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SUPREME COURT

OF THE

PHILIPPINES

FROM

OCTOBER 10, 2016 TO OCTOBER 19, 2016

SUPREME COURT
MANILA
2017

Prepared
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2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 8638. October 10, 2016]

DATU BUDENCIO E. DUMANLAG, *complainant, vs.* **ATTY. WINSTON B. INTONG,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; ALLEGATION OF EXORBITANT NOTARIZATION FEES MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.—** With respect to the claim of exorbitant notarization fees, the same deserves scant consideration in view of complainant's failure to offer corroborative proof to support his bare allegations. While a lawyer is mandated under Canon 20 of the CPR to charge only fair and reasonable fees, and that he may be penalized, even disbarred or suspended from his office as an attorney for breach of the ethics of the legal profession as embodied in the CPR, such violation must be established by clear, convincing and satisfactory proof, which was not done in this case.

2. **ID.; ID.; RESPONDENT IS REPRIMANDED FOR FAILURE TO OBEY LAWFUL ORDERS OF THE COURT AND THE INTEGRATED BAR OF THE PHILIPPINES.—** Respondent cannot, however, escape accountability for his repetitive disregard of the resolutions of the Court requiring him to file his comment to the complaint and to pay the fine imposed upon him for his failure to do so. As correctly pointed out by

Commissioner Villanueva, the Court issued three resolutions dated July 19, 2010, March 9, 2011, and September 28, 2011, requiring respondent to file his comment, to show cause for his failure to file, and to pay a fine of ₱1,000.00 for such failure. But all three were left unheeded. Respondent ought to know that orders of the court are "not mere requests but directives which should have been complied with promptly and completely." "He disregarded the oath he took when he was accepted to the legal profession 'to obey the laws and the legal orders of the duly constituted legal authorities.' x x x His conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court," pursuant to Canon 11 of the CPR, which mandates that "[a] lawyer shall observe and maintain the respect due to the courts and to judicial officers x x x." It has been stressed that the determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension, and, in grave cases, disbarment. In the present case, the Court finds too harsh the recommendation of the IBP Board of Governors that respondent be suspended from the practice of law for a period of six months. After all, respondent did file his mandatory conference brief before the IBP where he cited the Resolution dated July 19, 2010 of the Court, requiring him to file his comment to the complaint. He also attended the mandatory conference/hearing scheduled by the IBP, although he failed to file his position paper despite the directive to do so. Under the circumstances, and considering that this appears to be respondent's first infraction, the Court finds it proper to reprimand him with warning that commission of the same or similar infraction will be dealt with more severely.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a complaint[1] dated March 19, 2010 filed by complainant Datu Budencio E. Dumanlag (complainant) against

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

respondent Atty. Winston B. Intong (respondent) for gross misconduct and negligence.

The Facts

Complainant claims to be a leader of the Indigenous People of Bangcud, Malaybalay and the President of the Philippine Datus Cultural Minorities Assistance, Inc. and the Frontier's Mining Prospectors and Location Corporation.[2] On March 12, 2010, complainant received a letter[3] from respondent,[4] which is reproduced in full hereunder:

February 08, 2010

TO: DATU BUDENCIO DUMANLAG
Infront Mac Feedmill, San Jose
P-1, Malaybalay City, Bukidnon

Sir:

Please consider this as a letter request for your presence on 12 February 2010 at 2:00 o'clock in the afternoon located at Purok 11, Poblacion, Valencia City, Bukidnon.

This is for the settlement and pre-litigation conference prior to any legal action against you as complainant by my client JAIME AJOC & ENCARNACION DUMANLAG-AJOC of Lapu-lapu St., Valencia City.

Hoping for your preferential and positive action on this matter.

Thank you very much. My highest esteem.

Very truly yours,

(SGD) ATTY. WINSTON B. INTONG
For and in behalf of Mr. & Mrs. Ajoc

[2] *Id*. at 2.

[3] *Id*. at 7.

[4] See *id*. at 3.

Complainant took offense with the aforequoted letter as it was allegedly intended "to FORCE, COMPULSORY (*sic*), to investigate, or fiscalize, in the moment (sic) [complainant] in his LAW OFFICE at Purok 11 Poblacion Valencia City, Bukidnon. [Respondent] intend (sic) for particular purpose that HIS LAW OFFICE in Valencia City is one of the COURTS in the Philippines as to investigate [complainant] thereat."[5] To bolster his indignation, complainant cited Republic Act No. (RA) 8371,[6] otherwise known as "The Indigenous Peoples' Rights Act of 1997," specifically Section 21 which accords equal protection and non-discrimination of Indigenous Cultural Communities and Indigenous Peoples (ICCs/IPs), as follows:

> Section 21. *Equal Protection and Non-discrimination of ICCs/IPs*. – Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.
>
> xxx xxx xxx

He likewise quoted an Evaluation Report[7] of the Office of the Ombudsman dated October 11, 2001 where he, as complainant, stressed that "[n]o court in the Philippines, therefore, should punish any member of a cultural community but shall

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[5] *Id*. at 3.

[6] Entitled "AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on October 29, 1997.

[7] *Rollo*, pp. 11-12, including dorsal portions.

extend to them courtesies in accordance with [the aforesaid] law."[8]

Complainant averred further that the incorporation papers of the Philippine Datus Cultural Minorities Assistance, Inc. and the Frontier's Mining Prospectors and Location Corporation were supposed to be notarized at respondent's law office, but the charge for notarization amounting to ₱10,000.00 was "very dear, very expensive," and complainant could not afford the same.[9] He then accused respondent of soliciting cases for purposes of gain, which act constitutes malpractice, citing Section 27, Rule 138 of the Rules of Court,[10] to wit:

> Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In a Resolution[11] dated July 19, 2010, the Court required respondent to file his comment on the complaint, which he failed to do. Consequently, in a Resolution[12] dated March 9, 2011, the Court issued a show cause order against respondent reiterating compliance with Resolution dated July 19, 2010. On September 28, 2011, the Court imposed a fine of ₱1,000.00 upon respondent for his continued failure to comply with the

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[8] See *id*. at 11, page 2 dorsal portion. See also *id*. at 3.

[9] See *id*. at 3.

[10] See *id*. at 3-4.

[11] *Id*. at 27. Signed by Clerk of Court Lucita Abjelina-Soriano.

[12] *Id*. at 29.

directive to file comment.[13] However, respondent still failed to pay said fine,[14] or to file his comment. Thus, in a Resolution[15] dated July 1, 2013, the Court dispensed with the filing of respondent's comment, and referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On January 21, 2014, the IBP-Commission on Bar Discipline (IBP-CBD) issued a Notice of Mandatory Conference/Hearing[16] directing the parties to submit their respective mandatory conference briefs. In compliance therewith, respondent filed his brief[17] on March 11, 2014 claiming that the letter dated February 8, 2010 merely invited complainant "for his presence and to confront, if not, sit and resolve any issue/s that he x x x may have against JAIME AJOC and his wife ENCARNACION";[18] and that such effort at conflict resolution in the hope of avoiding costly and cumbersome litigations is not an act of malpractice, and does not constitute gross misconduct.[19]

The IBP's Findings

In his Report and Recommendation[20] dated May 27, 2014, the IBP-CBD Investigating Commissioner Cecilio A. C. Villanueva (Commissioner Villanueva) proposed the **dismissal of the complaint** for failure of the complainant to substantiate his accusations against respondent. Commissioner Villanueva found no force, threat or intimidation in the tenor of the letter sent by respondent, and described the same as a "mere request"

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[13] See Resolution dated September 28, 2011; *id*. at 30.

[14] See Certification dated March 11, 2013; *id*. at 31.

[15] *Id*. at 34.

[16] *Id*. at 36. Signed by Commissioner Cecilio A. C. Villanueva.

[17] See Respondent's Brief dated March 5, 2014; *id*. at 37-41.

[18] *Id*. at 39.

[19] *Id*. at 39-40.

[20] *Id*. at 55-60.

that was "carefully worded, done in a respectful manner."[21] He pointed out, however, the demeanor of the complainant at the mandatory conference as that of a senior citizen who was "very sensitive and demanding of his reputation as a leader of cultural group. People should be careful of things to say to him lest he gets offended or even get mad." Commissioner Villanueva almost cited complainant in contempt when the latter threatened him and the stenographer with a lawsuit before the Commission on Human Rights, this Court, and the United Nations.[22]

Be that as it may, Commissioner Villanueva recommended[23] that respondent be **reprimanded** for his disrespectful actuations before the Court and the IBP-CBD committed as follows:

> Respondent's propensity to ignore the lawful orders of the [Court] as well as those of the IBP[-CBD] is manifest from the record. The [Court] issued three resolutions requiring respondent to comment on the complaint filed by complainant, but he simply ignored the Court's orders and did not file his comment. Consequently, the [Court] resolved to dispense with the filing of the comment but referred the matter to the IBP for investigation, report and recommendation so as not to deprive respondent of his right to due process.
>
> Again, respondent was given several opportunities to express his side on the charge during the investigation thereof by the IBP. Neither did he file a position paper as required by the Commission on Bar Discipline. Again, he merely ignored the Commission's directives.[24]

On April 19, 2015, the IBP Board of Governors issued a Resolution[25] which adopted and approved with modification the aforesaid Report and Recommendation of Commissioner

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[21] *Id*. at 59.

[22] *Id*. at 59-60.

[23] *Id*. at 60.

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

[25] See Notice of Resolution of Resolution No. XXI-2015-317 signed by National Secretary Nasser A. Marohomsalic; *id*. at 53-54.

Villanueva. In view of respondent's propensity to ignore the lawful orders of the Court, as well as the IBP-CBD, which was found to be unbecoming of him as officer of the court, respondent was **suspended from the practice of law for six (6) months**.[26]

Thereafter, the IBP forwarded the case to the Court as provided under Rule 139-B, Section 12 (b)[27] of the Rules of Court.[28]

The Court's Ruling

The Court sustains the findings of the IBP Board of Governors, except as to the penalty.

It has been consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.[29] Thus, in disbarment proceedings, the burden of proof rests upon the complainant, and for the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[30] However, in this case, complainant failed to discharge the burden of proving his accusations of gross misconduct on the part of the respondent.

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[26] See *id*. at 53.

[27] Section 12. *Review and decision by the Board of Governors*. – x x x.

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

x x x x x x x x x

[28] *Rollo*, at p. 51.

[29] *Aba v. De Guzman, Jr.*, 678 Phil. 588, 599-600 (2011).

[30] See *Balistoy v. Bron*, A.C. No. 8667, February 3, 2016, citing *Aba v. De Guzman, Jr., id*. at 600.

Complainant's allegation of force and compulsion accompanying the letter dated February 8, 2010 is negated by the very words used therein. Respondent described said letter in the opening paragraph as a "letter request for [complainant's] presence."[31] He then went on to close the letter with "[h]oping for your [(complainant's)] preferential and positive action on this matter" and "[m]y highest esteem."[32] As aptly pointed out by Commissioner Villanueva in his Report and Recommendation, the letter was "carefully worded, done in a respectful manner."[33] There was absolutely nothing on the face of the letter that would justify complainant's indignation against any discourtesy or discrimination against him. The letter was a mere invitation for complainant to attend a settlement and pre-litigation conference, which respondent, as a lawyer, is obligated to pursue. Under Rule 1.04, Canon 1 of the Code of Professional Responsibility (CPR), "[a] lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement." There was nothing wrong, therefore, with respondent's efforts to set up a conference between complainant and his clients.

With respect to the claim of exorbitant notarization fees, the same deserves scant consideration in view of complainant's failure to offer corroborative proof to support his bare allegations. While a lawyer is mandated under Canon 20 of the CPR to charge only fair and reasonable fees, and that he may be penalized, even disbarred or suspended from his office as an attorney for breach of the ethics of the legal profession as embodied in the CPR,[34] such violation must be established by clear, convincing and satisfactory proof, which was not done in this case.

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[31] *Rollo*, p. 7.

[32] *Id*.

[33] *Id*. at 59.

[34] *Foster v. Agtang*, A.C. No. 10579, December 10, 2014, 744 SCRA 242, 261.

Respondent cannot, however, escape accountability for his repetitive disregard of the resolutions of the Court requiring him to file his comment to the complaint and to pay the fine imposed upon him for his failure to do so. As correctly pointed out by Commissioner Villanueva, the Court issued three resolutions dated July 19, 2010, March 9, 2011, and September 28, 2011, requiring respondent to file his comment, to show cause for his failure to file, and to pay a fine of ₱1,000.00 for such failure. But all three were left unheeded. Respondent ought to know that orders of the court are "not mere requests but directives which should have been complied with promptly and completely." "He disregarded the oath he took when he was accepted to the legal profession 'to obey the laws and the legal orders of the duly constituted legal authorities.' x x x His conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court,"[35] pursuant to Canon 11 of the CPR, which mandates that "[a] lawyer shall observe and maintain the respect due to the courts and to judicial officers x x x."

It has been stressed that the determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension, and, in grave cases, disbarment.[36] In the present case, the Court finds too harsh the recommendation of the IBP Board of Governors that respondent be suspended from the practice of law for a period of six months. After all, respondent did file his mandatory conference brief before the IBP where he cited

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[35] *Andres v. Nambi*, A.C. No. 7158, March 9, 2015, 752 SCRA 110, 118; citations omitted.

[36] *Enriquez v. Lavadia, Jr.*, A.C. No. 5686, June 16, 2015, 757 SCRA 587, 598-599; citation omitted.

the Resolution dated July 19, 2010 of the Court, requiring him to file his comment to the complaint. He also attended the mandatory conference/hearing scheduled by the IBP, although he failed to file his position paper despite the directive to do so. Under the circumstances, and considering that this appears to be respondent's first infraction, the Court finds it proper to reprimand him with warning that commission of the same or similar infraction will be dealt with more severely. This is consistent with the ruling in the recent case of *Andres v. Nambi*,[37] where respondent therein was found to have ignored the Court's resolution directing him to file comment, and to have failed to attend the mandatory conference before the IBP Commission on Bar Discipline despite notice, as well as to file his position paper. Since it was also his first infraction, respondent therein was merely reprimanded by the Court, as in this case.

WHEREFORE, the Court **REPRIMANDS** respondent Atty. Winston B. Intong (respondent) for refusing to obey lawful orders of the Court and the Integrated Bar of the Philippines, with a warning that a repetition of the same or similar act or offense shall be dealt with more severely.

Let a copy of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as a member of the Bar.

SO ORDERED.

*Leonardo-de Castro** (*Acting Chief Justice*), *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on official leave.

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[37] *Supra* note 35.

* Per Special Order No. 2386 dated September 29, 2016.

FIRST DIVISION

[G.R. No. 191150. October 10, 2016]

NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS (NASECORE), represented by PETRONILO ILAGAN, FEDERATION OF VILLAGE ASSOCIATIONS (FOVA), represented by SIEGFRIEDO VELOSO, and FEDERATION OF LAS PIÑAS VILLAGE ASSOCIATIONS (FOLVA), represented by BONIFACIO DAZO, *petitioners, vs.* **MANILA ELECTRIC COMPANY (MERALCO),** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ENERGY REGULATORY COMMISSION (ERC); ERC RULING APPROVING RESPONDENT'S PROPOSED RATE PURSUANT TO PERFORMANCE-BASED REGULATION (PBR) METHODOLOGY CANNOT BE COLLATERALLY ATTACKED THROUGH THE INSTANT PETITION.— [P]etitioners' opposition against the PBR rate-setting methodology adopted by the ERC, through its issuance of the DWRG and the RDWR, was not made through the proper case directly attacking the constitutionality and/or validity of the same. Hence, the instant petition constitutes a collateral attack on the above-stated regulation, and therefore, should, at the outset, be disallowed. To explain, based on the PBR methodology, regulated entities, such as MERALCO, are required to go through two (2) **separate** proceedings for their rates to be finally approved. These are: ***first***, the determination of the ARR, which is used to derive the MAP; and ***second***, the translation of the MAP into a distribution rate structure for each customer class or segment. **ERC Case Nos. 2008-004 RC and 2008-018 RC**, **from which the instant petition emanated**, already refer to MERALCO's separate applications for the translation of its MAP into distribution rates of different customer classes for the First and Second regulatory years of the ERC-approved ARR for the regulatory period 2007-2011, which is

the second proceeding contemplated under the PBR methodology. **It no longer concerns the propriety of MERALCO's shift to the PBR methodology**, which was what the ERC had officially adopted at the time **ERC Case Nos. 2008-004 RC and 2008-018 RC** were filed.

2. ID.; ID.; ID.; ID.; FAILURE OF THE PETITIONERS TO OBJECT AND/OR ATTEND PUBLIC CONSULTATIONS DESPITE DUE NOTICE IS FATAL; THE ASSAILED ERC RULING HAS LONG BECOME FINAL AND EXECUTORY AND HENCE, IMMUTABLE.— [I]t should be highlighted that no discernible objection was raised by petitioners during the public consultations conducted by the ERC relative to its shift to the PBR methodology. Neither did petitioners raise their opposition to the ERC's adoption of the same in **ERC Case No. 2006-045 RC** where the subject matter was precisely MERALCO's application for the approval of its ARR and determination of its MAP for the same regulatory period, which is the first proceeding contemplated under the PBR system. As the records show, during the pendency of **ERC Case No. 2006-045 RC**, MERALCO was not only required to present to the public the circumstances of its application, they also had to present their witnesses who undertook a lengthy-cross examination and addressed clarificatory questions propounded by the ERC and its technical consultants. Further, when the ERC issued its Draft Determination, it invited various stakeholders in the energy sector, including herein petitioners, to attend public consultations, ask clarificatory questions themselves, and even file their respective comments and/or petitions for intervention; however, they failed to do so despite due notice. It was only after affording all stakeholders the opportunity to be heard that the ERC rendered its Decision dated August 30, 2007 approving with modification MERALCO's ARR, performance incentive scheme, and MAP for regulatory period 2007-2011, **which ruling has now lapsed into finality**. Based on the foregoing, it is therefore evident that petitioners were given an ample opportunity to question the ERC's shift to the PBR methodology, including its application relative to MERALCO's rate propositions, but to no avail. Consequently, they can no longer question the judgment rendered in said case which had long become final and executory and hence, immutable.

3. REMEDIAL LAW; APPEALS; RULE 45 PETITION; THE ISSUE OF REASONABLENESS OF THE RATES APPROVED BY ERC ENTAILS FACTUAL MATTERS WHICH IS PROSCRIBED UNDER RULE 45.— [T]he resolution of the instant petition would nonetheless entail a determination of factual matters which is proscribed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The general rule is that in a petition for review under Rule 45, only questions of law may be raised. In this case, petitioners contest the reasonableness of the rates approved by the ERC inasmuch as it granted MERALCO's application for the approval of its ARR and determination of its MAP covering the regulatory period of 2007-2011. x x x Case law provides that the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. As applied in this case, in order to assess the reasonableness of the rates approved by the ERC, there is a glaring need to scrutinize the veracity of the adverse allegations of both parties, which, in turn, necessitates an examination of the evidence in support thereof. Therefore, the issue on reasonableness posed in the petition inevitably treads the territory of questions of fact, which is generally proscribed from review in a Rule 45 petition, as in this case.

4. ID.; ID.; FACTUAL FINDINGS OF THE ERC RELATIVE TO RESPONDENT'S RATE APPLICATIONS AS AFFIRMED BY THE COURT OF APPEALS ARE BINDING ON THE SUPREME COURT.— It must be stressed that since rate-fixing calls for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter, such matters are primarily entrusted to the administrative or regulating authority. Hence, the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence. Absent any of the exceptions laid down by jurisprudence, such factual findings of quasi-judicial agencies, especially when affirmed by the CA, are binding on this Court. As determined by the ERC, which was

affirmed by the CA, petitioners failed to sufficiently show that the rates approved in the proceedings below were unreasonable as they claimed to be. As pointed out by the CA, MERALCO's rate applications were approved only after the ERC conducted the necessary proceedings, received evidence in support of the applications and, thereafter, made an independent evaluation of the same. Thus, the CA cannot be faulted in sustaining the reasonableness of the rates approved by the ERC. In *Ynchausti Steamship Co. v. Public Utility Commissioner*, this Court articulated that "[t]here is a legal presumption that the fixed rates are reasonable, and it must be conceded that the fixing of rates by the Government, through its authorized agents, involves the exercise of reasonable discretion and unless there is an abuse of that discretion, the courts will not interfere."

5. POLITICAL LAW; ADMINISTRATIVE LAW; ENERGY REGULATORY COMMISSION (ERC); RATE ON RETURN BASED (RORB) METHODOLOGY AND PBR METHODOLOGY, DISTINGUISHED.— [U]nder the RORB methodology, power rates were set to recover the cost of service prudently incurred, *i.e.*, historical costs, plus a reasonable rate of return. This means that actual and reasonable costs were used for a prescribed test year to determine the revenue requirement, with the use of the test year assuming that the past relationship among revenue, costs, and net investment during said test year will continue into the future. On the other hand, the PBR methodology deviates from the use of historical costs, and instead, uses projections of operating and capital expenditures to meet projected demand, thereby enabling the regulated entities to invest in facilities to meet customer requirements and prescribed service levels. This methodology also features a performance incentive scheme which provides incentives and penalties to the utility to compel it to be more efficient and reliable, while maintaining reasonable rates and improving the quality of service to achieve pre-determined target levels.

6. ID.; ID.; ID.; ERC'S SHIFT FROM THE RORB TO PBR METHODOLOGY SHOULD BE DEEMED A SUPERVENING EVENT WHICH RENDERED THE REQUIREMENT OF COA AUDIT BEFORE APPROVING RATE INCREASE APPLICATIONS AS DIRECTED IN *LUALHATI* MOOT AND ACADEMIC.— [I]t is well to point out that *Lualhati* is traced from **ERC Case Nos. 2001-646 and**

> **2001-900**, which cover MERALCO's application for rate increase **when the ERC was still adopting the RORB methodology in its rate-setting function**. In other words, the need of a COA audit, under the auspices of the *Lualhati* ruling, pertained to MERALCO's rates when it was still under the RORB system. During the pendency of this case, the ERC shifted to the PBR methodology, which premises and assumptions are conceptually different from that followed in the RORB. x x x Because of the variances in its premises and assumptions, the ERC's shift from the RORB to the PBR methodology should therefore be deemed as a supervening circumstance that rendered inconsequential this Court's provisional approval of the rate increases applied for by MERALCO in *Lualhati* which was made under the context of the now-defunct RORB system. Accordingly, the issue of whether or not the ERC should have first took into account the findings in the COA audit before approving MERALCO's applications in **ERC Case Nos. 2008-004 RC and 2008-018 RC** as directed in *Lualhati* has become moot and academic. In *Carpio v. CA*, it was explained that "[a] case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use," as the aforesaid issue raised in this case. For all these reasons, the petition is therefore denied.

APPEARANCES OF COUNSEL

Leonardo A. Aurelio for petitioners.
Angara Abello Concepcion Regala & Cruz for respondent.
Jose Ronald V. Valles, co-counsel for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 29, 2010 of the Court of

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[1] *Rollo*, Vol. I, pp. 8-72.

[2] *Id*. at 74-96. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Normandie B. Pizarro and Florito S. Macalino concurring.

Appeals (CA) in CA-G.R. SP No. 108663, which affirmed the Decision[3] dated May 29, 2008 and the Order[4] dated April 13, 2009 of the Energy Regulatory Commission (ERC) in ERC Case Nos. 2008-004 RC and 2008-018 RC, approving with modification respondent Manila Electric Company's (MERALCO) applications for the translation into distribution rates of the Energy Regulatory Commission (ERC)-approved Annual Revenue Requirement (ARR), utilizing the Performance-Based Regulation (PBR) methodology, covering the first and second regulatory years of the 2007-2011 regulatory period.

The Facts

On April 14, 2000, MERALCO, a utility company engaged in the business of sale and distribution of electricity within its franchise area, filed with the now-defunct Energy Regulatory Board (ERB) an application for approval of the revision of its current rate schedules and an appraisal of its properties, which would allow an increase in its basic charge by about ₱0.30 per kilowatt hour (kWh), docketed as ERB Case No. 2000-57.[5] During the pendency of this case, the Philippine Congress enacted Republic Act No. 9136,[6] otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), which provisions, *inter alia*, abolished the ERB and created the ERC in its stead,[7] as well as directed all electric distribution utilities to file an application for approval of their unbundled rates with the ERC.[8]

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[3] *Id*. at 101-135. Signed by Chairman Rodolfo B. Albano, Jr. and Commissioners Rauf A. Tan, Alejandro Z. Barin, Maria Teresa A.R. Castañeda, and Jose C. Reyes.

[4] *Id*. at 136-167. Signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Rauf A. Tan, Alejandro Z. Barin, Maria Teresa A.R. Castañeda, and Jose C. Reyes.

[5] *Id*. at 75.

[6] Entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES" (June 26, 2001).

[7] See Section 38 of the EPIRA.

[8] See Sections 23, 24, and 25 of the EPIRA.

Thus, pursuant to the EPIRA, MERALCO filed an application for the approval of its unbundled rates and the appraisal of its properties, docketed as **ERC Case No. 2001-900**. Eventually, this latter case was consolidated with ERB Case No. 2000-57, which was re-docketed as **ERC Case No. 2001-646**.[9] During this time, the ERC adopted the Rate on Return Base (RORB) methodology in its rate-setting function. Under the RORB methodology, rates are set to recover the cost of service incurred by the distribution utility plus a reasonable rate of return[10], whereby historical costs are used to determine the revenue requirement.[11]

On March 20, 2003, the ERC issued a Decision in **ERC Case Nos. 2001-646 and 2001-900**, approving MERALCO's twin applications and fixing its rate of return, initially at 12%, but later, upon reconsideration, at 15.5% through an Order dated May 30, 2003.[12] The matter eventually reached this Court through separate petitions respectively filed by MERALCO, *i.e.*, G.R. No. 166769[13] and the ERC, *i.e.*, G.R. No. 166818,[14] which cases were eventually consolidated. On December 6, 2006, this Court rendered a Decision in these consolidated cases, *i.e.*, *MERALCO v. Lualhati* (*Lualhati*),[15] upholding the new rates fixed by the ERC, albeit provisionally, pending the complete audit on the books, records, and accounts of MERALCO to be performed by the Commission on Audit (COA).[16]

Meanwhile, the ERC, acting in accordance with its rate-setting authority under the EPIRA,[17] and after the conduct of several

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[9] *Rollo*, Vol. I, p. 75.

[10] *Id*. at 76.

[11] See *id*. at 90.

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

[13] Entitled "*MERALCO v. Genaro Lualhati, et al.*"

[14] Entitled "*ERC v. Genaro Lualhati, et al.*"

[15] See 539 Phil. 509 (2006).

[16] *Rollo*, Vol. I, pp. 77-78.

[17] See Section 43 (f) of the EPIRA.

public consultations, issued Resolution No. 4, Series of 2003 dated May 29, 2003, **signaling its shift from the RORB methodology to the PBR methodology in fixing the wheeling rates of regulated entities**.[18] Under the PBR methodology, the price of the utility concerned, *i.e.*, electricity, is controlled through an average price cap mechanism under which a limit is placed upon the average revenue per kWh at a particular period which the utility is allowed to earn.[19]

Consequently, the ERC issued Resolution No. 12-02, Series of 2004[20] promulgating the Distribution Wheeling Rate Guidelines (DWRG), which would govern the setting of distribution rates of privately-owned distribution utilities that will enter into the new PBR system.[21] Under the DWRG, five (5) entry groups are defined to enter into the PBR system.[22] MERALCO, together with Dagupan Electric Corporation (DECORP) and Cagayan Electric Power and Light Company, Inc. (CEPALCO), were among the first entrants to the PBR.[23]

On July 26, 2006, the ERC issued Resolution No. 39, Series of 2006,[24] promulgating the Rules for Setting Distribution Wheeling Rates (RDWR) for Privately Owned Distribution Utilities Entering Performance Based Regulation.[25] The RDWR, which is an update of the DWRG, sets a maximum price cap on the distribution wheeling rates that may be charged by regulated entities in a regulated period. Regulation occurs during

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[18] See *rollo*, Vol. I, p. 78 and *rollo*, Vol. III, p. 1336.

[19] See *rollo*, Vol. III, p. 1339.

[20] Entitled "ADOPTING A METHODOLOGY FOR SETTING DISTRIBUTION WHEELING RATES" dated December 10, 2004; see *rollo*, Vol. II, p. 675.

[21] See *rollo*, Vol. I, p. 78.

[22] See *rollo*, Vol. II, p. 675.

[23] See *rollo*, Vol. I, p. 78 and *rollo*, Vol. II, p. 675.

[24] Entitled "Adopting the Rules for Setting Distribution Wheeling Rate (RDWR) for Privately Owned Distribution Utilities Entering Performance Based Regulation" dated July 26, 2006. *Rollo*, Vol. II, pp. 675-677.

[25] Dated August 1, 2006. *Id*. at 678-831.

a four (4)-year period and prices are set in advance for each regulatory year in a period.[26] The PBR-entrant is given an ARR,[27] which is a forecast of the cash flow requirements of the regulated entity, based on a Building Block analysis that uses a 'classical' weighted average cost of capital (WACC).[28] This will be used to derive the Maximum Annual Price (MAP),[29] which, in turn, shall be allocated by the distribution utilities in setting the rate schedule for its distribution, supply, and metering charges for each customer class or segment[30] following the provisions of the Distribution Services Open Access Rules[31] and the Uniform Rate Filing Requirements.[32] Prompted by the foregoing, MERALCO filed on September 1, 2006 an application for the approval of its ARR and performance incentive scheme for the regulatory period 2007-2011 in accordance with the RDWR before the ERC, docketed as **ERC Case No. 2006-045 RC**.[33]

On May 16, 2007, the ERC, in accordance with the RDWR, issued a Draft Determination[34] in **ERC Case No. 2006-045 RC**

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[26] Article II of the RDWR; *rollo*, Vol. II, p. 703. See also *rollo*, Vol. I, p. 78.

[27] Article IV, Section 4.6.1; *rollo*, Vol. II, at p. 720.

[28] Article IV, Section 4.6.2; *id*. at 721.

[29] Article III, Section 3.2.1; *rollo*, Vol. II, p. 704. See also *rollo*, Vol. I, p. 79.

[30] *Rollo*, Vol. I, p. 108.

[31] As promulgated by the ERC under Resolution No. 1, Series of 2006, dated January 18, 2006. See *rollo*, Vol. II, p. 688.

[32] Dated January 13, 2001, resulting from ERC Case No. 2001-873, docketed on October 31, 2001. See *rollo*, Vol. II, p. 696. See also *rollo*, Vol. I, pp. 323-326.

[33] See *rollo*, Vol. I, p. 332.

[34] Under Article VII, Section 7.1.7, in relation to Section 7.1.11 of the RDWR, the ERC, not later than four months prior to the commencement of the relevant Regulatory Period, must publish a Draft Determination (DD) on the price control arrangements that are to apply for the relevant Regulatory Period and after considering all written submissions of interested parties and public hearings held for that purpose, the ERC must publish a Final Determination (FD) on the price control arrangements not later than one (1) month prior to the commencement of the relevant regulatory period. (See *rollo*, Vol. II, pp. 774-775.)

that embodied its initial views on the price control arrangements that were to apply to PBR entrants, as well as its initial evaluation of MERALCO's proposals and subjected it to public consultation.[35] Various stakeholders in the energy sector, including herein petitioners National Association of Electricity Consumers for Reforms (NASECORE), Federation of Village Associations (FOVA), and Federation of Las Piñas Village Associations (FOLVA; collectively, petitioners), were invited to attend the said public consultations, ask clarificatory questions, and even file their respective petitions for intervention; however, petitioners, among others, failed to do so despite due notice.[36] As such, the ERC declared a general default against all those who failed to appear during the hearing and file their petitions for intervention without justifiable reasons, especially since a considerable length of time from the publication of MERALCO's application, as well as of the Notice of Public Hearing, had lapsed without said stakeholders heeding the notices of the ERC.[37]

After considering all the evidence and public comments submitted, the ERC rendered a Decision[38] dated August 30, 2007 in **ERC Case No. 2006-045 RC**, approving MERALCO's application *albeit* with substantial disallowances and reductions, the details of which were embodied in the Final Determination[39]

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[35] See *rollo*, Vol. I, pp. 79-80, 327-328, and 335.

[36] *Id*. at 333.

[37] *Id*. at 333-334.

[38] *Rollo*, Vol. II, pp. 833-843. Signed by Commissioners Rauf A. Tan, Maria Teresa R. Castañeda and Jose C. Reyes. Chairman Rodolfo B. Albano, Jr. and Commissioner Alejandro Z. Barin, on leave.

[39] The Final Determination embodies the ERC's initial position on the price control arrangements that will apply to MERALCO for regulatory period 2007-2011. It describes the ERC's evaluation of MERALCO's revenue and performance incentive scheme application, as well as the evidence presented in support thereof during the clarificatory meetings and evidentiary hearings. It is designed to present ERC's final decision on the price arrangements and will form the basis on which MERALCO will prepare and submit a rate application for the regulatory period 2007-2011. *Id*. at 844-924.

(FD) that was annexed to the said Decision.[40] MERALCO sought for the reconsideration[41] of the foregoing, which was denied in an Order[42] dated December 5, 2007. It appearing that no more appeals were filed, the ERC ruling in **ERC Case No. 2006-045 RC** became final and executory.

Pursuant to the directives of the ERC, as stated in the FD, MERALCO consequently filed on January 11, 2008 and April 1, 2008 separate applications for the approval of its translation into distribution rates of different customer classes for the first and second regulatory years of the ERC-approved ARR for the regulatory period 2007-2011 before the ERC, docketed as **ERC Case Nos. 2008-004 RC**[43] **and 2008-018 RC**,[44] from which the present petition before this Court originated.

At the initial hearing, the following intervenors/oppositors entered their appearances, namely, herein petitioners, Consolidated Industrial Gases, Incorporated (CIGI), Freedom from Debt Coalition (FDC), National Power Corporation (NPC), and Mr. Amado H. Soliman.[45] None of the intervenors/oppositors presented any evidence in support of their stand despite the opportunity given.[46]

The ERC Ruling in ERC Case Nos. 2008-004 RC and 2008-018 RC and Further Proceedings

On May 29, 2008, the ERC rendered a Decision[47] approving with modification MERALCO's separate applications for

[40] See *id.* at 840-842.

[41] Not attached to the *rollos.*

[42] *Rollo*, Vol. II, pp. 960-979. Signed by Chairman Rodolfo B. Albano, Jr. and Commissioners Rauf A. Tan, Alejandro Z. Barin and Jose C. Reyes. Commissioner Maria Teresa R. Castañeda, on leave.

[43] Dated January 10, 2008. *Id.* at 1122-1133.

[44] Dated March 28, 2008. *Id.* at 1230-1240.

[45] *Rollo*, Vol. I, pp. 83 and 105.

[46] *Id.* at 83.

[47] *Id.* at 101-135.

approval of its translation into distribution rates of different customer classes for the 1st and 2nd regulatory years of the ERC-approved ARR for the regulatory period 2007-2011. It consolidated the two (2) distribution rate applications for regulatory years 2008 and 2009 into one price reset to be implemented beginning July 1, 2008, in view of the substantial delay in the issuance of the FD for MERALCO.[48]

Petitioners, in a joint motion, sought for reconsideration,[49] averring in the main that the new PBR methodology adopted was inconsistent and contrary to the provisions of the EPIRA. The other intervenors/oppositors likewise filed separate motions for reconsideration of the May 29, 2008 ERC Decision; while the Office of the Solicitor General (OSG), for the Republic of the Philippines through the Department of Trade and Industry (DTI) and the Philippine Chamber of Commerce and Industry (PCCI), moved to intervene and to admit their motions for reconsideration.[50]

In the meantime, MERALCO submitted a Manifestation,[51] stating, among others, its intention to defer the recovery of its corporate income tax (CIT) in order to mitigate the impact of the implementation of the new distribution rate structure on its consumers and prevent price shocks.[52]

In an Order[53] dated April 13, 2009, the ERC modified its May 29, 2008 Decision relative to the computation of the MAP for 2009 to reflect a zero CIT component after MERALCO manifested to defer the recovery of its CIT and further removed all rate distortions from MERALCO's distribution costs for regulatory year 2008.[54] On the other hand, all the motions for

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[48] *Id*. at 83, 128-129, and 116-117.

[49] Not attached to the *rollos.*

[50] *Rollo*, Vol. I, p. 137.

[51] Dated October 22, 2008. *Rollo*, Vol. II, pp. 1076-1081.

[52] *Rollo*, Vol. I, p. 144.

[53] *Id*. at 136-161.

[54] *Id.* at 159-161.

reconsideration, as well as petitions for intervention were denied for lack of merit.[55] It held that the issues relative to the propriety of the PBR methodology under the RDWR should have been raised during the time the RDWR was being promulgated by the ERC and that no further interventions can be entertained as it had already issued declarations of general default in accordance with the ERC rules.[56]

Unconvinced, petitioners appealed[57] to the CA, docketed as **CA-G.R. SP No. 108663**, asserting that: (*a*) the ERC should have first revisited the assumptions it used in approving the increased RORB rate from 12% to 15.5% in accordance with its Order[58] dated May 30, 2003 in **ERC Case Nos. 2001-646 and 2001-900**[59]; and (*b*) there must be compliance with the audit requirement by the COA as directed by this Court in *Lualhati* before the ERC could approve MERALCO's applications.[60]

The CA Ruling in CA-G.R. SP No. 108663

In a Decision[61] dated January 29, 2010, the CA affirmed the May 29, 2008 Decision and April 13, 2009 Order of the ERC in **ERC Case Nos. 2008-004 RC and 2008-018 RC**, holding that a review of the assumptions used in the approval of the provisional rate increase in *Lualhati* was not required since the RORB rate-setting methodology used therein had already been abandoned by the adoption of the PBR methodology. It

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[55] See *id.* at 161.

[56] See *id.* at 157-158.

[57] Not attached to the *rollo*s.

[58] *Rollo*, Vol. II, pp. 614-656.

[59] These cases pertain to MERALCO's previous application for approval of its unbundled rates and appraisal of its properties that had been approved by the ERC in its Decision dated March 20, 2003 (Unbundling Decision) and affirmed by the Supreme Court in *MERALCO v. Lualhati*, 539 Phil. 509 (2006).

[60] See *rollo*, Vol. I, p. 87.

[61] *Id.* at 74-96.

added that the factors considered in determining MERALCO's ARR and MAP had already been settled in the ERC's August 30, 2007 Decision and FD in **ERC Case No. 2006-045**, hence, cannot be the subject of review.[62] The CA likewise dismissed petitioners' contention that a complete audit by the COA is required before approving MERALCO's applications, pointing out that no less than the *Lualhati* case held that the same was not an indispensable requirement, and that absent any showing that the decision and order of the ERC were arrived at arbitrarily, the latter's findings are accorded not only respect but even finality.[63] In the same manner, the CA denied petitioners' claims for rate rollback and refund for lack of basis.[64]

Hence, the instant petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA correctly upheld the ERC ruling in **ERC Case Nos. 2008-004 RC and 2008-018 RC**, which approved with modification MERALCO's applications for the translation into distribution rates of the ERC-approved ARR under the PBR methodology for the first and second regulatory years of the 2007-2011 regulatory period.

The Court's Ruling

The petition is without merit.

Primarily, petitioners assail the ERC's shift to the PBR methodology, arguing that while the ERC has the authority to adopt alternative forms of internationally-accepted rate-setting methodology as provided for by the EPIRA, it must nevertheless ensure a reasonable price of electricity.[65] Corollary thereto, petitioners likewise assail the approval of MERALCO's proposed

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[62] See *id*. at 88-89.

[63] See *id*. at 93-95.

[64] See *id*. at 95.

[65] See *id*. at 42-44 and 48.

rates pursuant to the PBR methodology, contending that such rates are unreasonable and unjustified, especially in view of its allegation that MERALCO was receiving excessive profits over the last six (6) years.[66]

The arguments are untenable.

The rule is settled that "[a]dministrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law x x x and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court."[67] As such, they "cannot be attacked collaterally. Unless [such] rule is annulled in a direct proceeding, the legal presumption of its validity stands."[68]

In this case, petitioners' opposition against the PBR rate-setting methodology adopted by the ERC, through its issuance of the DWRG and the RDWR, was not made through the proper case directly attacking the constitutionality and/or validity of the same. Hence, the instant petition constitutes a collateral attack on the above-stated regulation, and therefore, should, at the outset, be disallowed. To explain, based on the PBR methodology, regulated entities, such as MERALCO, are required to go through two (2) **separate** proceedings for their rates to be finally approved. These are: ***first***, the determination of the ARR, which is used to derive the MAP; and ***second***, the translation of the MAP into a distribution rate structure for each customer class or segment.[69] **ERC Case Nos. 2008-004 RC and 2008-018 RC**, **from which the instant petition emanated**, already refer to MERALCO's separate applications for the translation of its MAP into distribution rates of different

[66] *Id*. at 45 and 49-50.

[67] *Spouses Dacudao v. Sec. Gonzales*, 701 Phil. 96, 110-111 (2013), citing *ABAKADA GURO Party List v. Purisima*, 584 Phil. 246, 283 (2008).

[68] *Dasmariñas Water District v. Monterey Foods Corporation*, 587 Phil. 403, 416 (2008).

[69] See MERALCO's Comment; *rollo*, Vol. I, p. 366.

customer classes for the First and Second regulatory years of the ERC-approved ARR for the regulatory period 2007-2011, which is the second proceeding contemplated under the PBR methodology. **It no longer concerns the propriety of MERALCO's shift to the PBR methodology**, which was what the ERC had officially adopted at the time **ERC Case Nos. 2008-004 RC and 2008-018 RC** were filed.

Moreover, it should be highlighted that no discernible objection was raised by petitioners during the public consultations conducted by the ERC relative to its shift to the PBR methodology. Neither did petitioners raise their opposition to the ERC's adoption of the same in **ERC Case No. 2006-045 RC** where the subject matter was precisely MERALCO's application for the approval of its ARR and determination of its MAP for the same regulatory period, which is the first proceeding contemplated under the PBR system. As the records show, during the pendency of **ERC Case No. 2006-045 RC**, MERALCO was not only required to present to the public the circumstances of its application, they also had to present their witnesses who undertook a lengthy-cross examination and addressed clarificatory questions propounded by the ERC and its technical consultants. Further, when the ERC issued its Draft Determination, it invited various stakeholders in the energy sector, including herein petitioners, to attend public consultations, ask clarificatory questions themselves, and even file their respective comments and/or petitions for intervention; however, they failed to do so despite due notice. It was only after affording all stakeholders the opportunity to be heard that the ERC rendered its Decision dated August 30, 2007 approving with modification MERALCO's ARR, performance incentive scheme, and MAP for regulatory period 2007-2011, **which ruling has now lapsed into finality**. Based on the foregoing, it is therefore evident that petitioners were given an ample opportunity to question the ERC's shift to the PBR methodology, including its application relative to MERALCO's rate propositions, but to no avail. Consequently, they can no longer question the judgment rendered in said case which had long become final and executory and hence, immutable.[70]

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[70] See *Argel v. Singson*, G.R. No. 202970, March 25, 2015, 754 SCRA 468, 476.

Besides, the resolution of the instant petition would nonetheless entail a determination of factual matters which is proscribed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The general rule is that in a petition for review under Rule 45, only questions of law may be raised.[71] In this case, petitioners contest the reasonableness of the rates approved by the ERC[72] inasmuch as it granted MERALCO's application for the approval of its ARR and determination of its MAP covering the regulatory period of 2007-2011. In support of their protest, petitioners presented factual data which purportedly show MERALCO's strong financial position for the last 21 years (1987-2007), considering that it had actually earned a total of ₱88,960.00 for every ₱1,000.00 investment, which translates to a gain of 8,896% on their actual investments.[73] For its part, MERALCO contests petitioners' "misleading assertions", clarifying that petitioners incorrectly assumed that the original value of the common shares issued is the only investment of the investors, and further maintained that when net income earned throughout the years are retained by a company as accumulated in the Retained Earnings account and are used for the company's continuing operations, it is considered a reinvestment, and therefore should be an addition to the investors' investment in the company.[74]

Case law provides that the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[75] As applied in this case, in

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[71] See *Delos Reyes Vda. Del Prado v. People*, 685 Phil. 149, 159-161 (2012).

[72] *Rollo*, Vol. I, p. 42.

[73] *Id*. at 54-55, 58, and 61.

[74] See Comment dated June 10, 2010; *id*. at 409-410.

[75] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 577, 586 (2013).

order to assess the reasonableness of the rates approved by the ERC, there is a glaring need to scrutinize the veracity of the adverse allegations of both parties, which, in turn, necessitates an examination of the evidence in support thereof. Therefore, the issue on reasonableness posed in the petition inevitably treads the territory of questions of fact, which is generally proscribed from review in a Rule 45 petition, as in this case.

The factual nature of the considerations involved in the present petition is further highlighted by the observation that the ERC, in line with the PBR methodology, used macroeconomic forecasts available for the Philippines from a number of independent sources and compared them with the economic forecasts submitted by it in its Revenue Application (which includes data on the Philippines Consumer Price Index [CPI], the United States CPI, and the PhP/US$ exchange rate) in order to assess whether these forecasts are reasonable to apply during the covered regulatory period, or whether these need to be adapted.[76] As to the regulatory year 2009 rate application, MERALCO echoed the following factual findings of the ERC:

> iv. The annual adjusted MAP for a regulatory year, in terms of the RDWR, is an adjustment of the MAP for the previous regulatory year, taking into account the following factors:
>
> a. The X-factor as determined by the Commission;
>
> b. The Philippines CPI for the previous measurement period;
>
> c. The US Consumer Price Index (CPI) for the previous measurement period;
>
> d. The US Dollar-Philippine Peso exchange rate for the previous measurement period;
>
> e. The performance incentive factor (S-factor) for the previous measurement period; and
>
> f. Under or over recovery in rates over the previous measurement period (the K-factor)

[76] *Rollo*, Vol. I, p. 390.

These factors were calculated by MERALCO and thoroughly reviewed by the Commission. **It was noted that all of MERALCO's calculations were carried out in accordance with the RDWR**.

v. Based on the Commission's own calculation using the actual March index, the CPI movement over this period was determined to be 3.83%.

vi. Based on the actual indices, the Commission made its own calculation on the ΔDUSER-factor at -10.19%.

vii. After correcting the factors noted above, the Commission recalculated the same at -1.78%.

viii. The table below shows a comparison of MERALCO's performance incentive targets and its actual service performance over the measurement period. It can be noted that MERALCO performed reasonably well, slightly exceeding its average performance of recent times. This corresponds with the calculation made by the Commission.

ix. MERALCO calculated the under-recovery factor (k_{2009}) at PhP0.1580/kWh. This is the same figure that was determined by the Commission.[77] (Emphasis and underscoring supplied)

It must be stressed that since rate-fixing calls for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter, such matters are primarily entrusted to the administrative or regulating authority.[78] Hence, the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence. Absent any of the exceptions laid down by jurisprudence, such factual findings of quasi-judicial agencies, especially when affirmed by the CA, are binding on this Court.[79]

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[77] *Id*. at 401-402. See also *id*. at 119-122.

[78] *Republic of the Philippines (Republic) v. MERALCO*, 449 Phil. 118, 135 (2003), citing *Republic v. Medina*, 148-B Phil. 1127, 1153 (1971).

[79] See *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 443-444 (2012), citations omitted.

As determined by the ERC, which was affirmed by the CA, petitioners failed to sufficiently show that the rates approved in the proceedings below were unreasonable as they claimed to be. As pointed out by the CA, MERALCO's rate applications were approved only after the ERC conducted the necessary proceedings, received evidence in support of the applications and, thereafter, made an independent evaluation of the same.[80] Thus, the CA cannot be faulted in sustaining the reasonableness of the rates approved by the ERC. In *Ynchausti Steamship Co. v. Public Utility Commissioner*,[81] this Court articulated that "[t]here is a legal presumption that the fixed rates are reasonable, and it must be conceded that the fixing of rates by the Government, through its authorized agents, involves the exercise of reasonable discretion and unless there is an abuse of that discretion, the courts will not interfere."[82]

For another, petitioners decry the ERC's failure to wait for and take into consideration the complete audit on the books, records, and accounts of MERALCO by the COA before approving MERALCO's new rates. According to them, *Lualhati* directed the ERC to request the COA to perform such audit relative to MERALCO's provisionally-approved increase and unbundled rates. Petitioners further add that due to ERC's unbridled approval of new rates, MERALCO was able to amass excess profits in the amount of ₱39,208,556,000.00 for the period of 2003-2008, thus, giving it an average annual return of investment of 51%, which is way above the 12% return on investment generally allowed for public utilities.[83]

However, it is well to point out that *Lualhati* is traced from **ERC Case Nos. 2001-646 and 2001-900**, which cover MERALCO's application for rate increase **when the ERC was still adopting the RORB methodology in its rate-setting**

[80] *Rollo*, Vol. I, p. 95.

[81] 42 Phil. 621 (1922).

[82] *Id.* at 624.

[83] See *rollo*, Vol. I, p. 41.

function. In other words, the need of a COA audit, under the auspices of the *Lualhati* ruling, pertained to MERALCO's rates when it was still under the RORB system. During the pendency of this case, the ERC shifted to the PBR methodology, which premises and assumptions are conceptually different from that followed in the RORB. In particular, under the RORB methodology, power rates were set to recover the cost of service prudently incurred, *i.e.*, historical costs, plus a reasonable rate of return. This means that actual and reasonable costs were used for a prescribed test year to determine the revenue requirement, with the use of the test year assuming that the past relationship among revenue, costs, and net investment during said test year will continue into the future.[84] On the other hand, the PBR methodology deviates from the use of historical costs, and instead, uses projections of operating and capital expenditures to meet projected demand, thereby enabling the regulated entities to invest in facilities to meet customer requirements and prescribed service levels. This methodology also features a performance incentive scheme which provides incentives and penalties to the utility to compel it to be more efficient and reliable, while maintaining reasonable rates and improving the quality of service to achieve pre-determined target levels.[85]

Because of the variances in its premises and assumptions, the ERC's shift from the RORB to the PBR methodology should therefore be deemed as a supervening circumstance that rendered inconsequential this Court's provisional approval of the rate increases applied for by MERALCO in *Lualhati* which was made under the context of the now-defunct RORB system. Accordingly, the issue of whether or not the ERC should have first took into account the findings in the COA audit before approving MERALCO's applications in **ERC Case Nos. 2008-004 RC and 2008-018 RC** as directed in *Lualhati* has become moot and academic. In *Carpio v. CA*,[86] it was explained that

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[84] *Id.* at 319-320.

[85] See *id.* at 320.

[86] 70 Phil. 154, 163 (2013).

"[a] case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use," as the aforesaid issue raised in this case. For all these reasons, the petition is therefore denied.

WHEREFORE, the petition is **DENIED**. The Decision dated January 29, 2010 of the Court of Appeals in CA-G.R. SP No. 108663 is hereby **AFFIRMED**.

SO ORDERED.

*Leonardo-de Castro** (*Acting Chairperson), Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on official leave.

SECOND DIVISION

[G.R. No. 203610. October 10, 2016]

REPUBLIC OF THE PHILIPPINES and HOUSING AND URBAN DEVELOPMENT COORDINATING COUNCIL (HUDCC), *petitioners, vs.* **GONZALO ROQUE, JR., MANUELA ALMEDA ROQUE, EDUVIGIS A. PAREDES, MICHAEL A. PAREDES, PURIFICACION ALMEDA, JOSE A. ALMEDA, MICHELLE A. ALMEDA, MICHAEL A. ALMEDA, ALBERTO DELURA, and THERESA ALMEDA**, *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; STATE'S IMMUNITY FROM SUIT; FAILURE OF THE REPUBLIC TO ABIDE BY THE CONDITIONS UNDER THE

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* Per Special Order No. 2386 dated September 29, 2016.

CONTRACT IT ENTERED INTO CONSTITUTES AN IMPLIED WAIVER OF ITS IMMUNITY.— The Constitution provides that "the State may not be sued without its consent." One instance when a suit is against the State is when the Republic is sued by name, as in this case. A suit against the State is allowed when the State gives its consent, either expressly or impliedly. Express consent is given through a statute while implied consent is given when the State enters into a contract or commences litigation. Although not all contracts entered into by the government operates as a waiver of its non-suability, the Court held in the two cases below that the State effectively gave its consent when it entered into contracts and committed breach. x x x In the present case, the Republic entered into deeds of sale with the respondents to construct the NGC Project on the lots sold. To facilitate the sale, the Republic created a negotiating team to discuss the terms of the sale with the respondents. The latter agreed to the negotiated sale on these alleged conditions: (a) that they will have the right to repurchase the properties if the NGC Project does not push through; and (b) that the NGC Project will increase the market value of their remaining properties. Following *Santiago* and *Republic*, the State's failure to abide by these conditions constitutes the State's implied waiver of its immunity. We reiterate that the doctrine of state immunity from suit cannot serve to perpetrate an injustice on a citizen. If we rule otherwise, we will be tolerating unfair dealing in contract negotiation.

2. REMEDIAL LAW; APPEALS; RULE 45 PETITION; THE COURT IS BOUND BY THE FACTUAL FINDINGS AND CONCLUSIONS OF THE LOWER COURTS ON THE ISSUES OF PRESCRIPTION AND LACHES; CASE AT BAR.— This Court is not a trier of facts. It is not our function to review, examine, and evaluate the probative value of the evidence presented. We give great weight to the RTC's conclusion and findings; we are even bound by the RTC's findings when the CA adopts them. Resolving the issues of prescription and laches in the present case requires a factual review, specifically whether the presidential proclamations that reduced the land allotted for the NGC Project covered the subject properties and when the prescription period should start to run under the circumstances. These are questions of fact that this Court need not delve into. Nevertheless, the RTC found and

concluded, with the CA affirming, that the respondents' action to annul the sale is not barred either by prescription or laches. Both court ruled that the enactment of RA 9207 was the earliest time that the respondents could have known about the government's plans to officially use the land for socialized housing. Thus, the respondents were not barred by prescription when they filed their complaint in 2005, within four (4) years from the enactment of RA 9207. As to laches, both the RTC and the CA found that the respondents' letters to the DPWH showed that they were vigilant in asserting their alleged right to repurchase the properties from the Republic. This vigilance negates the Republic's claim of laches. We are bound and accordingly adopt these findings and conclusions by the lower courts.

3. ID.; EVIDENCE; PAROL EVIDENCE RULE; FORBIDS ANY ADDITION TO THE TERMS OF A WRITTEN AGREEMENT BY TESTIMONY SHOWING THAT THE PARTIES ORALLY AGREED ON OTHER TERMS BEFORE THE SIGNING OF THE DOCUMENT; EXCEPTIONS.— The parol evidence rule forbids any addition to the terms of a written agreement by testimony showing that the parties orally agreed on other terms before the signing of the document. However, a party may present evidence to modify, explain, or add to the terms of a written agreement if he **puts in issue in his pleadings** either: (a) an intrinsic ambiguity, mistake, or imperfection in the written agreement; (b) the **failure of the written agreement to express the parties' true intent and agreement**; (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. The issue must be squarely presented.

4. ID.; ID.; ID.; EXCEPTIONS TO THE PAROL EVIDENCE RULE CANNOT APPLY IN CASE AT BAR; RESPONDENTS FAILED TO PUT IN ISSUE IN THEIR COMPLAINT THAT THE DEEDS OF SALE DO NOT EXPRESS THE PARTIES' TRUE INTENT.— We note the basic rule that he who alleges must prove his case. In this case, the respondents have the burden to prove that the sale was subject to two conditions: (a) their remaining properties will benefit from the increase in land value after the construction of the NGC Project and (b) the government will return the sold properties to them should the NGC Project not materialize. However, they failed to discharge this burden. Notably, they failed

to present copies of the deeds of sale to show that the sale was attended by the alleged conditions. Pursuant to the parol evidence rule, no evidence of contractual terms is admissible other than the contract itself. On this level alone, the respondents failed to discharge their burden. Furthermore, the respondents failed to put in issue in their pleadings the sale contract's failure to express the parties' agreement. In *Ortañez v. Court of Appeals*, the respondents alleged the existence of oral conditions which were not reflected in the deeds of sale. A witness testified in court that the sale was subject to the oral conditions. The Court held that the parol evidence was inadmissible because, among others, the respondents failed to **expressly plead** that the deeds of sale did not reflect the parties' intentions. Instead, they merely alleged that the sale was subject to four conditions which they tried to prove during trial. The Court emphasized that this cannot be done because they failed to put in issue in their pleadings any exception to the parol evidence rule. Similar to *Ortañez,* a review of the complaint reveals that the respondents *failed to put in issue in their complaint* that the deeds of sale do not express the parties' true intent. Hence, the failure of the deeds of sale to reflect the parties' agreement was not squarely presented as an issue for the court to hear evidence on it. Therefore, the exceptions to the parol evidence rule cannot apply.

5. ID.; ID.; ID.; ID.; RESPONDENTS FAILED TO ALLEGE THAT THE TERMS OF THE DEEDS OF SALE ARE AMBIGUOUS OR OBSCURE TO REQUIRE THE PRESENTATION OF PAROL EVIDENCE TO ASCERTAIN THE PARTIES' INTENT.— The second exception to the parol evidence rule applies only when the written contract is **so ambiguous or obscure in terms that the parties' contractual intention cannot be understood from a mere reading of the agreement.** Hence, the court may receive extrinsic evidence to enable the court to address the ambiguity. Although parol evidence is admissible to explain the contract's meaning, it cannot serve to incorporate into the contract additional conditions which are not mentioned at all in the contract unless there is fraud or mistake. Evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict, or defeat the operation of a valid contract. Hence, parol evidence is inadmissible to modify the terms of the agreement if the complaint fails to allege any mistake or imperfection in the written agreement. In the present case, the respondents failed to allege that the terms of the deeds of sale are ambiguous or

obscure to require the presentation of parol evidence to ascertain the parties' intent. Both parties agree that the transaction was clearly a sale to transfer ownership over the properties to the Republic. Absent any allegation that the contractual terms are ambiguous, the testimonies of Gonzalo and Viloria are unnecessary to establish the two alleged oral conditions.

6. CIVIL LAW; SPECIAL CONTRACTS; SALES; WHERE THE REPUBLIC ENTERED INTO A SALE TRANSACTION, IT IS NOT BOUND BY THE CONDITION APPLICABLE IN EXPROPRIATION CASES.— [W]e point out that the parties entered into a negotiated sale transaction; thus, the Republic did not acquire the property through expropriation. In expropriation, the Republic's acquisition of the expropriated property is subject to the condition that the Republic will return the property should the public purpose for which the expropriation was done did not materialize. On the other hand, a sale contract between the Republic and private persons is not subject to this same condition unless the parties stipulate it. The respondents in this case failed to prove that the sale was attended by a similar condition. Hence, the parties are bound by their sale contract transferring the property without the condition applicable in expropriation cases.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Agrava Martinez & Reyes for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by the Republic of the Philippines (*Republic*) assailing the July 4, 2012 decision[2] and the September 26, 2012 resolution[3] of the

[1] *Rollo*, pp. 7-32.

[2] *Id.* at 38-61; penned by Court of Appeals Associate Justice Socorro B. Inting, and concurred in by Associate Justices Fernanda Lampas Peralta and Mario V. Lopez.

[3] *Id.* at 63.

Court of Appeals (*CA*) in CA G.R. CV No. 93018. The CA affirmed the Regional Trial Court's (*RTC*) decision annulling the sale of the respondents' properties to the Republic, and ordering the respondents to return the purchase price they received from the government.

ANTECEDENT FACTS

Gonzalo Roque, Jr. (*Gonzalo),* Manuela Almeda-Roque, Eduvigis A. Paredes, Michael A. Paredes, Purificacion Almeda, Jose A. Almeda, Michelle A. Almeda, Michael A. Almeda, Alberto Delura, and Theresa Almeda (*respondents*), owned several parcels of land with a total area of about 9,811 square meters,[4] located in Constitution Hills, Quezon City.[5] Gonzalo represented the respondents in the court proceedings.

In 1978, the Republic, through the Department of Public Works and Highways (*DPWH*), approached the respondents and asked them to sell a portion of the land at government-dictated prices lower than the market value.[6] The Republic was supposed to use the land for President Marcos' National Government Center (*NGC*) Project — his plan to bring together the various national government offices in one venue for greater efficiency and to create additional areas for the expanding needs of the central government and the people.[7]

The respondents allege that several public hearings regarding the sale took place between the Republic and the respondents;[8] and that during these meetings, the Republic made the following representations:

First, the Republic guaranteed that although the respondents would get paid a price much lower than the market value of the land, the construction of the NGC Project would eventually

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[4] *RTC rollo,* p. 3.

[5] *Rollo,* p. 40.

[6] *Id.* at 39-40.

[7] *RTC rollo,* p. 4.

[8] *Rollo,* p. 57.

enhance the value of the surrounding portions of the land that they still own.[9]

Second, the Republic assured the respondents that, in the remote possibility that it abandons the project, they will have the right to buy back the land.[10]

The respondents further allege that they were reluctant to sell the land, but felt compelled to do so because martial law was in force, and they dared not resist a project of President Marcos.[11] Thus, relying on the Republic's representations, the respondents signed the deeds of absolute sale.

The Register of Deeds cancelled the three certificates of title (*TCT*) and issued six new titles.[12] Three of these new titles were issued in the Republic's name: (a) TCT No. RT-115781 (283214); (b) TCT No. RT-34249 (283216); and (c) TCT No. RT-115907 (283212).[13]

The Republic did not immediately take possession of all of the land it had bought from the respondents;[14] thus, the respondents continued to occupy portions of the sold properties.[15]

After several years, informal settlers began to occupy parts of the land, and the respondents felt that the Republic was reneging on its undertaking to develop the land into the NGC Project.[16] Hence, Gonzalo sent letters dated March 25, 1987, and September

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[9] *Id*. at 40.

[10] *Id*. at 42.

[11] *Id*. at 68.

[12] *Id*. at 61-62. The three titles issued in the Republic's name covers the properties sold while the remaining three titles issued in the respondents' names covers their remaining properties.

[13] *Id*. at 39-41 and 61-62.

[14] *Id*. at 41 and 70.

[15] *Id*. at 70.

[16] *Id*. at 41.

23, 1988, to then DPWH Secretary Vicente R. Jayme (*Jayme*) offering to buy back the properties.[17] Gonzalo received no response.

The respondents' suspicion was confirmed in December 2003. Armando A. De Castro (*De Castro*), then undersecretary of the Housing and Urban Development Coordinating Council (*HUDCC*), wrote a letter to the respondents, requesting them to vacate all portions of the sold land that they were still occupying, because the government would use the properties for socialized housing pursuant to Republic Act (*R.A.*) No. 9207.[18]

On August 23, 2004, Gonzalo wrote another letter to then HUDCC Secretary Michael Defensor, offering to buy back the properties.[19] He argued that the respondents have the right to repurchase the properties after the Republic abandoned the NGC Project and diverted the use of the properties to socialized housing.[20]

Secretary Defensor allegedly found the respondents' position reasonable and requested a feedback on the possibility of a repurchase.[21] However, the secretary was transferred to another department and was unable to further address the situation.[22]

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[17] *Id.*

[18] An Act Declaring Certain Portions of the National Government Center Site Open for Disposition to Bona Fide Residents and Local Government or Community Facilities, Charitable, Educational and Religious Institutions Actually Occupying the Same for Socioeconomic, Civic and Religious Purposes, Amending for this Purpose Proclamation No. 1826, Series of 1979 and for Other Purposes (Approved on: May 17, 2003).

[19] *Rollo,* p. 71.

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

[21] *Id*. at 71-72: Marginal note on Gonzalo's letter:

"August 23, 2004

Sonny Godonez,

This request is reasonable. Look into the possibility of a purchase.

Give me a feedback asap.

(Sgd.) Michael Defensor"

[22] *Id*. at 72.

Despite persistent follow-ups, the respondents failed to receive any action from the Republic on this matter.[23]

Realizing that the Republic had completely abandoned its initial plan to use the land for the NGC Project, in 2005, the respondents filed a **complaint** for **the annulment of the sale** of the properties on the grounds of fraud, force, intimidation, or undue influence.[24] They also asserted their right to buy back the properties at the same price at which they sold them since the Republic failed to develop the land according to the original purpose for which it was "expropriated."[25] Alternatively, they asked for the payment of additional compensation in the amount of not less than Five Million Pesos.[26]

In their answer,[27] the Republic and the HUDCC (*defendants*) argue that: (1) they are immune from suit as government instrumentalities; (2) they agreed to neither the respondents' right to repurchase the properties in case the government abandons the NGC Project nor a right to additional compensation in case the respondents' remaining properties suffer a decrease in market value; (3) the respondents were not forced, intimidated, or unduly influenced to sell their properties to the government; and (4) even assuming that any vice of consent attended the sale, the respondents' action for the annulment of sale is barred by prescription[28] and laches.

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[23] *Id*.

[24] *RTC rollo,* pp. 2-12.

[25] *Rollo,* p. 42.

[26] *Id*. at 42.

[27] *Id*. at 77-87.

[28] *Id*. at 82-83: The defendants argued that an action for annulment of sale must be filed within four years from the time the defect of the consent ceased. (CIVIL CODE OF THE PHILIPPINES, Art. 1391) Thus, the action prescribed on February 24, 1990 or four years from the time martial rule ceased.

Assuming that fraud attended the sale, the action for the annulment of sale on that ground prescribes after four years from the discovery of the

During trial, Dante Viloria (*Viloria*) testified on the negotiations that took place. Viloria was the Assistant City Assessor of Quezon City and was part of the government's negotiating team for the NGC Project. He testified that: (a) the negotiated price was lower than the base amounts in Presidential Decree No. 1517;[29] (b) the government did not file any court action to expropriate the properties; (c) it did not take possession of the properties; and (d) it undertook to resell the properties to the respondents at the same price if the project would not push through.[30] Gonzalo's testimony corroborated Viloria's testimony.

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fraud. The defendants argue that from 1987 to 1998, several presidential proclamations were issued subjecting the properties to socialized housing programs.

The implementation of socialized housing on the properties since 1987 was known to the general public. Thus, the respondents should have filed the action for annulment of sale not later than 2002.

[29] Presidential Decree No. 1517, Proclaiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof, "Urban Land Reform Act", June 11, 1978.

[30] *Rollo,* pp. 103-104.

"Q: What was the practice at the time with respect to the payment of just compensation for land expropriation by the government, if you know?

A: We started expropriation proceedings under P.D. 1517, the declared value of the owner and the declare (sic) value of the assessor, whichever is lower.

Q: Was that observed in the case of the expropriation of the National Government Center?

A: It was not, sir, because the clamor there is very low not in accordance with the price acquisition of lands.

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Q: Did you arrive at some negotiated price, purchase price for the properties?

A: Yes, Sir.

x x x x x x x x x

Q: How about the issue of the possibility of abandonment of the project of the government, was that taken up?

A: That is one that we discussed in the meeting the need of privating (sic) their property. **If the government will not push through with the project, they can repurchase or reconvey the property.**

Several presidential proclamations were issued pertaining to the NGC Project from 1979-1998.[31] In 2003, Congress passed RA 9207, amending the proclamations. Under Section 3 of RA 9207, 184 hectares on the west side and 238 hectares on the east side were excluded from the original 444-hectare NGC reservation.[32]

THE RTC RULING

The RTC decided in the respondents' favor. It held that (1) the Republic is not immune from suit; (2) the respondents' action is not barred by either prescription or laches; and (3) the sale should be annulled.

First, the RTC held that the Republic is not immune from suit. Citing Section 9, Article III of the Constitution,[33] the Republic cannot invoke government immunity since the nature of the case is either to obtain just compensation or to retrieve the properties.

Second, the respondents' action is not barred by their prescription or laches.

It noted Roques's letter to DPWH Secretary Jayme dated March 25, 1987 and September 23, 1988. In the March letter,

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Q: At what price?

A: The same price."

[31] *Rollo*, pp. 78-79. Several presidential proclamations were issued in relation to the NGC Project, to wit:

a) In 1979, President Marcos issued Proclamation No. 1926, reserving the 444-hectare property as a site for the NGC Project;

b) In 1987, President Aquino issued Proclamation No. 137, excluding some portions of the NGC reservation and declared these portions open for disposition;

c) In 1993, President Ramos issued Proclamation No. 248, declaring the excluded properties reserved for the *bona fide* residents; and

d) In 1998, President Ramos issued Proclamation No. 1169, excluding additional areas from the NGC site.

[32] *Id*. at 79.

[33] "**Section 9**. Private property shall not be taken for public use without just compensation."

Gonzalo brought up the agreement he had with the Republic that he has pre-emptive right to buy back his property from the government should the project not push though. In the September letter, Gonzalo told the DPWH Secretary that he prenented the informal setters from building structures within his former property and reiterated his pre-emptive right to buy back the property. The RTC took these letters as clear indications of the respondent's vigilance in invoking their right; thus, their action is not barred by laches.

The RTC added that the repondents found out about the Republic's plan to divert the use of the properties to low-cost housing only on May 14, 2003, when RA 9207 was enacted. Thus, the filing of the complaint in 2005 was within the four-year prescriptive period reckoned from the enactment of RA 9207.

Third, the RTC annulled the deeds of absolute sale on the ground of fraud. It gave credence to Viloria and Gonzalo's testimonies about the matters discussed during negotiations. Based on these testimonies, the RTC emphasized that the respondents signed the deeds of absolute sale relying on the government's assurances that they could retrieve the properties should the NGC Project not materialize.

Fourth, the RTC declared that the respondents are not entitled to damages and attorney's fees because the Republic was not in bad faith in resisting the complaint. The RTC added that the Republic is not entitled to its counterclaims because RA 9207 recognizes the validity of vested rights and precedence of proclamations.

Aggrieved, the Republic filed an appeal with the CA.

THE CA RULING

The CA **affirmed** the RTC's decision.[34] It held that: (1) the Republic is not immune from suit; (2) the sale was conditioned upon the materialization of the NGC Project; and (3) the respondents' action is not barred by prescription or laches.

[34] *Rollo*, p. 60.

First, the CA ruled that the doctrine of sovereign immunity must be read with Section 9, Article III of the Constitution, which provides that "private property shall not be taken for public use without just compensation." This provision imposes two requirements: public purpose and payment of just compensation.

In the present case, the Republic "extrajudicially expropriated" the respondents' properties for a public purpose, *i.e., the construction of the NGC Project*. However, the Republic failed to pay just compensation to the respondents. To recall, it expropriated the land at an amount far below the actual market value. Despite the low price, the respondents sold their properties relying on the Republic's promise that they would be amply compensated by the appreciation of their remaining properties' values.

Not only did the NGC Project not materialize but the values of their remaining properties depreciated due to the illegal settlers in their vicinity. Thus, the respondents were deprived of just compensation to which they are entitled.

Consequently, the Republic may not validly invoke the non-suability of the State and conveniently hide under the State's cloak of invincibility against suit. The ends of justice would be subverted if the court were to uphold the State's immunity from suit in this case.

Second, the CA held that the parties entered into a conditional sale with a right to repurchase the properties from the Republic. The sale was subject to these conditions: (a) the landowners may repurchase the properties at selling price should the NGC Project not materialize; and (b) the construction of the NGC Project will increase the land value of the landowners' remaining properties.

The Republic invoked the parol evidence rule in arguing that the sale had no conditions. In response, the CA noted that the parol evidence rule admits of exceptions, such as the failure of the written agreement to express the parties' true intent.[35] This exception applies in the present case.

The testimony of Viloria established that the sale contracts failed to express the parties' true intent and agreement. He explained

[35] RULES OF COURT, Rule 130, Sec. 9(b).

that the Republic assured the respondents that it would reconvey the properties to them should the NGC Project not push through.

The CA added that the enactment of R.A. No. 9207 had no effect on the respondents' right to repurchase their land, because the law recognizes the precedence and validity of vested rights. Given that the Republic no longer pushed through with the NGC Project, it should have allowed the respondents to exercise their right to buy back the land.

Third, the CA ruled that the respondents' action is not barred by prescription and/or laches. As the RTC held, the respondents filed their complaint within the prescribed period and were prompt and vigilant in protecting their rights.

Hence, the Republic filed this petition.

THE PARTIES' ARGUMENTS

In its petition, the Republic argues that: (a) the lower courts erred in annulling the sale on the ground of fraud; (b) the respondents have no right to reacquire the properties sold to the Republic; (c) the respondents' action is barred by laches and/or prescription; and (d) the State has not given its consent to be sued.

The Republic submits that the government did not use insidious words or machinations constitutive of fraud in transacting with the respondents. The government did not lie when it told the respondents that it intended to establish the NGC Project in the area, and its failure to realize the project cannot be considered a fraudulent act.[36]

Furthermore, the respondents' failure to realize their expected gain from the "economic boom" is not a ground to annul the sale. They voluntarily agreed to the sale, albeit reluctantly. They should not be allowed to obtain judicial relief just because they believe they got the short end of the bargain. Moreover, any deficiency in the purchase price has been more than adequately compensated by the respondents'

[36] *Rollo*, p. 22.

uninterrupted use of a portion of the government's property for over thirty (30) years.[37]

The Republic points out that the respondents failed to present any document to prove that there were conditions imposed on the sale.[38] Furthermore, the enactment of R.A. No. 9207 has determined the public use of the land.[39]

Even assuming that vices of consent attended the sale in 1978 and persisted during the Marcos regime, the Republic argues that the respondents should have filed the action to annul within four (4) years from February 24, 1986.[40] The respondents, however, only filed their complaint in January 2005, or clearly beyond the prescriptive period.

Finally, the Republic reiterates that, under the doctrine of state immunity from suit, it cannot be sued without its consent.[41]

In their comment, the respondents argue that: (a) the defense of immunity from suit is not proper in an eminent domain case; (b) the action is not barred by prescription and/or laches; (c) the Republic compelled them to sell their properties through extrajudicial expropriation at a government-dictated price; and (d) the CA correctly annulled the extrajudicial expropriation of the land and allowed the respondents to repurchase the land given the government's abandonment of the NGC Project.

The respondents submit that the Republic cannot hide behind the state immunity doctrine to defeat the constitutionally guaranteed right against the taking of private property for a purpose other than the specified public use and only after payment of just compensation.

The respondents argue that their action has not prescribed because they filed the complaint within four (4) years from the

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[37] *Id*. at 23.

[38] *Id*. at 24.

[39] *Id*. at 24.

[40] *Id*. at 28.

[41] *Id*. at 30.

enactment of RA 9207.[42] Their action is also not barred by laches because their act of sending the letters to the DPWH shows their vigilance in protecting their rights.[43] Further, the Republic failed to prove that the respondents had any constructive or actual knowledge of the presidential decrees reducing or modifying the land meant for the NGC Project.[44]

The respondents contend that they had no choice but to accept the price that the government offered during the Marcos regime.[45] Even the State recognized the dark period of fear that enveloped the country under President Marcos, as shown by the passage of R.A. No. 10368.[46] This law made it a policy to acknowledge the State's moral and legal obligation to recognize and provide reparation to victims of rights violations committed at the time.[47]

Finally, the respondents note that the Republic did not dispute Viloria's testimony that during the negotiations for the expropriation of the land, the government undertook to resell the land to its former owners should the government abandon the NGC Project.[48]

The Republic reiterates its arguments in the reply. It stresses that the RTC annulled the sale on the ground of *fraud* despite the absence of deceit or use of insidious words or machinations to induce the respondents to enter into the sale contracts. It also insists that the properties will still be devoted to public use, which is socialized housing. It stresses that the respondents failed to present evidence that ₱60.00 per square meter in 1987 did not constitute just compensation. Moreover, the respondents used the properties without paying rent.

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[42] *Id.* at 133.

[43] *Id.* at 133.

[44] *Id.* at 134.

[45] *Id.* at 135.

[46] Human Rights Victims Reparation and Recognition Act, July 23, 2012.

[47] *Rollo*, p. 137.

[48] *Id.* at 139.

OUR RULING

We **grant** the Republic's petition.

The issues for the Court's resolution are: (a) whether the Republic is immune from suit; (b) whether the action is barred by prescription or laches; and (c) whether an exception to the parol evidence rule applies.

A. Immunity from Suit

We rule that the Republic is not immune from suit in the present case.

The Constitution provides that "the State may not be sued without its consent."[49] One instance when a suit is against the State is when the Republic is sued by name,[50] as in this case.

A suit against the State is allowed when the State gives its consent, either expressly or impliedly. Express consent is given through a statute[51] while implied consent is given when the State enters into a contract or commences litigation.[52] Although not all contracts entered into by the government operates as a waiver of its non-suability, the Court held in the two cases below that the State effectively gave its consent when it entered into contracts and committed breach.

In *Santiago v. The Government of the Republic of the Philippines*,[53] Ildefonso Santiago and his wife donated a parcel of land to the Republic on the alleged condition that the latter would install lighting facilities and a water system and would build an office building and parking lot on the property on or before December 7, 1974. Santiago filed a complaint for the

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[49] 1987 CONSTITUTION, Art. XVI, Sec. 6.

[50] *Republic v. Sandoval*, G.R. No. 84607, March 19, 1993, 220 SCRA 124, 126-127.

[51] *United States of America v. Guinto*, G.R. No. 76607, February 26, 1990, 182 SCRA 644-645.

[52] *Id*.

[53] G.R. No. L-48214, December 19, 1978, 87 SCRA 294.

revocation of the donation due to the government's breach of the condition. The trial court dismissed the case based on the State's non-suability. The Court set aside the dismissal on *certiorari*, reasoning that the State's consent to be sued is presumed when the State fails to comply with the alleged terms of a deed of donation. It essentially held that the Republic impliedly waived its immunity.

In *Republic v. Sandiganbayan*,[54] the Court ruled that when the Republic entered into a compromise agreement with a private person, it stripped itself of its immunity from suit and placed itself on the same level as its adversary. When the State enters into a contract which creates mutual or reciprocal rights and obligations, the State may be sued even without express consent.[55] Its consent to be sued is implied from its entry into the contract and the Republic's breach grants the other party the right to enforce or repudiate the contract.

In the present case, the Republic entered into deeds of sale with the respondents to construct the NGC Project on the lots sold. To facilitate the sale, the Republic created a negotiating team to discuss the terms of the sale with the respondents. The latter agreed to the negotiated sale on these alleged conditions: (a) that they will have the right to repurchase the properties if the NGC Project does not push through; and (b) that the NGC Project will increase the market value of their remaining properties.

Following *Santiago* and *Republic*, the State's failure to abide by these conditions constitutes the State's implied waiver of its immunity. We reiterate that the doctrine of state immunity from suit cannot serve to perpetrate an injustice on a citizen.[56] If we rule otherwise, we will be tolerating unfair dealing in contract negotiation.

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[54] G.R. No. 129406, March 6, 2006, 484 SCRA 119, 120.

[55] *Id.*

[56] *Amigable v. Cuenca*, G.R. No. L-26400, February 29, 1972; *Ministerio v. Court of First Instance of Cebu*, G.R. No. L-31635, August 31, 1971, 40 SCRA 464.

B. Prescription and Laches

We turn to the issue of whether the respondents' action for annulment of sale is barred by prescription and/or laches.

Prescription can either be a question of law or fact.[57] It is question of fact where there is a need to determine the veracity of factual matters.[58] Laches is also evidentiary in nature.[59]

This Court is not a trier of facts. It is not our function to review, examine, and evaluate the probative value of the evidence presented. We give great weight to the RTC's conclusion and findings; we are even bound by the RTC's findings when the CA adopts them.[60]

Resolving the issues of prescription and laches in the present case requires a factual review, specifically whether the presidential proclamations that reduced the land allotted for the NGC Project covered the subject properties and when the prescription period should start to run under the circumstances. These are questions of fact that this Court need not delve into.

Nevertheless, the RTC found and concluded, with the CA affirming, that the respondents' action to annul the sale is not barred either by prescription or laches. Both court ruled that the enactment of RA 9207 was the earliest time that the respondents could have known about the government's plans to officially use the land for socialized housing. Thus, the respondents were not barred by prescription when they filed their complaint in 2005, within four (4) years from the enactment of RA 9207.

As to laches, both the RTC and the CA found that the respondents' letters to the DPWH showed that they were vigilant in asserting

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[57] *Macababbad, Jr. v. Masirag,* G.R. No. 161237, January 14, 2009, 576 SCRA 70-71, citing *Crisostomo v. Garcia,* G.R. No. 164787, January 31, 2006, 481 SCRA 402-403.

[58] *Id.*

[59] *Id*.

[60] See *W-Red Construction and Development Corporation v. CA,* 392 Phil. 888, 894 (2000).

their alleged right to repurchase the properties from the Republic. This vigilance negates the Republic's claim of laches.

We are bound and accordingly adopt these findings and conclusions by the lower courts.

C. Parol Evidence

The core issue in this case is whether an exception to the parol evidence rule applies. In resolving this issue, we examine whether the parol evidence presented, particularly Gonzalo and Viloria's testimonies, are admissible to establish the alleged oral conditions in the sale contract.

We rule in the negative.

Section 9, Rule 130 of the Rules of Court provides that a written contract is deemed to contain all the terms agreed upon by the parties and no evidence of these terms is admissible other than the contents of the contract. The parol evidence rule forbids any addition to the terms of a written agreement by testimony showing that the parties orally agreed on other terms before the signing of the document.[61] However, a party may present evidence to modify, explain, or add to the terms of a written agreement if he **puts in issue in his pleadings** either: (a) an intrinsic ambiguity, mistake, or imperfection in the written agreement; (b) the **failure of the written agreement to express the parties' true intent and agreement**; (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. The issue must be squarely presented.[62]

We note the basic rule that he who alleges must prove his case. In this case, the respondents have the burden to prove that the sale was subject to two conditions: (a) their remaining properties will benefit from the increase in land value after the construction of the NGC Project and (b) the government

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[61] *Ortañez v. Court of Appeals*, G.R. No. 107372, January 23, 1997, 266 SCRA 561-562.

[62] *Id.*

will return the sold properties to them should the NGC Project not materialize. However, they failed to discharge this burden.

Notably, they failed to present copies of the deeds of sale to show that the sale was attended by the alleged conditions. Pursuant to the parol evidence rule, no evidence of contractual terms is admissible other than the contract itself. On this level alone, the respondents failed to discharge their burden.

Furthermore, the respondents failed to put in issue in their pleadings the sale contract's failure to express the parties' agreement. In *Ortañez v. Court of Appeals*,[63] the respondents alleged the existence of oral conditions which were not reflected in the deeds of sale. A witness testified in court that the sale was subject to the oral conditions. The Court held that the parol evidence was inadmissible because, among others, the respondents failed to **expressly plead** that the deeds of sale did not reflect the parties' intentions. Instead, they merely alleged that the sale was subject to four conditions which they tried to prove during trial. The Court emphasized that this cannot be done because they failed to put in issue in their pleadings any exception to the parol evidence rule.

Similar to *Ortañez*, a review of the complaint reveals that the respondents *failed to put in issue in their complaint* that the deeds of sale do not express the parties' true intent. Hence, the failure of the deeds of sale to reflect the parties' agreement was not squarely presented as an issue for the court to hear evidence on it. Therefore, the exceptions to the parol evidence rule cannot apply.

Even assuming that the respondents put in issue in the complaint the deed of sales' failure to express the parties' true agreement, the parol evidence will still not apply because they failed to justify the applicability of the second exception to the parol evidence in this case.

The second exception to the parol evidence rule applies only when the written contract is **so ambiguous or obscure in terms**

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[63] *Id*.

that the parties' contractual intention cannot be understood from a mere reading of the agreement.[64] Hence, the court may receive extrinsic evidence to enable the court to address the ambiguity.[65]

Although parol evidence is admissible to explain the contract's meaning, it cannot serve to incorporate into the contract additional conditions which are not mentioned at all in the contract unless there is fraud or mistake.[66] Evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict, or defeat the operation of a valid contract.[67] Hence, parol evidence is inadmissible to modify the terms of the agreement if the complaint fails to allege any mistake or imperfection in the written agreement.

In the present case, the respondents failed to allege that the terms of the deeds of sale are ambiguous or obscure to require the presentation of parol evidence to ascertain the parties' intent. Both parties agree that the transaction was clearly a sale to transfer ownership over the properties to the Republic. Absent any allegation that the contractual terms are ambiguous, the testimonies of Gonzalo and Viloria are unnecessary to establish the two alleged oral conditions.

To reiterate, the respondents failed to comply with the parol evidence rule because: *first*, they failed to produce copies of the deeds of sale; *second*, they failed to prove that the second exception to the parol evidence rule applies. Hence, the testimonies of Gonzalo and Viloria are inadmissible under the parol evidence rule.

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[64] *Seaoil Petroleum Corporation v. Autocorp Group*, G.R. No. 164326, October 17, 2008, 569 SCRA 387.

[65] *Id.*

[66] *Id.*

[67] *Id.*

CONCLUSION

In sum, we rule that (a) the State is not immune from suit; (b) the respondents' action is not barred by either prescription or laches; and (c) the second exception to the parol evidence rule does not apply. Consequently, we grant the Republic's petition and reverse the CA's ruling annulling the sale contract between the parties.

On a final note, we point out that the parties entered into a negotiated sale transaction; thus, the Republic did not acquire the property through expropriation.

In expropriation, the Republic's acquisition of the expropriated property is subject to the condition that the Republic will return the property should the public purpose for which the expropriation was done did not materialize.[68] On the other hand, a sale contract between the Republic and private persons is not subject to this same condition unless the parties stipulate it.

The respondents in this case failed to prove that the sale was attended by a similar condition. Hence, the parties are bound by their sale contract transferring the property without the condition applicable in expropriation cases.

WHEREFORE, we grant the Republic's petition and accordingly **REVERSE** and **SET ASIDE** the Court of Appeal's July 4, 2012 decision and September 26, 2012 resolution in CA G.R. CV No. 93018.

SO ORDERED.

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

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[68] *Quano v. Republic*, G.R. Nos. 168770 and 168812, February 9, 2011, sc.judiciary.gov.ph.

* Designated as Acting Chief Justice per Special Order No. 2386 dated September 29, 2016.

SECOND DIVISION

[G.R. No. 212980. October 10, 2016]

BUENAVISTA PROPERTIES, INC., and/or JOSEPHINE CONDE, *petitioners, vs.* **RAMON G. MARIÑO, represented by ATTY. OSWALDO F. GABAT as Attorney-in-Fact and Counsel *vice* ATTY. AMADO DELORIA, former Attorney-in-Fact and counsel**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; A SECOND MOTION FOR RECONSIDERATION IS GENERALLY PROHIBITED; WHILE THE RULES PROVIDE FOR EXCEPTIONS, A MOTION FOR RECONSIDERATION MAY BE ENTERTAINED ONLY BEFORE THE RULING SOUGHT TO BE RECONSIDERED BECOMES FINAL.— We emphasize that the June 1, 2016 Motion for Reconsideration With Leave of Court that BPI filed addressing the Court's April 4, 2016 Resolution (denying with finality its November 10, 2014 motion for reconsideration) is a prohibited second motion for reconsideration pursuant to Section 2, Rule 52 in relation with Section 4, Rule 56, both of the Rules of Court, as well as pursuant to Section 3, Rule 15 of the Internal Rules of the Supreme Court. Section 2 of Rule 52 states that *"[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."* Under Section 3 of Rule 15, the Court *"shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice. There is reconsideration 'in the higher interest of justice' when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties."* Note, however, that while the Rule provides for exceptions, the second motion for reconsideration can still only be entertained ***"before the ruling sought to be reconsidered becomes final by operation of law***

or by the Court's declaration." The case does not present a situation that would justify the Court in granting BPI's June 1, 2016 Motion for Reconsideration With Leave of Court – a second motion for reconsideration which the Court should not entertain.

2. ID.; PLEADINGS AND PRACTICE; THE COURT STRONGLY WARNS A NON-PARTY TO THE CASE NOT TO INTERFERE WITH THE PROCESSES OF THE PRESENT CASE OR TO MALIGN THE COURT OR ITS MEMBERS.— The Court likewise warns Mr. Delfin Cruz in the strongest terms that any further word from him, whether directly made to this Court or its Members or in the social media (as he had threatened), **tending to interfere with the processes of the present case, to malign this Court or its Members, to disparage their reputation or to impugn their integrity**, shall be dealt with severely and without consideration of Mr. Delfin Cruz' age or age-related infirmities.

APPEARANCES OF COUNSEL

Ibuyan Garcia Ibuyan Law Offices for petitioners.
Oswaldo F. Gabat for respondent.

R E S O L U T I O N

BRION, *J.*:

Before us is the petitioners' **Motion for Reconsideration with Leave of Court** addressing the April 4, 2016 Resolution of this Court that denied "the motion with FINALITY, no substantial argument having been adduced to warrant the reconsideration sought." The previously denied motion was the petitioners' motion for reconsideration of our Resolution dated September 17, 2014, which denied the petition for review on certiorari.

I. FACTUAL BACKDROP OF GR NO. 212980:

The Spouses Buencamino and Spouses San Juan *(landowners)* entered into a Joint Venture Agreement *(JVA)* with ***La Savoie*** Development Corporation. The parties agreed that La Savoie

would develop the three (3) parcels of land located in San Rafael, Bulacan into a commercial and residential subdivision *(Buenavista Park Subdivision)*, and manage the project including its sales. The pricing of the lots were to be determined jointly by the landowners and La Savoie.

The landowners subsequently sold their property to Josephine Conde (*Conde*) who assigned her interests to Buenavista Properties, Inc. (*BPI*). Conde and BPI thereafter executed an **Addendum**[1] (to the JVA) extending the period of development to 1997.

Soon after, BPI, through Conde, wrote La Savoie several letters asking the latter "to stop selling until [it has] put enough development to obtain the best prices",[2] and until they have agreed on the revised prices. In a letter dated **August 17, 1997**, BPI reiterated its request and to "immediately stop selling the subdivision lots until [they] have agreed on the prices x x x otherwise, [it] shall be forced to invoke the termination clause of the JVA."[3] BPI's requests were left unheeded.

On **July 18, 1997**, respondent Ramon G. Mariño (*Mariño*) and La Savoie, through its President Jeanne Menguito (*Menguito*), entered into a **Contract to Sell**[4] involving a parcel of land in Buenavista Park Subdivision. Paragraph 4 of the Contract provides that upon complete payment of the purchase price, La Savoie agrees to execute a final deed of sale in favour of Mariño.

On **February 28, 1998**, BPI filed before the Regional Trial Court *(RTC)* a complaint against La Savoie for the termination

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[1] *Rollo*, pp. 212-215.

[2] Letter dated September 30, 1996, *id*. at 218.

See also BPI's July 22, 1996 and August 15, 1996 letters requesting La Savoie to suspend the sale of the lots immediately upon receipt of the letter until such time as they have agreed on the new pricing of the lots, *id*. at 216-217 respectively.

[3] *Id*. at 219.

[4] *Id*. at 142-146.

of the JVA, recovery of properties plus damages, with a prayer for a temporary restraining order and a writ of preliminary injunction[5] *(JVA rescission case).* The RTC issued a **writ of preliminary injunction on August 11, 1998,** enjoining La Savoie from selling the remaining unsold lots in the Buenavista Park Subdivision.[6]

Mariño **completed the payment** for the subdivision lot on **September 19, 2001**. La Savoie thereafter transmitted the corresponding Deed of Absolute Sale to BPI for its execution.[7] Despite demands, BPI refused to sign the Deed and to deliver the title in favor of Mariño. BPI claimed that La Savoie, in excess of authority, sold the subdivision lots in prices fixed unilaterally and without BPI's approval.

In a decision[8] dated **June 12, 2003**, the RTC, among others: (1) terminated the JVA and the Addendum to the JVA; and (2) ordered La Savoie to deliver to BPI the possession of the Buenavista Park Subdivision together with all the improvements thereon.

Mariño subsequently filed before the Housing and Land Use Regulatory Board *(HLURB)* an action for specific performance against the petitioners.

In its decision dated **June 5, 2006**, the HLURB-Legal Services Group ordered the petitioners to: *(1) deliver the title, covering the purchased subdivision lot, to Mariño under the latter's name free from all liens and encumbrances within thirty days from finality*; and (2) pay the amount of ₱20,000.00 as exemplary damages, ₱30,000.00 as attorney's fees, and ₱20,000.00 as cost of suit.

Meanwhile, in a decision[9] dated August 10, 2006, **the CA affirmed** the June 12, 2003 decision of the RTC in **the JVA**

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[5] Docketed as Civil Case No. Q-98-33682.

[6] *Rollo,* pp. 229-230.

[7] October 9, 2002 letter, *id*. at 134.

[8] Issued by Judge Lydia Querubin Layosa, *id*. at 231-237.

[9] Docketed as CA-G.R. No. 79318, *id*. at 238-251.

rescission case. The case eventually reached this Court, on La Savoie's appeal, which the Court denied in a Resolution[10] dated February 19, 2007.

On **September 17, 2007**, the HLURB Commissioners affirmed the findings of facts and conclusions of law contained in the decision of the HLURB-Legal Services Group.

The petitioners appealed the September 17, 2007 HLURB decision before the Office of the President *(OP)* which the latter denied in its **September 30, 2008** decision. The OP likewise denied the petitioners' motion for reconsideration in its May 7, 2009 decision.

The CA Ruling

In its September 30, 2013 decision, the CA affirmed the September 30, 2008 OP decision declaring that:

First, La Savoie's sale of the lot to Mariño is not *ultra vires*. The CA pointed out that Mariño does not appear to have been aware of BPI's letters to La Savoie asking the latter to stop the sale of the lots until they have agreed on the price. Thus, BPI's withdrawal of authority to sell cannot bind Mariño.

Second, even if La Savoie had exceeded its authority to sell, BPI is solidarily liable for allowing the former to act as though it had full powers following Article 1911 of the Civil Code.

Third, at the time of the execution of the Contract to Sell, no case had been filed by BPI to prevent La Savoie from selling the property. BPI only filed a case for rescission of the JVA seven months after the execution of sale to Mariño.

Fourth, Mariño is entitled to the delivery of the title as he had fully paid the purchase price pursuant to Section 25 of Presidential Decree *(PD)* No. 957 (or the Subdivision and Condominium Buyers' Protective Decree).

Fifth, La Savoie is not an indispensable party to the case who could have rendered the decision void per Section 7, Rule

[10] *Id.* at 584.

3 of the Rules of Court. According to the CA, La Savoie has already transmitted the Deed of Absolute Sale over the subject lot to BPI. Since the title is in BPI's name and possession, it has the obligation to execute the Deed and deliver the title to Mariño; thus, BPI is the indispensable party, not La Savoie and Menguito.

Lastly, the Court's denial of La Savoie's petition in the JVA rescission case was contained only in a minute resolution. Thus, the CA concluded citing *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[11] the denial cannot be deemed a binding precedent to the case especially when different issues and parties are involved.

II. THE PETITION

BPI argued in its petition for review on *certiorari* before this Court that:

1. the authority to sell granted to La Savoie under the JVA was a limited authority to sell, *i.e.*, only "by way of engaging the services of brokers";
2. since La Savoie's authority to sell was limited, its act of selling the lot to Mariño is *ultra vires;*
3. BPI and its President Conde were not parties to the Contract to Sell with Mariño, but rather La Savoie and its President Menguito, thus, the Contract did not and could not bind them;
4. As they were not parties to the Contract to Sell, Mariño did not have a cause of action against them and the HLURB should have dismissed the latter's case against it;
5. La Savoie and its President Menguito are indispensable parties in this case, hence, Mariño's failure to implead them rendered the decision of the HLURB void;

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[11] G.R. No. 188550, August 19, 2013, citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009, 600 SCRA 413, 416, 446-447.

6. BPI filed a third-party complaint against La Savoie in the former's Answer to Mariño's Complaint;

7. Mariño is a buyer in bad faith because he failed to examine the title;

8. the duty of delivering the title to the buyer under Section 25 of Presidential Decree 957 cannot be imposed on a non-party to a contract; and

9. the CA, which this Court affirmed, had previously decided a case, involving closely identical facts, in favour of BPI; and the OP in fact had similarly dismissed the cases filed against BPI for refusing to honor La Savoie's unauthorized sale to buyers in similar situations.

III. INCIDENTS SUBSEQUENT TO THE FILING OF THE PETITION

The Court's September 17, 2014 Minute Resolution

On **September 17, 2014**, the Court issued a **minute resolution**[12] denying the petition for "failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising substantially factual issues."

Petitioner's motion for reconsideration (1st MR)

On November 10, 2014, the petitioners sought reconsideration[13] of the Court's September 17, 2014 Resolution reiterating that:

1. the authority to sell BPI granted to La Savoie under the JVA was a limited authority to sell, *i.e.*, only "by way of engaging the services of brokers";

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[12] *Rollo,* pp. 304-305.

[13] *Id.* at 306-312.

2. BPI had already withdrawn this limited authority to sell on July 22, 1996, or almost one year before La Savoie sold the subject subdivision lot to Mariño on July 18, 1997;

3. the CA, which this Court affirmed, had previously decided a case, involving closely identical facts, in favour of BPI; and

4. there was no privity of contract between BPI and Mariño as the Contract to Sell was entered into between La Savoie and Mariño.

Mr. Delfin V. Cruz's November 25, 2014 Letter (1st Letter)

On November 25, 2014, Mr. Delfin V. Cruz wrote Associate Justices Arturo D. Brion and Mariano C. Del Castillo identical letters[14] bringing to the Justices' attention the present case which he believed was "railroaded and continue to be railroaded by prosecutors, judges, and justices because of money and influence."[15]

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[14] Dated November 25, 2014. The letter addressed to Associate Justice Mariano C. Del Castillo is attached to the *rollo*, pp. 317-326.

[15] Page 2 of Mr. Delfin's letter. He also claimed that the case "did not undergo [the Justices'] scrutiny because if it did, [they] would render an impartial decision based on evidence because [they] are guided by "FAIRNESS" and the sense of "HIYA" and, in this regard, he accused the Court's Second Division of unjustifiably denying their *Petition for Review on Certiorari* of the CA decision, which, he believed was way out of line since the CA concealed and vanished the truth presented in evidence.

Thereafter, he added, the CA twisted the truth by falsely declaring that "[BPI] gave La Savoie authority to sell to justify its decision favouring Mariño." He pointed out that [BPI] never authorized La Savoie to sell. Rather, the Special Power of Attorney [BPI] executed and presented as evidence shows BPI merely authorized La Savoie to "*engage the services of brokers,"* which authority [BPI] revoked about a year before La Savoie sold lots to Mariño and other buyers."[15]

The Court's April 4, 2016 Minute Resolution

On April 4, 2016, the Court issued a resolution[16] denying with finality the petitioners' motion for reconsideration because "no substantial argument having been adduced to warrant the reconsideration sought."

Petitioners' Motion for Reconsideration with Leave of Court (2nd MR)

On **June 1, 2016**, the petitioners filed a Motion for Reconsideration With Leave of Court[17] from the Court's April

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Further, he claimed that the "[CA's] decision merely echoed La Savoie's unsubstantiated allegations,[4] and pointed out that "[Mrs. Menguito] misrepresented herself as a Filipino citizen although she is a Vietnamese who holds French citizenship" while her children are foreigners holding ACR's.[15] Thus, Mr. Delfin posits that since "La Savoie is not allowed by Philippine laws to acquire land because it is 56% foreign-owned," it cannot "claim ownership of properties registered in the name of [BPI] and undertake to execute deeds of sale in favour of buyers." These notwithstanding, La Savoie sold [BPI's lots as owner pretending to have the [power to execute a deed of sale.

He continued that BPI was justified in refusing to deliver on La Savoie's unauthorized sale. Unfortunately, it was only BPI, the lot owner, that Mariño sued before the HLURB, despite the fact that it was not even a party to the contract between the seller La Savoie and the buyer Mariño; neither did it receive any part of the consideration Mariño paid La Savoie.[15]

Additionally, he alleged that the CA even falsely declared that BPI did not implead La Savoie even when the evidence shows otherwise as BPI had filed a third party complaint against La Savoie.[15]

He effectively charged the Second Division of unjustly favoring an undeserving party claiming that the CA "abused its power and someone in the Second Division is doing no less by allowing it to deprive a property owner of its property without due process."[15] "That the Second Division's resolution unjustly favors Mariño is exposed by the fact that despite our advertence to a decision affirmed by the [Court] x x x in which the [CA] held that La Savoie's promise to deliver 19 lots to a complainant did not bind [BPI], the Second Division did not pay attention to it."[15] To Mr. Delfin, "there exists a conspiracy among La Savoie, its lawyers, and buyer Mariño with the protection of arbiters, prosecutors, and members of the judiciary, and even those who sit in judgment at the [IBP]."[15]

[16] *Rollo*, p. 639.

[17] *Id*. at 640-657.

4, 2016 resolution denying with finality their 1st MR (the motion for reconsideration of the Court's September 17, 2014 Resolution); the present motion prayed that the Court "take a second look at the many valid arguments and the overwhelming evidences presented which prove that the [CA] twisted the facts and acted with grave abuse of discretion equivalent to a capricious and whimsical exercise of judgment resulting in a x x x warped and one-sided decision."[18]

The petitioners insist that:

1. the authority to sell BPI granted to La Savoie under the JVA was a limited authority to sell, *i.e.*, only "by way of engaging the services of brokers" which authority BPI already withdrew on July 22, 1996, or almost one year before La Savoie sold the subject subdivision lot to Mariño on July 18, 1997;

2. La Savoie and its President Menguito are indispensable parties in this case, hence, Mariño's failure to implead them rendered the decision of the HLURB void;

3. there was no privity of contract between BPI and Mariño as the Contract to Sell was entered into between La Savoie and Mariño; and

4. the CA, which this Court affirmed, had previously decided a case, involving closely identical facts, in favour of BPI.

Mr. Delfin Cruz's June 21, 2016 Letter (2nd Letter)

On June 21, 2016, Mr. Delfin V. Cruz sent Associate Justice Brion a second letter relating that he sent the 1st Letter "believing that [the] petition x x x did not undergo [J. Brion's] scrutiny because I was convinced by your public pronouncements that you are guided by the rule of 'FAIRNESS' and the sense of 'HIYA' and so you would never affirm a resolution upholding

[18] *Id*. at 640-641.

a [CA] decision that is way out of line because it is not based on documentary evidence, law, and jurisprudence."[19]

The Court's July 13, 2016 Resolution

In a resolution dated July 13, 2016, the Court resolved to:

1. *DEFER ACTION on the petitioners' Motion for Reconsideration with Leave of Court dated June 1, 2016;*

2. *DEFER ACTION on Delfin Cruz's letters of June 21, 2016 and November 25, 2014 (the latter having been simply previously noted);*

3. *REQUIRE Delfin V. Cruz to: (a) define his exact relationship with Buenavista Properties, Inc.; (b) state if he had been authorized by Buenavista Properties and/or its counsel to write his letters dated November 25, 2014 and June 21, 2016 respectively, both within 10 days from receipt of this resolution; and*

4. *REQUIRE Buenavista Properties, Inc. and its counsel of record to state if they are aware of the letters of Delfin V. Cruz; to confirm the exact relationship of Delfin V. Cruz with Buenavista Properties, Inc. and if they*

[19] He also pointed out that he, however, "just learned that [*J.* Brion is] the *ponente* of the case, subject of [the] letter x x x that it is not your intention to rig our case because you have made public declarations of your resolve to "earn the trust, through our actions, of the society that has been good to us and of the public we are sworn to serve" quoting *J.* Brion's October 25, 2014 speech at the Greater Manila IBP Convention.

He further claimed that he "still wants to believe that the decision to dismiss [the] petition was arrived at without malice and that all [*J.* Brion's] pronouncements are authentic and sincere". Nonetheless, he effectively threatened to "resort to extrajudicial means such as telling Mr. Efren S. Cruz x x x that his column of October 30, 2014, about [*J.* Brion] is one big mistake, or spreading the news of this injustice on social media, or picketing your office with the press in tow to accuse you and have the society judge the unfairness of your actions" because he cannot "accept an unjust decision that is clearly not in accord with documentary evidence, law, and jurisprudence" and he is "shocked by [the] resolution dismissing [the] petition."

authorized Delfin V. Cruz to write the above-mentioned letters, all within 10 days from receipt of this Resolution.

Mr. Delfin Cruz's July 28, 2016 Letter (3rd Letter)

In his letter dated July 28, 2016 (with enclosed copy of the JVA between BPI and La Savoie) addressed to J. Brion, Mr. Delfin Cruz reiterated that *"there is no factual basis for the Court of Appeals to say that La Savoie had the authority to sell, much less to promise to execute a deed of sale in favour of Mr. Mariño, because the SPA does not endow such power to La Savoie."*

Mr. Delfin Cruz insists that the Court of Appeals' decision, which compelled them to deliver the title to Mariño, is anchored on the falsehood that BPI gave La Savoie the power to sell, hence, it is *"clearly not motivated by the 'RULE OF FAIRNESS' and the 'SENSE OF HIYA' that you (referring to J. Brion) proclaim you are guided by x x x."* He implored J. Brion to *"hand down a decision in accordance with [his] 'rule of fairness' and the 'sense of hiya."*

Mr. Delfin Cruz's September 3, 2016 Letter (4th Letter)

In his letter dated September 3, 2016, addressed to J. Brion, Mr. Delfin Cruz stated that he was the "Chairman of the Board of Buenavista while the case between it and Ramon G. Mariño was still in the early stage" which made him intimately aware of the facts of the case.

He admitted that he wrote J. Brion merely as a concerned citizen *"even if I was not specifically authorized by either Buenavista or its lawyer, Atty. Ben I. Ibuyan, to write you"* and reiterated the reasons he stated in his previous three letters for writing J. Brion.

Finally, he apologized if his last letter appeared as a threat, emphasizing that it was not his intention and was in fact, "careful in using the words: 'I do not wish to resort to extra-judicial means….".

Petitioner Buenavista's Compliance

For its part, the petitioner, thru counsel, complied with our July 13, 2016 Resolution by submitting the joint affidavit of Cresencio R. Selispara and Gemma S. Buenafe attesting that they did not authorize Mr. Delfin Cruz to write his letters to the Court and were not even aware till they received the Court's directive of July 13, 2013 that these letters were written.

The Court's Ruling

The Court has already denied with finality BPI's motion for reconsideration in its April 4, 2016 resolution; BPI's June 1, 2016 Motion for Reconsideration With Leave of Court is a prohibited second motion for reconsideration.

We emphasize that the June 1, 2016 Motion for Reconsideration With Leave of Court that BPI filed addressing the Court's April 4, 2016 Resolution (denying with finality its November 10, 2014 motion for reconsideration) is a prohibited second motion for reconsideration pursuant to Section 2, Rule 52 in relation with Section 4, Rule 56, both of the Rules of Court, as well as pursuant to Section 3, Rule 15 of the Internal Rules of the Supreme Court.

Section 2 of Rule 52 states that *"[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."*

Under Section 3 of Rule 15, the Court *"shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice. There is reconsideration 'in the higher interest of justice' when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties."* Note, however, that while the Rule provides for exceptions, the second motion for reconsideration can still only be entertained ***"before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration."***

The case does not present a situation that would justify the Court in granting BPI's June 1, 2016 Motion for Reconsideration With Leave of Court – a second motion for reconsideration which the Court should not entertain.

Moreover, jurisprudence has settled that a "decision that has acquired finality becomes immutable and unalterable[,] and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it [will be] made by the court that rendered it or by the highest court of the land.' 'Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest.' No additions can be made to the decision, and no other action can be taken on it, except to order its execution."[20]

As discussed above, the Court denied with finality BPI's November 10, 2014 motion for reconsideration in the April 4, 2016 resolution; the resolution likewise provided that *"[n]o further pleadings or motions shall be entertained in this case. Let entry of final judgment be made in due course."*

In sum, these reasons sufficiently justify the Court in refusing to entertain BPI's June 1, 2016 second motion for reconsideration.

In any event, the Court correctly denied BPI's petition for review on certiorari and motion for reconsideration.

In any event, the Court correctly denied BPI's petition for review on *certiorari*, in its September 17, 2014 resolution, as well as its 1st MR in the April 4, 2016 resolution. The issues and arguments BPI raised in its petition, as reiterated in its 1st and 2nd MRs, merely repeated the issues it has previously raised before the HLURB, the OP, and the CA, which issues all three tribunals had duly considered and uniformly ruled against BPI.

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[20] See *J.* Brion's Dissenting Opinion in *Keppel v. Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*, G.R. Nos. 180880-81, *Pioneer Insurance and Surety Corporation v. Keppel v. Cebu Shipyard, Inc.*, G.R. Nos. 180896-97, September 18, 2012 (citations omitted).

We point out that the issues BPI raised in its petition and MRs can be summed up into two: (1) whether La Savoie had the authority to sell the subdivision lots pursuant to the JVA and its Addendum; and (2) assuming *arguendo* that La Savoie had the authority to sell under the JVA, whether such authority had already been rescinded prior to the execution of the Contract to Sell with Mariño.

We find it clear from the pertinent provisions of the JVA, footnoted below, that contrary to BPI's claim, La Savoie was empowered to sell the Buenavista Park Subdivision lots, including the subject lot it sold to Mariño.[21]

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[21] The JVA pertinently reads:

II. OBLIGATIONS OF THE DEVELOPER:

2.1 The DEVELOPER, furnishing all expenses, labor, materials, equipment, expertise and supervision, shall convert/develop the land into a mixed-use subdivision with commercial and residential phases in accordance with specifications, and designs and standards of the HOUSING AND LAND USE REGULATORY BOARD and other government agencies concerned. The DEVELOPER's work and responsibilities, include:

x x x x x x x x x

2.2 The **DEVELOPER**, in addition to the above **shall provide and exercise general management over the project**, its development, promotion, advertisement, marketing **and sales**.

x x x x x x x x x

III. DEVELOPER AS ATTORNEY-IN-FACT OF THE LANDOWNER:

3.1 For and in consideration of amounts received from the DEVELOPER and the interests of the DEVELOPER in the accomplishment of his authority, the **LANDOWNER hereby waives all rights to appoint another attorney, or to do and perform by himself the powers and authority herein conferred, and to revoke this authority except for causes mentioned herein**, in a manner that is binding even after his death to his heirs, executors or administrators, and designates and appoints the DEVELOPER as Attorney-in-fact with full power and authority to take full possession of the subject realty, exercise all acts necessary to x x x; **engage the services of brokers**.

This conclusion proceeds from the examination of clauses 2.2, 3.1, and 6.2 of the JVA which states that La Savoie had the power to, among others: (1) provide and **exercise general management** over the project including its marketing and sales;

IV. LIMITATIONS ON THE RIGHTS OF DEVELOPER:

x x x x x x x x x

4.2 All Certifications of Title on lots shall be in the name and possession of the LANDOWNER until they are sold, subject to the annotation of this agreement.

4.3 Pricing of lots and broker's commission shall be determined jointly by the LANDOWNER and the DEVELOPER.

x x x x x x x x x

VI. PERIOD OF SALE/DEVELOPMENT:

x x x x x x x x x

6.2 The **DEVELOPER shall sell** all the lots in the project within three (3) years from the execution of this agreement.

x x x x x x x x x

VII. RECEIPT AND COLLECTION OF PAYMENTS:

7.1 The **DEVELOPER as manager shall receive, collect and receipt in its name all payments from the buyers** subject to the obligation to account and remit to the LANDOWNER its due at the thirtieth (30th) day of each month.

x x x x x x x x x

VIII. PENALTIES

x x x x x x x x x

8.1 In case the DEVELOPER violates any provision of this contract or otherwise fails and/or refuses to go through with its commitment herein, the LANDOWNER, instead of suing for specific performance, **may elect to cancel this contract by means of a written communication set to that effect to the DEVELOPER**. In the event of said cancellation, the DEVELOPER shall, in addition to rights granted the LANDOWNER by law, forfeit in favour of said LANDOWNER all investments and/or improvements that shall have been introduced.

[emphases and underscoring supplied]

(2) to **act as BPI's attorney-in-fact** with full power and authority to take full possession of the realty, **including engaging the services of brokers**; and (3) **sell the lots, within the specified period**. Additionally, La Savoie had the authority **to receive and give receipts under its name, payments from buyers of the subdivision lots**, per clause 7.1 of the JVA.

Likewise and contrary to BPI's assertion, the Contract to Sell between La Savoie and Mariño was executed *before BPI categorically withdrew La Savoie's authority to sell under the JVA.* Note that per clause 8.1 of the JVA, in case La Savoie fails or refuses to perform its obligations under the JVA or violates any provisions of the JVA, BPI could either sue the former for specific performance or cancel the contract *via* written communication to this effect.

In this case, BPI's option to cancel the JVA, instead of suing for specific performance, became categorically clear only on February 28, 1998 when it filed the JVA rescission case against La Savoie. La Savoie and Mariño entered into the Contract to Sell on July 18, 1997 or seven (7) months prior to the filing of the JVA rescission case; undoubtedly, La Savoie then still retained the full authority under the JVA to enter into the Contract to Sell with Mariño.

While BPI wrote La Savoie several letters prior to the filing of the JVA rescission case, *i.e.*, on July 22, 1996, August 15, 1996, September 30, 1996, and August 15, 1997, requesting and/or asking the latter to suspend or stop selling the subdivision lots until they have agreed on the selling price, BPI never categorically terminated the JVA nor withdrew La Savoie's authority to sell through these letters.[22]

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[22] The pertinent provisions of BPI's letters state:

- July 22, 1996 letter:

> "x x x x x x x x x
>
> Since it has been more than four (4) years ago from the time you fixed the prices of our lots, it has now become obvious that our prices are no longer realistic and prospective buyers might simply take

Notably, and again contrary to BPI's claim, these letters show that it did not cancel the JVA prior to the filing of the JVA rescission case because, as of its August 15, 1997 letter, it was still about to invoke the termination clause of the JVA.

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advantage of our low prices for speculation purposes. We must therefore insist that **you suspend the sale of our lots immediately upon receipt hereof until such time as we have agreed on the new pricing of our lots.**

x x x x x x x x x"

- August 15, 1996 letter:

"x x x x x x x x x

We suggest that this time you conduct the necessary investigation of the current prices of the lots in nearby subdivisions, make a study, and submit to us your proposed pricing for our joint evaluation and decision on the matter.

In the meantime, **please stop selling until we have mutually agreed on the realistic pricing of the lots**.

x x x x x x x x x x"

- September 30, 1996 letter:

"x x x x x x x x x

In view hereof, we regret that we cannot agree to your proposed prices. Instead **we ask you to stop selling until you have put enough development to obtain the best price**s x x x."

- August 15, 1997 letter

"x x x x x x x x x

"Also, we have learned that you have gone on with the sale of the developed lots, notwithstanding our letters dated July 22, 1996, August 15, 1996 and March 17, 1997 asking you to desist from any further sale until we have agreed on revised prices. Please be reminded that our JVA specifically provides that pricing must be mutually agreed upon.

Please, therefore, **immediately stop selling the subdivision lots until we have agreed on the prices** and remit to us the accumulated penalties within FIVE (5) days from receipt of this letter; **otherwise, we shall be forced to invoke the termination clause of our JVA.**" [emphases supplied]

The above considerations are outlined to show the considerations the Court took into account in denying the petition outright (aside from the reason that the issues raised were mostly factual issues that a Rule 45 petition does not allow). Thus, this Court can only NOTE without action BPI's June 1, 2016 Motion for Reconsideration With Leave of Court addressing the April 4, 2016 Resolution of the Court (denying with finality its November 10, 2014 motion for reconsideration). It is a second motion for reconsideration that is prohibited under Section 2, Rule 52 in relation with Section 4, Rule 56, both of the Rules of Court, as well as under Section 3, Rule 15 of the Internal Rules of the Supreme Court.

The Court NOTES Mr. Delfin Cruz's compliance, through his September 3, 2016 Letter, with the Court's July 13, 2016 Resolution, among others, requiring him to: (a) define his exact relationship with Buenavista Properties, Inc.; (b) state if he had been authorized by Buenavista Properties and/or its counsel to write his letters dated November 25, 2014 and June 21, 2016 respectively.

Since he is not a formal party to the case, the Court cannot recognize the representations Mr. Delfin Cruz has made before this Court – through his letters dated November 25, 2014, June 21, 2016, July 28, 2016, and September 3, 2016 – in relation with the present case.

In line with this position, the Court likewise chooses to gloss over the observations that Mr. Delfin Cruz has made in his various letters against the Court and its Members.

The Court, however, observes that interventions of the kind that Mr. Delfin Cruz undertook are the kind of interference that only delays the resolution of cases in this Court; hence, our rule that parties should always speak through their counsels. If we do not penalize the counsels of record in this case at all, it is only because they promptly replied that they did not know of the intervention of Mr. Delfin Cruz who is no longer an official of their client company.

The Court likewise warns Mr. Delfin Cruz in the strongest terms that any further word from him, whether directly made to this Court or its Members or in the social media (as he had threatened), **tending to interfere with the processes of the present case, to malign this Court or its Members, to disparage their reputation or to impugn their integrity**, shall be dealt with severely and without consideration of Mr. Delfin Cruz' age or age-related infirmities.

WHEREFORE, premises considered, the Court resolves to:

1. **NOTE** without action Buenavista Properties Inc.'s June 1, 2016 Motion for Reconsideration With Leave of Court, filed to challenge the Court's April 4, 2016 Resolution that **DENIED WITH FINALITY** its November 10, 2014 Motion for Reconsideration; and

2. **NOTE** the letter dated September 3, 2016 (filed in compliance with the Court's directive to explain in the July 13, 2016 Resolution) and the other previous letters of Mr. Delfin Cruz. The Court, however, **WARNS** in the strongest terms that any further word from Mr. Delfin Cruz, whether directly made to this Court or its Members or in the social media (as Mr. Cruz had threatened), tending to interfere with the processes of the present case, to malign the Court or its Members, to disparage their reputation or to impugn their integrity, shall be dealt with severely and without consideration of Mr. Delfin Cruz' age or age-related infirmities.

No further pleadings shall be entertained in this case.

SO ORDERED.

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

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* Designated as Acting Chief Justice per Special Order No. 2386 dated September 29, 2016.

EN BANC

[A.C. No. 4269. October 11, 2016]

DOLORES NATANAUAN, *complainant, vs.* **ATTY. ROBERTO P. TOLENTINO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDING; THERE WAS NO DENIAL OF DUE PROCESS AND OPPORTUNITY TO BE HEARD; FAILURE TO PRESENT HIS SIDE OF THE CONTROVERSY DESPITE OPPORTUNITY TO DO SO CONSTITUTES A WAIVER OF SUCH RIGHT.— Contrary to his claims, Atty. Tolentino was not denied due process or deprived of an opportunity to be heard. The records show that his then counsel Atty. Fuentes filed a Comment on his behalf. He also filed a Motion for Reconsideration of the May 13, 2011 Resolution of the IBP Board, and a Supplemental Motion for Reconsideration. His participation through pleadings and motions cured whatever defect that may have attended the issuance of notices regarding the proceedings held before the IBP. x x x Knowing that there is a pending administrative complaint against him, Atty. Tolentino should have actively and voluntarily participated in the case especially so when he believes that his defense is meritorious. Instead, after filing his Comment containing bare denials and facts unsupported by any proof, Atty. Tolentino deliberately failed to participate in the proceeding and now hides behind the flimsy excuse that no notices were received by him or his counsel. As a lawyer, Atty. Tolentino is presumed to understand the gravity of a disbarment proceeding. His failure to present his side of the controversy, despite opportunity for him to do so, constitutes a waiver by him of such right.

2. ID.; ID.; ID.; THE RIGHT TO PRACTICE LAW IS A PRIVILEGE ACCORDED ONLY TO THOSE WHO ARE WORTHY OF IT.— The practice of law is neither a natural nor a constitutional right but a privilege bestowed by the State only upon the deserving and worthy for conferment of such

privilege. No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. It is a privilege granted only to those who possess the strict intellectual and moral qualifications required of lawyers who are instruments in the effective and efficient administration of justice.

3. ID.; ID.; ID.; RESPONDENT'S DIRECT PARTICIPATION IN THE FALSIFICATION, SUFFICIENTLY ESTABLISHED.— We agree with Commissioner Espina's finding that there is sufficient proof to hold that Atty. Tolentino was involved in the falsification. The totality of evidence (consisting of the falsified documents, Dolores' testimony detailing the transactions surrounding the land, and the investigation conducted by this Court) leaves no doubt as to Atty. Tolentino's involvement in, or at the very least, benefit from the acts of falsification imputed against him. Both Commissioner Espina and the IBP Board found that Atty. Tolentino's direct participation in the falsification of the Deed of Sale and the Joint Affidavit could be inferred from the fact that he was the one who personally entered into the subject contract with Dolores and her siblings, merely using his brother Alejo and his wife Filomena as dummies. x x x The circumstances surrounding the transactions covered by the falsified documents, viewed against Atty. Tolentino's bare denials, constrain us to apply the rule that in the absence of satisfactory explanation, one who is found in possession of, and who has used, a forged document, is the forger and, therefore, guilty of falsification. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, which, if no contrary proof is offered, will thereby prevail. A *prima facie* case of falsification having been established, Atty. Tolentino should have presented sufficient evidence to overcome such burden. Through his own fault, this he failed to do.

4. ID.; ID.; FALSIFICATION AND DISHONESTY CONSTITUTE VIOLATIONS OF LAWYER'S OATH AND CANON 10 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [W]e stress that while Atty. Tolentino

vehemently denies any participation in the alleged falsification of the August 3, 1979 Deed of Sale, he kept silent (both in his Comment and the subsequent motions he filed before the IBP and the Supreme Court) as to the March 9, 1979 Deed of Sale, a copy of which was attached as Annex I of the disbarment complaint. It also does not appear that Atty. Tolentino ever disputed his signature appearing in conformity to the Spouses Tolentino's Affidavit dated December 2, 1980 stating that the property never belonged to them and that he (Atty. Tolentino) was its true and absolute owner. x x x We reiterate that a lawyer is not merely a professional but also an officer of the court and as such, he is called upon to share in the task and responsibility of dispensing justice and resolving disputes in society. Any act on the part of a lawyer, an officer of the court, which visibly tends to obstruct, pervert, impede and degrade the administration of justice is contumacious, calling for both an exercise of disciplinary action and application of the contempt power. For his acts of dishonesty, Atty. Tolentino not only violated the Lawyer's Oath and Canon 10 of the Code of Professional Responsibility, he also failed to observe his duty as an officer of the court.

5. ID.; ID.; DELIBERATE NON-PARTICIPATION IN THE DISCIPLINARY PROCEEDINGS CONSTITUTES VIOLATION OF CANONS 1 AND 7 OF THE CODE OF PROFESSIONAL RESPONSIBILITY FOR IT SHOWS LACK OF RESPECT FOR THE LEGAL PROCESS AND SULLIES THE INTEGRITY OF THE LEGAL PROFESSION.— Canons 1 and 7 of the Code of Professional Responsibility provide that a lawyer shall, "uphold the Constitution, obey the laws of the land and promote respect for law and legal processes" and "at all times, uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar." Atty. Tolentino's deliberate non-participation in the disciplinary proceedings shows a lack of respect for the legal (disciplinary) process and sullies the integrity and dignity of the legal profession.

APPEARANCES OF COUNSEL

Samson Montesa Alcid Villacorta and Associates for complainant.

Rolando B. Aquino for respondent.

D E C I S I O N

JARDELEZA, *J.*:

For the Court's consideration is Atty. Roberto P. Tolentino's (Atty. Tolentino) motion to have his disbarment case re-opened and reheard on the ground that he was denied his constitutional right to due process.

The case originated from a disbarment complaint[1] filed by Dolores Natanauan (Dolores) accusing Atty. Tolentino of deceit, malpractice, and gross misconduct in violation of the Lawyer's Oath and the Code of Professional Responsibility.

The Facts

Complainant Dolores alleged that she is a co-owner (with her siblings Rafaela, Ernestina, and Romulo [Dolores, *et al.*]) of a parcel of land with an area of about 50,000 square meters located in Tagaytay City.[2] On January 3, 1978, they sold this land to Alejo Tolentino (Alejo) for ₱500,000.00. At the time, the title to the property had not yet been issued by the Land Registration Commission.[3] The parties thus agreed that payment for the same shall be made in installments, as follows: ₱80,000.00 upon the execution of the contract and the remaining balance in two (2) installments, payable one (1) year after the issuance of the title and then one (1) year thereafter.[4]

On August 9, 1979, and after the execution of the contract of sale between the parties, the Register of Deeds of Cavite issued Transfer Certificate of Title (TCT) No. T-107593[5] in Alejo's favor. Despite several requests from Dolores, *et al.*, Alejo, however, failed to settle the remaining obligation. Thus,

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[1] *Rollo,* pp. 2-14.

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

[3] *Id.* at 4.

[4] *Id.* at 3, 23-24.

[5] *Id.* at 30.

on May 14, 1991, Dolores, *et al.* filed a case against Alejo and his wife Filomena, docketed as Civil Case No. TG-1188, for the recovery of possession of immovable property, declaration of nullity of the deed of sale, and damages.[6]

On March 30, 1993, the Regional Trial Court (RTC) promulgated a Decision[7] in Civil Case No. TG-1188 declaring the rescission of the contract of sale. Consequently, it ordered: (1) the reconveyance of the land back to Dolores, *et al*.; (2) the cancellation of TCT No. T-107593; (3) the issuance of a new title in favor of Dolores, *et al.*; and (4) the payment of damages by Alejo and Filomena.

Sometime in June 1993, Dolores discovered that the TCT No. 107593 under Alejo's name was issued not on the basis of the January 3, 1978 contract but on a **Deed of Sale dated August 3, 1979**, purportedly executed by their father Jose Natanauan (Jose), Salud Marqueses, Melquides[8] Parungao and Asuncion Fajardo (Jose, *et al*.).[9] She further discovered a **Joint Affidavit dated August 6, 1979**, purportedly executed by Jose, *et al.* attesting to the absence of tenants or lessees in the property[10] and **another Deed of Sale dated March 9, 1979**, executed between Dolores, *et al*. as vendors and Atty. Tolentino as vendee covering purportedly the same property.[11]

Dolores claims that the foregoing documents were falsified as Jose, who died in Talisay, Batangas on June 12, 1977, could not have signed the Deed of Sale dated August 3, 1979 and the Joint Affidavit dated August 6, 1979.[12] Furthermore, the Deeds of Sale were all notarized by Notary Public Perfecto P. Fernandez

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[6] *Id.* at 46.

[7] *Id.* at 42-48.

[8] Also referred to as "Melquiades" in other parts of the records.

[9] *Rollo*, pp. 4-5, 26-27.

[10] *Id.* at 5-6, 28.

[11] *Id.* at 8, 38-40.

[12] *Id*. at 4, 25.

(Perfecto) who Dolores later on discovered was not commissioned as a notary public for and in the City of Manila for the year 1979.[13]

It was also around the same time that Dolores discovered that the title to the property has been subsequently registered, under TCT No. T-21993, in the name of Buck Estate, Inc., where Atty. Tolentino is a stockholder,[14] and mortgaged to Rizal Commercial Banking Corporation for Ten Million Pesos (₱10,000,000.00).[15]

Thus, on June 1, 1994, Dolores filed the present disbarment complaint against Atty. Tolentino and Perfecto for their alleged acts of falsification. In her complaint, Dolores attached an Affidavit dated December 2, 1980, where Alejo and Filomena attested that the subject property never belonged to them in truth or in fact, the true and absolute owner of the same being Alejo's brother, Atty. Tolentino.[16] Notably, this Affidavit bears Atty. Tolentino's conformity.[17]

In a Resolution[18] dated July 18, 1994, this Court required respondents to file their Comment within ten (10) days from notice.

Despite several attempts, a copy of the Resolution was not served on Perfecto due to lack of knowledge as to his whereabouts.[19] Atty. Tolentino, on the other hand, was able to file the required Comment[20] through his then-counsel Atty. Tranquilino M. Fuentes (Atty. Fuentes).

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[13] *Id.* at 6, 29.

[14] *Id*. at 10-11, 49-53.

[15] *Id*. at 11, 49-50.

[16] *Id*. at 8-9, 40-41.

[17] *Id.* at 41.

[18] *Id.* at 55.

[19] *Id.* at 68-70, 73, 80.

[20] *Id.* at 56-58.

In his Comment, Atty. Tolentino specifically denied having any participation in the falsification of the Deed of Sale dated August 3, 1979,[21] and vehemently denied any participation in the transactions, deeds of sale and other documents covering the subject property.[22] Atty. Tolentino claimed that there was no specific or concrete allegation of fact in the Complaint as to how he colluded with Alejo and Filomena in the commission of the alleged falsifications. He further pointed out that: (1) he does not appear as party to any of the falsified documents; and (2) it was not alleged that he benefited from the same.[23] Atty. Tolentino also averred that Buck Estate, Inc. did not acquire the property from Alejo and Filomena, but rather bought the same in a 1990 auction sale after the property was foreclosed due to the latter's failure to pay their loan obligations. He further alleged that he does not personally know his co-respondent Perfecto and has never dealt nor met with him in any capacity.[24]

In her Reply,[25] Dolores countered that Atty. Tolentino cannot disclaim knowledge or participation of the falsification as the latter, in fact, also misrepresented before the Supreme Court that he is the absolute owner of the subject parcel of land by virtue of the **March 9, 1979 Deed of Sale** notarized by Fernandez. To support this, Dolores cited this Court's decision in *Banco De Oro v. Bayuga*[26] involving the same subject property.

In the meantime, and in the course of her efforts to locate respondent Perfecto, Dolores discovered that Perfecto was not a member of the Philippine Bar as evidenced by a Certification[27] dated March 18, 1996 issued by then Deputy Clerk of Court and Bar Confidant Erlinda C. Verzosa. Neither has he been

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[21] *Id.* at 56.

[22] *Id.* at 57.

[23] *Id*.

[24] *Rollo,* pp. 57-58.

[25] *Id.* at 61-64.

[26] G.R. No. L-49568, October 17, 1979, 93 SCRA 443.

[27] *Rollo,* p. 105.

commissioned as notary public for and in the City of Manila since 1979 to 1996.[28]

On December 4, 1996, this Court referred the case to the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) for investigation, report and recommendation.[29] Due to Atty. Tolentino's repeated failure and refusal to appear on the scheduled hearings, Dolores was allowed to give testimony and present her evidence *ex-parte*.[30]

Findings of the Integrated Bar of the Philippines

In a Report and Recommendation[31] dated January 31, 2010, IBP Commissioner Edmund T. Espina (Commissioner Espina) found that Atty. Tolentino violated the Lawyer's Oath as well as Canon 1, Rule 1.01 of the Code of Professional Responsibility.[32]

Commissioner Espina gave credence to Dolores' testimony and found that this and other supporting documentary evidence clearly illustrated the acts of falsification committed by Atty. Tolentino in connivance with his brother Alejo and associate Perfecto.[33] Specifically, Commissioner Espina inferred Atty. Tolentino's direct participation in the falsifications from the fact that he was the one who personally entered into the subject contract with Dolores, *et al.*, merely using his brother Alejo and the sister-in-law Filomena as dummies.[34]

> x x x Circumstances exist which point to respondent's complicity in the two (2) acts of falsification- he is the brother of Alejo Tolentino, the original vendee, and the parcel of land consisting of fifty (*sic*)

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[28] *Id*. at 106.

[29] *Id*. at 112.

[30] *Id.* at 118.

[31] *Id.* at 214-223.

[32] *Id.* at 221.

[33] *Id*. at 220-221.

[34] *Id*. at 220.

(50,000) square meters, more or less, was subsequently conveyed, transferred and ceded to Buck Estate, Inc., of which he is one of the incorporators and stockholders, and which mortgaged the parcel of land with the bank. Another important document which points to respondent's fraudulent act is the very Affidavit of Spouses Alejo and Filomena Tolentino dated December 2, 1990 strongly stating, among other things, that subject parcel of land had never belonged to them, the true and absolute owner thereof being respondent, Atty. Roberto P. Tolentino. More importantly, said Deed of Sale and Joint-Affidavit were notarized by Perfecto P. Fernandez, a close associate of respondent Atty. Roberto P. Tolentino, both of them being residents and/or holding office in the same address, and worse, who is not a notary public or lawyer.

Not content with the foregoing felonious, unlawful and malicious acts, respondent Atty. Roberto P. Tolentino committed yet another falsification when he filed and submitted to the Supreme Court a Deed of Sale dated March 9, 1979 relative to that case entitled "[*Banco de Oro v. Bayuga*"], docketed as No. L-49568, 93 SCRA 443. Such Deed of Sale shows that complainant and her brother and sisters sold on installment basis the same parcel of land to respondent.[35]

Lastly, Commissioner Espina found that Atty. Tolentino's failure to appear before the IBP-CBD was another ground for disciplinary action. As a lawyer, he is required to submit himself to the disciplinary authority of the IBP.[36] Commissioner Espina thus recommended that Atty. Tolentino be suspended from the practice of law for a period of six (6) months.

On May 13, 2011, the IBP Board of Governors (IBP Board) issued a Resolution[37] adopting Commissioner Espina's Report and Recommendation but increasing the recommended penalty of suspension from the practice of law for six (6) months to three (3) years.[38]

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[35] *Id.* at 220-221.

[36] *Id.* at 222.

[37] *Id.* at 243.

[38] *Id*.

Atty. Tolentino filed a Motion for Reconsideration with Motion to Re-Open Case[39] and a Supplemental Motion for Reconsideration[40] dated July 29, 2011 and August 25, 2011, respectively. In his Supplemental Motion for Reconsideration, Atty. Tolentino attached a *Sinumpaang Salaysay*[41] signed by his brother Alejo and wife Filomena stating that they are, in fact, the true owners of the property subject of this case and that Atty. Moises Samson (counsel for Dolores) made them sign an affidavit written in English under the following pretext: "x x x *para maisaayos ang bilihan namin ng lupa nina Romulo* [*Natanauan*] *at mga kapatid nito* x x x."[42] They also denied attesting to such affidavit before anyone.

In a Resolution[43] dated December 15, 2012, the IBP Board unanimously denied Atty. Tolentino's motions. The IBP Board's resolutions were thereafter transmitted to this Court on April 4, 2013.[44]

On August 6, 2013, Atty. Tolentino filed a Manifestation and/or Motion[45] claiming that he was denied his constitutional right to due process when the IBP Board failed to give him an opportunity to be heard and present his side. Atty. Tolentino claims that neither he nor his counsel received a subpoena or notice of the order directing parties to file their memorandum. He likewise challenges the findings made by Commissioner Espina, on the ground that the latter simply relied on Dolores' Memorandum, there being no transcript of stenographic notes of the proceedings.[46] Atty. Tolentino further decries the IBP Board's decision to increase the recommended penalty from

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[39] *Rollo,* pp. 224-227.

[40] *Id*. at 232-236.

[41] *Id.* at 237-238.

[42] *Id.* at 237.

[43] *Id.* at 242.

[44] *Id*. at 241.

[45] *Id.* at 347-353.

[46] *Id*. at 348.

six (6) months to three (3) years suspension from the practice of law, as this was done without giving him the opportunity to be notified and heard.[47]

Issues

The issues to be resolved in this case are as follows: (1) whether there was a violation of Atty. Tolentino's constitutional right to due process; and (2) whether Atty. Tolentino committed deceit, malpractice and gross misconduct through the aforementioned falsifications in violation of the Code of Professional Responsibility and the Lawyer's Oath which would merit his disbarment and removal from the legal profession.

The Court's Ruling

The Court resolves to deny Atty. Tolentino's motion and affirm the IBP Resolution with modification.

There was no denial of due process and opportunity to be heard.

Atty. Tolentino, like any respondent in a disbarment or administrative proceeding, is entitled to due process. The most basic tenet of due process is the right to be heard, hence, denial of due process means the total lack of opportunity to be heard or to have one's day in court.[48] As a rule, no denial of due process takes place where a party has been given an opportunity to be heard and to present his case.[49]

Rule 138, Section 30 of the Revised Rules of Court also provides:

Sec. 30. *Attorney to be heard before removal or suspension.* – No attorney shall be removed or suspended from the practice of his

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[47] *Id*. at 349.

[48] *Ylaya v. Gacott,* A.C. No. 6475, January 30, 2013, 689 SCRA 452, 463.

[49] *Ylaya v. Gacott, supra.* See also *Alliance of Democratic Free Labor Organization v. Laguesma,* G.R. No. 108625, March 11, 1996, 254 SCRA 565, 574.

profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex-parte.*

Contrary to his claims, Atty. Tolentino was not denied due process or deprived of an opportunity to be heard. The records show that his then counsel Atty. Fuentes filed a Comment on his behalf. He also filed a Motion for Reconsideration of the May 13, 2011 Resolution of the IBP Board, and a Supplemental Motion for Reconsideration. His participation through pleadings and motions cured whatever defect that may have attended the issuance of notices regarding the proceedings held before the IBP.

In *Vivo v. Philippine Amusement and Gaming Corporation*,[50] we held that any defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard.[51] We likewise reiterated that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.[52]

Knowing that there is a pending administrative complaint against him, Atty. Tolentino should have actively and voluntarily participated in the case especially so when he believes that his defense is meritorious. Instead, after filing his Comment containing bare denials and facts unsupported by any proof, Atty. Tolentino deliberately failed to participate in the proceeding and now hides behind the flimsy excuse that no notices were received by him or his counsel.

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[50] G.R. No. 187854, November 12, 2013, 709 SCRA 276.

[51] *Id*. at 285, citing *Gonzales v. Civil Service Commission*, G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.

[52] *Id*., citing *Autencio v. Mañara*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.

As a lawyer, Atty. Tolentino is presumed to understand the gravity of a disbarment proceeding. His failure to present his side of the controversy, despite opportunity for him to do so, constitutes a waiver by him of such right.[53]

The right to practice law is a privilege accorded only to those worthy of it.

The practice of law is neither a natural nor a constitutional right but a privilege bestowed by the State only upon the deserving and worthy for conferment of such privilege.[54]

No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities.[55] It is a privilege granted only to those who possess the strict intellectual and moral qualifications required of lawyers who are instruments in the effective and efficient administration of justice.[56]

As guardian of the legal profession, this Court has the ultimate disciplinary power over members of the Bar to ensure that the highest standards of competence, honesty and fair dealing are maintained.[57]

Under Section 27, Rule 138 of the Revised Rules of Court, a lawyer may be suspended or disbarred from the practice of law for any of the following grounds:

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[53] *Roces v. Aportadera*, A.M. No. 2936, March 31, 1995, 243 SCRA 108, 114.

[54] *Alcantara v. De Vera*, A.C. No. 5859, November 23, 2010, 635 SCRA 674, 679.

[55] *Embido v. Pe, Jr.*, A.C. No. 6732, October 22, 2013, 708 SCRA 1, 10-11.

[56] *In Re: Al Argosino*, B.M. No. 712, March 19, 1997, 270 SCRA 26, 30.

[57] *Overgaard v. Valdez*, A.C. No. 7902, March 31, 2009, 582 SCRA 567, 582.

1) Deceit;
2) Malpractice;
3) Gross misconduct in office;
4) Grossly immoral conduct;
5) Conviction of a crime involving moral turpitude;
6) Violation of the lawyer's oath;
7) Willful disobedience to the lawful order of the court;
8) Willful appearance as an attorney for a party without authority to do so; and
9) Solicitation of cases at law for the purpose of gain either personally or through paid agents or brokers.[58]

A lawyer may be disciplined or suspended from the practice of law for any misconduct, whether in his professional or private capacity, which shows him to be wanting in character, honesty, probity and good demeanor and thus unworthy to continue as an officer of the court.[59] A lawyer may be disbarred or suspended not only for acts and omissions of malpractice and dishonesty in his professional dealings. He may also be penalized for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him.[60]

We, however, emphasize that the purpose of disbarment is not meant as a punishment to deprive a lawyer of a means of livelihood. Rather, it is intended to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.[61] Considering the serious consequences of the disbarment or

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[58] See also *Jimenez v. Francisco*, A.C. No. 10548, December 10, 2014, 744 SCRA 215, 240.

[59] *Macarrubo v. Macarrubo*, A.C. No. 6148, February 27, 2004, 424 SCRA 42, 49.

[60] *Lizaso v. Amante*, A.C. No. 2019, June 3, 1991, 198 SCRA 1, 9-10, citing *In Re: Pelaez*, 44 Phil. 567 (1923).

[61] *Yap-Paras v. Paras*, A.C. No. 4947, June 7, 2007, 523 SCRA 358, 362.

suspension of a member of the Bar, this Court has held that substantial evidence is necessary to justify the imposition of the administrative penalty.[62]

In this case, respondent Atty. Tolentino is charged with violating the Lawyer's Oath and Canons 1, 7, and 10 of the Code of Professional Responsibility.

The Lawyer's Oath is a covenant every lawyer undertakes to become and remain part of the legal profession.[63] It is not mere facile words, drift and hollow, but a sacred trust that must be upheld and keep inviolable.[64] It is a source of obligation and duty for every lawyer,[65] which includes an undertaking to obey the laws and legal orders of duly constituted authorities therein, and not to do falsehood, nor consent to the doing of any in court. All lawyers are obligated to uphold their Oaths lest they be subjected to administrative cases and sanctions.[66]

Canons 1, 7, and 10 of the Code of Professional Responsibility, on the other hand, read as follows:

Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

Canon 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.

Canon 10 – A lawyer owes candor, fairness, and good faith to the court.

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[62] *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *Cabas v. Sususco*, A.C. No. 8677, June 15, 2016.

[63] REVISED RULES OF COURT, Rule 138, Sec. 17; *In Re: Benjamin Dacanay*, B.M. No. 1678, December 17, 2007.

[64] *Tan v. Diamante*, A.C. No. 7766, August 5, 2014, 732 SCRA 1, 9; *Sebastian v. Calis*, A.C. No. 5118, September 9, 1999, 314 SCRA 1, 7.

[65] *Madrid v. Dealca*, A.C. No. 7474, September 9, 2014, 734 SCRA 468, 478.

[66] *Id.*

Complainant sufficiently proved the charges of falsification against Atty. Tolentino.

In disbarment proceedings, the burden of proof rests upon the complainant; and the Court will exercise its disciplinary power only if the complainant establishes the complaint with substantial evidence.[67]

In her Complaint, Dolores alleged that she (with her siblings) sold the property to Alejo and Filomena, presenting as proof thereof the Deed of Sale dated January 3, 1978. We note, however, that Dolores would later on disclose[68] the *actual* transaction which transpired between them and Atty. Tolentino involving the subject property, *viz*:

> On ex-parte presentation of evidence, complainant testified that **she knew personally respondent Atty. Roberto P. Tolentino as he was the one who actually purchased their parcel of land** located at Barangay Sunga, Tagaytay City consisting of FIFTY THOUSAND (50,000) square meters; she and her brother, Romulo Natanauan and sisters, Rafaela Natanauan and Ernestina Natanauan, are co-owners of said parcel of land as evidenced by a Deed of Sale dated August 3, 1976 x x x executed in their favor by Jose Natanauan and Salud Marqueses.
>
> At the time of the said sale, Jose Natanauan and Salud Marqueses are the registered owners of said parcel of land by virtue of an Original Certificate of Title No. 0-1822 x x x issued by the Register of Deeds for the Province of Cavite.
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> **Atty. Roberto P. Tolentino purchased said parcel of land through the intervention of a certain Juan Luna;** on January 3, 1978, they were accompanied by Juan Luna to the Office of Atty. Roberto P. Tolentino located at Roxas Boulevard, Manila. Thereat, **Atty. Roberto P. Tolentino, paid them the amount EIGHTY THOUSAND (₱80,000.00) PESOS for and as downpayment for the purchase of said parcel of land. After receiving such amount, they were asked by him to sign a Deed of Sale dated August 3,**

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[67] *Reyes v. Nieva, supra* note 62.

[68] See Memorandum for Complainant, *rollo*, pp. 141-159.

1979 x x x subject to the condition that he will cause the transfer of ownership of the said parcel of land from Jose Natanauan to them and thereafter, he will pay the unpaid balance of the purchase price.

Instead of transferring said ownership from Jose Natanauan to them, she declared that Atty. Roberto Tolentino caused the transfer of ownership from Jose Natanauan to Spouses Alejo Tolentino and Filomena Tolentino by executing a falsified Deed of Sale dated August 3, 1979 x x x and Joint Affidavit dated August 6, 1979 x x x; Atty. Roberto P. Tolentino falsified and forged the signatures of Jose Natanauan, Salud Marqueses, Melquiades [Parungao] and Asuncion Fajardo in such documents making it appear that they (Jose, Salud, Melquiades and Asuncion) sold the said parcel of land to Spouses Alejo Tolentino and Filomena Tolentino.[69] (Emphasis supplied.)

We agree with Commissioner Espina's finding that there is sufficient proof to hold that Atty. Tolentino was involved in the falsification. The totality of evidence (consisting of the falsified documents, Dolores' testimony detailing the transactions surrounding the land, and the investigation conducted by this Court) leaves no doubt as to Atty. Tolentino's involvement in, or at the very least, benefit from the acts of falsification imputed against him.

Both Commissioner Espina and the IBP Board found that Atty. Tolentino's direct participation in the falsification of the Deed of Sale and the Joint Affidavit could be inferred from the fact that he was the one who personally entered into the subject contract with Dolores and her siblings, merely using his brother Alejo and his wife Filomena as dummies.

We agree with the IBP. We find most telling of Atty. Tolentino's involvement is the Deed of Sale dated March 9, 1979[70] which, as found by the IBP, Atty. Tolentino himself presented[71] before this Court in the case of *Banco De Oro v. Bayuga.*[72] We quote the relevant portion of the *Banco De Oro* decision, to wit:

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[69] *Id.* at 152-153.

[70] *Id.* at 251-252.

[71] *Id*. at 136-138.

[72] G.R. No. L-49568, October 17, 1979, 93 SCRA 443.

During the oral argument, the Bank was required to submit copies of the Record on Appeal filed in CA-G.R. No. 64130-R of the Court of Appeals and a chronology of relevant incidents. Its Compliance was filed on June 8, 1979. TOLENTINO was also required to submit, not later than the close of office hours of June 7, 1979, copy of the alleged deed showing the purchase by him of about eight hectares of real estate in Tagaytay City on account of which he allegedly paid ₱350,000.00 out of the ₱389,000.00 received by him from the loan proceeds. **TOLENTINO complied by submitting on June 7, 1979, at 11:00 A.M., a Deed of Sale dated March 9, 1979 of a parcel of land of 5 hectares in Tagaytay City for which he is shown to have made a down payment of ₱280,000.00.** At 3:00 P.M. of the same day, he submitted another Deed of Sale dated April 2, 1979 over a piece of property of 2 hectares in Tagaytay City for which he obligated himself to make a down payment of ₱70,000.00. Both sales, while duly acknowledged before a Notary Public, do not disclose any evidence of registration.[73] (Emphasis supplied.)

The Court examined the *rollo* of the *Banco De Oro* case and found that, indeed, **the Deed of Sale dated March 9, 1979 presented by Atty. Tolentino therein is the very same Deed of Sale dated March 9, 1979 which gave rise to the present disbarment case**.[74]

The circumstances surrounding the transactions covered by the falsified documents, viewed against Atty. Tolentino's bare denials, constrain us to apply the rule that in the absence of satisfactory explanation, one who is found in possession of, and who has used, a forged document, is the forger and, therefore, guilty of falsification.[75] The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, which, if no contrary proof is offered, will thereby prevail.[76] A *prima facie* case of falsification having

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

[74] *Rollo* (G.R. No. L-49568), pp. 324-325.

[75] *Pacasum v. People*, G.R. No. 180314, April 16, 2009, 85 SCRA 616, 637-638.

[76] *Republic v. Vda. de Neri*, G.R. No. 139588, March 4, 2004, 424 SCRA 676, 692-693, citing Francisco, *The Revised Rules Of Court In The Philippines*, Vol. VII, Part II (1997 ed.), p. 7.

been established, Atty. Tolentino should have presented sufficient evidence to overcome such burden. Through his own fault, this he failed to do.

Furthermore, we are convinced of Atty. Tolentino's dishonesty when he denied his association with Notary Public Perfecto. The March 9, 1979 Deed of Sale shows a contract of sale executed between Dolores, Romulo, Rafaela and Ernestina Natanauan, as vendors, and Atty. Tolentino, as vendee, ***and*** **notarized by "Notary Public" Perfecto**.[77] This clearly belies Atty. Tolentino's claim that he does not personally know Perfecto nor dealt with him in any capacity. This, in turn, further bolsters the conclusion that he had knowledge of or participation in the alleged falsifications.

In addition, we stress that while Atty. Tolentino vehemently denies any participation in the alleged falsification of the August 3, 1979 Deed of Sale, he kept silent (both in his Comment and the subsequent motions he filed before the IBP and the Supreme Court) as to the March 9, 1979 Deed of Sale, a copy of which was attached as Annex I of the disbarment complaint. It also does not appear that Atty. Tolentino ever disputed his signature appearing in conformity to the Spouses Tolentino's Affidavit dated December 2, 1980 stating that the property never belonged to them and that he (Atty. Tolentino) was its true and absolute owner.

To us, these clearly demonstrate Atty. Tolentino's lack of candor before the IBP and the Supreme Court. In *Silva Vda. de Fajardo v. Bugaring*,[78] we held:

> x x x Complete candor or honesty is expected from lawyers, particularly when they appear and plead before the courts for their own causes x x x. With his armada of legal knowledge and skills, respondent clearly enjoyed the upper hand. x x x
>
> Respondent is thus reminded that he is first and foremost an officer of the court. His bounden duty is to assist it in rendering justice to all. Lest he has forgotten, lawyers must always be disciples of truth. It is

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[77] *Rollo*, pp. 38-39. Emphasis supplied.

[78] A.C. No. 5113, October 7, 2004, 440 SCRA 160.

highly reprehensible when they themselves make a travesty of the truth and mangle the ends of justice. Such behavior runs counter to the standards of honesty and fair dealing expected from court officers.[79]

We reiterate that a lawyer is not merely a professional but also an officer of the court and as such, he is called upon to share in the task and responsibility of dispensing justice and resolving disputes in society. Any act on the part of a lawyer, an officer of the court, which visibly tends to obstruct, pervert, impede and degrade the administration of justice is contumacious, calling for both an exercise of disciplinary action and application of the contempt power.[80] For his acts of dishonesty, Atty. Tolentino not only violated the Lawyer's Oath and Canon 10 of the Code of Professional Responsibility, he also failed to observe his duty as an officer of the court.

Furthermore, Canons 1 and 7 of the Code of Professional Responsibility provide that a lawyer shall, "uphold the Constitution, obey the laws of the land and promote respect for law and legal processes" and "at all times, uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar." Atty. Tolentino's deliberate non-participation in the disciplinary proceedings shows a lack of respect for the legal (disciplinary) process and sullies the integrity and dignity of the legal profession. We agree with the IBP that this constitutes another reason to suspend Atty. Tolentino from the practice of law:

> x x x We cannot ignore the fact that by virtue of one's membership in the IBP, a lawyer thus submits himself to the disciplinary authority of the organization. x x x Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. x x x It is necessary for respondent to acknowledge the orders of the Commission in deference to its authority over him as a member of the IBP. His wanton disregard of its lawful orders subjects him to disciplinary sanction.[81] (Citations omitted.)

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[79] *Id.* at 171-172.

[80] *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 165. See also *Masinsin v. Albano*, G.R. No. 86421, May 31, 1994, 232 SCRA 631, 637, citing *Zaldivar v. Gonzales*, G.R. Nos. 79690-707 & 80578, October 7, 1988, 166 SCRA 316.

[81] *Rollo*, p. 253.

All lawyers must inculcate in themselves that the practice of law is not a right but a privilege granted only to those of good moral character. The Bar must maintain a high standard of honesty and fair dealing.[82] Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.[83]

We thus affirm the IBP Board's recommended action to suspend him from the practice of law for three (3) years.

WHEREFORE, premises considered, the Court finds respondent Atty. Roberto P. Tolentino **GUILTY** of violating the Lawyer's Oath, and Canons 1, 7, and 10 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for **THREE (3) YEARS EFFECTIVE FROM NOTICE,** with a **STERN WARNING** that any similar infraction in the future will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent Roberto P. Tolentino's personal record as an attorney, the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

*Carpio** (*Acting Chief Justice*), *Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe,* and *Caguioa, JJ.*, concur.

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[82] *Tejada v. Palaña*, A.C. No. 7434, August 23, 2007, 530 SCRA 771, 776; *Ronquillo v. Cezar*, A.C. No. 6288, June 16, 2006, 491 SCRA 1, 7; *Maligsa v. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 413.

[83] *Philippine Association of Court Employees v. Alibutdan-Diaz*, A.C. No. 10134, November 26, 2014, 742 SCRA 351, 357. See also *De Ere v. Rubi*, A.C. No. 5176, December 14, 1999, 320 SCRA 617, 622.

* Designated as Acting Chief Justice per Special Order No. 2382 dated September 27, 2016.

Sereno, C.J. and *Leonen, J.,* on official travel.

Velasco, Jr., J., on leave.

EN BANC

[I.P.I. No. 16-243-CA- J. October 11, 2016]

ARTHUR F. MORALES I, *complainant, vs.* **LEONCIA REAL-DIMAGIBA, JHOSEP Y. LOPEZ, and RAMON R. GARCIA, Associate Justices, Fifteenth Division, Court of Appeals, Manila,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ADMINISTRATIVE PROCEEDINGS; NOT BEING A PARTY IN THE CASE, COMPLAINANT HAS NO LEGAL INTEREST TO ASSAIL THE PROPRIETY OF THE COURT OF APPEALS' DECISION ISSUING A TEMPORARY RESTRAINING ORDER (TRO).— As correctly noted by respondent Justice Leoncia Real-Dimagiba in her comment, complainant is not a party in CA-G.R. SP No. 144428, which is still in its initial stage. Neither is he one of the private complainants who commenced the administrative case against Mayor Gatchalian before the OMB. Strictly speaking, complainant has no legal interest to contest the propriety of the CA Fifteenth Division's issuance of the TRO.

2. ID.; ID.; ADMINISTRATIVE COMPLAINT IS NOT THE REMEDY TO ASSAIL THE TRO; ADMINISTRATIVE COMPLAINT AGAINST MAGISTRATES CANNOT BE PURSUED SIMULTANEOUSLY WITH THE JUDICIAL REMEDIES ACCORDED TO PARTIES AGGRIEVED BY THE ERRONEOUS JUDGMENT OF THE FORMER.— Even assuming that complainant is a proper party to the case, still the administrative complaint is not the remedy to assail the TRO. The complaint was intended as a judicial remedy. It

was aimed at halting the subsequent issuance by respondent associate justices of a Writ of Preliminary Injunction. It is evident that complainant was aware that the instant administrative complaint would have been dismissed outright had it been filed by one of the parties in the OMB case. We have previously explained that administrative complaints against magistrates cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases not yet been resolved with finality. The parties in interest in the OMB case should have availed of judicial remedies instead of complainant herein filing an administrative case against respondent associate justices. Since the issuance of a TRO is judicial in nature, the parties could have opted to file a motion to lift the TRO or a motion for reconsideration or could have sought recourse from this Court.

3. ID.; ID.; ID.; RESOLUTIONS ISSUED BY JUSTICES IN THE PROPER EXERCISE OF THEIR JUDICIAL FUNCTIONS ARE NOT SUBJECT TO ADMINISTRATIVE DISCIPLINARY ACTION; THE DETERMINATION OF WHETHER THERE WAS ERROR IN THE ISSUANCE OF A TRO SHOULD BE ADDRESSED IN A PROPER JUDICIAL PROCEEDING.— [I]t is clear that the assailed resolutions were issued by respondent justices in the proper exercise of their judicial functions. As such, these are not subject to administrative disciplinary action. Other than complainant's bare allegations, there were no evidence presented to show any wrong-doings or bad faith on the part of respondent justices. We have settled the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part. Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith. x x x The determination, therefore, on whether there was error on the part of the respondent associate justices in issuing the TRO or whether the CA justices can now enjoin all decisions of the OMB would have to be squarely addressed by this Court the moment the issue is raised before it in a proper judicial

proceeding. x x x The administrative case against respondents is mere veneer to the objective of outlawing the TRO issued by respondents. That aim is beyond the range of this case. We cannot review the actions taken by the CA unless these are brought before us through the proper judicial process.

4. ID.; ID.; ID.; ID.; ADMINISTRATIVE LIABILITY FOR GROSS IGNORANCE OF THE LAW IN THE ISSUANCE OF A TRO MAY ATTACH ONLY IF IT WAS SHOWN THAT RESPONDENT JUSTICES HAVE BEEN MOTIVATED BY BAD FAITH; ABSENCE OF PROOF, THE PRESUMPTION THAT RESPONDENT JUSTICES ISSUED THE TRO IN GOOD FAITH STANDS.— In order to be held administratively liable it must be shown that the respondent associate justices have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. No such ill motivation was shown, nay alleged, to have caused the issuance of the TRO. x x x In fine, in the absence of proof to the contrary, the presumption is that respondent associate justices issued the TRO in good faith. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. 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.

R E S O L U T I O N

PEREZ, *J.*:

This case stemmed from the complaint filed by Arthur F. Morales I (complainant) charging Associate Justices Leoncia Real-Dimagiba, Jhosep Y. Lopez, and Ramon R. Garcia, all of the Fifteenth Division of the Court of Appeals (CA), with gross ignorance of the law, procedure and jurisprudence, rendering them unfit to perform their judicial functions.

Culled from the records are the following antecedent facts:

On 13 May 2015, a fire razed the warehouse of Kentex Marketing Corporation (Kentex) located at 6159 Tatalon St.,

Ugong, Valenzuela City. The incident caused the death of not less than seventy-four (74) employees of Kentex.

Investigation conducted after the incident revealed that Valenzuela City Mayor Rexlon T. Gatchalian (Mayor Gatchalian) issued a mayor's permit to Kentex without requiring the latter to submit a Fire Safety Inspection Certificate (FSIC), in violation of the Revised Fire Code of the Philippines (R.A. No. 9514).

Criminal and Administrative complaints were thereafter filed by the Fact-Finding Investigation Bureau-Military and Other Law Enforcement Officers (FFIB-MOLEO) against Mayor Gatchalian and other officials of Valenzuela City before the Office of the Ombudsman (OMB).

In a Joint Resolution dated 11 February 2016, the OMB found Mayor Gatchalian, among others, guilty of grave misconduct and gross neglect of duty and were meted the penalty of dismissal from the service with the accessory penalties of forfeiture of benefits and privileges and perpetual disqualification to hold public office.

Mayor Gatchalian assailed the OMB ruling before the CA through a Petition for Certiorari with Urgent Prayer for Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction. The case was docketed as CA-G.R. SP No. 144428 entitled "Rexlon T. Gatchalian v. Hon. Conchita Carpio Morales, et al." and raffled to the Fifteenth Division of the CA. In support of his application for injunctive relief, Mayor Gatchalian contended that the immediate implementation of the assailed Joint Resolution would cause him undue and irreversible damage considering that he would be precluded from seeking a second term as mayor of Valenzuela City as he was, at that time, vying for reelection.

On 4 March 2016, the Fifteenth Division of the CA issued a resolution the dispositive portion of which reads:

ACCORDINGLY, let a **Temporary Restraining Order** (TRO) be issued, good for 60 days from notice, enjoining respondents or any persons and all persons acting on their behalf from executing, or

implementing the assailed Joint Resolution of the Ombudsman dated 11 February 2016 in OMB-P-A-10581 as against the petitioner. x x x"[1]

Fearing that a Writ of Preliminary Injunction would follow, complainant filed the instant administrative complaint against respondent associate justices of the Fifteenth Division of the CA.

Complainant cited as his basis the case of *Villaseñor, et al. v. Ombudsman*[2] wherein this Court ruled that Section 7, Rule III of the Rules of the Ombudsman, as amended by A.O. No.17 dated 15 September 2003, is "categorical in providing that an appeal shall not stop the decision from being executory, and that such shall be executed as a matter of course" and hence, "(a)n appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal."[3]

Complainant thus maintained that the Joint Resolution dated 11 February 2016 of the OMB involving the dismissal from the service of Mayor Gatchalian cannot be enjoined by a TRO or Writ of Preliminary Injunction of the CA. He averred that the TRO issued by the respondent associate justices on 4 March 2016 was a direct contravention of the pronouncements of the Supreme Court in *Facura v. CA*[4] and *Villaseñor, et al.*

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[1] *Rollo*, pp. 101-102.

[2] G.R. No. 203303, 4 June 2014, 725 SCRA 230.

[3] *Rollo*, p. 8.

[4] The CA, even on terms it may deem just, has no discretion to stay a decision of the Ombudsman, as such procedural matter is governed specifically by the Rules of Procedure of the Office of the Ombudsman.

The CA's issuance of a preliminary mandatory injunction, staying the penalty of dismissal imposed by the Ombudsman in this administrative case, is thus an encroachment on the rule-making powers of the Ombudsman under Section 13 (8), Article XI of the Constitution and Sections 18 and 27 of R.A. No. 6770, which grants the Office of the Ombudsman the authority to promulgate its own rules of procedure. The issuance of an injunctive writ renders nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. 658 Phil. 554 (2011).

v. Ombudsman.[5] Further, complainant argued that the *Carpio-Morales v. Binay*[6] case cited by the respondent associate justices is not applicable considering that what was assailed therein was the OMB's order preventively suspending then Mayor Jejomar Erwin Binay of Makati City. In contrast, what was assailed in the case of Mayor Gatchalian is the penalty of dismissal from the service for grave misconduct and gross neglect of duty.

Complainant contended that the respondent associate justices' ratiocination in the issuance of the TRO that the "execution of the Joint Resolution (of the OMB) will be hard to undo" clearly showed their lack of awareness of the existing jurisprudence that in case the removed official wins his appeal, then he shall be considered only to have been preventively suspended and as a consequence thereof, said official may still run for public office.[7]

Complainant implores this Court to dismiss the respondent associate justices from the judiciary for grave ignorance of the law and jurisprudence.

In a Resolution[8] dated 9 August 2016, this Court required the respondent associate justices to comment on the verified complaint of Arthur F. Morales I.

In their respective comments, respondents averred that the administrative complaint against them is without basis in fact and in law. They maintained that the resolution they issued granting the application for TRO is supported by existing law and jurisprudence. They claimed that they were guided by the Supreme Court's ruling in Carpio-Morales v. Binay[9] which struck down the second paragraph of Section14 of R.A. 6770 as

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[5] *Supra* note 2.

[6] G.R. Nos. 217126-27, 10 November 2015.

[7] *Rollo*, pp. 8-9.

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

[9] *Supra* note 6.

unconstitutional. Moreover, they insist that they cannot be held liable for ignorance of the law because the complaint did not ascribe any improper motive or bad faith in any of them in their issuance of the TRO enjoining the OMB from implementing the imposed penalty of dismissal from the service of Mayor Gatchalian. They argued that even assuming that they erred in issuing the TRO, they cannot be held liable for it was an official act done in good faith, guided only by the dictate of their conscience, in accord with applicable laws and jurisprudence.

Our Ruling

The instant administrative complaint was filed by Arthur F. Morales I allegedly in his capacity as a resident, taxpayer and registered voter of Valenzuela City. He claimed that he shall be directly affected by the continuance of the incompetent work of Mayor Gatchalian, who, as found by the OMB, was responsible for the death of not less than 74 workers of Kentex. He further claimed that he filed the case because he does not want the same incident to happen again in Valenzuela City which would be possible in view of the continuance of the administration of Mayor Gatchalian.

As correctly noted by respondent Justice Leoncia Real-Dimagiba in her comment,[10] complainant is not a party in CA-G.R. SP No. 144428, which is still in its initial stage. Neither is he one of the private complainants who commenced the administrative case against Mayor Gatchalian before the OMB. Strictly speaking, complainant has no legal interest to contest the propriety of the CA Fifteenth Division's issuance of the TRO.

Even assuming that complainant is a proper party to the case, still the administrative complaint is not the remedy to assail the TRO. The complaint was intended as a judicial remedy. It was aimed at halting the subsequent issuance by respondent associate justices of a Writ of Preliminary Injunction. It is evident that complainant was aware that the instant administrative

[10] *Rollo*, pp. 2-3.

complaint would have been dismissed outright had it been filed by one of the parties in the OMB case. We have previously explained that administrative complaints against magistrates cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases not yet been resolved with finality.[11] The parties in interest in the OMB case should have availed of judicial remedies instead of complainant herein filing an administrative case against respondent associate justices. Since the issuance of a TRO is judicial in nature, the parties could have opted to file a motion to lift the TRO or a motion for reconsideration or could have sought recourse from this Court.

At the outset, it is clear that the assailed resolutions were issued by respondent justices in the proper exercise of their judicial functions. As such, these are not subject to administrative disciplinary action. Other than complainant's bare allegations, there were no evidence presented to show any wrong-doings or bad faith on the part of respondent justices. We have settled the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part.[12] Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.[13]

The complaint was anchored on the provisions of the Rules of Procedure of the Office of the Ombudsman. It should be noted that the issuances of the OMB, particularly A.O. No. 7, otherwise known as, the "Ombudsman Rules of Procedure" emanated from R.A. No. 6770, otherwise known as "The Ombudsman Act of 1989". Section 14 thereof provides:

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[11] *Rodriguez v. Gatdula*, 442 Phil. 307, 308 (2002).

[12] *Ceniza-Layese v. Asis*, 590 Phil. 56, 60 (2008).

[13] *Re: Complaint filed by Lucena B. Rallos against Justices Gabriel T. Ingles, Pamela Ann Maxino, and Carmelita S. Manahan*, 723 Phil. 1, 4 (2013).

Sec. 14. *Restrictions.* — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law. (Emphasis supplied)

The Fifteenth Division of the CA is not without basis in acting on the petition of Mayor Gatchalian. In the decision in *Carpio-Morales v. Binay, Jr.*,[14] this Court declared the second paragraph of Section 14 of R.A. No. 6770 **UNCONSTITUTIONAL**, while the policy against the issuance of provisional injunctive writs by courts other than the Supreme Court to enjoin an investigation conducted by the Office of the Ombudsman under the first paragraph of the said provision was **DECLARED** ineffective until the Court adopts the same as part of the rules of procedure through an administrative circular duly issued therefor.

Although the case of Erwin Binay, Jr. pertains to a preventive suspension, the pronouncement therein may arguably apply to any other OMB case since this Court did not make any distinction. The doctrine laid down in the case is that the CA has the authority to issue TRO and injunctive writs in the exercise of its certiorari jurisdiction conferred to it under Section 9 (1), Chapter I of Batas Pambansa 129, as amended. In arriving at the decision in the *Binay, Jr.*[15] case, the Court cited in part the case of *Smothers v. Lewis*, to wit:

x x x In the exercise of this power, a court, when necessary in order to protect or preserve the subject matter of the litigation, to protect its jurisdiction and to make its judgment effective, may grant or issue a temporary injunction in aid of or ancillary to the principal action.

The control over this inherent judicial power, in this particular instance the injunction, is exclusively within the constitutional realm of the courts. As such, it is not within the purview of the legislature to grant or deny

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[14] *Supra* note 6.

[15] *Id.*

the power nor is it within the purview of the legislature to shape or fashion circumstances under which this inherently judicial power may be or may not be granted or denied.

x x x x x x x x x

We reiterate our previously adopted language, ". . . a court, once having obtained jurisdiction of a cause of action, has, as incidental to its general jurisdiction, inherent power to do all things reasonably necessary to the administration of justice in the case before it. . ." **This includes the inherent power to issue injunctions.** (Emphasis in the original)

The determination, therefore, on whether there was error on the part of the respondent associate justices in issuing the TRO or whether the CA justices can now enjoin all decisions of the OMB would have to be squarely addressed by this Court the moment the issue is raised before it in a proper judicial proceeding. It should be consequentially clear that we are not making a ruling in this administrative case on the correctness of the issuance of a TRO. We are merely saying that under the facts of the matter at hand and cognizant of our ruling in *Carpio Morales v. Binay, Jr.*[16] we are not prepared to conclude that respondent associate justices are administratively liable for gross ignorance of the law in issuing a TRO in CA-G.R. SP No. 144428.

In order to be held administratively liable it must be shown that the respondent associate justices have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[17] No such ill motivation was shown, nay alleged, to have caused the issuance of the TRO.

Further on the issue, the Court has ruled that when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial

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[16] *Supra* note 6.

[17] *Cabatingan, Sr. v. Arcueno*, 436 Phil. 341, 350 (2002).

authority.[18] Justices are presumed to be conversant with the law and the rules. When the law or procedure is so elementary, such as the provisions of the Rules of Court, not to know it or to act as if one does not know it constitutes gross ignorance of the law.[19] Such ignorance of a basic rule in court procedure would be tantamount to gross ignorance and would render them administratively liable. In view of the unreconciled pronouncements in the cases of *Facura* and *Villaseñor*, on one hand, and the *Carpio-Morales v. Binay, Jr.* case, on the other, the subject matter here involved is not one which can be considered elementary.

To press the point, the present Resolution should not be read as an allowance *carte blanche* for the issuance of TROs against the OMB's decision in criminal and administrative complaints against officials and employees of the government. Foremost, we did not rule on the validity of the issuance of the TRO by the respondent associate justices. What we said is that there is a relevant ruling in the *Binay, Jr.* case which removes the issuance by respondent associate justices from the ambit of gross ignorance of the law. Just as important, the validity of the issuance of a TRO, owing to the fact that a TRO is merely a provisional remedy which is an adjunct to a main suit,[20] which in this case is the main petition of Mayor Gatchalian pending before the CA, is a judicial issue that cannot be categorically resolved in the instant administrative matter.

The administrative case against respondents is mere veneer to the objective of outlawing the TRO issued by respondents. That aim is beyond the range of this case. We cannot review the actions taken by the CA unless these are brought before us through the proper judicial process.

The remedy against the issuance of the TRO is unarguably and by its very nature, resolvable only thru judicial procedures which are, a motion for reconsideration and, if such motion is denied, a

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[18] See *Rep. of the Phils. v. Caguioa*, 608 Phil. 577, 605 (2009).

[19] See *Baculi v. Belen,* 604 Phil. 1, 10 (2009).

[20] *Bernardez v. Commission on Elections*, 628 Phil. 720, 732 (2010) citing *Caneland Sugar Corporation v. Alon*, 559 Phil. 462, 470 (2007) further citing *Philippine National Bank v. CA,* 353 Phil. 473, 479 (1998).

special civil action of *certiorari* under Rule 65.[21] It is the ruling granting the prayer for the writ of *certiorari* that a basis for an administrative action against the judge issuing the TRO may arise. Such happens when, from the decision on the validity of the issuance, there is a pronouncement that indicates gross ignorance of the law of the issuing judge.[22] The instant administrative complaint cannot be a substitute for the aforesaid judicial remedies.

In fine, in the absence of proof to the contrary, the presumption is that respondent associate justices issued the TRO in good faith. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. 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.[23]

WHEREFORE, in view of the foregoing, the instant administrative complaint filed by Arthur F. Morales I against Associate Justices Leoncia Real-Dimagiba, Jhosep Y. Lopez and Ramon R. Garcia, all of the Fifteenth Division, Court of Appeals, Manila is hereby **DISMISSED** for lack of merit.

SO ORDERED.

*Carpio** (*Acting Chief Justice*), *Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Jardeleza,* and *Caguioa, JJ.*, concur.

Sereno, C.J. and *Leonen, J.,* on official leave.

Velasco, Jr., J., on leave.

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[21] *Brizuela v. Dingle*, 576 Phil. 611, 624 (2008).

[22] *Rep. of the Phils. v. Caguioa*, 608 Phil. 577, 604 (2009); *De Jesus v. Dilag*, 508 Phil. 173, 181 (2005).

[23] *Crisologo v. Daray*, 584 Phil. 366, 374 (2008).

* Acting Chief Justice per Special Order No. 2389 dated 29 September 2016.

EN BANC

[G.R. No. 201809. October 11, 2016]

H. SOHRIA PASAGI DIAMBRANG, *petitioner, vs.* **COMMISSION ON ELECTIONS and H. HAMIM SARIP PATAD,** *respondents.*

SYLLABUS

POLITICAL LAW; ELECTIONS; IF THE CERTIFICATE OF CANDIDACY IS VOID *AB INITIO*, THE CANDIDATE IS NOT CONSIDERED A CANDIDATE FROM THE VERY BEGINNING; THE QUALIFIED CANDIDATE WHO PLACED SECOND TO THE DISQUALIFIED ONE SHOULD HAVE BEEN PROCLAIMED AS WINNER.— [T]he prevailing ruling is that if the certificate of candidacy is void *ab initio*, the candidate is not considered a candidate from the very beginning even if his certificate of candidacy was cancelled after the elections. Patad's disqualification arose from his being a fugitive from justice. It does not matter that the disqualification case against him was finally decided by the COMELEC *En Banc* only on 14 November 2011. Patad's certificate of candidacy was void *ab initio*. As such, Diambrang, being the first-placer among the qualified candidates, should have been proclaimed as the duly-elected Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte.

APPEARANCES OF COUNSEL

Dibaratun Law Office & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO*, *Acting C.J.*:

The Case

Before the Court is a petition for *certiorari*[1] assailing the Resolution of the Commission on Elections (COMELEC) *En Banc* promulgated on 30 January 2012 in SPC No. 10-079 (BRGY).

The Antecedent Facts

Petitioner H. Sohria Pasagi Diambrang (Diambrang) and respondent H. Hamim Sarip Patad (Patad) were candidates for Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte in the 25 October 2010 Barangay Elections. Patad obtained 183 votes while Diambrang obtained 78 votes. However, the Barangay Board of Canvassers (BBOC) proclaimed Diambrang as the duly elected Punong Barangay based on the assumption that Patad was disqualified for being a fugitive from justice. The BBOC's assumption was, in turn, based on the recommendation of the Provincial Election Supervisor that was not yet final and executory because the COMELEC had not issued any ruling on the matter.

Patad filed a petition to annul Diambrang's proclamation. The case was docketed as SPC No. 10-079 (BRGY). Neither Diambrang nor any of the members of the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte filed their comment on the petition.

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* Acting Chief Justice per Special Order No. 2386 dated 29 September 2016.

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

The Decision of the COMELEC Second Division

In its Resolution[2] promulgated on 11 August 2011, the COMELEC Second Division annulled Diambrang's proclamation. The COMELEC Second Division ruled that the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte gravely abused its discretion amounting to lack of jurisdiction in proclaiming Diambrang as the duly elected Punong Barangay based solely on the recommendation of the Provincial Election Supervisor. The COMELEC Second Division ruled that the members of the BBOC should have been aware that the Provincial Election Supervisor, Joseph Hamilton M. Cuevas (Cuevas), merely conducted a preliminary investigation of the case and his recommendation was subject to review by the COMELEC. The COMELEC Second Division noted that the recommendation of Cuevas to disqualify Patad was overturned by the COMELEC First Division in its Resolution dated 14 January 2011 in SPA No. 10-144 (BRGY).

In addition, the COMELEC Second Division ruled that Diambrang, who only obtained the second highest number of votes in the elections, could not be declared as the winning candidate even if Patad was disqualified.

The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the petition is hereby GRANTED. The proclamation of private respondent H. Sohria Diambrang is ANNULLED. A writ of Preliminary Mandatory Injunction is issued commanding the BBOC of Barangay Kaludan, Nunungan, Lanao del Norte to convene anew and to PROCLAIM petitioner H. Hamim Sarip Patad as the winning Punong Barangay thereat. The Law Department is directed to file the necessary charge against the members of the BBOC for arrogating unto themselves the power to disqualify a candidate.
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> SO ORDERED.[3]

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[2] *Rollo*, pp. 58-62. Penned by Presiding Commissioner Lucenito N. Tagle with Commissioners Elias R. Yusoph and Augusto C. Lagaman concurring.

[3] *Id.* at 61.

Diambrang filed a motion for reconsideration.

The Decision of the COMELEC *En Banc*

In its Resolution promulgated on 30 January 2012,[4] the COMELEC *En Banc* annulled the proclamation of Diambrang and ordered the first ranked Barangay Kagawad of Barangay Kaludan to succeed as the new Punong Barangay.

The COMELEC *En Banc* affirmed its 14 November 2011 Resolution overturning the COMELEC First Division's Resolution of 14 January 2011 in SPA No. 10-144 (BRGY). In its 14 November 2011 Resolution, the COMELEC *En Banc* granted the Petition to Disqualify and/or Deny Due Course to the Certificate of Candidacy of Patad on the ground that he is a fugitive from justice and thus disqualified from running for public office.

The COMELEC *En Banc* ruled that despite Patad's disqualification, Diambrang, who garnered the next highest number of votes, could not be proclaimed as the elected Punong Barangay. Having lost the elections, Diambrang is not entitled to be declared elected. Instead, the COMELEC *En Banc* ruled that the vacant position should be filled by the first ranked Kagawad pursuant to Section 44(b) of the Local Government Code.[5]

The dispositive portion of the COMELEC *En Banc*'s Resolution reads:

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[4] *Id.* at 25A-31. Signed by Chairman Sixto Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, Christian Robert S. Lim and Augusto C. Lagman.

[5] Section 44(b) of the Local Government Code reads:

x x x x x x x x x

b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

WHEREFORE, premises considered, the Commission hereby RESOLVES to ANNUL the proclamation of H. Sohria P. Diambrang. In view of the permanent vacancy in the Office of the Punong Barangay, the proclaimed first ranked Barangay Kagawad of Barangay Kaludan, Nunungan, Lanao del Norte is hereby ORDERED to succeed as the new Punong Barangay pursuant to Section 44 of the Local Government Code.

SO ORDERED.[6]

Hence, Diambrang's recourse to this Court.

The Issue

The only issue that we need to resolve here is whether Diambrang can be proclaimed as the elected Punong Barangay in view of Patad's disqualification.

The Ruling of this Court

This case has been rendered moot by the election of a new Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte during the 28 October 2013 Barangay Elections.[7] The case had been overtaken by events due to Patad's failure to file his comment on the petition as well as the repeated failure of the Postmaster of Lanao del Norte to respond to the Court's query whether Patad received the Resolution requiring him to file his comment. In a letter dated 18 January 2016, the Judicial Records Office[8] requested for the assistance of the Postmaster General and CEO of Manila to determine the date of delivery of the letter under Registry Receipt No. 9206 addressed to Patad.[9] The request was forwarded to the Office of Area VIII Director of Central Mindanao.[10] On 11 August 2016, Eduardo M. Juliata,

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[6] *Rollo*, p. 30.

[7] http://www.comelec.gov.ph/?r=Archives/RegularElections/2013BSKE/Results. Visited on 19 June 2015.

[8] Through SC Assistant Chief Basilia T. Ringol.

[9] *Rollo*, pp. 170-171.

[10] *Id.* at 177.

Sr., LC/ACTG Postmaster of Philippine Postal Corporation, Central Mindanao Area VIII issued a certification that the registered letter was received in good order by SB Samsodin Guindo on 30 July 2012.[11] In a Resolution dated 30 August 2016, the Court resolved to dispense with the filing of Patad's comment on the petition.[12]

We reiterate the Court's prevailing rulings on the matter of disqualification of a candidate and its effect on the second-placer in an election.

The assailed Decision of the COMELEC *En Banc* was promulgated on 30 January 2012. The COMELEC *En Banc* ruled that Diambrang, as a second placer, could not be declared as the duly-elected winner despite Patad's disqualification.

On 9 October 2012, this Court promulgated its ruling in *Jalosjos, Jr. v. Commission on Elections*[13] where the Court held:

> Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took effect, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation

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[11] *Id.* at 191.

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

[13] 696 Phil. 601 (2012).

of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.[14]

In *Aratea v. Commission on Elections*,[15] we ruled that whether the certificate of candidacy is cancelled before or after the elections is immaterial because a cancellation on the ground that the candidate was ineligible or not qualified to run means he was never a candidate from the very beginning.

In *Maquiling v. Commission on Elections*,[16] the Court revisited its previous ruling that the second-placer cannot be proclaimed as a winner in an election contest. This Court held in *Maquiling*:

> We have ruled in the recent cases of *Aratea v. COMELEC* and *Jalosjos v. COMELEC* that a void COC cannot produce any legal effect.
>
> Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.
>
> Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.
>
> As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.

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[14] *Id.* at 633-634.

[15] 696 Phil. 700 (2012).

[16] 709 Phil. 408 (2013).

There is no need to apply the rule cited in *Labo v. COMELEC* that when the voters are well aware within the realm of notoriety of a candidate's disqualification and still cast their votes in favor said candidate, then the eligible candidate obtaining the next higher number of votes may be deemed elected. That rule is also a mere obiter that further complicated the rules affecting qualified candidates who placed second to ineligible ones.

The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.[17]

Clearly, the prevailing ruling is that if the certificate of candidacy is void *ab initio*, the candidate is not considered a candidate from the very beginning even if his certificate of candidacy was cancelled after the elections.

Patad's disqualification arose from his being a fugitive from justice. It does not matter that the disqualification case against him was finally decided by the COMELEC *En Banc* only on 14 November 2011. Patad's certificate of candidacy was void *ab initio*. As such, Diambrang, being the first-placer among the qualified candidates, should have been proclaimed as the duly-elected Punong Barangay of Barangay Kaludan, Nunungan, Lanao del Norte. However, due to supervening events as we previously discussed, Diambrang can no longer hold office.

WHEREFORE, we **DISMISS** the petition for being moot and academic.

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[17] *Id.* at 447-448.

SO ORDERED.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

Jardeleza, J., no part.

Sereno, C. J., on official leave.

Velasco, Jr., J., on leave.

Leonen, J., on official business.

EN BANC

[G.R. No. 210903. October 11, 2016]

PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), *petitioner, vs.* **COMMISSION ON AUDIT (COA) and HON. MA. GRACIA M. PULIDO TAN, Chairperson, COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT (R.A.) NO. 7916 AS AMENDED BY R.A. NO. 8748 *VIS-A-VIS* PRESIDENTIAL DECREE (P.D.) NO. 1597; WHILE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) IS EXEMPT FROM THE SALARY STANDARDIZATION LAW (SSL), ANY INCREASE IN SALARY OR COMPENSATION SHALL BE SUBJECT TO THE APPROVAL OF THE PRESIDENT NOTWITHSTANDING THE POWER GRANTED TO ITS BOARD OF DIRECTORS TO FIX COMPENSATION AND BENEFITS OF ITS EMPLOYEES.— It is not disputed that after the enactment of the Salary Standardization Law (Republic Act No. 6758 became effective on July 1, 1989), laws have been passed exempting some government entities from its

coverage. The said government entities were allowed to create their own compensation and position classification systems that apply to their respective offices, usually through their Board of Directors. In *Engr. Mendoza v. Commission on Audit*, this Court mentioned several of those government entities that are now exempt from the salary standardization law[.] x x x Petitioner's Charter is no different from those mentioned above. Again, Section 16 of R.A. No. 7916, as amended, provides: x x x All positions in the PEZA shall be governed by a compensation, position classification system and qualification standards approved by the director general with the concurrence of the Board of Directors x x x **The PEZA shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its systems conform as closely as possible with the principles under Republic Act No. 6758**. x x x The ruling in *Intia, Jr. v. COA* and the provisions of Section 6 of P.D. No. 1597 can thus be reconciled as both emphasized that these exempted government entities are required to report to the President, through the DBM, the details of its salary and compensation system. Reporting, however, is different from approval. Section 6 of P.D. No. 1597 specifically requires the exempted government agencies to report to the President, through the DBM, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President. x x x [T]he charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction. They are still required to report to the Office of the President, through the DBM the details of their salary and compensation system and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758. Such restriction is the most apparent indication that the legislature did not divest the President, as Chief Executive of his power of control over the said government entities. x x x Thus, respondent COA was correct in claiming that petitioner has to comply with Section 3 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is merely a reiteration of the President's power of control over the GOCCs/CFIs

notwithstanding the power granted to the Board of Directors of the latter to establish and fix a compensation and benefits scheme for its employees.

2. ID.; ID.; ID.; THE DISALLOWANCE OF THE PAYMENT OF ADDITIONAL CHRISTMAS BONUS TO PEZA OFFICERS AND EMPLOYEES FOR THE PREVIOUS YEARS DOES NOT AUTOMATICALLY MAKE THE RESPONSIBLE OFFICERS LIABLE; GOOD FAITH ABSOLVES RESPONSIBLE OFFICERS OF PEZA FROM LIABILITY FOR REFUND.— The affirmation of the disallowance of the payment of additional Christmas bonus/ cash gifts to PEZA officers and employees for CY 2005 to 2008, however, does not automatically cast liability on the responsible officers. The question to be resolved is: To what extent may accountability and responsibility be ascribed to public officials who may have acted in good faith, and in accordance with their understanding of their authority which did not appear clearly to be in conflict with other laws? Otherwise put, should public officials be held financially accountable for the adoption of certain policies or programs which are found to be not in accordance with the understanding by the Commission on Audit several years after the fact, which understanding is only one of several ways of looking at the legal provisions? Good faith has always been a valid defense of public officials that has been considered by this Court in several cases. Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconcientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. x x x [R]ecently in *Social Security System v. Commission on Audit*, this Court ruled that good faith absolves liable officers from refund[.] x x x It is the same good faith, therefore, that will absolve the responsible officers of PEZA from liability for refund. In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be

counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.

APPEARANCES OF COUNSEL

Procolo M. Olaivar and *Nestor Hun A. Nadal* for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERALTA, ***J.*:**

In much of law, as in life, there is a constant need to balance competing values, interests and other considerations. In a free society, there is a need to carefully calibrate the proper balance between liberty and authority, between peace and order and privacy, and, between responsible public service and unreasonable or arbitrary rules retroactively applied to public officials and employees. To allow one value to dominate the counterpart could lead to undesirable consequences.[1]

In the present case, the Court is confronted with the need to provide for an equitable and acceptable equilibrium between

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[1] In *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, 205374, 205592, 205852, 206360, September 2, 2014, 734 SCRA 88, 105-106, the Court said:

Once again the Court is asked to draw a carefully drawn balance in the incessant conflicts between rights and regulations, liberties and limitations, and competing demands of the different segments of society. Here, we are confronted with the need to strike a workable and viable equilibrium between a constitutional mandate to maintain free, orderly, honest, peaceful and credible elections, together with the aim of ensuring equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefore, for public information campaigns and forums among candidates, on one hand, and the imperatives of a republican and democratic state, together with its guarantees rights of suffrage, freedom of speech and of the press, and the people's right to information, on the other.

accountability of public officials and the degree of responsibility and diligence by which they are to be adjudged. While it is a basic postulate of the republican form of government that we have that public office is a public trust[2] – that individuals who join the government are expected to abide by the guiding principles and policies by which public service is to be performed – it also values the dignity of every human person.[3] It should ever be kept in mind that the people are not mere creatures of the State. They should not be considered as mere automatons, unthinking individuals who are not to experiment, or innovate, lest they may be made to shoulder the monetary cost of such endeavors if subsequently found to be in violation of rules which were not clearly established or understood at the time the action was performed.

Government employment should be seen as an opportunity for individuals of good will to render honest-to-goodness public service, not a trap for the unwary. It should be an attractive alternative to private employment, not an undesirable undertaking grudgingly accepted, to thereafter regret. It should present a fulfilling environment where those who enter could realize their potentials, and the public could benefit from their contributions.

For this Court's consideration is the Petition for *Certiorari*,[4] under Rule 64, in relation to Rule 65, of the Rules of Court, dated February 6, 2014 of petitioner Philippine Economic Zone Authority (*PEZA*), seeking the annulment of Commission on Audit (*COA*) Decision No. 2013-231 dated December 23, 2013 which affirmed Corporate Government Sector-B Decision No. 2011-008 dated August 31, 2011 and Notice of Disallowance No. 10-001-101-(05-08) dated May 27, 2010 disallowing the

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[2] Public office is public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. (Art. XI, Section 1, Constitution)

[3] The State values the dignity of every human person and guarantees full respect for human rights. (Art. II, Sec. 11, Constitution)

[4] *Rollo,* pp. 3-38.

payment of additional Christmas bonus/cash gifts to PEZA officers and employees for Calendar Years (*CY*) 2005 to 2008.

The facts follow.

The PEZA Charter, Republic Act (*R.A.*) No. 7916, was amended by R.A. No. 8748 in 1999 exempting PEZA from existing laws, rules and regulations on compensation, position classification and qualification standards. Section 16 of R.A. No. 7916, as amended, reads as follows:

> Sec. 16. *Personnel.* – The PEZA Board of Directors shall provide for an organization and staff of officers and employees of the PEZA, and upon recommendation of the director general with the approval of the secretary of the Department of Trade and Industry, appoint and fix the remunerations and other emoluments: Provided, The the Board shall have exclusive and final authority to promote, transfer, assign and reassign officers of the PEZA, any provision of existing law to the contrary notwithstanding: Provided, further, That the director general may carry out removal of such officers and employees.
>
> All positions in the PEZA shall be governed by a compensation, position classification system and qualification standards approved by the director general with the concurrence of the Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the Subic Bay Metropolitan Authority (*SBMA*), Clark Development Corporation (*BCDA*) and the private sector and shall be subject to the periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. **The PEZA shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its systems conform as closely as possible with the principles under Republic Act No. 6758.**[5]

The PEZA Board in Resolution No. M-99-266 dated October 29, 1999, adjusted PEZA's compensation plan and included in the said compensation plan is the grant of Christmas bonus in

[5] Emphasis ours.

such amount as may be fixed by the Board and such other emoluments.

Petitioner PEZA had been granting Christmas bonus in the amount of Fifty Thousand Pesos (₱50,000.00) to each of its officers and employees for CY 2000 to 2004, however, for the years 2005 to 2008, the Christmas bonus was gradually increased per PEZA Board Resolution Nos. 05-450 and 06-462 dated November 28, 2005 and September 26, 2006, respectively. For 2005, the Christmas bonus was increased to ₱60,000.00 and was again increased to ₱70,000.00 in 2006 and 2007. In 2008, the Christmas bonus was increased to ₱75,000.00 per PEZA officer/employee.

State Auditor V Aurora Liveta-Funa, on May 27, 2010, issued Notice of Disallowance (*ND*) No. 10-001-101-(05-08)[6] that was received by PEZA on May 31, 2010. The ND stated that the payment of additional Christmas bonus to PEZA officers and employees for calendar years 2005-2008 violated Section 3 of Memorandum Order (*M.O.*) No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of government-owned and controlled corporations (*GOCCs*) and government financial institutions (*GFIs*) that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President.

The matter was brought to the Corporate Government Sector-B which later on rendered the Decision No. 2011-008[7] dated August 31, 2011 not giving credence to the arguments of petitioner and affirmed the Notice of Disallowance No. 10-001-101-(05-08) dated May 27, 2010 in the aggregate amount of Php20,438,750.00. Thereafter, pursuant to Rules V and VII of the 2009 Revised Rules of Procedure of the COA, petitioner filed the Petition for Review with respondent COA.

The COA in its Decision No. 2013-231[8] dated December 23, 2013 ruled that notwithstanding Section 16 of the PEZA Charter, petitioner is still duty-bound to observe the guidelines and

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[6] *Rollo,* p. 31.

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

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

policies as may be issued by the President citing *Intia, Jr. v. COA*[9] where this Court ruled that the power of the board to fix the compensation of the employees is not absolute. The COA further cited Section 6 of Presidential Decree (*P.D.*) No. 1597 which mandates presidential review and approval, through the Department of Budget and Management (*DBM*), of the position classification and compensation plan of an agency exempt from the Office of Compensation and Position Classification (*OCPC*) coverage.

Furthermore, according to the COA, M.O. No. 20 requires presidential approval on salary increases, while Administrative Order (*A.O.*) No. 103 suspends the grant of new or additional benefits in line with the austerity measures of the government. The COA added that these presidential issuances are not abhorrent to the authority of the PEZA Board of Directors to fix the remuneration of PEZA officers and employees. It stated that the requirement of presidential approval does not remove from the board the power to fix the compensation and allowances of PEZA officers and employees but is meant to determine whether or not the standards set by law have been complied with.

Hence, petitioner filed the present petition assigning the following error:

RESPONDENT ERRED WHEN IT RULED THAT THE GRANT OF ADDITIONAL CHRISTMAS BONUS TO PEZA OFFICERS AND EMPLOYEES NEEDS THE APPROVAL OF THE OFFICE OF THE PRESIDENT BECAUSE REPUBLIC ACT NO. 7916, AS AMENDED BY REPUBLIC ACT NO. 8748, AUTHORIZES THE PEZA BOARD OF DIRECTORS TO FIX THE REMUNERATIONS AND OTHER EMOLUMENTS OF PEZA OFFICERS AND EMPLOYEES.

Petitioner argues that it is not covered by P.D. No. 1597 because its provisions are inconsistent with R.A. No. 7916, as amended, which authorizes the PEZA Board to determine the compensation of its officers and employees and that even assuming without admitting that it is covered by P.D. No. 1597,

[9] 366 Phil. 273, 293 (1999).

the law mentions of reporting to the President through the Budget Commission and does not say that the approval of the President, through the Budget Commission, should be secured.

The Office of the Solicitor General (*OSG*),[10] on the other hand, claims that despite the exception clause in Section 16 of R.A. No. 7916, as amended, said provision should nonetheless be read in conjunction with the existing laws pertaining to compensation among government agencies, as it is undoubtedly a GOCC over which the President exercises his power of control, through the DBM, aside from the parameter set by the provision itself, *i.e.*, that PEZA "shall, however, endeavor to make its system conform as closely as possible with the principles under Republic Act. No. 6758."

In its Reply[11] dated October 22, 2014, petitioner reiterated its earlier arguments.

After a careful study of the arguments of both petitioner and respondent, this Court finds no merit to the petition.

It is not disputed that after the enactment of the Salary Standardization Law (Republic Act No. 6758 became effective on July 1, 1989), laws have been passed exempting some government entities from its coverage. The said government entities were allowed to create their own compensation and position classification systems that apply to their respective offices, usually through their Board of Directors. In *Engr. Mendoza v. Commission on Audit*,[12] this Court mentioned several of those government entities that are now exempt from the salary standardization law, to wit:

1. Philippine Postal Corporation

Sections 22 and 25 of Republic Act No. 7354 or the "Postal Service Act of 1992" state:

> Sec. 22. Merit System. — The Corporation shall establish a human resources management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal

[10] Comment dated June 20, 2014, *rollo*, pp. 54-83.

[11] *Rollo*, pp. 89-113.

[12] 717 Phil. 491 (2013).

of all personnel. Such system shall aim to establish professionalism and excellence at all levels of the postal organization in accordance with sound principles of management.

A progressive compensation structure, which shall be based on job evaluation studies and wage surveys and subject to the Board's approval, shall be instituted as an integral component of the Corporation's human resources development program. The Corporation, however, may grant across-the-board salary increase or modify its compensation structure as to result in higher salaries, subject to either of the following conditions:

(a) there are evidences of prior improvement in employee productivity, measured by such quantitative indicators as mail volume per employee and delivery times.

(b) a law raising the minimum wage has been enacted with application to all government employees or has the effect of classifying some positions in the postal service as below the floor wage.

x x x x x x x x x

Sec. 25. Exemption from Rules and Regulations of the Compensation and Position Classification Office. — All personnel and positions of the Corporation shall be governed by Section 22 hereof, and as such shall be exempt from the coverage of the rules and regulations of the Compensation and Position Classification Office. The Corporation, however, shall see to it that its own system conforms as closely as possible with that provided for under Republic Act No. 6758.

In *Intia, Jr. v. Commission on Audit*,[13] this Court affirmed the Philippine Postal Corporation's exemption from the Salary Standardization Law. However, the corporation should report the details of its salary and compensation system to the Department of Budget and Management.

x x x x x x x x x

2. Trade and Investment Development Corporation of the Philippines

[13] *Supra* note 9.

The Trade and Investment Development Corporation of the Philippines is also exempted from the Salary Standardization Law as provided in Section 7 of Republic Act No. 8494:[14]

> Sec. 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (*TIDCORP*) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.
>
> All positions in TIDCORP shall be governed by a compensation and position classification system and qualification standards approved by TIDCORP's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every four (4) years without prejudice to yearly merit reviews or increases based on productivity and profitability. TIDCORP shall be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall, however, endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758.
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> x x x x x x x x x

3. Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation

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[14] *An Act Further Amending Presidential Decree No. 1080, As Amended, by Reorganizing and Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding Its Primary Purpose, and for Other Purposes, Republic Act No. 8494 (1998).*

From 1995 to 2004, laws were passed exempting several government financial institutions from the Salary Standardization Law. Among these financial institutions are the Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

This Court has taken judicial notice of this development in *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*:[15]

> Indeed, we take judicial notice that after the new BSP charter was enacted in 1993, Congress also undertook the amendment of the charters of the GSIS, LBP, DBP and SSS, and three other GFIs, from 1995 to 2004, viz.:
>
> 1. R.A. No. 7907 (1995) for Land Bank of the Philippines (LBP);
> 2. R.A. No. 8282 (1997) for Social Security System (SSS);
> 3. R.A. No. 8289 (1997) for Small Business Guarantee and Finance Corporation, (SBGFC);
> 4. R.A. No. 8291 (1997) for Government Service Insurance System (GSIS);
> 5. R.A. No. 8523 (1998) for Development Bank of the Philippines (DBP);
> 6. R.A. No. 8763 (2000) for Home Guaranty Corporation (HGC); and
> 7. R.A. No. 9302 (2004) for Philippine Deposit Insurance Corporation (PDIC).
>
> It is noteworthy, as petitioner points out, that the subsequent charters of the seven other GFIs share this common proviso: a blanket exemption of all their employees from the coverage of the SSL, expressly or impliedly, as illustrated below:
>
> 1. Land Bank of the Philippines (Republic Act No. 7907)
>
> Section 10. Section 90 of [Republic Act No. 3844] is hereby amended to read as follows:

[15] 487 Phil. 531 (2004).

Section 90. *Personnel.* —

x x x x x x x x x

All positions in the Bank shall be governed by a compensation, position classification system and qualification standards approved by the Bank's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. The Bank shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758.

x x x x x x x x x

2. Social Security System (Republic Act No. 8282)

Section 1. [Amending Republic Act No. 1161, Section 3(c)]:

x x x x x x x x x

(c) The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may [be] deemed necessary; fix their reasonable compensation, allowances and other benefits; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: Provided, however, That the personnel of the SSS below the rank of Vice President shall be appointed by the SSS President: Provided, further, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission; Provided further, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: Provided, finally, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.

3. Small Business Guarantee and Finance Corporation (Republic Act No. 8289)

Section 8. [Amending Republic Act No. 6977, Section 11]:

(e) notwithstanding the provisions of Republic Act No. 6758, and Compensation Circular No. 10, series of 1989 issued by the Department of Budget and Management, the Board of Directors of [the Small Business Guarantee and Finance Corporation] shall have the authority to extend to the employees and personnel thereof the allowance and fringe benefits similar to those extended to and currently enjoyed by the employees and personnel of other government financial institutions.

4. Government Service Insurance System (Republic Act No. 8291)

Section 1. [Amending Section 43(d) of Presidential Decree No. 1146].

x x x x x x x x x

Sec. 43. *Powers and Functions of the Board of Trustees.* — The Board of Trustees shall have the following powers and functions:

x x x x x x x x x

(d) upon the recommendation of the President and General Manager, to approve the GSIS' organizational and administrative structures and staffing pattern, and to establish, fix, review, revise and adjust the appropriate compensation package for the officers and employees of the GSIS with reasonable allowances, incentives, bonuses, privileges and other benefits as may be necessary or proper for the effective management, operation and administration of the GSIS, which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law and Republic Act No. 7430, otherwise known as the Attrition Law.

x x x x x x x x x

5. Development Bank of the Philippines (Republic Act No. 8523)

Section 6. [Amending Executive Order No. 81, Section 13]:

Section 13. *Other Officers and Employees.* — The Board of Directors shall provide for an organization and staff of officers

and employees of the Bank and upon recommendation of the President of the Bank, fix their remunerations and other emoluments. All positions in the Bank shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit or increases based on the Bank's productivity and profitability. The Bank shall, therefore, be exempt from existing laws, rules, and regulations on compensation, position classification and qualification standards. The Bank shall however, endeavor to make its system conform as closely as possible with the principles under Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

6. Home Guaranty Corporation (Republic Act No. 8763)

Section 9. *Powers, Functions and Duties of the Board of Directors.* — The Board shall have the following powers, functions and duties:

x x x x x x x x x

(e) To create offices or positions necessary for the efficient management, operation and administration of the Corporation: Provided, That all positions in the Home Guaranty Corporation (HGC) shall be governed by a compensation and position classification system and qualifications standards approved by the Corporation's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities: Provided, further, That the compensation plan shall be comparable with the prevailing compensation plans in the private sector and which shall be exempt from Republic Act No. 6758, otherwise known as the Salary Standardization Law, and from other laws, rules and regulations on salaries and compensations; and to establish a Provident Fund and determine the Corporation's and the employee's contributions to the Fund;

x x x x x x x x x

7. Philippine Deposit Insurance Corporation (Republic Act No. 9302)

> Section 2. Section 2 of [Republic Act No. 3591, as amended] is hereby further amended to read:
>
> x x x x x x x x x
>
> 3.
>
> x x x x x x x x x
>
> x x x x Provided, That all positions in the Corporation shall be governed by a compensation, position classification system and qualification standards approved by the Board based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans of other government financial institutions and shall be subject to review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. The Corporation shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its system conform as closely as possible with the principles under Republic Act No. 6758, as amended.[16]

Petitioner's Charter is no different from those mentioned above. Again, Section 16 of R.A. No. 7916, as amended, provides:

> Sec. 16. *Personnel.* – The PEZA Board of Directors shall provide for an organization and staff of officers and employees of the PEZA, and upon recommendation of the director general with the approval of the secretary of the Department of Trade and Industry, appoint and fix the remunerations and other emoluments: Provided, The the Board shall have exclusive and final authority to promote, transfer, assign and reassign officers of the PEZA, any provision of existing law to the contrary notwithstanding: Provided, further, That the director general may carry out removal of such officers and employees.
>
> All positions in the PEZA shall be governed by a compensation, position classification system and qualification standards approved by the director general with the concurrence of the Board of Directors based on a comprehensive job analysis and audit of actual duties

[16] *Id.* at 568-577. (Emphases omitted)

and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the Subic Bay Metropolitan Authority (*SBMA*), Clark Development Corporation (*BCDA*) and the private sector and shall be subject to the periodic review by the Board no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and profitability. **The PEZA shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall however endeavor to make its systems conform as closely as possible with the principles under Republic Act No. 6758**.[17]

The COA, in disallowing the increase in the Christmas bonus implemented by petitioner, insists that despite the provisions of Section 16 of R.A. No. 7916, as amended, petitioner is still bound to observe the guidelines and policies issued by the Office of the President citing this Court's ruling in *Intia, Jr. v. COA*[18] where it was ruled that the power of the board of directors to fix the compensation of the employees is not absolute, thus:

> x x x the Board's discretion on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, that is, its compensation system, including the allowances granted by the Board to PPC employees, must strictly conform with that provided for other government agencies under R.A. No. 6758 (Salary Standardization Law) in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the Department of Budget and Management pursuant to Section 6 of P.D. 1597.[19]

In addition, the COA cited Section 6 of P.D. No. 1597 which provides the requisite Presidential review, through the DBM, of the position classification and compensation plan of an agency exempt from the Office of Compensation and Position Classification (*OCPC*) coverage, which reads as follows:

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[17] Emphasis ours.

[18] *Supra* note 9.

[19] *Intia, Jr. v. COA, supra* note 9.

Section 6. *Exemptions from OCPC Rules and Regulations*. Agencies positions and groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. **Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.**[20]

It is true that in *Intia, Jr. v. COA*, this Court affirmed the Philippine Postal Corporation's exemption from the Salary Standardization Law, this Court also ruled that the corporation should report the details of its salary and compensation system to the DBM, thus:

First, it is conceded that the PPC, by virtue of its charter, R.A. No. 7354, has the power to fix the salaries and emoluments of its employees. This function, being lodged in the Postmaster General, the same must be exercised with the approval of the Board of Directors. This is clear from Sections 21 and 22 of said charter.

Petitioners correctly noted that since the PPC Board of Directors are authorized to approve the Corporation's compensation structure, it is also within the Board's power to grant or increase the allowances of PPC officials or employees. As can be gleaned from Sections 10 and 17 of P.D. No. 985 (A Decree Revising the Position Classification and Compensation System in the National Government, and Integrating the Same), the term "compensation" includes salaries, wages, allowances, and other benefits.

x x x x x x x x x

While the PPC Board of Directors admittedly acted within its powers when it granted the RATA increases in question, the same should have first been reviewed by the DBM before they were implemented Sections 21, 22, and 25 of the PPC charter should be read in conjunction with Section 6 of P.D. No. 1597:

[20] Emphasis ours.

> Sec. 6. *Exemption from OCPC Rules and Regulations.* — Agencies, positions or groups of officials and employees of the national government, including government-owned and controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details, following such specifications as may be prescribed by the President.
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> x x x x x x x x x

As the Solicitor General correctly observed, there is no express repeal of Section 6, P.D. No. 1597 by RA No. 7354. Neither is there an implied repeal thereof because there is no irreconcilable conflict between the two laws. On the one hand, Section 25 of R.A. No. 7354 provides for the exemption of PPC from the rules and regulations of the CPCO. On the other hand, Section 6 of P.D. 1597 requires PPC to report to the President, through the DBM, the details of its salary and compensation system. **Thus, while the PPC is allowed to fix its own personnel compensation structure through its Board of Directors, the latter is required to follow certain standards in formulating said compensation system.** One such standard is specifically stated in Section 25 of R.A. No. 7354[.][21]

The ruling in *Intia, Jr. v. COA* and the provisions of Section 6 of P.D. No. 1597 can thus be reconciled as both emphasized that these exempted government entities are required to report to the President, through the DBM, the details of its salary and compensation system. Reporting, however, is different from approval. Section 6 of P.D. No. 1597 specifically requires the exempted government agencies to report to the President, through the DBM, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

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[21] *Intia, Jr. v. COA, supra* note 9, at 288-290.

In fact, a close reading of the charters of those other government entities exempted from the Salary Standardization Law shows a common provision stating that although the board of directors of the said entities has the power to set a compensation, position classification system and qualification standards, the same entities shall also endeavor to make the system to conform as closely as possible to the principles and modes provided in R.A. No. 6758. This Court, in *Trade and Investment Development Corporation of the Philippines v. Civil Service Commission*,[22] recognized the Trade and Investment Development Corporation's exemption from the Salary Standardization Law. However, this Court ruled that the said Corporation should, however, "endeavor" to conform to the principles and modes of the Salary Standardization Law in making its own system of compensation and position classification. The phrase "to endeavor" means "to devote serious and sustained effort" and "to make an effort to do." It is synonymous with the words to strive, to struggle and to seek. The use of "to endeavor" in the context of Section 7 of R.A. No. 8494 means that despite TIDCORP's exemption from laws involving compensation, position classification and qualification standards, it should still strive to conform as closely as possible with the principles and modes provided in R.A. No. 6758. The phrase "as closely as possible," which qualifies TIDCORP's duty "to endeavor to conform," recognizes that the law allows TIDCORP to deviate from R.A. No. 6758, but it should still try to hew closely with its principles and modes. Had the intent of Congress been to require TIDCORP to fully, exactly and strictly comply with R.A. No. 6758, it would have so stated in unequivocal terms. Instead, the mandate it gave TIDCORP was to endeavor to conform to the principles and modes of R.A. No. 6758, and not to the entirety of this law.[23]

Thus, the charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction. They are still required to report to the Office of the President, through the DBM the details of their salary and

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[22] 705 Phil. 357 (2013).

[23] *Engr. Mendoza v. Commission on Audit, supra* note 2, at 509.

compensation system and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758. Such restriction is the most apparent indication that the legislature did not divest the President, as Chief Executive of his power of control over the said government entities. In *National Electrification Administration v. COA*,[24] this Court explained the nature of presidential power of control, and held that the constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.

It must always be remembered that under our system of government all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept is embodied in Section 17, Article VII of the Constitution which provides as follows:

> Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

Thus, respondent COA was correct in claiming that petitioner has to comply with Section 3[25] of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is merely a reiteration of the President's power of control over the GOCCs/CFIs notwithstanding the power granted to the Board of Directors of the latter to establish and fix a compensation and benefits scheme for its employees.

Aside from the M.O. No. 20, respondent COA also aptly cited in its Decision No. 2013-231, P.D. No. 1597 and A.O. No. 103, which directed austerity measures in government, thus:

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[24] 427 Phil. 464, 485 (2002), citing *De Leon v. Carpio*, 258-A Phil. 223, 231 (1989).

[25] Section 3. Any increase in salary or compensation of GOCCs/GFIs that are not in accordance with the SSL shall be subject to the approval of the President.

MO No. 20 likewise requires Presidential approval on salary increases while AO No. 103 suspends the grant of new or additional benefits in line with the austerity measures of the government. These executive issuances may not be simply dismissed as inutile as long as they are not inconsistent with the special law, the PEZA Charter. "Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances x x x. Unless an administrative order is declared invalid, courts have no option but to apply the same.

The abovementioned Presidential issuances are not abhorrent to the authority of the BOD to fix the remuneration of the PEZA officers and employees. The requirement of President's approval does not remove from the BOD the power to fix the compensation and allowances of PEZA but merely requires the same to be submitted to the President, through the DBM, in order to determine whether or not the standards set by law have been complied with.

Moreover, the DBM Footnotes/Restrictions on the corporation's Corporate Operating Budget (*COB*) for calendar years 2005-2008 explicitly mentioned laws which PEZA is enjoined to strictly comply, namely, Section 6 of PD No. 1597, Section 3 of MO No. 20, and AO No. 103 dated August 31, 2004. Further, the DBM, in its confirmation letter dated December 3, 2008 on PEZA's CY 2007 COB, states that "This confirmation, however, should not be construed as approval of any unauthorized expenditures, particularly for Personal Services. New/additional benefits or salary increases granted should be supported by appropriate legal basis and approval from the Office of the President.[26]

The affirmation of the disallowance of the payment of additional Christmas bonus/cash gifts to PEZA officers and employees for CY 2005 to 2008, however, does not automatically cast liability on the responsible officers.

The question to be resolved is: To what extent may accountability and responsibility be ascribed to public officials who may have acted in good faith, and in accordance with their understanding of their authority which did not appear clearly to be in conflict with other laws? Otherwise put, should public

[26] *Rollo*, pp. 28-29.

officials be held financially accountable for the adoption of certain policies or programs which are found to be not in accordance with the understanding by the Commission on Audit several years after the fact, which understanding is only one of several ways of looking at the legal provisions?

Good faith has always been a valid defense of public officials that has been considered by this Court in several cases. Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.[27]

In *Arias v. Sandiganbayan*,[28] this Court placed significance on the good faith of heads of offices having to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations, thus:

> There is no question about the need to ferret out and convict public officers whose acts have made the bidding out and construction of public works and highways synonymous with graft or criminal inefficiency in the public eye. However, the remedy is not to indict and jail every person who may have ordered the project, who signed a document incident to its construction, or who had a hand somewhere in its implementation. The careless use of the conspiracy theory may sweep into jail even innocent persons who may have been made unwitting tools by the criminal minds who engineered the defraudation.
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> x x x x x x x x x
>
> We would be setting a bad precedent if a head of office plagued by all too common problems – dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence – is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace

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[27] *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *Maritime Industry Authority v. COA*, G.R. No. 185812, January 13, 2015, 747 SCRA 300, 347.

[28] G.R. No. 81563, December 19, 1989, 180 SCRA 309.

every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

x x x x x x x x x

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations. x x x.[29]

Similarly, good faith has also been appreciated in *Sistoza v. Desierto*,[30] thus:

There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates.

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[29] *Arias v. Sandiganbayan, supra,* at 312-316.

[30] 437 Phil. 117 (2002).

Stated otherwise, in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, no definite nor certain defects or when the public officer's trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error. As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy.[31]

And recently in *Social Security System v. Commission on Audit*,[32] this Court ruled that good faith absolves liable officers from refund, thus:

Notwithstanding the disallowance of the questioned disbursements, the Court rules that the responsible officers under the ND need not refund the same on the basis of good faith. In relation to the requirement of refund of disallowed benefits or allowances, good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconcientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.[33]

In *Mendoza v. COA*,[34] the Court held that the lack of a similar ruling is a basis of good faith. Thus, good faith may be appreciated in the case at bench as there is no jurisprudence yet ruling that the benefits which may be received by members of the SSC are limited to those enumerated under Section 3 (a) of the SS Law.

It is the same good faith, therefore, that will absolve the responsible officers of PEZA from liability from refund.

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[31] *Sistoza v. Desierto, supra*, at 120-122.

[32] G.R. No. 210940, September 6, 2016.

[33] *PEZA v. COA, supra* note 27.

[34] *Supra* note 12.

In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.

WHEREFORE, the Petition dated February 6, 2014 of petitioner Philippine Economic Zone Authority (*PEZA*) is **DISMISSED.** Consequently, Commission on Audit Decision No. 2013-231 dated December 23, 2013, which affirmed Corporate Government Sector-B Decision No. 2011-008 dated August 31, 2011 and Notice of Disallowance No. 10-001-101-(05-08) dated May 27, 2010, disallowing the payment of additional Christmas bonus/cash gifts to PEZA officers and employees for Calendar Years (*CY*) 2005 to 2008 is **AFFIRMED.** However, PEZA and its officers are absolved from refunding the amount covered by the same notice of disallowance.

SO ORDERED.

Carpio, (Acting C. J.), Leonardo-de Castro, Brion, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

Jardeleza, J., no part.

Sereno, C.J. and *Leonen, J.,* on official leave.

Velasco, Jr., J., on leave.

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* Per Special Order No. 2386 dated September 29, 2016.

SECOND DIVISION

[A.C. No. 8168. October 12, 2016]

SPOUSES EDWIN B. BUFFE AND KAREN M. SILVERIO-BUFFE, *complainants, vs.* **SEC. RAUL M. GONZALEZ, USEC. FIDEL J. EXCONDE, JR., and CONGRESSMAN ELEANDRO JESUS F. MADRONA,** *respondents.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; REPUBLIC ACT NO. 6770 (OMBUDSMAN ACT OF 1989); JURISDICTION OF THE OFFICE OF THE OMBUDSMAN; AN ADMINISTRATIVE CASE FILED AGAINST PUBLIC OFFICERS FOR THEIR ALLEGED UNFAIR AND DISCRIMINATORY ACTS IN RELATION TO THEIR OFFICIAL FUNCTIONS DURING THEIR TENURE SHOULD BE RESOLVED BY THE OFFICE OF THE OMBUDSMAN.— We dismiss the administrative case against Exconde and Madrona for lack of jurisdiction. The present administrative case should be resolved by the Office of the Ombudsman, considering that complainants have filed a complaint before it on 12 February 2009. In the case of Gonzalez, his death on 7 September 2014 forecloses any administrative case against him. The authority of the Ombudsman to act on complainants' administrative complaint is anchored on Section 13(1), Article XI of the 1987 Constitution, which provides that: "[t]he Office of the Ombudsman shall have the following powers, functions, and duties: (1) investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient." Under Section 16 of RA 6770, otherwise known as the Ombudsman Act of 1989, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his or her tenure. Section 19 of RA 6770 also states that the Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which

> are unreasonable, unfair, oppressive, or discriminatory. Considering that both Exconde and Madrona are public officers being charged for actions, which are allegedly unfair and discriminatory, involving their official functions during their tenure, the present case should be resolved by the Office of the Ombudsman as the appropriate government agency. Indeed, the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their official duties. For such acts, government lawyers fall under the disciplinary authority of either their superior or the Ombudsman. Moreover, an anomalous situation will arise if the IBP asserts jurisdiction and decides against a government lawyer, while the disciplinary authority finds in favor of the government lawyer.

APPEARANCES OF COUNSEL

Alexander M. Madrona for respondent Eleandro Jesus F. Madrona.

Defensor Lantion Briones Villamor & Tolentino Law Offices for Raul M. Gonzales and Fidel J. Exconde, Jr.

D E C I S I O N

CARPIO*, Acting C.J.*:

The Case

Before this Court is a disbarment complaint filed by Spouses Edwin B. Buffe and Karen M. Silverio-Buffe (complainants) against former Secretary of Justice Raul M. Gonzalez,[1] former Undersecretary of Justice Fidel J. Exconde, Jr., and former Congressman Eleandro Jesus F. Madrona (respondents), for committing an unethical act in violation of the Code of Professional Responsibility, and the Lawyer's Oath, particularly the willful violation of Republic Act Nos. (RA) 6713, 3019, and civil service law and rules.

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[1] Also referred to in the Records as "Raul M. Gonzales."

The Facts

The undisputed facts, as culled from the records, are as follows:

On 15 July 2008, former President Gloria Macapagal Arroyo appointed Karen M. Silverio-Buffe (Silverio-Buffe) as Prosecutor I/Assistant Provincial Prosecutor of Romblon province. On 15 August 2008, Silverio-Buffe took her oath of office before Metropolitan Trial Court of Manila, Branch 24, Judge Jesusa P. Maningas (Judge Maningas). She, then, furnished the Office of the President, Civil Service Commission and Department of Justice (DOJ) with copies of her oath of office. On 19 August 2008, Silverio-Buffe informed the Office of the Provincial Prosecutor of Romblon that she was officially reporting for work beginning that day.

In a letter dated 26 August 2008, Romblon Provincial Prosecutor Arsenio R.M. Almadin asked former Secretary of Justice Raul M. Gonzalez (Gonzalez) to confirm the appointment of Silverio-Buffe since the Provincial Prosecution Office did not receive any official communication regarding Silverio-Buffe's appointment.

In a Memorandum Order dated 19 December 2008, Gonzalez ordered Silverio-Buffe "to cease and desist from acting as prosecutor in the Office of the Provincial Prosecutor of Romblon, or in any Prosecutor's Office for that matter, considering that [she has] no appointment to act as such, otherwise [she] will be charged of usurpation of public office."[2]

On 11 February 2009, Silverio-Buffe, together with her husband Edwin B. Buffe, filed with the Office of the Bar Confidant (OBC) a Joint Complaint-Affidavit[3] alleging that former Congressman Eleandro Jesus F. Madrona (Madrona), acting out of spite or revenge, persuaded and influenced Gonzalez and Undersecretary Fidel J. Exconde, Jr. (Exconde) into refusing to administer Silverio-Buffe's oath of office and into withholding

[2] *Rollo*, p. 41.

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

the transmittal of her appointment papers to the DOJ Regional Office. Madrona allegedly acted out of spite or revenge against Silverio-Buffe because she was one of the plaintiffs in a civil case for enforcement of a Radio Broadcast Contract, which was cancelled by the radio station due to adverse commentaries against Madrona and his allies in Romblon.

In their Joint Complaint-Affidavit, they narrated that: (1) on 1 August 2008, the Malacanang Records Office transmitted Silverio-Buffe's appointment papers to the DOJ and they were received by a clerk named Gino Dela Peña; (2) on 13 August 2008, a certain Cora from the Personnel Division of the DOJ asked Silverio-Buffe if she had any "connection" in the Office of the Secretary because her papers were being withheld by Exconde, and when she said none, Cora told her to come back the following day; (3) on 14 August 2008, Silverio-Buffe was introduced to Gonzalez, who informed her that Madrona strongly opposed her appointment and advised her to work it out with Madrona; (4) since Gonzalez refused to administer her oath of office, Silverio-Buffe took her oath before Judge Maningas on 15 August 2008; (5) Silverio-Buffe twice wrote a letter to Gonzalez pleading for the transmittal of her appointment papers, but Gonzalez never replied; and (6) on 13 November 2008, they went to the DOJ and met Exconde, who informed them that they should think of a solution regarding Madrona's opposition to her appointment. Exconde asked for the reason of Madrona's opposition and Silverio-Buffe replied that she supported Madrona's rival, Eduardo Firmalo, during the elections. Exconde persuaded Silverio-Buffe to talk with Madrona, but she insisted on not approaching Madrona because of their diverse principles. Exconde, then, suggested that Silverio-Buffe write Gonzalez a letter stating that she already approached Madrona yet the latter ignored her plea, but Silverio-Buffe refused the suggestion.

In a Resolution dated 15 April 2009,[4] the Court, through the First Division, required the respondents to comment on the complaint.

[4] *Id*. at 43-44.

In his Comment with Counter-Complaint dated 23 June 2009,[5] Madrona denied that he acted out of spite or revenge against Silverio-Buffe or that he persuaded, induced, or influenced anyone to refuse to administer oath to Silverio-Buffe and to withhold the transmittal of her appointment papers. Madrona insisted that the allegations against him are without proof, and based on general conjectures and hearsay. On the other hand, Madrona alleged that complainants should be accountable for their dishonest and deceitful conduct in submitting to the Court as annexes a complaint without its last two pages and a contract altered by Silverio-Buffe.

In a joint Comment dated 1 July 2009,[6] Gonzalez and Exconde claimed that: (1) the complaint is unfounded and purely for harassment because Silverio-Buffe's appointment papers were not endorsed by the Office of the President to the DOJ for implementation; (2) the Court has no jurisdiction over the complaint because a case for violation of RA 6713 and civil service rules should be filed with the Civil Service Commission and a case for violation of RA 3019 should be filed with the Sandiganbayan; (3) the proper venue for her grievance is with the Office of the President; (4) assuming that her appointment papers were withheld, such act was presumed to be the act of the President herself, with the presumption of regularity of official functions; and (5) Exconde was erroneously impleaded since he never signed any document relating to Silverio-Buffe's appointment.

In her Reply dated 17 July 2009,[7] Silverio-Buffe insisted that her appointment papers were endorsed by the Office of the President to the Office of the Secretary of Justice, as evidenced by the Endorsement Letter of then Executive Secretary Eduardo R. Ermita. However, Exconde, as Chief of Personnel Management and Development under the Office of the Secretary of Justice,

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[5] *Id*. at 48-55.

[6] *Id*. at 95-103.

[7] *Id*. at 110-122.

refused to forward her appointment letter to the Personnel Division of DOJ for implementation.

In a Resolution dated 21 October 2009,[8] the Court, through the Third Division, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

In a Memorandum dated 12 July 2010,[9] then DOJ Secretary Leila M. De Lima transmitted Silverio-Buffe's appointment papers to the Office of the Provincial Prosecutor of Romblon.

In a Resolution dated 20 October 2010,[10] the Court, through the Second Division, referred the Motion to Dismiss[11] filed by Madrona to the IBP. Madrona sought to dismiss the present administrative complaint on the ground of forum-shopping, because he received an order from the Office of the Ombudsman directing him to file a counter-affidavit based on the same administrative complaint filed before the OBC.

The IBP's Report and Recommendation

In a Report and Recommendation dated 5 October 2011,[12] Investigating Commissioner Oliver A. Cachapero (Investigating Commissioner) found the complaint impressed with merit, and recommended the penalty of censure against the respondents.[13] The Investigating Commissioner found respondents' united action of stopping the appointment of Silverio-Buffe unethical.

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[8] *Id*. at 152-153.

[9] *Id*. at 453.

[10] *Id*. at 185.

[11] *Id*. at 179-181.

[12] *Id*. at 606-609.

[13] *Id*. at 609. "Foregoing premises considered, the undersigned believes and so holds that the complaint is meritorious. Accordingly, he recommends that the three (3) Respondents be meted with the penalty of CENSURE."

In Resolution No. XX-2012-215[14] issued on 28 June 2012, the IBP Board of Governors reversed the Investigating Commissioner's Report and Recommendation, to wit:

> RESOLVED to REVERSE as it is hereby unanimously REVERSED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering that the complaint lacks merit the case against Respondents is hereby DISMISSED.

Complainants then filed a motion for reconsideration.

In Resolution No. XX-2013-307[15] issued on 21 March 2013, the IBP Board of Governors denied the motion for reconsideration, to wit:

> RESOLVED to unanimously DENY Complainants' Motion for Reconsideration, there being no cogent reason to reverse the Resolution and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2012-215 dated June 28, 2012 is hereby AFFIRMED.

Hence, complainants filed a petition before this Court.

The Issue

The issue in this case is whether Gonzalez, Exconde, and Madrona should be administratively disciplined based on the allegations in the complaint.

The Ruling of the Court

We dismiss the administrative case against Exconde and Madrona for lack of jurisdiction. The present administrative case should be resolved by the Office of the Ombudsman, considering that complainants have filed a complaint before it on 12 February 2009.[16] In the case of Gonzalez, his death on

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[14] *Id*. at 572-573.

[15] *Id*. at 603.

[16] *Id*. at 183.

7 September 2014 forecloses any administrative case against him.[17]

The authority of the Ombudsman to act on complainants' administrative complaint is anchored on Section 13(1), Article XI of the 1987 Constitution, which provides that: "[t]he Office of the Ombudsman shall have the following powers, functions, and duties: (1) investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."

Under Section 16[18] of RA 6770, otherwise known as the Ombudsman Act of 1989, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his or her tenure.[19] Section 19[20] of RA 6770 also states that the Ombudsman shall act on all complaints relating, but

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[17] In *Caoile v. Atty. Macaraeg*, A.C. No. 720, 17 June 2015, citing *Apiag v. Cantero*, 335 Phil. 511 (1997), the Court dismissed the administrative case against respondent and no longer imposed any sanction against him in view of his death during the pendency of the case.

[18] Republic Act No. 6770, Section 16. *Applicability*. — The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and nonfeasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

[19] *Samson v. Restrivera*, 662 Phil. 45 (2011).

[20] Republic Act No. 6770, Section 19. *Administrative Complaints*. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;

(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
(5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification.

not limited, to acts or omissions which are unreasonable, unfair, oppressive, or discriminatory.

Considering that both Exconde and Madrona are public officers being charged for actions, which are allegedly unfair and discriminatory, involving their official functions during their tenure, the present case should be resolved by the Office of the Ombudsman as the appropriate government agency. Indeed, the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their official duties. For such acts, government lawyers fall under the disciplinary authority of either their superior[21] or the Ombudsman.[22] Moreover, an anomalous situation will arise

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[21] Executive Order No. 292, or "Administrative Code of 1987," Book V, Title I, Chapter 7, Section 47. *Disciplinary Jurisdiction.* – (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) **The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction**. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

x x x x x x x x x (Emphasis supplied)

[22] Republic Act No. 6770, Section 21. *Officials Subject to Disciplinary Authority; Exceptions*. - The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and

if the IBP asserts jurisdiction and decides against a government lawyer, while the disciplinary authority finds in favor of the government lawyer.

WHEREFORE, we **DISMISS** the administrative complaint against now deceased Secretary of Justice Raul M. Gonzalez for being moot. We also **DISMISS** the administrative complaint against respondents, former Undersecretary of Justice Fidel J. Exconde, Jr. and former Congressman Eleandro Jesus F. Madrona, for lack of jurisdiction.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever appropriate action the Ombudsman may wish to take with respect to the possible administrative and criminal liability of respondents Fidel J. Exconde, Jr. and Eleandro Jesus F. Madrona.

SO ORDERED.

Brion, del Castillo, and *Mendoza, JJ.,* concur.

Leonen, J., on official business.

FIRST DIVISION

[G.R. No. 171865. October 12, 2016]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **HEIRS OF BENEDICTO AND AZUCENA ALONDAY,** *respondents.*

SYLLABUS

1. CIVIL LAW; LOANS; CONTRACT OF LOAN; FOR THE ALL-EMBRACING OR DRAGNET CLAUSES TO

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its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

SECURE FUTURE AND OTHER LOANS, THE LOANS THEREBY SECURED MUST BE SUFFICIENTLY DESCRIBED IN THE MORTGAGE CONTRACT.— There is no question, indeed, that all-embracing or dragnet clauses have been recognized as valid means to secure debts of both future and past origins. Even so, we have likewise emphasized that such clauses were an exceptional mode of securing obligations, and have held that obligations could only be deemed secured by the mortgage if they came fairly within the terms of the mortgage contract. For the all-embracing or dragnet clauses to secure future loans, therefore, such loans must be sufficiently described in the mortgage contract. If the requirement could be imposed on a future loan that was uncertain to materialize, there is a greater reason that it should be applicable to a past loan, which is already subsisting and known to the parties.

2. ID.; ID.; ID.; THE AGRICULTURAL LOAN AND THE COMMERCIAL LOAN OBTAINED BY RESPONDENTS FROM PETITIONER BANK SHOULD BE TREATED INDIVIDUALLY AND SEPARATELY.— [I]t was undeniable that the petitioner had the opportunity to include some form of acknowledgement of the previously subsisting agricultural loan in the terms of the second mortgage contract. The mere fact that the mortgage constituted on the property covered by TCT No. T-66139 made no mention of the pre-existing loan could only strongly indicate that each of the loans of the Spouses Alonday had been treated *separately* by the parties themselves, and this sufficiently explained why the loans had been secured by *different* mortgages. Another indication that the second mortgage did not extend to the agricultural loan was the fact that the second mortgage was entered into in connection only with the commercial loan. x x x The execution of the subsequent mortgage by the parties herein to secure the subsequent loan was an indication that they had intended to treat each loan as distinct from the other, and that they had intended to secure each of the loans individually and separately.

3. ID.; ID.; ID.; THE MORTGAGE CONTRACTS EXECUTED BY RESPONDENTS WERE CONTRACTS OF ADHESION EXCLUSIVELY PREPARED BY THE PETITIONER, HENCE, SHOULD BE CONSTRUED AGAINST THE LATTER.— We further concur with the CA and the RTC in their holding that the mortgage contracts executed by the Spouses

Alonday were contracts of adhesion exclusively prepared by the petitioner. Under Article 1306 of the *Civil Code*, the contracting parties "*may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy*." This is an express recognition by the law of the right of the people to enter into all manner of lawful conventions as part of their safeguarded liberties. The objection against a contract of adhesion lies most often in its negation of the autonomy of the will of the parties in contracts. A contract of adhesion, albeit valid, becomes objectionable only when it takes undue advantage of one of the parties – the weaker party – by having such party just adhere to the terms of the contract. In such situation, the courts go to the succor of the weaker party by construing any obscurity in the contract against the party who prepared the contract, the latter being presumed as the stronger party to the agreement, and as the party who caused the obscurity. x x x Considering that the agricultural loan had been pre-existing when the mortgage was constituted on the property covered by TCT No. T-66139, it would have been easy for the petitioner to have expressly incorporated the reference to such agricultural loan in the mortgage contract covering the commercial loan. But the petitioner did not. Being the party that had prepared the contract of mortgage, its failure to do so should be construed that it did not at all contemplate the earlier loan when it entered into the subsequent mortgage.

4. ID.; DAMAGES; AWARD OF ACTUAL DAMAGES, REDUCED; INTEREST ON THE JUDGMENT OBLIGATION, IMPOSED.— To accord with what is fair, based on the records, we reduce the basis of the actual damages to ₱1,200.00/square meter. Such valuation is insulated from arbitrariness because it was made by the Spouses Alonday themselves in their complaint, rendering a total of ₱717,600.00 as actual damages. x x x The petitioner should be held liable for interest on the actual damages of ₱717,600.00 representing the value of the property with an area 598 square meters that was lost to them through the unwarranted foreclosure, the same to be reckoned from the date of judicial demand (*i.e.*, the filing of the action by the Spouses Alonday). At the time thereof, the rate was 12% *per annum*, and such rate shall run until June 30, 2013. Thereafter, or starting on July

1, 2013, the rate of interest shall be 6% *per annum* until full payment of the obligation, pursuant to the ruling in *Nacar v. Gallery Frames*, which took into consideration the lowering of interest rates by the Monetary Board. In addition, Article 2212 of the *Civil Code* requires that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. Accordingly, the interest due shall itself earn legal interest of 6% *per annum* from the date of finality of the judgment until its full satisfaction, the interim period being deemed to be an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

The Chief Legal Counsel PNB Legal Department for petitioner.

Tolentino Law Office for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The issue is whether the all-embracing or dragnet clause contained in the first mortgage contract executed between the parties for the security of the first loan could authorize the foreclosure of the property under the mortgage to secure a second loan despite the full payment of the second loan.

Antecedents

On September 26, 1974, the Spouses Benedicto and Azucena Alonday (Spouses Alonday) obtained an agricultural loan of ₱28,000.00 from the petitioner at its Digos, Davao del Sur Branch, and secured the obligation by constituting a real estate mortgage on their parcel of land situated in Sta. Cruz, Davao del Sur registered under Original Certificate of Title (OCT) No. P-3599 of the Registry of Deeds of Davao del Sur.[1]

[1] *Rollo,* p. 12.

On June 11, 1980, the Spouses Alonday obtained a commercial loan for ₱16,700.00 from the petitioner's Davao City Branch, and constituted a real estate mortgage over their 598 square meter residential lot situated in Ulas, Davao City registered under Transfer Certificate of Title (TCT) No. T-66139 of the Registry of Deeds of Davao City.

It is noted that the mortgage contracts contained the following identical provision, to wit:

> That for and in consideration of certain loans, overdrafts, and other credit accommodations, obtained from the Mortgagee, which is hereby fixed at _____, Philippine Currency, and to secure the payment of the same and those others that the Mortgagee may extend to the Mortgagor, including interests and expenses, and other obligations owing by the Mortgagor to the Mortgagee, whether direct or indirect, principal or secondary, as appearing in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcel of land which is/are described in the list inserted at the back of this document xxx. In case the Mortgagor executes subsequent promissory note or notes either as renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodation, xxx, this mortgage shall also stand as security for the payment of the said promissory note or notes, and/or accommodations without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes and/or accommodations were existing on the date thereof, notwithstanding full payments of any or all obligations of the Mortgagors. This mortgage shall also stand as security for said obligations and any and all other obligations of the Mortgagor to the Mortgagee of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution of this mortgage. However, if the Mortgagor shall pay the Mortgagee, its successors or assigns, the obligations secured by this mortgage, together with interests, costs and other expenses, on or before the date they are due, and shall keep and perform all the covenants and agreements herein contained for the Mortgagor to keep and perform, then this mortgage shall be null and void, otherwise, it shall remain in full force and effect.[2]

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[2] *Id.* at 16-17.

The Spouses Alonday made partial payments on the commercial loan, which they renewed on December 23, 1983 for the balance of ₱15,950.00. The renewed commercial loan, although due on December 25, 1984, was fully paid on July 5, 1984.[3]

On August 6, 1984, respondents Mercy and Alberto Alonday, the children of the Spouses Alonday, demanded the release of the mortgage over the property covered by TCT No. T-66139. The petitioner informed them, however, that the mortgage could not be released because the agricultural loan had not yet been fully paid, and that as the consequence of the failure to pay, it had foreclosed the mortgage over the property covered by OCT No. P-3599 on August 17, 1984.

It appeared that notwithstanding such foreclosure, a deficiency balance of ₱91,525.22 remained.[4] Hence, the petitioner applied for the extra-judicial foreclosure of the mortgage on the property covered by TCT No. T-66139. A notice of extra-judicial sale was issued on August 20, 1984, and the property covered by TCT No. T-66139 was sold on September 28, 1984 to the petitioner in the amount of ₱29,900.00. Since the Alondays were unable to redeem the property, the petitioner consolidated its ownership. Later on, the property was sold for ₱48,000.00 to one Felix Malmis on November 10, 1989.[5]

According to the petitioner, the deed of mortgage relating to the property covered by TCT No. T-66139 included an "all-embracing clause" whereby the mortgage secured not only the commercial loan contracted with its Davao City Branch but also the earlier agricultural loan contracted with its Digos Branch.

Judgment of the RTC

On July 8, 1994, therefore, the respondents instituted a complaint against the petitioner in the Regional Trial Court

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[3] *Id*. at 12.

[4] *Id*. at 12-13.

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

(RTC) in Davao City to recover damages and attorney's fees (Civil Case No. 23,021-94), averring that the foreclosure and sale of the property covered by TCT No. T-66139 was illegal.

On November 28, 1997, the RTC rendered judgment finding in favor of the respondents,[6] and disposed as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against defendant bank, ordering said defendant bank:
>
> 1. To pay plaintiffs the sum of One Million Seven Hundred Thousand (₱1,700,000.00) Pesos, representing the value of the land covered by TCT No. T-66139;
> 2. To pay plaintiffs the sum of ₱20,000.00 as attorney's fees; and
> 3. To pay the costs of this suit.
>
> SO ORDERED.[7]

The RTC observed that if the petitioner had intended to have the second mortgage secure the pre-existing agricultural loan, it should have made an express reservation to that effect; that based on the all-embracing clause, the mortgage was a contract of adhesion, and the ambiguities therein should be construed strictly against the petitioner; that the last sentence of the all-embracing clause provided that the mortgage would be null and void upon the payment of the obligations secured by the mortgage; and that the petitioner was guilty of bad faith in refusing to nullify the mortgage despite full payment of the commercial loan prior to its maturity.

The RTC also ruled that because the property had already been sold to Malmis, a third party not brought within the trial court's jurisdiction, it could not order the return of the property; and that it was ordering the petitioner instead to pay the respondents the value of the property under its present market valuation.

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[6] *Id*. at 85-92; penned by Judge Virginia Hofileña-Europa.

[7] *Id*. at 92.

Decision of the CA

Dissatisfied, the petitioner appealed to the Court of Appeals (CA). The appeal was docketed as C.A.-G.R. CV No. 60625.

On August 31, 2005, the CA affirmed the RTC,[8] observing that the mortgage, being a contract of adhesion, should be construed strictly against the petitioner as the party who had drafted the same; and that although the petitioner had argued, citing *Mojica v. Court of Appeals*,[9] that all-embracing clauses were valid to secure past, present and future loans, *Mojica v. Court of Appeals* was not in point inasmuch as the facts therein were different from the facts herein.

The petitioner filed a motion for reconsideration, but the CA denied the motion on February 27, 2006.[10]

Hence, this appeal by petition for review on *certiorari*.

Issues

The petitioner assigns the following errors to the CA, to wit:

I. The Court of Appeals grievously erred in restricting and delimiting the scope and validity of the standard "all-embracing clause" in real estate mortgage contracts solely to future indebtedness and not to prior ones, contrary to leading Supreme Court decisions on the matter.

II. Even assuming *arguendo* that the xxx decisions are inapplicable to the case at bar, the Court of Appeals grievously erred in awarding the unsubstantiated amount of ₱1.7 million in damages and ₱20,000.00 as attorney's fees against PNB without factual and legal basis.[11]

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[8] *Id.* at 11-22; penned by Associate Justice Myrna Dimaranan-Vidal (retired), and concurred in by Associate Justice Teresita Dy-Liacco Flores (retired) and Associate Justice Edgardo A. Camello.

[9] G.R. No. 94247, September 11, 1991, 201 SCRA 517.

[10] *Rollo,* pp. 24-25.

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

The petitioner submits that *Mojica v. Court of Appeals* validates the use of an all-embracing clause in a mortgage agreement to secure not only the amount indicated on the mortgage instrument, but also the mortgagor's future and past obligations; that by denying the applicability to the case of *Mojica v. Court of Appeals* and other similar rulings, the CA disregarded the principle of *stare decisis*; and that the CA in effect thereby regarded all-embracing clauses invalid as to prior obligations.

Ruling of the Court

The appeal lacks merit.

The CA opined as follows:

> The real estate mortgage on the property covered by TCT No. T-66139 was specifically constituted to secure the payment of the commercial loan of the Spouses ALONDAY. In the same manner, the real estate mortgage on the property covered by OCT No. P-3599 was constituted to secure the payment of their agricultural loan with the PNB. With the execution of separate mortgage contracts for the two (2) loans, it is clear that the intention of the parties was to limit the mortgage to the loan for which it was constituted.
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> x x x x x x x x x
>
> The [Mojica] case is not in point since the facts therein are different from the case at bench. In *Mojica vs. Court of Appeals*, the mortgaged real estate property was made to answer for future advancement or renewal of the loan, whereas in the instant case, the foreclosure sale included a property which was used as a security for a commercial loan which was obtained after the agricultural loan.
>
> The mortgage provision relied upon by appellant is known in American jurisprudence as a "dragnet" clause, which is specifically phrased to subsume all debts of past or future origin. Such clauses pursuant to the pronouncement of the Supreme Court in *DBP vs. Mirang* must be "carefully scrutinized and strictly construed."[12]

[12] *Id*. at 17-19.

The petitioner wrongly insists that the CA, through the foregoing ratiocination, held that the all-embracing or dragnet clauses were altogether invalid as to prior obligations. What the CA, although reiterating that the Court upheld the validity of using real estate mortgages to secure future advancements, only thereby pointed out that it could not find similar rulings as to mortgages executed to secure prior loans.

There is no question, indeed, that all-embracing or dragnet clauses have been recognized as valid means to secure debts of both future and past origins.[13] Even so, we have likewise emphasized that such clauses were an exceptional mode of securing obligations, and have held that obligations could only be deemed secured by the mortgage if they came fairly within the terms of the mortgage contract.[14] For the all-embracing or dragnet clauses to secure future loans, therefore, such loans must be sufficiently described in the mortgage contract.[15] If the requirement could be imposed on a future loan that was uncertain to materialize, there is a greater reason that it should be applicable to a past loan, which is already subsisting and known to the parties.

Nonetheless, it was undeniable that the petitioner had the opportunity to include some form of acknowledgement of the previously subsisting agricultural loan in the terms of the second mortgage contract. The mere fact that the mortgage constituted on the property covered by TCT No. T-66139 made no mention of the pre-existing loan could only strongly indicate that each of the loans of the Spouses Alonday had been treated *separately* by the parties themselves, and this sufficiently explained why the loans had been secured by *different* mortgages.

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[13] *Traders Royal Bank v. Castañares*, G.R. No. 172020, December 6, 2010, 636 SCRA 519, 528.

[14] *Asiatrust Development Bank v. Tuble*, G.R. No. 183987, July 25, 2012, 677 SCRA 519, 532-533.

[15] *Supra* note 13, at 528-529.

Another indication that the second mortgage did not extend to the agricultural loan was the fact that the second mortgage was entered into in connection only with the commercial loan. Our ruling in *Prudential Bank v. Alviar*[16] is then relevant, to wit:

> x x x The parties having conformed to the "blanket mortgage clause" or "dragnet clause," it is reasonable to conclude that they also agreed to an implied understanding that subsequent loans need not be secured by other securities, as the subsequent loans will be secured by the first mortgage. In other words, the sufficiency of the first security is a corollary component of the "dragnet clause." But of course, there is no prohibition, as in the mortgage contract in issue, against contractually requiring other securities for the subsequent loans. Thus, when the mortgagor takes another loan for which another security was given it could not be inferred that such loan was made in reliance solely on the original security with the "dragnet clause," but rather, on the new security given. This is the "reliance on the security test."
>
> x x x Accordingly, finding a different security was taken for the second loan no intent that the parties relied on the security of the first loan could be inferred, so it was held. The rationale involved, the court said, was that the "dragnet clause" in the first security instrument constituted a continuing offer by the borrower to secure further loans under the security of the first security instrument, and that when the lender accepted a different security he did not accept the offer.[17]

Although the facts in *Prudential Bank* were not entirely on all fours with those of this case because the prior mortgage in *Prudential Bank* was sought to be enforced against a subsequent loan already secured by other securities, the logic in *Prudential Bank* is applicable here. The execution of the subsequent mortgage by the parties herein to secure the subsequent loan was an indication that they had intended to treat each loan as distinct from the other, and that they had intended to secure each of the loans individually and separately.

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[16] G.R. No. 150197, July 28, 2005, 464 SCRA 353.

[17] *Id.* at 366.

We further concur with the CA and the RTC in their holding that the mortgage contracts executed by the Spouses Alonday were contracts of adhesion exclusively prepared by the petitioner. Under Article 1306 of the *Civil Code*, the contracting parties "*may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy*." This is an express recognition by the law of the right of the people to enter into all manner of lawful conventions as part of their safeguarded liberties. The objection against a contract of adhesion lies most often in its negation of the autonomy of the will of the parties in contracts. A contract of adhesion, albeit valid, becomes objectionable only when it takes undue advantage of one of the parties – the weaker party – by having such party just adhere to the terms of the contract. In such situation, the courts go to the succor of the weaker party by construing any obscurity in the contract against the party who prepared the contract, the latter being presumed as the stronger party to the agreement, and as the party who caused the obscurity.[18]

To reiterate, in order for the all-embracing or dragnet clauses to secure future and other loans, the loans thereby secured must be sufficiently described in the mortgage contract. Considering that the agricultural loan had been pre-existing when the mortgage was constituted on the property covered by TCT No. T-66139, it would have been easy for the petitioner to have expressly incorporated the reference to such agricultural loan in the mortgage contract covering the commercial loan. But the petitioner did not. Being the party that had prepared the contract of mortgage, its failure to do so should be construed that it did not at all contemplate the earlier loan when it entered into the subsequent mortgage.

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[18] *Philippine National Bank v. Manalo*, G.R. No. 174433, February 24, 2014, 717 SCRA 254, 269-270.

Anent the value of the property covered by TCT No. T-66139, the findings of the RTC on the valuation were as follows:

> Considering that the property is located at the junction of the roads leading to Toril and Calinan districts with big establishments all around, plaintiffs claim that at the time of the filing of this case which was in 1994, the reasonable market value of the land was ₱1,200.00 per square meter. To date, the value could reasonably be ₱3,000.00 per square meter.[19]

Opining that the respondents should be indemnified the value of the loss suffered from the illegal foreclosure of the property covered by TCT No. T-66139, the CA adopted the valuation by the RTC on the established fair market value of the property being ₱3,000.00/square meter, for a total of ₱1,700,000.00 as damages to be awarded.[20]

The petitioner challenges the valuation as devoid of basis. It points out that the complaint of the Spouses Alonday had placed the value of the property at ₱1,200.00/square meter; and that respondent Alberto Alonday had testified during the trial that the value of the property had been only ₱1,200.00/square meter.

We uphold the challenge by the petitioner.

We are at a loss at how the RTC had computed and determined the valuation at ₱3,000.00/square meter. Such determination was easily the product of guesswork on the part of the trial court, for the language employed in its judgment in reference to such value was "could reasonably be."[21] On its part, the CA adverted to the valuation as "approximately ₱3,000.00,"[22] indicating that its own determination of the fair market value was of similar tenor

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[19] *Rollo*, p. 91.

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

[21] *Supra* note 6.

[22] *Supra* note 8.

as that by the RTC. Accordingly, the valuation by both lower courts cannot be upheld, for it is basic enough that in their determination of actual damages, the courts should eschew mere assertions, speculations, conjectures or guesswork;[23] otherwise, they would be guilty of arbitrariness and whimsicality.

Moreover, the courts cannot grant reliefs not prayed for in the pleadings or in excess of what is being sought by the party.[24]

To accord with what is fair, based on the records, we reduce the basis of the actual damages to ₱1,200.00/square meter. Such valuation is insulated from arbitrariness because it was made by the Spouses Alonday themselves in their complaint, rendering a total of ₱717,600.00 as actual damages.

The lower courts did not impose interest on the judgment obligation to be paid by the petitioner. Such interest is in the nature of compensatory interest, as distinguished from monetary interest. It is relevant to elucidate on the distinctions between these kinds of interest. In this regard, the Court has expounded in *Siga-an v. Villanueva*:[25]

> Interest is a compensation fixed by the parties for the use or forbearance of money. This is referred to as monetary interest. Interest may also be imposed by law or by courts as penalty or indemnity for damages. This is called compensatory interest. The right to interest arises only by virtue of a contract or by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.
>
> Article 1956 of the Civil Code, which refers to monetary interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. As can be gleaned from the foregoing provision, payment of monetary interest is allowed only

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[23] *De Guzman v. Tumolva*, G.R. No. 188072, October 19, 2011, 659 SCRA 725, 732.

[24] *Diona v. Balangue*, G.R. No. 173559, January 7, 2013, 688 SCRA 22, 35.

[25] G.R. No. 173227, January 20, 2009, 576 SCRA 696.

if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. Thus, we have held that collection of interest without any stipulation therefor in writing is prohibited by law.

x x x x x x x x x

There are instances in which an interest may be imposed even in the absence of express stipulation, verbal or written, regarding payment of interest. Article 2209 of the Civil Code states that if the obligation consists in the payment of a sum of money, and the debtor incurs delay, a legal interest of 12% *per annum* may be imposed as indemnity for damages if no stipulation on the payment of interest was agreed upon. Likewise, Article 2212 of the Civil Code provides that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent on this point.

All the same, the interest under these two instances may be imposed only as a penalty or damages for breach of contractual obligations. It cannot be charged as a compensation for the use or forbearance of money. In other words, the two instances apply only to compensatory interest and not to monetary interest.[26] x x x

The petitioner should be held liable for interest on the actual damages of ₱717,600.00 representing the value of the property with an area 598 square meters that was lost to them through the unwarranted foreclosure, the same to be reckoned from the date of judicial demand (*i.e.*, the filing of the action by the Spouses Alonday). At the time thereof, the rate was 12% *per annum*, and such rate shall run until June 30, 2013. Thereafter, or starting on July 1, 2013, the rate of interest shall be 6% *per annum* until full payment of the obligation, pursuant to the ruling in *Nacar v. Gallery Frames*,[27] which

[26] *Id.* at 704-705, 707.

[27] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 455-457.

took into consideration the lowering of interest rates by the Monetary Board.

In addition, Article 2212[28] of the *Civil Code* requires that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. Accordingly, the interest due shall itself earn legal interest of 6% *per annum* from the date of finality of the judgment until its full satisfaction, the interim period being deemed to be an equivalent to a forbearance of credit.[29]

WHEREFORE, the Court **AFFIRMS** the decision promulgated in C.A.-G.R. CV No. 60625 on August 31, 2005 in all respects subject to the following **MODIFICATIONS,** namely: (1) the award of ₱1,700,000.00 representing the value of the land covered by Transfer Certificate of Title No. T-66139 of the Registry of Deeds of Davao City is **REDUCED** to ₱717,600.00, the same to be paid by petitioner Philippine National Bank; (2) the principal amount of ₱717,600.00 shall earn interest of 12% *per annum* from the filing of the complaint until June 30, 2013, and interest of 6% *per annum* from July 1, 2013 until full payment; and (3) the interests thus earned shall also earn interest of 6% *per annum* from the finality of this decision until full payment.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[28] Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (1109a)

[29] *Planters Development Bank v. Lopez,* G.R. No. 186332, October 23, 2013, 708 SCRA 481, 501-503.

FIRST DIVISION

[G.R. No. 196134. October 12, 2016]

VALENTIN S. LOZADA, *petitioner, vs.* **MAGTANGGOL MENDOZA,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; A DIRECTOR OR CORPORATE OFFICER IS GENERALLY NOT SOLIDARILY LIABLE WITH THE CORPORATION FOR SEPARATION PAY DUE TO ITS EMPLOYEE.— A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as the corporate agents are not their personal liability but the direct responsibility of the corporation they represent. As a general rule, corporate officers are not held solidarily liable with the corporation for separation pay because the corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.

2. ID.; ID.; ID.; TWO REQUISITES THAT MUST CONCUR FOR A DIRECTOR OR OFFICER TO BE PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS; SUCH REQUISITES WERE LACKING IN CASE AT BAR.— To hold a director or officer personally liable for corporate obligations, two requisites must concur, to wit: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith. A perusal of the respondent's position paper and other submissions indicates that he neither ascribed gross negligence or bad faith to the petitioner nor alleged that the petitioner had assented to patently unlawful acts of the corporation. The respondent only

maintained that the petitioner had asked him to sign a new employment contract, but that he had refused to do the petitioner's bidding. The respondent did not thereby clearly and convincingly prove that the petitioner had acted in bad faith. Indeed, there was no evidence whatsoever to corroborate the petitioner's participation in the respondent's illegal dismissal. Accordingly, the twin requisites of allegation and proof of bad faith necessary to hold the petitioner personally liable for the monetary awards in favor of the respondent were lacking. x x x The petitioner might have acted in behalf of LB&C Services Corporation but the corporation's failure to operate could not be hastily equated to bad faith on his part. Verily, the closure of a business can be caused by a host of reasons, including mismanagement, bankruptcy, lack of demand, negligence, or lack of business foresight. Unless the closure is clearly demonstrated to be deliberate, malicious and in bad faith, the general rule that a corporation has, by law, a personality separate and distinct from that of its owners should hold sway. In view of the dearth of evidence indicating that the petitioner had acted deliberately, maliciously or in bad faith in handling the affairs of LB&C Services Corporation, and such acts had eventually resulted in the closure of its business, he could not be validly held to be jointly and solidarily liable with LB&C Services Corporation.

3. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENT, APPLIED.— The Labor Arbiter did not render any findings about the petitioner perpetrating the wrongful act against the respondent, or about the petitioner being personally liable along with LB&C Services Corporation for the monetary award. The lack of such findings was not assailed by the respondent. On its part, the NLRC did not discuss the matter at all in its decision of May 31, 2006, which ultimately attained finality. To hold the petitioner liable after the decision had become final and executory would surely alter the tenor of the decision in a manner that would exceed its terms. Moreover, by declaring that the petitioner's liability as solidary, the Labor Arbiter modified the already final and executory February 23, 2005 decision. The modification was impermissible because the decision had already become immutable, even if the modification was intended to correct erroneous conclusions of fact and law. The only recognized exceptions to the immutability of the decision are the corrections of clerical errors, the making

of so-called *nunc pro tunc* entries that cause no prejudice to any party, and where the judgment is void. None of such exceptions applied herein. It is fully warranted, therefore, that we quash and lift the *alias* writ of execution as a patent nullity by virtue of its not conforming to, or of its being different from and going beyond or varying the tenor of the judgment that gave it life. To insist on its validity would be defying the constitutional guarantee against depriving any person of his property without due process of law.

APPEARANCES OF COUNSEL

Genaro S. Jacosalem for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This appeal seeks the reversal of the decision promulgated on September 28, 2010,[1] whereby the Court Appeals (CA), in CA-G.R. SP No. 111722, set aside the decision of the National Labor Relations Commission (NLRC) upon finding that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction in reversing the ruling of the Labor Arbiter dated February 24, 2009,[2] and reinstated such ruling in favor of the respondent holding the petitioner liable for the satisfaction of the money judgment in favor of the respondent.

Antecedents

The factual and procedural antecedents are as follows:

On October 13, 1997, the petitioner Magtanggol Mendoza was employed as a technician by VSL Service Center, a single proprietorship owned and managed by Valentin Lozada.

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[1] *Rollo*, pp. 149-157; penned by Associate Justice Isaias Dicdican (retired), and concurred in by Associate Justice Stephen C. Cruz and Associate Justice Samuel H. Gaerlan.

[2] *Id*. at 128-129.

Sometime in August 2003, the VSL Service Center was incorporated and changed its business name to LB&C Services Corporation. Subsequently, the petitioner was asked by respondent Lozada to sign a new employment contract. The petitioner did not accede because the respondent company did not consider the number of years of service that he had rendered to VSL Service Center. From then on, the petitioner's work schedule was reduced to one to three days a week.

In December 2003, the petitioner was given his regular working schedule by the respondent company. However, on January 12, 2004, the petitioner was advised by the respondent company's Executive Officer, Angeline Aguilar, not to report for work and just wait for a call from the respondent company regarding his work schedule.

The petitioner patiently waited for the respondent company's call regarding his work schedule. However, he did not receive any call from it. Considering that his family depends on him for support, he asked his wife to call the respondent company and inquire on when he would report back to work. Still, the petitioner was not given any work schedule by the respondent company.

Aggrieved, the petitioner filed a complaint against the respondent company on January 21, 2004 for illegal dismissal with a prayer for the payment of his 13th month pay, service incentive leave pay, holiday pay and separation pay and with a claim for moral and exemplary damages, and attorney's fees. The case was docketed as NLRC NCR Case No. 00-01-00968-2004.

A mandatory conciliation conference was conducted, but to no avail, thus, they were ordered by the Labor Arbiter to submit their respective position papers.

In his Position paper dated March 2, 2004, the petitioner alleged that he was constructively dismissed as he was not given any work assignment for his refusal to sign a new contract of employment. He was dismissed from his work without any valid authorized cause. He was not given any separation pay for the services that he rendered for almost six (6) years that he worked with VSL Service Center. He thus claimed that his termination from employment was effected illegally, hastily, arbitrarily and capriciously.

In its Position paper, dated March 9, 2004, the respondent company vehemently denied the allegation of the petitioner that he was dismissed from employment. The petitioner was still reporting for work with

the respondent company even after he filed a complaint with the arbitration board of the NLRC up to February 10, 2004. It also denied that the petitioner was its employee since 1997. The truth of the matter, according to the respondent company, was that it employed the petitioner only on August 1, 2003 because the respondent company started its corporate existence only on August 27, 2002 and started its business operation on August 1, 2003. It further averred that respondent Valentin Lozada was not an officer or employee of the respondent company nor (sic) its authorized representative. The respondent company finally claimed that it was the petitioner who severed his relationship with it.[3]

On February 23, 2005, the Labor Arbiter declared the dismissal of the petitioner from employment as illegal, disposing thusly:

> WHEREFORE, premises considered, judgment is rendered declaring the dismissal of complainant as illegal and ordering his reinstatement with full backwages plus payment of his 13th month pay (less ₱500.00 pesos) and service incentive leave pay all computed three years backward, as follows:
>
> x x x x x x x x x
>
> SO ORDERED.[4]

LB&C Services Corporation appealed, but the NLRC dismissed the appeal for non-perfection thereof due to failure to deposit the required cash or surety bond. Thus, the Labor Arbiter's decision attained finality on August 4, 2006, and the entry of judgment was issued by the NLRC on August 16, 2006.

The respondent moved for the issuance of the writ of execution, which the Labor Arbiter granted on November 21, 2006.

The petitioner and LB&C Services Corporation filed a motion to quash the writ of execution,[5] alleging that there was no employer-employee relationship between the petitioner and the respondent; and that LB&C Services Corporation "has been

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[3] *Id*. at 150-152.

[4] *Id*. at 152.

[5] *Id*. at 108-110.

closed and no longer in operation due to irreversible financial losses."[6]

The Labor Arbiter denied the motion to quash the writ of execution on April 16, 2007.[7] In due course, the sheriff garnished ₱5,767.77 in the petitioner's deposit under the account of Valor Appliances Services at the Las Piñas Branch of the First Macro Bank.

On November 19, 2007, the Labor Arbiter directed the sheriff to proceed with further execution of the properties of the petitioner for the satisfaction of the monetary award in favor of the respondent.[8]

On December 19, 2007, the sheriff issued to the petitioner a notice of levy upon realty. The sheriff notified the Registry of Deeds of Las Piñas City on the levy made on the petitioner's real property with an area of 31.30 square meters covered by Transfer Certificate of Title No. T-43336 of that office.

LB&C Services Corporation moved for the lifting of the levy because the real property levied upon had been constituted by the petitioner as the family home;[9] and that the decision of the Labor Arbiter did not adjudge the petitioner as jointly and solidarily liable for the obligation in favor of the respondent.

After the Labor Arbiter denied its motion for the lifting of the levy on February 24, 2009,[10] LB&C Services Corporation appealed the denial to the NLRC, which, on May 29, 2009, reversed the Labor Arbiter, as follows:

> WHEREFORE, premises considered, respondents' appeal is hereby GRANTED. Accordingly, the order of the labor arbiter is hereby REVERSED and SET ASIDE.

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[6] *Id*. at 109.

[7] *Id*. at 112-114.

[8] *Id*. at 153-154.

[9] *Id*. at 154.

[10] *Id*.

As prayed for by the respondents, the levy constituted over such Las Piñas property which is covered by Transfer Certificate of Title No. (sic) is hereby LIFTED.

SO ORDERED.[11]

The respondent assailed the reversal by motion for reconsideration, which the NLRC thereafter denied.

Thence, a petition for *certiorari* was filed in the CA to assail the ruling of the NLRC on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

As stated, the CA promulgated the assailed decision on September 28, 2010 granting the petition for *certiorari*, and reinstating the Labor Arbiter's decision. It opined that the petitioner was still liable despite the fact that the Labor Arbiter's decision had not specified his being jointly and severally liable for the monetary awards in favor of the respondent; that LB&C Services Corporation, being an artificial being, must have an officer who could be presumed to be the employer, being the person acting in the interest of the corporate employer;[12] that with LB&C Services Corporation having already ceased its operation, the respondent could no longer recover the monetary benefits awarded to him, thereby rendering the entire procedure and the award nugatory; and that the petitioner was the corporate officer liable by virtue of his having acted on behalf of the corporation.

Hence, this appeal by the petitioner.

Issue

Was the petitioner liable for the monetary awards granted to the respondent despite the absence of a pronouncement of his being solidarily liable with LB&C Services Corporation?

Ruling of the Court

The appeal is meritorious.

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[11] *Id*. at 155.

[12] *Id*. at 157.

A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as the corporate agents are not their personal liability but the direct responsibility of the corporation they represent.[13] As a general rule, corporate officers are not held solidarily liable with the corporation for separation pay because the corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[14]

To hold a director or officer personally liable for corporate obligations, two requisites must concur, to wit: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith.[15]

A perusal of the respondent's position paper and other submissions indicates that he neither ascribed gross negligence or bad faith to the petitioner nor alleged that the petitioner had assented to patently unlawful acts of the corporation. The respondent only maintained that the petitioner had asked him to sign a new employment contract, but that he had refused to do the petitioner's bidding. The respondent did not thereby clearly and convincingly prove that the petitioner had acted in bad faith. Indeed, there was no evidence whatsoever to corroborate the petitioner's participation in the respondent's illegal dismissal. Accordingly, the twin requisites of allegation

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[13] *Polymer Rubber Corporation v. Salamuding*, G.R. No. 185160, July 24, 2013, 702 SCRA 153, 160.

[14] *Ever Electrical Manufacturing, Inc.(EEMI) v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local*, G.R. No. 194795, June 13, 2012, 672 SCRA 562, 569.

[15] *Polymer Rubber Corporation v. Salamuding*, *supra*, at 161.

and proof of bad faith necessary to hold the petitioner personally liable for the monetary awards in favor of the respondent were lacking.

The CA reinstated the Labor Arbiter's decision by relying on the pronouncement in *Restaurante Las Conchas v. Llego*,[16] where the Court held that when the employer corporation was no longer existing and the judgment rendered in favor of the employees could not be satisfied, the officers of the corporation should be held liable for acting on behalf of the corporation.[17]

A close scrutiny of *Restaurante Las Conchas* shows that the pronouncement applied the exception instead of the general rule. The Court opined therein that, as a rule, the officers and members of the corporation were not personally liable for acts done in the performance of their duties;[18] but that the exception instead of the general rule should apply because of the peculiar circumstances of the case. The Court observed that if the general rule were to be applied, the employees would end up with an empty victory inasmuch as the restaurant had been closed for lack of venue, and there would be no one to pay its liability because the respondents thereat claimed that the restaurant had been owned by a different entity that had not been made a party in the case.[19]

It is notable that the Court has subsequently opted not to adhere to *Restaurante Las Conchas* in the cases of *Mandaue Dinghow Dimsum House, Co., Inc. v. National Labor Relations Commission-Fourth Division*[20] and *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission.*[21]

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[16] G.R. No. 119085, September 9, 1999, 314 SCRA 24.

[17] *Id.* at p. 32.

[18] *Id*.

[19] *Ever Electrical Manufacturing, Inc.(EEMI) v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local, supra*, note 14, at 570.

[20] G.R. No. 161134, March 3, 2008, 547 SCRA 402.

[21] G.R. Nos. 170689 and 170705, March 17, 2009, 581 SCRA 598.

In *Mandaue Dinghow Dimsum House, Co., Inc.*, the Court declined to follow *Restaurante Las Conchas* because there was showing that the respondent therein, Henry Uytengsu, had acted in bad faith or in excess of his authority. It stressed that every corporation was invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it might be related; and that the doctrine of piercing the veil of corporate fiction must be resorted to with caution.[22] The Court noted that corporate directors and officers were solidarily liable with the corporation for the termination of employees done with malice or bad faith; and declared that bad faith did not connote bad judgment or negligence, but a dishonest purpose or some moral obliquity and conscious doing of wrong, or meant a breach of a known duty through some motive or interest or ill will, or partook of the nature of fraud.

In *Pantranco Employees Association*, the Court rejected the invocation of *Restaurante Las Conchas* and refused to pierce the veil of corporate fiction, explaining:

> As between PNB and PNEI, petitioners want us to disregard their separate personalities, and insist that because the company, PNEI, has already ceased operations and there is no other way by which the judgment in favor of the employees can be satisfied, corporate officers can be held jointly and severally liable with the company. Petitioners rely on the pronouncement of this Court in *A.C. Ransom Labor Union-CCLU v. NLRC* and subsequent cases.
>
> This reliance fails to persuade. We find the aforesaid decisions inapplicable to the instant case.
>
> For one, in the said cases, the persons made liable after the company's cessation of operations were the officers and agents of the corporation. The rationale is that, since the corporation is an artificial person, it must have an officer who can be presumed to be the employer, being the person acting in the interest of the employer. The corporation, only in the technical sense, is the employer. In the instant case, what is being made liable is another corporation (PNB) which acquired the debtor corporation (PNEI).

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[22] *Supra*, note 20, at 414.

Moreover, in the recent cases *Carag v. National Labor Relations Commission and McLeod v. National Labor Relations Commission*, the Court explained the doctrine laid down in AC Ransom relative to the personal liability of the officers and agents of the employer for the debts of the latter. In *AC Ransom*, the Court imputed liability to the officers of the corporation on the strength of the definition of an employer in Article 212(c) (now Article 212[e]) of the Labor Code. Under the said provision, employer includes any person acting in the interest of an employer, directly or indirectly, but does not include any labor organization or any of its officers or agents except when acting as employer. It was clarified in *Carag* and *McLeod* that Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. It added that the governing law on personal liability of directors or officers for debts of the corporation is still Section 31 of the Corporation Code.

More importantly, as aptly observed by this Court in *AC Ransom*, it appears that Ransom, foreseeing the possibility or probability of payment of backwages to its employees, organized Rosario to replace Ransom, with the latter to be eventually phased out if the strikers win their case. The execution could not be implemented against Ransom because of the disposition posthaste of its leviable assets evidently in order to evade its just and due obligations. Hence, the Court sustained the piercing of the corporate veil and made the officers of Ransom personally liable for the debts of the latter.

Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. **In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.**[23] [Bold emphasis supplied]

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[23] *Supra*, note 21, at 614-616.

The records of this case do not warrant the application of the exception. The rule, which requires malice or bad faith on the part of the directors or officers of the corporation, must still prevail. The petitioner might have acted in behalf of LB&C Services Corporation but the corporation's failure to operate could not be hastily equated to bad faith on his part. Verily, the closure of a business can be caused by a host of reasons, including mismanagement, bankruptcy, lack of demand, negligence, or lack of business foresight. Unless the closure is clearly demonstrated to be deliberate, malicious and in bad faith, the general rule that a corporation has, by law, a personality separate and distinct from that of its owners should hold sway. In view of the dearth of evidence indicating that the petitioner had acted deliberately, maliciously or in bad faith in handling the affairs of LB&C Services Corporation, and such acts had eventually resulted in the closure of its business, he could not be validly held to be jointly and solidarily liable with LB&C Services Corporation.

The CA imputed bad faith to LB&C Services Corporation in respect of the cessation of its operations because it still filed an appeal to the NLRC,[24] which the CA construed as evincing its intent to evade liability. For that reason, the CA deemed it mandatory to pierce the corporate fiction and then identified the petitioner as the person responsible for the payment of the respondent's money claims. However, the CA pointed out nothing else in the records that showed the petitioner as being responsible for the acts complained of. At the very least, we consider it to be highly improbable that LB&C Services Corporation deliberately ceased its operations if only to evade the payment of the monetary awards adjudged in favor of a single employee like the respondent.

In reinstating the decision of the Labor Arbiter, the CA, although conceding that the petitioner was not among those who should be liable for the monetary award, still went on to pierce the veil of corporate fiction and to declare as follows:

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[24] *Rollo,* p. 156.

Undoubtedly, respondent Lozada cannot be absolved from his liability as corporate officer. Although, as a rule, the officers and members of a corporation are not personally liable for the acts done in the performance of their duties, this rule admits of exceptions one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee. The corporate officer in such case should be held for acting on behalf of the corporation. Here, the respondent company already ceased its business operation.

x x x x x x x x x

x x x The petitioner's claim that respondent Lozada was the real owner of the LB & C Corporation is thus correct and tenable. The conclusion is bolstered by the fact that the respondent company never revealed who were the officers of the LB & C Corporation if only to pinpoint responsibility in the closure of the company that resulted in the dismissal of the petitioner from employment. Respondent Lozada is, therefore, personally liable for the payment of the monetary benefits due to the petitioner, its former employee.[25]

The Labor Arbiter did not render any findings about the petitioner perpetrating the wrongful act against the respondent, or about the petitioner being personally liable along with LB&C Services Corporation for the monetary award. The lack of such findings was not assailed by the respondent. On its part, the NLRC did not discuss the matter at all in its decision of May 31, 2006, which ultimately attained finality. To hold the petitioner liable after the decision had become final and executory would surely alter the tenor of the decision in a manner that would exceed its terms.

Moreover, by declaring that the petitioner's liability as solidary, the Labor Arbiter modified the already final and executory February 23, 2005 decision. The modification was impermissible because the decision had already become immutable, even if the modification was intended to correct erroneous conclusions of fact and law. The only recognized exceptions to the immutability of the decision are the corrections of clerical errors, the making of so-called *nunc*

[25] *Id*. at 158-159.

pro tunc entries that cause no prejudice to any party, and where the judgment is void.[26] None of such exceptions applied herein.

It is fully warranted, therefore, that we quash and lift the *alias* writ of execution as a patent nullity by virtue of its not conforming to, or of its being different from and going beyond or varying the tenor of the judgment that gave it life. To insist on its validity would be defying the constitutional guarantee against depriving any person of his property without due process of law.

In sum, there was no justification for holding the petitioner jointly and solidarily liable with LB&C Services Corporation to pay to the respondent the adjudged monetary award. To start with, the respondent had not alleged the petitioner's act of bad faith, whether in his complaint or in his position paper, or anywhere else in his other submissions before the Labor Arbiter, that would have justified the piercing of the veil of corporate identity. Hence, we reverse the CA.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on September 28, 2010; **ANNULS** and **SETS ASIDE** the order issued on April 16, 2007 by Labor Arbiter Antonio R. Macam; **QUASHES** and **LIFTS** the *alias* writ of execution; and **DIRECTS** the National Labor Relations Commission Labor Arbiter to implement with utmost dispatch the final and executory decision rendered on May 31, 2006 against the assets of LB&C Services Corporation only.

No pronouncement on costs of suit.

SO ORDERED.

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

Sereno, C.J., on leave.

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[26] *Alba v. Yupangco,* G.R. No. 188233, June 29, 2010, 622 SCRA 503, 508.

THIRD DIVISION

[G.R. No. 196670. October 12, 2016]

ALLIED BANKING CORPORATION, *petitioner, vs.* **SPOUSES RODOLFO and GLORIA MADRIAGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL OF THE COMPLAINT FOR FAILURE TO PROSECUTE, PROPER.— The failure of a plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested to obtain from the court the relief prayed for in his complaint; hence, the court is authorized to order the dismissal of the complaint on its own motion or on motion of the defendants. The presumption is not, however, by any means, conclusive because the plaintiff, on a motion for reconsideration of the order of dismissal, may allege and establish a justifiable cause for such failure. True, there is nothing in the Rules that sanctions the non-filing of an Amended Complaint. But the dismissal of the complaint by the trial court was not *per se* due to the non-filing of an amended complaint. A scrutiny of the records shows that the commitment to file the amended complaint was but a mere ruse to delay the proceedings. x x x It can be inferred from respondents' actuations that they were not serious in pursuing the case. In fact, we lend credence to the Bank's claim that respondents were employing dilatory tactics to thwart the foreclosure of their property. Apart from the failure to file the amended complaint as manifested and the numerous changing of counsels, respondents are deemed to have failed to comply with the order of the court to secure a new counsel within forty-five (45) days. Respondents' failure to prosecute is indicated, underscored even, by their failure to set the case for pre-trial. x x x The failure of respondents to promptly set the case for pre-trial, without justifiable reason, is tantamount to failure to prosecute. Respondents cannot [blame] their counsels because they too had been remiss in their duty to diligently pursue the case when

they failed to secure the services of a counsel within the given period. Respondents' laxity in attending to their case ultimately led to its dismissal. Indeed, respondents were in the brink of losing their property to foreclosure. This situation should all the more pursue the case relentlessly. The law aids the vigilant, not those who slumber on their rights. *Vigilantibus, sed non dormientibus Jura subverniunt.*

2. ID.; ID.; ID.; ID.; DISMISSAL OF THE CASE FOR FAILURE TO PROSECUTE RESTS ON THE SOUND DISCRETION OF THE TRIAL COURT; ABSENT PATENT ABUSE, THE DETERMINATION OF THE TRIAL COURT WILL NOT BE DISTURBED.— [T]he question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court. The true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. As to what constitutes "unreasonable length of time," this Court has ruled that it depends on the circumstances of each particular case and that "the sound discretion of the court" in the determination of the said question will not be disturbed, in the absence of patent abuse.

APPEARANCES OF COUNSEL

Oracion Barlis & Associates for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

PEREZ, *J.*:

This petition for review challenges the reinstatement and remand of Civil Case No. 2059 to the Regional Trial Court (RTC) of Bangued, Abra, Branch 2 by the Court of Appeals in its Decision[1] dated 19 October 2010 in CA-G.R. CV No. 83413.

[1] *Rollo*, pp. 100-110; Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Romeo F. Barza and Jane Aurora C. Lantion concurring.

The RTC had earlier dismissed the case for respondents' failure to prosecute.

The factual background is as follows:

Respondent Spouses Rodolfo and Gloria Madriaga obtained a ₱750,000.00 loan from Allied Bank (the Bank) secured by a real estate mortgage on their property. Respondents alleged to have religiously paid the loan from June 1996 to August 1999 through Leo Nolasco (Nolasco), the Bank's Creditor Investigator/ Appraiser, in the aggregate amount of ₱628,953.96. In July 1999, respondents converted the remaining balance of their loan, including interest, in the amount of ₱380,000.00 to a term loan. Payments were regularly coursed to Nolasco.

On 25 May 2001, respondents received a demand letter from the Bank for the payment of ₱399,898.56. Upon further inquiry, respondents discovered that said amount represented their unpaid obligation from June 2000 to May 2001. Respondents claimed to have paid for the same. They requested for a copy of the ledger and/or record of their loan obligation but the Bank ignored the same.

On 1 January 2002, the Bank filed a petition for extrajudicial foreclosure of mortgage over respondents'property. Respondents, through Atty. Wilfredo Santos (Atty. Santos), countered with a Complaint for Specific Performance with prayer for a Writ of Preliminary Injunction, before the RTC of Bangued, Abra, to enjoin the extrajudicial foreclosure and to compel the Bank to allow them to examine their loan record. The Bank, in turn, filed its Answer with Compulsory Counterclaim.

On 22 April 2002, Atty. Eliseo Cruz (Atty. Cruz) entered his appearance as new counsel of respondents and requested leave of court to amend the Complaint. The RTC gave the new counsel fifteen (15) days from receipt of the order, or until 21 May 2002, to file their Amended Complaint.[2] Instead, Atty. Cruz filed a Reply and Answer to the Bank's Counterclaim on 21 April 2002. On 10 May 2002, the Bank filed a Rejoinder.

[2] *Id*. at 40.

Respondents failed to file their Amended Complaint within the given period. During the 24 June 2002 hearing, Atty. Cruz explained that he just received the receipts from the original counsel, Atty. Santos; thus, he requested an extension. The case was reset to 5 August 2002.[3]

On 5 August 2002, a new counsel, Atty. Meliton Balagtey (Atty. Balagtey) appeared in behalf of respondents and requested additional time to study the case. Upon agreement of the parties, the case was reset to 21 October 2002.[4]

Claiming that no amended complaint had yet been filed, the Bank filed a Motion to Dismiss on 8 October 2002 on the ground of failure of respondents to comply with the Orders of the trial court.[5] Hence, respondents' counsel was directed by the trial court to file his Opposition/Comment.[6]

On 31 October 2002, respondents filed their Comment to Motion to Dismiss with Apology essentially stressing that the fault of the former counsel should not bind the present counsel and that the case should be heard on the merits. Atty. Balagtey also manifested he could not yet file the Amended Complaint.[7]

On 4 December 2002, Atty. Balagtey filed a Motion withdrawing his appearance as counsel for respondents. In said motion, Atty. Balagtey also asked that an order be issued to compel the Bank to produce the following documents in court: 1) Original copy of the loan ledger with Main Office of Allied Bank and that the copy of the loan ledger with Allied Bank Branch at Bangued, Abra; 2) Contracts of loan; 3) Promissory Notes; 4) Copy of the withdrawal and deposit slips; and 5) Duplicate copy of receipts of payment made.[8]

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[3] *Id*. at 41.

[4] *Id*. at 42.

[5] *Id*. at 43-46.

[6] *Id*. at 48.

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

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

During the 24 March 2003 hearing, the trial court granted the motion of Atty. Balagtey to withdraw from the case and gave respondents forty-five (45) days to secure the services of new counsel.[9]

In the 28 July 2003 hearing, respondents announced Atty. Narciso Bolislis of the Public Attorney's Office (PAO) as their new counsel but the latter did not enter his appearance on record.

On 7 August 2003, the trial court dismissed the case on the grounds of failure on the part of respondents to prosecute the case and to comply with the orders of the trial court. The dispositive portion of the Order[10] reads:

> IN VIEW HEREOF and as prayed for by [the Bank] this case is dismissed pursuant to Sec. 3, Rule 17 of the Rules of Court.[11]

Respondents, through their new counsel, the Public Attorney's Office (PAO), moved to reconsider the above order. The PAO stressed that the failure of respondents to present evidence was due to successive withdrawals and changes of their counsels. The PAO also explained its belated appearance was due to failure of respondents to meet the indigency test.[12]

On 15 April 2004, the trial court denied the motion for reconsideration for lack of merit. The trial court ruled that respondents' failure to prosecute their case for an unreasonable length of time cannot be justified by the successive withdrawals and changes of their counsel. The trial court held that respondents have blatantly abused the judicial system, and the leniency of the trial court and the Bank.[13]

Aggrieved, respondent appealed to the Court of Appeals arguing that the trial court gravely erred in dismissing the case for failure to prosecute considering that the successive

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[9] *Id.* at 60.

[10] Issued by Judge Corpus B. Alzate.

[11] *Rollo*, p. 63.

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

[13] *Id.* at 70-71.

withdrawals and changes of their counsels were not their fault; their engagement of PAO to provide them assistance was a manifest indication of their desire to prosecute the action; and their subsequent counsels were under no obligation to amend the complaint.

In a Decision dated 19 October 2010, the Court of Appeals reversed the trial court's 15 April 2004 Order affirming its earlier order dismissing the case. The dispositive portion reads:

> **WHEREFORE**, premises considered, the instant appeal is **GRANTED**. The Regional Trial Court's Order dated April 15, 2004 is **REVERSED** and **SET ASIDE**. The case (Civil Case No. 2059) is **REINSTATED** and **REMANDED** to the court of origin for continuance of the proceedings. The trial court is hereby directed to order its branch clerk of court to immediately set the case for pre-trial.[14]

The Court of Appeals found that the trial court's dismissal of the case was precipitate and unwarranted. The Court of Appeals observed that all previous resettings of the case were granted by the trial court without the objection of the Bank. The Court of Appeals found the dismissal of the Complaint too harsh and that the trial court should have, at most, waived the right of respondents to amend the Complaint. The Court of Appeals also did not find the delay of five (5) or eight (8) months before the setting of pre-trial as unreasonable.

The Court of Appeals also denied the motion for reconsideration filed by the Bank.

The Bank contends that respondents failed to exercise their utmost diligence and reasonable promptitude in prosecuting their action for an unreasonable length of time. The Bank points out that respondents did not promptly set the case for pre-trial; that they did not promptly amend their Complaint despite being given ample chances; that they did not also promptly engage the services of a counsel. The Bank expounds that respondents must promptly move ex parte that the case be set for pre-trial

[14] *Id*. at 109.

within five (5) days after the last pleading joining the issues has been filed and served. The Bank asserts that respondents' failure to file their announced Amended Complaint despite being given two chances to do so is inexcusable. The Bank emphasizes that respondents' dilatory tactics were meant to thwart the foreclosure of their property.

For their part, respondents insist that the delay in the proceeding was caused by the sucessive withdrawals and changes in their counsels which are beyond their control.

The Bank adds in its Reply that respondents failed to obey the following orders of the trial court:

1. 22 April 2002 Order giving Atty. Cruz fifteen (15) days to file the Amended Complaint;
2. 24 June 2002 Order for Atty. Cruz to file the Amended Complaint; and
3. 24 March 2003 Order for respondents to engage the services of new counsel.[15]

The lone issue to be resolved is whether the trial court correctly dismissed respondents' complaint for failure to prosecute. Stated otherwise, was the Court of Appeals correct in reinstating the case?

The petition is meritorious.

Under Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, the failure on the part of the plaintiff, without any justifiable cause, to comply with any order of the court or the Rules, or to prosecute his action for an unreasonable length of time, may result in the dismissal of the complaint either *motu proprio* or on motion by the defendant. There are three (3) instances when the trial court may dismiss an action *motu proprio*, namely: 1) where the plaintiff fails to appear at the time of the trial; 2) where he fails to prosecute his action for an unreasonable

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

length of time; and, 3) when he fails to comply with the rules or any order of the court.[16]

The failure of a plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested to obtain from the court the relief prayed for in his complaint; hence, the court is authorized to order the dismissal of the complaint on its own motion or on motion of the defendants. The presumption is not, however, by any means, conclusive because the plaintiff, on a motion for reconsideration of the order of dismissal, may allege and establish a justifiable cause for such failure.[17]

True, there is nothing in the Rules that sanctions the non-filing of an Amended Complaint. But the dismissal of the complaint by the trial court was not *per se* due to the non-filing of an amended complaint. A scrutiny of the records shows that the commitment to file the amended complaint was but a mere ruse to delay the proceedings. It was respondents themselves through Atty. Cruz who sought leave of court to file an amended complaint on 22 April 2002. At that time, the Bank had already filed its Answer to the original Complaint. And despite filing their Reply, respondents pursued their intention to file the amended complaint during the 24 June 2002 hearing. Come 5 August 2002, a new counsel, Atty. Balagtey, entered his appearance for respondents. Atty. Balagtey requested additional time to study the case, without however abandoning respondents' intention to file the amended complaint. The case was reset, not once but thrice in a span of four (4) months because respondents made repeated requests for time to file the amended complaint. Instead of filing the amended complaint for which additional time had been frequently requested, Atty. Balagtey filed a motion for issuance of an order requiring the Bank to produce certain records. In the same motion for which additional time had been requested as frequently done before, Atty. Balagtey surprisingly

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[16] *Goldloop Properties, Inc. v. Court of Appeals*, G.R. No. 99431, 11 August 1992, 212 SCRA 498, 505.

[17] *Malayan Insurance, Co., Inc. v. Ipil International, Inc.*, 532 Phil. 70, 81-82 (2006).

prayed for his withdrawal from the case. Respondents appeared during the 24 March 2003 hearing without counsel. At that juncture, enough events have transpired indicating that respondents have abandoned the filing of the amended complaint and shifted to a different strategy. The trial court was kind enough to give respondents forty-five (45) days to secure the services of another counsel. But this leniency was once again abused by respondents when they failed to secure the services of a new counsel within the 45-day period. It is of record that, respondents' alleged new counsel did not enter his appearance during the 28 July 2003 hearing. This prompted the trial court, upon motion of the Bank, to issue an order dismissing the case for failure to prosecute. It can be inferred from respondents' actuations that they were not serious in pursuing the case. In fact, we lend credence to the Bank's claim that respondents were employing dilatory tactics to thwart the foreclosure of their property.

Apart from the failure to file the amended complaint as manifested and the numerous changing of counsels, respondents are deemed to have failed to comply with the order of the court to secure a new counsel within forty-five (45) days.

Respondents' failure to prosecute is indicated, underscored even, by their failure to set the case for pre-trial.

Section 1, Rule 18 of the 1997 Rules of Civil Procedure, as amended, mandates that after the last pleading has been served and filed, it is the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

In this case, respondents should have set the case for pre-trial right after their receipt of the Bank's Rejoinder in May 2002. Instead, respondents sought to delay the proceeedings by manifesting that an amended complaint will be filed. Respondents' offered excuse that their financial status forced the successive withdrawals of their counsels deserves scant consideration. PAO even admitted that respondents failed the indigency test. The failure of respondents to promptly set the case for pre-trial, without justifiable reason, is tantamount to failure to prosecute. Respondents cannot blame their counsels because they too had been remiss in their duty to

diligently pursue the case when they failed to secure the services of a counsel within the given period. Respondents' laxity in attending to their case ultimately led to its dismissal. Indeed, respondents were in the brink of losing their property to foreclosure. This situation should all the more pursue the case relentlessly. The law aids the vigilant, not those who slumber on their rights. *Vigilantibus, sed non dormientibus Jura subverniunt.*[18]

Finally, the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court. The true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. As to what constitutes "unreasonable length of time," this Court has ruled that it depends on the circumstances of each particular case and that "the sound discretion of the court" in the determination of the said question will not be disturbed, in the absence of patent abuse.[19]

Finding no patent abuse on the part of the trial court, we grant the petition.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated 19 October 2010 and Resolution dated 7 April 2011 of the Court of Appeals in CA-G.R. CV No. 83413 are hereby **REVERSED** and **SET ASIDE**. The 7 August 2003 Order of the Regional Trial Court, Branch 2 in Bangued, Abra, in Civil Case No. 2059 dismissing the Complaint is hereby **REINSTATED**.

SO ORDERED.

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

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[18] *Pangasinan v. Disonglo-Almazora*, G.R. No. 200558, 1 July 2015, 761 SCRA 220, 223.

[19] *Soliman v. Fernandez*, G.R. No. 176652, 4 June 2014, 724 SCRA 525, 531.

THIRD DIVISION

[G.R. No. 199480. October 12, 2016]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **TESS S. VALERIANO**, *respondent.*

SYLLABUS

TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); RECOMMENDATION OF THE REGIONAL DIRECTOR (RD) TO FILE A COMPLAINT CONSTITUTES AS COMPLIANCE WITH THE REQUIREMENT OF SECTION 220 OF THE NIRC WHICH REQUIRES APPROVAL OF THE BIR COMMISSIONER BEFORE FILING A CASE FOR RECOVERY OF TAXES.— The required approval of the Commissioner provided under Section 220 of the 1997 NIRC aside, Section 7 thereof allows the delegation of powers of the Commissioner to any subordinate official with the rank equivalent to a division chief or higher, save for the instances specified thereunder[.] x x x In *Republic v. Hizon*, the Court upheld the validity of a complaint for collection of tax deficiency which was signed by the Chief of the Legal Division of BIR Region 4 and verified by the RD of Pampanga. Citing Section 7 of the 1997 NIRC, the Court ratiocinated that "[n]one of the exceptions relates to the Commissioner's power to approve the filing of tax collection cases." x x x In the same manner, the approval of filing of a criminal action is not one of the non-delegable functions of the Commissioner. As previously stated, the petitioner had earlier submitted a written recommendation from the RD to file the instant case against Valeriano. Therefore, the recommendation of the RD to file the instant case constitutes as compliance with the requirement under Section 220 of the 1997 NIRC.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by the People of the Philippines (petitioner) assailing the Decision[2] dated November 18, 2011 of the Court of Tax Appeals (CTA) *en banc* in CTA EB Criminal Case No. 010. The CTA *en banc* sustained the Resolutions dated November 23, 2009[3] and June 1, 2010[4] of the CTA Special First Division which dismissed the criminal case against Tess S. Valeriano (Valeriano).

Antecedent Facts

On February 9, 2006, the Regional Director (RD) of the Bureau of Internal Revenue (BIR), Revenue Region No. 6, wrote a Letter[5] to the City Prosecutor of Manila, recommending the criminal prosecution of Valeriano as president/authorized officer of the Capital Insurance & Surety Co., Inc. (Corporation) for failure to pay the following internal revenue tax obligations of the Corporation in violation of Section 255,[6] in relation to Section

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

[2] CTA *en banc rollo*, pp. 67-75.

[3] CTA Special First Division *rollo*, pp. 32-33.

[4] *Id*. at 61-64.

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

[6] **Sec. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation*. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000[.00]) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

253(d)[7] and Section 256,[8] of the 1997 National Internal Revenue Code (NIRC):

Kind of Tax	Assessment No./ Demand No.	Year	Date	Amount
Def. Income Tax	34-2000	2000	January 14, 2004	₱ 12,541,339.18
Def[.] VAT	34-2000	2000	January 14, 2004	16,296,946.70
Def. EWT	34-2000	2000	January 14, 2004	4,397,619.73
Def. DST	34-2000	2000	January 14, 2004	17,513,440.24[9]

Thus, an Information[10] was filed with the CTA by Assistant City Prosecutor Suwerte L. Ofrecio-Gonzales (Assistant City Prosecutor Ofrecio-Gonzales) on July 9, 2009 against Valeriano

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Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000[.00]) but not more than Twenty thousand pesos (₱20,000[.00]) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[7] Sec. 253. ***General Provisions.***—

x x x x x x x x x

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

x x x x x x x x x

[8] **Sec. 256.** *Penal Liability of Corporations*. — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (₱50,000[.00]) but not more than One hundred thousand pesos (₱100,000[.00]).

[9] CTA Special First Division *rollo*, p. 4.

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

for violation of Section 255, in relation to Section 253(d) and Section 256, of the 1997 NIRC.

On August 4, 2009, the CTA First Division issued a Resolution,[11] whereby Assistant City Prosecutor Ofrecio-Gonzales was ordered to submit within five days from receipt thereof proof that the filing of the criminal case was with the written approval of the BIR Commissioner, and not by the RD, in compliance with Section 220[12] of the 1997 NIRC, as amended.

In a Resolution[13] dated September 28, 2009, the CTA First Division ordered Assistant City Prosecutor Ofrecio-Gonzales to comply with the earlier resolution, within a final and non-extendible period of five days from receipt of the Resolution.

However, Assistant City Prosecutor Ofrecio-Gonzales failed to comply with the order to submit the approval of the Commissioner (to file the criminal action), as required. Consequently, the CTA First Division, through a Resolution[14] dated November 23, 2009, dismissed the case against Valeriano for failure to prosecute.

On January 29, 2010, a Special Attorney from the Legal Division of BIR Revenue Region No. 6 filed an "Entry of Appearance with Leave to Admit Manifestation and Motion for Reconsideration."[15] Attached thereto was a

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[11] Signed by Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista and Caesar A. Casanova; *id*. at 26-27.

[12] **Sec. 220.** *Form and Mode of Proceeding in Actions Arising under this Code*. — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

[13] CTA Special First Division *rollo*, pp. 29-30.

[14] *Id*. at 32-33.

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

photocopy[16] of the supposed written approval of the BIR Commissioner to file the criminal case against Valeriano.

The CTA Special First Division then promulgated an Order[17] on February 9, 2010, requiring Valeriano to comment on the Motion with Leave to Admit Manifestation and Motion for Reconsideration filed by the counsel of the BIR Commissioner. However, the records disclose that Valeriano had already moved out of her address of record.[18]

On June 1, 2010, the CTA Special First Division issued a Resolution,[19] denying the petitioner's motion for reconsideration for lack of merit.

On July 1, 2010, the petitioner filed a Petition for Review[20] with the CTA *en banc*, arguing that it was not at fault when Assistant City Prosecutor Ofrecio-Gonzales failed to comply with the orders of the CTA Special First Division[21] and that the government is not bound by the errors committed by its agents.[22]

The CTA *en banc*, in its Resolution[23] dated August 9, 2010, directed Valeriano to file her comment. But as with the other documents sent to her, the resolution was returned unserved with the notation "RTS moved out." As Valeriano failed to file Comment,[24] the CTA *en banc*, through a Resolution[25] dated October 14, 2010, directed the parties

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[16] *Id.* at 43-44.

[17] *Id.* at 57.

[18] *Id.*

[19] *Id.* at 61-64.

[20] CTA *en banc rollo*, pp. 4-14.

[21] *Id.* at 12.

[22] *Id.* at 12-A.

[23] *Id.* at 43-44.

[24] *Id.* at 45.

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

to submit their respective memoranda. Only the petitioner filed a Memorandum,[26] after which the case was submitted for decision.[27]

The CTA *en banc* rendered its Decision[28] on November 18, 2011, denying the petition. The dispositive portion thereof reads as follows:

> **WHEREFORE**, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Resolutions dated November 23, 2009 and June 1, 2010 are hereby **AFFIRMED with MODIFICATION that the DISMISSAL is without prejudice.**
>
> **SO ORDERED**.[29]

In sustaining the dismissal of the case, the CTA *en banc* noted that the petitioner failed to comply with the Resolutions dated August 4, 2009 and September 28, 2009 of the CTA Special First Division. While the petitioner did attach to its motion for reconsideration an alleged written approval of the BIR Commissioner,[30] it was merely a photocopy which was hardly readable. Hence, there was no compliance with the resolutions even when the lawyer of the BIR, deputized as special prosecutor, took over in the filing of the motion for reconsideration.[31]

Ergo, this petition with the lone assignment of error:

> **THE HONORABLE CTA *EN BANC* ERRED IN RENDERING ITS DECISION DATED NOVEMBER 18, 2011, DENYING THE PETITION FOR REVIEW FOR THE PETITIONER'S SUPPOSED FAILURE TO PROSECUTE**.[32]

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[26] *Id*. at 49-60.

[27] *Id*. at 63-64.

[28] *Id*. at 67-75.

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

[30] *Id*. at 32-33.

[31] *Id*. at 74.

[32] *Rollo*, p. 18.

Ruling of the Court

The records of the case reveal that, indeed, the petitioner had earlier submitted a letter[33] of the RD of BIR Revenue Region No. 6, recommending the criminal prosecution of Valeriano. This letter was attached to the Information along with other documents pertinent to the case.[34] However, this was not deemed as compliance with Section 220, as the letter was not from the BIR Commissioner himself.

After the dismissal decreed by the CTA Special First Division, the petitioner, through a motion for reconsideration, presented an alleged copy of the written approval[35] dated July 2006 signed by then BIR Commissioner Jose Mario C. Buñag. Yet, as the CTA *en banc* found, the contents of the photocopied letter were faded and almost imperceptible.

The prerequisite approval of the BIR Commissioner in the filing of a civil or criminal action is provided under Section 220 of the 1997 NIRC, which states that:

> **Sec. 220.** *Form and Mode of Proceeding in Actions Arising under this Code*. – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.** (Emphasis ours)

The required approval of the Commissioner provided under Section 220 of the 1997 NIRC aside, Section 7 thereof allows the delegation of powers of the Commissioner to any subordinate official with the rank equivalent to a division chief or higher, save for the instances specified thereunder, *viz*:

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[33] CTA Special First Division *rollo*, pp. 4-6.

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

[35] CTA Special First Division *rollo*, pp. 43-44.

Section 7. *Authority of the Commissioner to Delegate Power*. – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the **rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* **That the following powers of the Commissioner shall not be delegated:**

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: *Provided, however*, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (₱500,000[.00]) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of [F]inance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept. (Emphasis and underlining ours)

In *Republic v. Hizon*,[36] the Court upheld the validity of a complaint for collection of tax deficiency which was signed by the Chief of the Legal Division of BIR Region 4 and verified by the RD of Pampanga. Citing Section 7 of the 1997 NIRC, the Court ratiocinated that "[n]one of the exceptions relates to the Commissioner's power to approve the filing of tax collection cases."[37]

[36] 378 Phil. 330 (1999).

[37] *Id*. at 338.

The Court made a similar pronouncement in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*,[38] where the authority of the Chief of the BIR Accounts Receivable and Billing Division to issue a demand letter was questioned. The Court ruled that "[t]he general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the [NIRC] enumerated in Section 7."[39] The act of issuance of the demand letter by the Chief of the Accounts Receivable and Billing Division did not fall under any of the exceptions that have been specified as non-delegable.[40]

In the same manner, the approval of filing of a criminal action is not one of the non-delegable functions of the Commissioner. As previously stated, the petitioner had earlier submitted a written recommendation from the RD to file the instant case against Valeriano. Therefore, the recommendation of the RD to file the instant case constitutes as compliance with the requirement under Section 220 of the 1997 NIRC.

Notwithstanding the foregoing, the petitioner is cautioned to take the initiative of periodically checking on the progress of its cases[41] to avoid a similar instance where its counsel's negligence or failure to comply with court orders would result to delay or worse, constitute as bar in the prosecution of criminal tax cases.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated November 18, 2011 of the Court of Tax Appeals *en banc* in CTA EB Criminal Case No. 010, as well as the Resolutions dated November 23, 2009 and June 1, 2010 of the

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[38] 513 Phil. 317 (2005).

[39] *Id*. at 325.

[40] *Id*. at 326.

[41] *Macondray & Co., Inc. v. Provident Insurance Corporation*, 487 Phil. 158, 161 (2004).

Court of Tax Appeals Special First Division in CTA Case No. O-145, are **REVERSED and SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals for further proceedings.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 200087. October 12, 2016]

YOLANDA LUY *y* GANUELAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ACCORDED GREAT RESPECT.— [T]he factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions on the credibility of the witnesses on which said findings were anchored are accorded great respect. This great respect rests in the trial court's first-hand access to the evidence presented during the trial, and in its direct observation of the witnesses and their demeanor while they testify on the occurrences and events attested to. Absent any showing of a fact or circumstance of weight and influence that would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings on and assessment of the credibility of witnesses made by the trial court are binding on the appellate tribunal. Unlike the appellate court, the trial court has the unique opportunity of such personal observation. The respect for the latter court's factual findings particularly

deepens once the appellate court has affirmed such factual findings, for the latter, performing its sworn duty to re-examine the trial records as thoroughly as it could in order to uncover any fact or circumstances that could impact the verdict in favor of the appellant, is then presumed to have uncovered none sufficient to undo or reverse the conviction. As such, the lower courts' unanimous factual findings are generally binding upon the Court which is not a trier of facts. Upon review, the Court has not found any valid reason to disturb the factual findings of the RTC and the CA.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ESSENTIAL ELEMENTS FOR A SUCCESSFUL PROSECUTION OF ILLEGAL POSSESSION OF DANGEROUS DRUGS, SUFFICIENTLY ESTABLISHED.— [A] successful prosecution for the illegal possession of dangerous drugs in violation of Section 11 of R. A. No. 9165 requires that the following essential elements of the offense be established, namely: (1) the accused is in possession of an item or object identified as a prohibited drug; (2) her possession is not authorized by law; and (3) she freely and consciously possessed the drug. x x x [A]ll the essential elements of illegal possession of dangerous drugs were established. To start with, she was caught in the voluntary possession of the *shabu*. And, secondly, she presented no evidence about her being authorized to possess the *shabu*. Worthy to reiterate is that her mere possession of the *shabu* constituted the crime itself. Her *animus possidendi* – the intent to possess essential in crimes of mere possession like this – was established beyond reasonable doubt in view of the absence of a credible explanation for the possession.

3. ID.; ID.; ID.; PROPER PENALTY.— [T]he correct penalty was an indeterminate sentence whose minimum should not be less than the minimum of 12 years and one day prescribed by Section 11(3), R.A. No. 9165, supra, and whose maximum should not exceed the maximum of 20 years as also prescribed by Section 11(3), R.A. No. 9165, supra. x x x Considering that neither the offense committed nor the imposable penalty was expressly exempt from the coverage of the *Indeterminate Sentence Law* pursuant to Section 2 thereof, the imposition of the indeterminate sentence was mandatory. x x x To conform with the *Indeterminate*

Sentence Law, therefore, the indeterminate sentence should be 12 years and one day, as minimum, to 14 years, as maximum.

4. ID.; ID.; ID.; ID.; SUBSIDIARY IMPRISONMENT CANNOT BE IMPOSED WHERE THE PRINCIPAL PENALTY WAS HIGHER THAN IMPRISONMENT FOR SIX YEARS.— The other error of the lower courts was in imposing subsidiary imprisonment should the petitioner be unable to pay the fine. The imposition of subsidiary imprisonment, which is a subsidiary personal liability of a person found guilty by final judgment who has no property with which to meet the fine, is based on and in accord with Article 39 of the *Revised Penal Code*, a provision that is supplementary to special laws (like R.A. No. 9165) unless the latter should specially provide the contrary. But subsidiary imprisonment cannot be imposed on the petitioner because her principal penalty, supra, was higher than *prision correccional* or imprisonment for six years. x x x To repeat, the RTC's imposition of subsidiary imprisonment "in case of inability to pay the fine" of ₱300,000.00 was invalid and legally unenforceable. In view of the foregoing, the petitioner is ordered to suffer the modified penalty of an indeterminate sentence of 12 years and one day, as minimum, to 14 years, as maximum, and to pay a fine of ₱300,000.00, without subsidiary imprisonment in case of her insolvency.

APPEARANCES OF COUNSEL

The Law Firm of Penullar & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case involves the criminal attempt by the petitioner to smuggle dangerous drugs (*shabu*) inside a detention facility to her detained husband by submerging the packets of *shabu* inside a plastic jar filled with strawberry juice and cracked ice. The attempt failed because of the alacrity of the lady guard manning the entrance of the jail compound.

The Case

Under appeal is the decision promulgated on August 31, 2011,[1] whereby the Court of Appeals (CA) affirmed in CA-G.R. CR No. 33057 the judgment rendered on September 18, 2009 by the Regional Trial Court (RTC), Branch 74, in Olongapo City finding the petitioner guilty beyond reasonable doubt of illegal possession of six heat-sealed transparent plastic sachets containing methamphetamine hydrochloride (*shabu*) with a total net weight of approximately 2.60 grams.[2]

Antecedents

The Office of the City Prosecutor in Olongapo City initiated the prosecution through the information filed in the RTC charging the petitioner with violation of Section 11, Article II, Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), alleging:

> That on or about the twenty-fifth (25th) day of October 2004, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in her effective possession and control six (6) heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride otherwise known as 'Shabu' with an approximate total weight of Two Gram (sic) and Six Tenth (2.6) of a gram which is a dangerous drugs (sic), said accused not having the corresponding license or prescription to possess said dangerous drugs. (sic)
>
> CONTRARY TO LAW.[3]

The CA narrated the factual and procedural antecedents, *viz.*:

During the trial, the prosecution presented the lone testimony of Jail Officer 3 Myrose Joaquin, while the accused-appellant testified for the defense.

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[1] *Rollo*, pp. 18-26; penned by Associate Justice Rodil V. Zalameda, with the concurrence of Associate Justice Amelita G. Tolentino (retired) and Associate Justice Normandie B. Pizarro.

[2] *Id*. at pp. 28-35; penned by Acting Presiding Judge Clodualdo M. Monta.

[3] *Id*. at 19.

As part of her testimony, JO3 Joaquin claimed that on 25 October 2004, she was doing her usual duty as female guard at the gate of the Bureau of Jail Management Bureau Olongapo City. When she searched the effects of accused-appellant for possible contrabands, her attention was called on the strawberry juice placed in a white container full of cracked ice inside. When she was asked what was unusual about the juice, JO3 Joaquin answered that accused-appellant can make the juice inside if she wanted to. To quell her suspicion, JO3 Joaquin asked accused-appellant if she could transfer it in another container but accused-appellant refused. JO3 Joaquin insisted, nevertheless. They then went to the guardhouse and transferred the juice into a bowl. As the ice inside scattered, the illegal drugs were revealed. Accused-appellant allegedly pleaded for her not to report the matter to the jail warden, but JO3 Joaquin ignored her plea. After bringing accused-appellant to the jail warden, they brought the confiscated items to the laboratory for examination. The examination revealed that the confiscated items were positive for methamphetamine hydrochloride.

JO3 Joaquin also identified the accused-appellant in court and the confiscated items and claimed that they can identify them to be the same items seized from accused-appellant because of the markings she placed thereon.

On cross-examination, JO3 Joaquin explained that the heat-sealed plastic sachets were wrapped with a plastic and two (2)-peso coin. She also admitted that she placed accused-appellant on a close watch because even prior to the incident, accused-appellant would bring with her ready-made juice, making her think that accused-appellant was peddling illegal drugs inside the prison. Finally, she claimed that she never had a misunderstanding with accused-appellant prior to the date of the incident.

Accused-appellant, on the other hand, claimed that on 25 October 2004, she was at the BJMP to visit her husband, Nestor, a prisoner therein. As she was about to go inside the compound, a certain Melda called her and requested that she give the juice to her husband, a certain Bong, who was also a prisoner at the BJMP. Accused-appellant initially declined and advised Melda to go personally so she could talk to her husband. Melda, however, was supposedly in a hurry as she still had to fetch her child. Melda allegedly also had no identification at that time. Because of Melda's insistence, accused-

appellant acceded to her request and got Melda's plastic box containing a Tupperware and a juice container. When she was asked who could corroborate this story, accused-appellant claimed that nobody saw Melda handed (sic) to her the juice container as she had no companion at that time.

Accused-appellant further stated that after receiving Melda's items, she already went inside the compound and went passed (sic) through the routine security inspection. When JO3 Joaquin transferred the juice into a bowl, she saw a plastic that contained two (2) coins. Thereafter, JO3 Joaquin brought her to the office of the BJMP. After a while, she was detained.

On cross-examination, accused-appellant admitted that her husband was convicted of a drug-related case and that she, herself, was once detained before. She did not know the full name of Melda or her husband but she had seen them in the past inside the jail. She also admitted that there can be no dispute that the drugs were found in her possession but maintained that the same came from Melda.[4]

Judgment of the RTC

After the trial, the RTC rendered judgment on September 18, 2009 convicting the petitioner as charged,[5] disposing thusly:

WHEREFORE, this Court finds accused Yolanda Luy y Ganuelas guilty beyond reasonable doubt of violation of Section 11, Article II, R.A. 9165 and is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day and to pay a fine of ₱300,000.00 with subsidiary imprisonment in case of inability to pay the fine. The illegal drug confiscated from the accused is hereby ordered to be turned over to the Philippine Drug and (sic) Enforcement Agency (PDEA) for disposition in accordance with law.

SO ORDERED.[6]

Decision of the CA

The petitioner appealed, but the CA affirmed the conviction through the now assailed decision, holding:

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

[5] *Supra* note 2.

[6] *Rollo,* p. 22.

WHEREFORE, premises considered, the instant Appeal is **DENIED**. The assailed Decision of the court a quo is **AFFIRMED IN TOTO.**

SO ORDERED.[7]

Issue

In this appeal, the petitioner insists that the CA erred in affirming her conviction despite the failure of the Prosecution to show that arresting officer JO3 Myrose Joaquin had faithfully complied with the requirement on the chain of custody under Section 21 of R.A. No. 9165; that, accordingly, the packets of *shabu* presented in court as evidence were not shown to be the same substances recovered from her; that, moreover, JO3 Joaquin claimed to have brought the substances herself to the crime laboratory for chemical examination, but did not mention the person who had received the same from her at the laboratory; and that no inventory of the seized substances was made and no any pictures of them were taken at the point of arrest.

Ruling of the Court

The appeal lacks merit.

First of all, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions on the credibility of the witnesses on which said findings were anchored are accorded great respect. This great respect rests in the trial court's first-hand access to the evidence presented during the trial, and in its direct observation of the witnesses and their demeanor while they testify on the occurrences and events attested to.[8] Absent

[7] *Id.* at 26.

[8] *Gulmatico v. People*, G.R. No. 146296, October 15, 2007, 536 SCRA 82, 95; *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Perez v. People*, G.R. No. 150443, January 20, 2006,

any showing of a fact or circumstance of weight and influence that would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings on and assessment of the credibility of witnesses made by the trial court are binding on the appellate tribunal.[9] Unlike the appellate court, the trial court has the unique opportunity of such personal observation. The respect for the latter court's factual findings particularly deepens once the appellate court has affirmed such factual findings, for the latter, performing its sworn duty to re-examine the trial records as thoroughly as it could in order to uncover any fact or circumstances that could impact the verdict in favor of the appellant, is then presumed to have uncovered none sufficient to undo or reverse the conviction. As such, the lower courts' unanimous factual findings are generally binding upon the Court which is not a trier of facts.[10]

Upon review, the Court has not found any valid reason to disturb the factual findings of the RTC and the CA.

Secondly, a successful prosecution for the illegal possession of dangerous drugs in violation of Section 11 of R. A. No. 9165 requires that the following essential elements of the offense be established, namely: (1) the accused is in possession of an item or object identified as a prohibited drug; (2) her possession is not authorized by law; and (3) she freely and consciously possessed the drug.[11]

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479 SCRA 209, 219-220; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 153-154; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343, 349; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164, 174; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 265-266; *People v. Santiago*, G.R. Nos. 137542-43, January 20, 2004, 420 SCRA 248, 256.

[9] *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489, 495-496.

[10] *People v. Prajes*, G.R. No. 206770, April 2, 2014, 720 SCRA 594, 601, citing *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 64-65.

[11] *People v. Dela Cruz*, G.R. No. 182348, November 20, 2008, 571 SCRA 469, 474-475.

The petitioner, whose husband, Nestor, was a detainee in the Olongapo City jail, was caught in the actual illegal possession of the *shabu* involved herein as she was entering the gate of the jail compound by JO3 Joaquin, the female guard, during the latter's routine inspection of her person and personal belongings on October 25, 2004. JO3 Joaquin, as the designated searcher of female visitors, conducted the search in the presence of other jail guards. Noticing the round white-colored plastic jar labeled *Tang Orange* filled with cracked ice and strawberry juice, she insisted that the petitioner transfer the strawberry juice into another container, but the latter resisted. JO3 Joaquin and a fellow jail guard then brought the jar inside the guardhouse with the petitioner in tow, and there emptied its contents into a bowl. Upon removing the cracked ice, the jail guards discovered the plastic material containing two ₱1 coins inside the jar. At that point, the petitioner pleaded with them not to report their discovery to the jail warden, but JO3 Joaquin ignored her. The guards immediately haled her before the warden along with the plastic material and its contents. Opening the plastic material in the presence of the petitioner, they found the six heat-sealed transparent plastic sachets with suspected *shabu* inside. Under the circumstances, the petitioner was arrested *in flagrante delicto*.

At the time of confiscation on October 25, 2004, JO3 Joaquin marked the heat-sealed plastic sachets of *shabu* with her initials "MCJ/AO".[12] Thereafter, the request for laboratory examination was prepared by P./Chief Insp. Miguel Gallardo Corpus.[13] The request and the substances were delivered to the laboratory by PO1 C.M. Ballon. Later on, the PNP Crime Laboratory Service issued Chemistry Report No. D-0181-2004 (Exhibit C) through P./Sr. Insp. Arlyn M. Dascie, Forensic Chemist, attesting to the findings on the substances indicating the presence of methylamphetamine hydrochloride, or *shabu*.[14]

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[12] *Rollo*, p. 80.

[13] *Id*. at 58.

[14] *Id*. at 59.

The petitioner expectedly denied that the *shabu* belonged to her. Her sole explanation for why she had the *shabu* at the time was that a certain Melda had requested her to bring the jar of strawberry juice inside the jail compound for her husband, Bong, also a detainee, because Melda had supposedly forgotten to bring her identification card that day, and because she was then in a hurry to fetch her child.

The RTC after the trial and the CA on appeal rejected the petitioner's denial and explanation. We also reject them now. Denial, aside from being easily fabricated, has been the common excuse tendered by those arrested and prosecuted for the illegal possession of dangerous drugs. Under Section 11[15] of R.A. Act No. 9165, however, the mere possession of the dangerous drugs was enough to render the possessor guilty of the offense. Moreover, the denial by the petitioner, being self-serving and negative, did not prevail over the positive declarations of J03 Joaquin. In order for the denial to be accorded credence, it must be substantiated by strong and convincing evidence.[16] Alas, the petitioner did not present such evidence here. As to her explanation, she could have presented Melda herself to corroborate her story. Her word alone not enough because she had been caught in the actual possession of the *shabu* during the routinary search at the gate of the jail compound. As such, we cannot allow her denial to gain traction at all.[17]

In fine, all the essential elements of illegal possession of dangerous drugs were established. To start with, she was caught

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[15] Section 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, **who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof**:

x x x x x x x x x.

[16] *Portuguez v. People*, G.R. No. 194499, January 14, 2015, 746 SCRA 114, 125, citing *People v. Gonzaga*, G.R. No. 184952, October 11, 2010, 632 SCRA 551, 569.

[17] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 477.

in the voluntary possession of the *shabu*. And, secondly, she presented no evidence about her being authorized to possess the *shabu*. Worthy to reiterate is that her mere possession of the *shabu* constituted the crime itself. Her *animus possidendi* – the intent to possess essential in crimes of mere possession like this – was established beyond reasonable doubt in view of the absence of a credible explanation for the possession.[18]

Thirdly, the petitioner insists that the State did not prove the chain of custody of the *shabu*. In our view, however, her immediate admission of the possession of the *shabu* following her arrest *in flagranti delicto* bound her for, under the rules on evidence, the act, declaration or omission of a party as to a relevant fact was admissible against her.[19] Her admission renders her insistence irrelevant and inconsequential.

Finally, the CA affirmed the penalty fixed by the RTC of 12 years and one day of imprisonment and fine of ₱300,000.00 with subsidiary imprisonment in case of inability to pay the fine. The affirmance was erroneous for two reasons, namely: *one*, the penalty of imprisonment thus imposed was a straight penalty, which was contrary to Section 1 of the *Indeterminate Sentence Law*; and, *two*, mandating the subsidiary imprisonment was legally invalid and unenforceable.

The penalty for the crime committed by the petitioner is provided for in Section 11(3) of R.A. No. 9165, as follows:

> Section 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law,

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[18] *People v. Bontuyan*, G.R. No. 206912, September 10, 2014, 735 SCRA 49, 61.

[19] Rule 130 of the *Rules of Court* provides:

> Section 26. *Admissions of a party*. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to four hundred thousand pesos (₱400,000.00)**, if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or "shabu**", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Based on the provision, the correct penalty was an indeterminate sentence whose minimum should not be less than the minimum of 12 years and one day prescribed by Section 11(3), R.A. No. 9165, supra, and whose maximum should not exceed the maximum of 20 years as also prescribed by Section 11(3), R.A. No. 9165, supra. The imposition of the indeterminate sentence was required by Section 1 of the *Indeterminate Sentence Law*, *viz.*:

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**. *(As amended by Act No. 4225)*

Considering that neither the offense committed nor the imposable penalty was expressly exempt from the coverage of

the *Indeterminate Sentence Law* pursuant to Section 2[20] thereof, the imposition of the indeterminate sentence was mandatory.[21] The minimum and the maximum periods had a worthy objective, for, as the Court expounded in *Bacar v. Judge de Guzman, Jr.*:[22]

> The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record. *The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the RPC or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory*.

To conform with the *Indeterminate Sentence Law*, therefore, the indeterminate sentence should be 12 years and one day, as minimum, to 14 years, as maximum.

The other error of the lower courts was in imposing subsidiary imprisonment should the petitioner be unable to pay the fine. The imposition of subsidiary imprisonment, which is a subsidiary

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[20] Section 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (As amended by Act No. 4225, Aug. 8, 1935)

[21] *Argoncillo v. Court of Appeals*, G.R. No. 118806, July 10, 1998; 292 SCRA 313, 331; *Bacar v. De Guzman, Jr.*, A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328, 339; *People v. Lee, Jr.*, G.R. No. 66859, September 12, 1984, 132 SCRA 66, 67.

[22] *Supra*, at 340.

personal liability of a person found guilty by final judgment who has no property with which to meet the fine, is based on and in accord with Article 39 of the *Revised Penal Code*, a provision that is supplementary to special laws (like R.A. No. 9165) unless the latter should specially provide the contrary.[23] But subsidiary imprisonment cannot be imposed on the petitioner because her principal penalty, supra, was higher than *prision correccional* or imprisonment for six years. In this regard, Article 39 of the *Revised Penal Code* relevantly states:

> Article 39. *Subsidiary penalty.* — If the convict has no property with which to meet the fine mentioned in the paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:
>
> x x x x x x x x x
>
> 3. **When the principal imposed is higher than *prision correccional*, no subsidiary imprisonment shall be imposed upon the culprit**.
>
> x x x x x x x x x

To repeat, the RTC's imposition of subsidiary imprisonment "in case of inability to pay the fine" of ₱300,000.00 was invalid and legally unenforceable.

In view of the foregoing, the petitioner is ordered to suffer the modified penalty of an indeterminate sentence of 12 years and one day, as minimum, to 14 years, as maximum, and to pay a fine of ₱300,000.00, without subsidiary imprisonment in case of her insolvency.

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[23] Article 10 of the *Revised Penal Code* states:

> Article 10. *Offenses not subject to the provisions of this Code.*
>
> — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 31, 2011 in CA-G.R. CR No. 33057 subject to the **MODIFICATION** that the penalty of the petitioner is the indeterminate sentence of 12 years and one day, as minimum, to 14 years, as maximum, and to pay a fine of ₱300,000.00, without subsidiary imprisonment in case of her insolvency; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

Sereno, C.J., on leave.

THIRD DIVISION

[G.R. No. 211977. October 12, 2016]

MARIANO LIM, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF PRESIDENTIAL DECREE NO. 1612 (THE ANTI-FENCING LAW OF 1979); CRIME OF FENCING; ELEMENTS.— The following are the essential elements of the crime of fencing: "1. A crime of robbery or theft has been committed; 2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime; 3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and 4. There is on the part of the accused, intent to gain for himself or for another."

2. ID.; REVISED PENAL CODE; THEFT; ELEMENTS.— Theft under Article 308 of the Revised Penal Code has been defined as the taking of someone's property without the owner's consent, for his personal gain, and without committing any violence against or intimidation of persons or force, upon things. The elements of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

3. ID.; VIOLATION OF PRESIDENTIAL DECREE NO. 1612 (THE ANTI-FENCING LAW OF 1979); CRIME OF FENCING; TO ESTABLISH THE FIRST ELEMENT OF FENCING, SUFFICIENT PROOF OF OWNERSHIP OF THE SUBJECT PROPERTY MUST BE PRESENTED.— While the CA correctly ruled that conviction of the principal in the crime of theft is not necessary for an accused to be found guilty of the crime of fencing, we disagree with its ruling that the prosecution sufficiently proved the DPWH's ownership of the Komatsu Grader. During trial, the prosecution presented the testimony of Engr. Gulmatico, the project engineer for the SRRIP of the DPWH. Engr. Gulmatico testified on his discovery of the theft of one unit Komatsu Road Grader with engine number GD95L-55845 allegedly owned by the DPWH. However, except for his statement that the subject grader was procured by his office, Engr. Gulmatico failed to establish his or his office's ownership over the subject grader. x x x Even the Memorandum Receipt submitted by the prosecution and relied upon by the trial court is wanting. Nowhere in the Memorandum Receipt does it state that the subject grader is owned by the DPWH. The portions which should show the date acquired, property number, classification number, and unit value for the grader were left blank. At best, the Memorandum Receipt is a mere indicator that the subject grader was received by Engr. Gulmatico for his safekeeping and responsibility. Being the government agency in charge of construction projects, the DPWH is expected to have a database of all equipment and materials it uses for easy reference of its employees. The prosecution's failure to present a sufficient proof of ownership of the grader despite the many opportunities it had to do so places doubt on the

DPWH's claim of ownership. Thus, it cannot be said that the first element of fencing had been established. In fact, the prosecution even failed to conclusively establish that the grader had been stolen.

4. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; HEARSAY EVIDENCE; THE EXCLUSION THEREOF IS ANCHORED ON THE ABSENCE OF CROSS-EXAMINATION, DEMEANOR EVIDENCE, AND OATH.— Sec. 36, Rule 130 of the Rules of Court provides that witnesses can testify only with regard to facts of which they have personal knowledge; otherwise, their testimonies would be inadmissible for being hearsay. Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. Consequently, hearsay evidence, whether objected to or not, has no probative value unless it is shown that the evidence falls within any of the exceptions to the hearsay rule as provided in the Rules of Court. However, none of the exceptions applies to the present case.

5. ID.; ID.; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; A DULY NOTARIZED DOCUMENT, BY VIRTUE OF ITS NOTARIZATION, ENJOYS A PRESUMPTION OF REGULARITY.— On the presumption that fencing had been committed as provided by Sec. 5 of PD 1612, we rule that petitioner was able to overcome the same upon his presentation of the Affidavit of Ownership which he secured from Petronilo Banosing. Both the RTC and the CA failed to consider that the Affidavit of Ownership given by Petronilo Banosing to petitioner was a duly notarized document which, by virtue of its notarization, enjoys a presumption of regularity x x x. [T]o overcome the presumption of regularity of notarized documents, it is necessary to contradict it with "evidence that is clear, convincing and more than merely preponderant." Contrary to respondent's assertion, the ownership of the subject grader was not conclusively established by the prosecution.

6. CRIMINAL LAW; VIOLATION OF PRESIDENTIAL DECREE NO. 1612 (THE ANTI-FENCING LAW OF 1979); CLEARANCE REQUIRED UNDER SECTION 6; REQUISITES.— [T]he clearance stated in Sec. 6 of PD 1612 is only required if several conditions are met: *first*, that the person, store, establishment or entity is in the business of buying and selling of any good, article, item, object, or anything of value; *second*, that such thing of value was obtained from an unlicensed dealer or supplier thereof; and *third*, that such thing of value is to be offered for sale to the public. In the present case, the first and third requisites were not met. Nowhere was it established that petitioner was engaged in the business of buy and sell. Neither was the prosecution able to establish that petitioner intended to sell or was actually selling the subject grader to the public.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE PROSECUTION HAS THE DUTY TO PROVE EACH AND EVERY ELEMENT OF THE CRIME CHARGED IN THE INFORMATION TO WARRANT A FINDING OF GUILT FOR THE SAID CRIME.— [T]he conviction of petitioner violated his constitutional right to be informed of the nature and cause of the accusation against him. x x x The Information presumes that petitioner knew of the alleged theft of the subject grader, pertaining to the first part of the third element of the crime of fencing x x x. The trial court, however, convicted petitioner on the ground that he should have known that the subject grader was derived from the proceeds of theft, pertaining to the second part of the third element x x x. It is necessary to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove **each and every element of the crime charged in the information** to warrant a finding of guilt for the said crime. Furthermore, the information must correctly reflect the charges against the accused before any conviction may be made.

APPEARANCES OF COUNSEL

Miguel D. Larida for petitioner.
Office of the Solicitor General 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 seeking the reversal of the Decision[1] dated July 30, 2013 and Resolution[2] dated February 28, 2014 of the Court of Appeals (CA), which affirmed the Decision[3] dated February 17, 2009 of the Regional Trial Court (RTC), Branch 8 in Davao City, convicting petitioner Mariano Lim (Lim) for violating Presidential Decree No. 1612 (PD 1612), otherwise known as the Anti-Fencing Law of 1979.

The Facts

An Information dated June 27, 1997 charged Lim with the following:

> That on or about January 16, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then the proprietor of Basco Metal Supply located at Matina, Davao City, with intent to gain for himself, wilfully (sic), unlawfully and feloniously purchased and received for ₱400,000.00 one (1) unit Komatsu Road Grader with Chassis Model and Serial No. GD-51R-100049 and bearing an (sic) Engine Serial Number 6D951-55845 owned by Second Rural Road Improvement Project (SRRIP) PMO-DPWH of Isulan, Sultan Kudarat, being lodged for repair at the Facoma Compound of Poblacion Norala, South Cotabato, and possessed the same, knowing that said Komatsu Road Grader was stolen, thereby committing an act of fencing in violation of the Anti-Fencing Law of 1979, to the damage and prejudice of the aforesaid complainant in its true value of ₱2,000[,]000.00.

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[1] *Rollo*, pp. 30-42. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

[2] *Id.* at 57-59.

[3] *Id*. at 119-126. Penned by Presiding Judge Salvador M. Ibarreta, Jr.

CONTRARY TO LAW.[4]

Upon arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued.[5]

Version of the Prosecution

The prosecution presented two witnesses: (1) Engr. Herminio Gulmatico, the project engineer of the Second Rural Road Improvement Project (SRRIP) PMO-DPWH of Isulan, Sultan Kudarat; and (2) SPO4 Alfredo T. Santillana. The testimonies of the prosecution witnesses were summarized by the trial court, as follows:

SPO4 Santillana testified that i. [S]ometime in January 1997, he was an investigator of the theft and robbery section of Police Precinct No. 3, Talomo, Davao City; ii. [I]n the afternoon of January 31, 1997, Engr. Herminio Gulmatico went to his office to seek assistance in the recovery of a Komatsu Road Grader bearing Engine Serial Number 6D951-55845 and Chassis No. GD-51R-100[0]49; iii. [H]e was informed by Gulmatico that said heavy equipment could be found at Basco Metal Metal (sic) Supply along Mc Arthur Highway, Davao City; iv. [T]his information was caused to be verified by the station commander of said Police Precinct and after finding out that it was accurate, a search warrant was applied for; and v. [T]he search warrant was served on Basco Metal Supply where the aforedescribed heavy equipment was found.

Engr. Gulmatico for his part testified that: i. [H]e is the project engineer of the [SRRIP] PMO-DPWH of Isulan, Sultan Kudarat; ii. [O]n July 1, 1996, he received from Engineer Ireneo Veracion, the former project engineer, the aforesaid heavy equipment; iii. [S]ometime in June of 1997 the heavy equipment was in the Facoma Compound in Norala, South Cotabato undergoing repairs; iv. [A]round the third week of January, 1997, he was informed that the heavy equipment was removed from that compound by Petronilo Banosing; v. [H]e was also told that the heavy equipment was loaded on a ten wheeler truck and brought to Davao City particularly at Km. 3 Mc Arthur Highway; vi. [A]rmed with this information he proceeded to Davao

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[4] *Id.* at 32.

[5] *Id*.

City and sought the assistance of Talomo Police Precinct; vii. [T]he consequent search warrant applied for by the police officers of that precinct was served on Basco Metal Supply where the heavy equipment was found.[6]

Version of the Defense

On the other hand, petitioner was presented as the sole witness for the defense. The trial court summarized petitioner's testimony, to wit:

Accused Mariano Lim did not present testimonial evidence other than his and testified, thus: i. [H]e bought the heavy equipment from Petronilo Banosing for Four Hundred Thousand (₱400,000.00) Pesos; ii. Banosing showed him a Certificate of Ownership that stated that the heavy equipment is his; and, iii. [H]e checked with the DPWH in Manila and found out that the subject heavy equipment is not included in the inventory of equipment of the DPWH.[7]

Ruling of the RTC

The RTC found Lim guilty beyond reasonable doubt of the crime of fencing under PD 1612, to wit:

FOR THE FOREGOING[,] this Court finds accused[,] MARIANO LIM[,] GUILTY beyond reasonable doubt for violation of Presidential Decree No. 1612 otherwise known as the Anti-Fencing Law of 1979 and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of from **TWELVE (12) YEARS of PRISION MAYOR as Minimum to EIGHTEEN (18) YEARS of RECLUSION TEMPORAL as Maximum**. Accused is also directed to indemnify the DPWH the amount of One Hundred Thousand (₱100,000.00) Pesos.

SO ORDERED.[8]

In imposing the penalty, the trial court applied the Indeterminate Sentence Law in relation to Section 3(a) of PD 1612, based on its own valuation of the heavy equipment

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

[7] *Id*. at 120-121.

[8] *Id*. at 126.

considering that the prosecution did not present any evidence on this matter. The trial court set the value of the heavy equipment at one hundred thousand pesos (₱100,000) after finding that essential parts of the engine were already removed at the time of its discovery.

Aggrieved, petitioner appealed the case to the CA.

Ruling of the CA

On July 30, 2013, the appellate court rendered the assailed Decision upholding the findings of the trial court, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED** in toto.

SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration but the CA denied the same in the assailed Resolution, ruling that the arguments raised had already been considered and thoroughly discussed in the assailed Decision.

Hence, the present petition.

The Issues

Petitioner raised the following assignment of errors:

I.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER FOR VIOLATION OF PRESIDENTIAL DECREE NO. 1612, OTHERWISE KNOWN AS THE ANTI-FENCING LAW OF 1979 BECAUSE THE CRIME OF THEFT HAS NOT BEEN PROVEN IN COURT AND THE PERSON ACCUSED OF THEFT IS AT-LARGE OR A FUGITIVE FROM JUSTICE.

II.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER

[9] *Id.* at 41.

NOTWITHSTANDING THE FACT THAT HE IS A PURCHASER FOR VALUE AND IN GOOD FAITH, WITHOUT INTENT TO GAIN.

III.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED WHEN IT CONSIDERED THE MEMORANDUM RECEIPT OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS AS EVIDENCE OF OWNERSHIP OF THE KOMATSU ROAD GRADER.

IV.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER EVEN IF HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[10]

In its Comment,[11] public respondent raised the following issues:

I.

ALL THE ELEMENTS FOR THE OFFENSE OF VIOLATION OF THE ANTI-FENCING LAW AND THE GUILT OF PETITIONER WERE ESTABLISHED AND PROVED BY THE PROSECUTION BEYOND REASONABLE DOUBT.

II.

THE FACTUAL ISSUES RAISED BY PETITIONER DO NOT FALL UNDER THE RECOGNIZED EXCEPTIONS TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE ENTERTAINED IN A PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE RULES OF COURT.

The basic issue in the instant case is whether or not the CA erred in sustaining the petitioner's conviction. Central to resolving this issue is determining whether or not the elements of the crime of fencing were established by the prosecution.

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[10] *Id.* at 15-16.

[11] *Id.* at 234-254.

The Court's Ruling

The petition is impressed with merit.

The following are the essential elements of the crime of fencing:

1. A crime of robbery or theft has been committed;

2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime;

3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and

4. There is on the part of the accused, intent to gain for himself or for another.[12]

In the present case, the trial court relied heavily on the testimony of Engr. Gulmatico in finding that all elements of fencing exist. The trial court said:

In the instant case the Court finds that the prosecution has established the existence of the first, second, third and fourth elements. A theft was committed when Petronilo Banosing took subject (sic) heavy equipment from Facoma Compound in Norala, South Cotabato on January 16, 1997 and a case for Theft or Criminal Case No. 275 was filed. The stolen heavy equipment, after a search warrant was issued, was found in the premises of Basco Metal Supply owned by the accused, Mariano Lim, located at Km 3, Matina, Davao City. Basco Metal Supply is in the business of buying used equipment.[13]

This Court has honored the principle that an appeal in a criminal case opens the whole action for review on any question including those not raised by the parties. The reason for this

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[12] *Norma Dizon-Pamintuan v. People of the Philippines*, G.R. No. 111426, July 11, 1994, 234 SCRA 63.

[13] *Rollo*, p. 122.

rule is that every circumstance in favor of the accused should be considered.[14]

After a careful and thorough review of the records, we are convinced that the trial court erred in convicting herein petitioner.

On the first element, we find that the prosecution failed to establish that theft had been committed.

Theft under Article 308 of the Revised Penal Code has been defined as the taking of someone's property without the owner's consent, for his personal gain, and without committing any violence against or intimidation of persons or force upon things. The elements of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[15]

While the CA correctly ruled that conviction of the principal in the crime of theft is not necessary for an accused to be found guilty of the crime of fencing, we disagree with its ruling that the prosecution sufficiently proved the DPWH's ownership of the Komatsu Grader.

During trial, the prosecution presented the testimony of Engr. Gulmatico, the project engineer for the SRRIP of the DPWH. Engr. Gulmatico testified on his discovery of the theft of one unit Komatsu Road Grader with engine number GD95L-55845 allegedly owned by the DPWH. However, except for his statement that the subject grader was procured by his office, Engr. Gulmatico failed to establish his or his office's ownership over the subject grader. Thus:

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[14] *People of the Philippines v. Erlindo Yam-Id alias "Ely,"* G.R. No. 126116, June 21, 1999.

[15] *Luis Marcos P. Laurel v. Hon. Zeus C. Abrogar, Presiding Judge of the Regional Trial Court, Makati City, Branch 150, People of the Philippines & Philippine Long Distance Telephone Company*, G.R. No. 155076, January 13, 2009.

PROS. BELO

Q The subject of this case for violation of Anti Fencing law against the person of Mr. Mariano Lim is a one unit Komatsu Road Grader with engine number GD95L-55845, can you tell us if you are familiar with this particular unit?

A Actually, this grader was assigned to us sometime [in] 1989 it [was] lost 10 years after.

Q Tell us who was the accountable officer of this particular unit when it was lost?

A It was already M.R. to me during that time.

Q Do you have any evidence that the same unit (sic) or there was a Memorandum Receipt already issued to you?

A Yes, sir.

Q I am showing to you a document already marked as Exhibit "A" for the prosecution, tell us if this is the document, [M]emorandum Receipt you are referring to?

A Yes, sir.

Q May we pray, Your Honor, that the item indicated/described in this Memorandum Receipt be ordered marked as Exhibit "A-1". (So marked)

Q From whom did you receive this unit of which a Memorandum Receipt was issued to you?

A From the previous project engineer, sir.

Q There is a signature appearing over the name GERMENIO GULMATICO, tell us whose signature that, is that your signature?

A Yes, sir, that is my signature.

Q This signature indicates that you received the item under your accountability?

A Yes, sir.[16]

On cross-examination, Engr. Gulmatico admitted that he received no confirmation from the DPWH Manila office as to who purchased the subject grader:

ATTY. CHUA

Q You [are] also aware Mr. Witness that there are no markings because the unit was originally purchased by the World Bank?

A Actually, sir, there are markings we have engraved before but because the equipment was continuously used, it got erased, sir, we have three dump trucks, we have many equipments and we have marked it DPWH but because of the time that had past it got erased and considering the manner and the job that we are using it. Actually, the front of the grader [is] marked SRRIP, during that time but at that time that it was lost, it was erased when it was turned over to us.

Q But [can you] reiterate the fact that when it was MR to you there was no identification marks?

A Yes.

Q And of course you are not the person who erased those marks?

A Yes.

Q And you also admit going back to my earlier question that this unit was purchased by the World Bank?

A I don't know, sir what was the condition with our Office at Manila but as far as I know that our project was funded by the World Bank and I think the procurement was done in Manila, so it might be the World Bank or at the request of our office as funded by the World Bank.

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[16] TSN, April 10, 2001, pp. 4-5; *rollo*, pp. 165-166.

Q But you will admit that this particular SRRIP project was funded by the World Bank?

A Yes, sir.

Q Did you try to check with your DEPO in Cotabato City or in your Port Area Office in Manila whether this particular unit was one of those listed in the inventory of the DPWH, did you check?

A Actually, sir, I have some request in Manila that they will furnish us the original acquisition cost but the people in Manila do not give us time to that thing (sic), perhaps this might be the third time that I will have to request so that our Office can avail of those things and we can say further about it, sir.

Q Did you not try to write or inquire from the Project Director Paliamen Mamaente of the Project Management Office of your department in port area whether this unit was actually purchased by the World Bank?

A Yes, I have, sir.

Q What was the reply of project Director Mamaente, if any?

A I did not receive any [reply], sir.[17] x x x

Even the Memorandum Receipt submitted by the prosecution and relied upon by the trial court is wanting. Nowhere in the Memorandum Receipt does it state that the subject grader is owned by the DPWH. The portions which should show the date acquired, property number, classification number, and unit value for the grader were left blank. At best, the Memorandum Receipt is a mere indicator that the subject grader was received by Engr. Gulmatico for his safekeeping and responsibility.

Being the government agency in charge of construction projects, the DPWH is expected to have a database of all

[17] TSN, April 10, 2001, pp. 18-20; *rollo*, pp. 179-181.

equipment and materials it uses for easy reference of its employees. The prosecution's failure to present a sufficient proof of ownership of the grader despite the many opportunities it had to do so places doubt on the DPWH's claim of ownership. Thus, it cannot be said that the first element of fencing had been established.

In fact, the prosecution even failed to conclusively establish that the grader had been stolen. Engr. Gulmatico's testimony on the alleged act of theft should not be given any weight considering that he had no personal knowledge of the actual theft. Most, if not his entire testimony, consisted of hearsay evidence as he relied mostly on the information given to him by various persons, to wit:

PROS. BELO

Q While under your accountability, can you recall if anything happened [with] this particular unit?

A On January 26, 1997, **I was informed by my driver** that this said grader was previously lodged for repair in the compound of Petronilo Banosing in the evening of January 26, 1997.

Q Can you still recall **who informed you of the taking of this unit** by one Petronilo Banosing?

A Yes, sir, **it was my driver** because I [told] him to visit once in a while our area in Nohralla.

Q Can you tell us what is the name of the driver?

A Yes, Venecio Calderon.

x x x x x x x x x

Q After you were informed of the fact that the item subject of this case was stolen, what action if any, did you take?

A During the filing of the case, we [waited] for almost two days and during that time, **Mr. Basilio Elaga, owner of the Pakoma Compound informed me** that a Ten Wheeler Truck coming from Isulan was the transportation used in

taking that grader, so after two days of filing, we contacted all operators in Isulan and we found out a ten wheeler truck with plate no. MB8116 driven by Mr. Ricardo Mamon and being assisted by Mr. Digdigan as the grader was being transported to [an] unknown place.

Q Were you able to determine thereafter as to where the item was brought?

A When I conducted a thorough investigation and inquiries to **the truck helper**, he **informed me** that said grader was transported to Davao City, particularly it was dropped down at Km. 3, Mac Arthur Highway, Matina, Davao City.[18]
x x x (emphasis supplied)

Even upon clarificatory questioning by the trial court judge, Engr. Gulmatico's answers were still based on information provided to him by third persons, as follows:

COURT

Q You said that you first learned of the fact of its having been stolen when your driver informed you that it was so stolen?

A Yes.

Q After you received this information from your driver, you made inquiries as regards how it was stolen from the Pacoma Compound?

A Yes.

Q And the results of your inquiries showed that it was taken by a [ten] wheeler driven by Ricardo Mamon who [was] accompanied by Ronnie Digdigan?

Q After receiving this information, you were able to talk to this people?

[18] TSN, April 10, 2001, pp. 6-8; *rollo*, pp. 167-169.

A No, it was only Ronnie Digdigan, the helper.

Q This Digdigan informed you that the grader was transported to Davao City?

A Yes.

Q He specified to whom it was delivered?

A Yes, he told us that he dropped it at the compound near Robin Marketing at Km. 3, Matina, Davao City.

Q Did you ask from Digdigan who hired them to transport this grader?

A Yes.

Q What did Digdigan tell you?

A He told me that it was Nilo Banosing who hired them to get it from Pacoma.[19] x x x (emphasis supplied)

Sec. 36, Rule 130 of the Rules of Court provides that witnesses can testify only with regard to facts of which they have personal knowledge; otherwise, their testimonies would be inadmissible for being hearsay.[20] Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath.[21]

Consequently, hearsay evidence, whether objected to or not, has no probative value unless it is shown that the evidence falls

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[19] TSN, April 10, 2001, pp. 35-37; *rollo*, pp. 196-198.

[20] *Melanio Mallari y Liberato v. People of the Philippines*, G.R. No. 153911, December 10, 2004; citing *People of the Philippines v. Manhuyod, Jr.*, 352 Phil. 866 (1998).

[21] *Rogelio Dantis v. Julio Maghinang, Jr.*, G.R. No. 191696, April 10, 2013.

within any of the exceptions to the hearsay rule as provided in the Rules of Court.[22] However, none of the exceptions applies to the present case.

A cursory reading of Engr. Gulmatico's testimony shows that his statements pertaining to the alleged theft are all based on information which he claims to have received from third persons, all of whom were never presented to testify under oath in court. Thus, it was erroneous for the trial court to give probative value on Engr. Gulmatico's testimony considering that the truth and credibility of such statements cannot be ascertained for being mere hearsay.

Even assuming *arguendo* that theft had been committed, the third element of fencing is wanting in this case.

In ruling that petitioner knew or should have known that the grader was the object of theft, the trial court held that petitioner was unable to rebut the presumption under PD 1612, thus:

> Accused was unable to rebut the presumption under PD1612. The Certificate of Ownership executed by seller is unavailing. Suffice it to state that said document being self-serving should not have been relied upon by the accused. It might even be stated that this document should have made him even more wary that the seller did not own the heavy equipment sold to him. The unauthenticated list of equipment purportedly prepared by the DPWH that did not include the heavy equipment and submitted by the accused as part of his defense is also unavailing. Put simply, he verified with the DPWH its ownership of the heavy equipment long after the instant case was filed. What is more, the list he presented was merely a photocopy whose authenticity is doubtful. Under Section 6 of PD 1612, what he should have done was to secure a clearance/permit from the police.[23]

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[22] *Melanio Mallari y Liberato v. People of the Philippines*, G.R. No. 153911, December 10, 2004; citing *People of the Philippines v. Sacapaño*, 372 Phil. 543 (1999) and *People of the Philippines v. Crispin*, 383 Phil. 919 (2000).

[23] *Rollo*, pp. 124-125.

The trial court ruled that petitioner should not have relied upon the Certificate of Ownership presented by Banosing as it is self-serving. Instead, petitioner should have secured a clearance or permit from the police, in compliance with Sec. 6 of PD 1612.

The CA went even further and placed the burden on petitioner, stating:

> In this case, the accused-appellant is engaged in buying and selling equipment as the proprietor of Basco Metal Supply. As a businessman who regularly engaged in buying and selling equipment, the accused-appellant should have exercised more diligence and prudence in ascertaining whether Petronilo Ban[o]sing was indeed the real owner of the Komatsu Grader. Moreover, the circumstances of the sale should have put the accused-appellant on guard and should have impelled him to exercise more caution in dealing with Petronilo Ban[o]sing who was selling not an ordinary run down equipment but a heavy duty Komatsu grader which can only be owned by a select few who engage in land development. Instead, the accused-appellant simply relied on the Affidavit of Ownership and the representations of Petronilo Ban[o]sing that he was a contractor, which is but a last ditch attempt, albeit futile, to exculpate himself from criminal liability.[24]

We disagree.

On the presumption that fencing had been committed as provided by Sec. 5 of PD 1612, we rule that petitioner was able to overcome the same upon his presentation of the Affidavit of Ownership which he secured from Petronilo Banosing.

Both the RTC and the CA failed to consider that the Affidavit of Ownership given by Petronilo Banosing to petitioner was a duly notarized document which, by virtue of its notarization, enjoys a presumption of regularity, as elaborated in *Ocampo v. Land Bank of the Philippines*:

> It is well settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive

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[24] *Id*. at 40.

presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld. In addition, one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. We have also held that a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.[25] (citations omitted)

Respondent argues that the presumption of regularity of the notarized Affidavit of Ownership had been overturned. We rule otherwise. As pointed out by respondent, to overcome the presumption of regularity of notarized documents, it is necessary to contradict it with "evidence that is clear, convincing and more than merely preponderant." Contrary to respondent's assertion, the ownership of the subject grader was not conclusively established by the prosecution. As earlier stated, Engr. Gulmatico was unable to confirm its ownership in his testimony. Further, the Memorandum Receipt also failed to establish this. Despite the many opportunities to submit additional proof of ownership, the prosecution failed to do so.

The trial court also erred in applying Sec. 6 of PD 1612 to the present case:

While one who is in possession of the proceeds of robbery or theft is presumed to have knowledge of the fact that said items were stolen or (sic) PD 1612 provides a safeguard or a protection for a would be buyer of second hand articles. Thus, Section 6 of said law provides:

> "SEC. 6. Clearance/Permit to Sell/Used Second Hand Articles. For purposes of this Act, all stores, establishments or entities dealing in the buy and sell of any good, article item, object of anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station

[25] G.R. No. 164968, July 3, 2009, 591 SCRA 562, 571-572.

> commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as a fence."

The aforequoted section simply means that a person who is engaged in the buying and selling of an item from an unlicensed dealer or supplier shall, before offering the same for sale to the public[,] secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such establishment or entity is located and any person who fails to secure the clearance or permit required by this section, shall upon conviction be punished as a fence. (underscoring in the original)

x x x Under Section 6 of PD 1612, what he should have done was to secure a clearance/permit from the police.[26]

It appears that both the RTC and the CA ruled that petitioner should have first secured a clearance or a permit from the police, in compliance with Sec. 6 of PD 1612. However, said provision is inapplicable to the present case.

Sec. 6 of PD 1612 provides:

SEC. 6. Clearance/Permit to Sell/Used Second Hand Articles. For purposes of this Act, **all stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value** obtained from an unlicensed dealer or supplier thereof, **shall before offering the same for sale to the public**, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated

[26] *Rollo*, pp. 124-125.

thereunder shall upon conviction be punished as a fence. (emphasis supplied)

Clearly, the clearance stated in Sec. 6 of PD 1612 is only required if several conditions are met: *first*, that the person, store, establishment or entity is in the business of buying and selling of any good, article, item, object, or anything of value; *second*, that such thing of value was obtained from an unlicensed dealer or supplier thereof; and *third*, that such thing of value is to be offered for sale to the public.

In the present case, the first and third requisites were not met. Nowhere was it established that petitioner was engaged in the business of buy and sell. Neither was the prosecution able to establish that petitioner intended to sell or was actually selling the subject grader to the public.

During his cross-examination, petitioner testified:

PROS. SEPULVEDA

Q What business are you engaged in?

A I am buying used equipment.

Q Such as grader?

A Yes.[27]

Despite the lack of evidence supporting such conclusion, the CA even made a presumption that petitioner was engaged in the business of buy and sell in the assailed Decision, thereby erroneously applying Sec. 6, to wit:

In this case, **the accused-appellant is engaged in buying and selling equipment** as the proprietor of Basco Metal Supply. **As a businessman who regularly engaged in buying and selling equipment**, the accused-appellant should have exercised more diligence and prudence in ascertaining whether Petronilo Ban[o]sing was indeed the real owner of the Komatsu Grader. x x x

[27] TSN, July 19, 2004, pp. 12-13; *rollo*, pp. 215-216.

x x x The accused-appellant, who is engaged in the business of buying and selling equipment, clearly purchased the Komatsu Grader (sic) with the intention of re-selling the grader and its parts for profit.[28]

It is puzzling how the CA arrived at this conclusion when nowhere in the testimonies of the witnesses was it shown that petitioner intended to re-sell the subject grader to the public. The fact that the subject grader was not intended to be sold to the public is even further bolstered by the prosecution's witnesses' discovery that the grader was found in several pieces and in different locations within petitioner's compound. Thus, it was erroneous for the CA to make such a conclusion when the evidence presented does not support it.

Furthermore, requiring petitioner to secure the police certification is an act of futility considering that at the time when the subject grader was being offered to petitioner, no police report of the alleged theft has yet been made. To recall, petitioner purchased the subject grader from Petronilo Banosing on January 17, 1997, as evidenced by the Deed of Sale of the same date.[29] Yet, it was only on January 26, 1997 that Engr. Gulmatico discovered the alleged theft:

PROS. BELO

Q While under your accountability, can you recall if anything happened in this particular unit?

A On January 26, 1997, **I was informed by my driver** that this said grader was previously lodged for repair in the compound of Petronilo Banosing in the evening of January 26, 1997.[30]

Engr. Gulmatico further testified that he only reported the matter to the police on January 27, 1997, or 10 days after the subject grader was already sold to herein petitioner, as follows:

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[28] *Rollo*, p. 40.

[29] TSN, July 19, 2004, pp. 4-5; *rollo*, pp. 207-208.

[30] TSN, April 10, 2001, p. 6; *rollo*, p. 167.

PROS. BELO

Q After you were informed that this was taken by somebody, what action, if any, did you take?

A January 26 was a Monday so I went to the district the next day to file a case or gather information (sic) about the Nohralla and after the inquest there we found out that one Petronilo Banosing was the culprit and we file[d] a case against him before Judge Ayko.[31]

Thus, even if petitioner had secured the police clearance in compliance with Sec. 6 of PD 1612, it would not have shown that the grader was stolen since no theft had yet been reported at that time.

It is also worthy to note that, due to the prosecution's failure to present any evidence on the grader's actual value, the trial court assessed its value at one hundred thousand pesos (₱100,000) since parts of the engine were already missing at the time of its recovery. However, petitioner testified that he paid Petronilo Banosing the amount of four hundred thousand pesos (₱400,000). The disparity in the assessed value of the grader and the amount paid by petitioner would show that petitioner believed in good faith in the representations of Petronilo Banosing. Indeed, it is contrary to common human experience for a businessman to pay a consideration much higher than the actual value of an item unless he was made to believe otherwise.

Finally, we find that the conviction of petitioner violated his constitutional right to be informed of the nature and cause of the accusation against him.

In *Andaya v. People of the Philippines*,[32] we ruled that:

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to

[31] TSN, April 10, 2001, p. 7; *rollo*, p. 168.

[32] G.R. No. 168486, June 27, 2006.

enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.

The Information charging petitioner reads:

That on or about January 16, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being then the proprietor of Basco Metal Supply located at Matina, Davao City, with intent to gain for himself, wilfully (sic), unlawfully and feloniously purchased and received for ₱400,000.00 one (1) unit Komatsu Road Grader with Chassis Model and Serial No. GD-51R-100049 and bearing an (sic) Engine Serial Number 6D951-55845 owned by Second Rural Road Improvement Project (SRRIP) PMO-DPWH of Isulan, Sultan Kudarat, being lodged for repair at the Facoma Compound of Poblacion Norala, South Cotobato, and possessed the same, **knowing that said Komatsu Road Grader was stolen**, thereby committing an act of fencing in violation of the Anti-Fencing Law of 1979, to the damage and prejudice of the aforesaid complainant in its true value of ₱2,000[,]000.00.

CONTRARY TO LAW.[33] (emphasis supplied)

The Information presumes that petitioner knew of the alleged theft of the subject grader, pertaining to the first part of the third element of the crime of fencing, to wit:

[33] *Rollo*, p. 32.

3. The accused **knows or should have known** that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft.[34] (emphasis supplied)

The trial court, however, convicted petitioner on the ground that he should have known that the subject grader was derived from the proceeds of theft, pertaining to the second part of the third element:

Accused was unable to rebut the presumption under PD1612. The Certificate of Ownership executed by seller is unavailing. Suffice it to state that said document being self-serving should not have been relied upon by the accused. **It might even be stated that this document should have made him even more wary that the seller did not own the heavy equipment sold to him.** The unauthenticated list of equipment purportedly prepared by the DPWH that did not include the heavy equipment and submitted by the accused as part of his defense is also unavailing. Put simply, he verified with the DPWH its ownership of the heavy equipment long after the instant case was filed. What is more, the list he presented was merely a photocopy whose authenticity is doubtful. Under Section 6 of PD 1612, what he should have done was to secure a clearance/permit from the police.[35] (emphasis supplied)

From the foregoing, we find that the CA erred in affirming the trial court's findings and in convicting herein petitioner. It is necessary to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove **each and every element of the crime charged in the information** to warrant a finding of guilt for the said crime.[36]

Furthermore, the information must correctly reflect the charges against the accused before any conviction may be made.

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[34] *Norma Dizon-Pamintuan v. People of the Philippines*, G.R. No. 111426, July 11, 1994, 234 SCRA 63.

[35] *Rollo*, pp. 124-125.

[36] *Noe S. Andaya v. People of the Philippines*, G.R. No. 168486, June 27, 2006.

In the case at bar, the prosecution failed to prove the first and third essential elements of the crime charged in the information. Thus, petitioner should be acquitted due to insufficiency of evidence and reasonable doubt.

WHEREFORE, the Decision dated July 30, 2013 and the Resolution dated February 28, 2014 of the Court of Appeals in CA-G.R. CR No. 00740-MIN, affirming the Decision dated February 17, 2009 issued by the Regional Trial Court of Davao City, Branch 8, which found petitioner Mariano Lim guilty beyond reasonable doubt of violating Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law of 1979, are hereby **REVERSED** and **SET ASIDE**. Petitioner Mariano Lim is hereby **ACQUITTED** based on insufficiency of evidence and reasonable doubt.

SO ORDERED.

Peralta, Perez, Reyes, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 212562. October 12, 2016]

AVELINO ANGELES *y* OLANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS; ELEMENTS.— The crime Acts of Lasciviousness is punished under Article 336 of the Revised Penal Code x x x. To secure a conviction, the confluence of the following elements must be established by the prosecution beyond reasonable doubt: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under

any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.

2. REMEDIAL LAW; EVIDENCE; EQUIPOISE RULE; WHERE THE EVIDENCE ON AN ISSUE OF FACT IS IN EQUIPOISE, OR THERE IS DOUBT ON WHICH SIDE THE EVIDENCE PREPONDERATES, THE PARTY HAVING THE BURDEN OF PROOF LOSES.— The first element-that accused-appellant committed an act characterized by lewdness—was not proven beyond reasonable doubt. Accused-appellant conceded that he entered the purported victim's room and laid down beside her, but he vehemently denies mounting her and sucking her breasts. On the other hand, Jacqueline alleged that accused-appellant mounted her and sucked her breasts while she was asleep. In essence, the testimony of the purported victim is pitted against the testimony of the accused-appellant. The Court is faced with the challenge of deciding which of the two opposing testimonies should hold more weight. The Equipoise Rule thus comes into play. Under the said rule, "where the evidence on an issue of fact is in equipoise, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses." Considering that nothing is more settled in criminal law than the rule that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt. We hold that in the case at bar, the scales of justice should tip in favor of accused-appellant.

3. ID.; ID.; CREDIBILITY OF WITNESSES; THE JURISPRUDENTIAL RULE THAT THE LONE UNCORROBORATED TESTIMONY OF THE OFFENDED VICTIM, SO LONG AS THE TESTIMONY IS CLEAR, POSITIVE, AND PROBABLE, MAY PROVE THE CRIME AS CHARGED, MAY NOT BE AUTOMATICALLY APPLIED IN A CASE WHERE THERE IS ANOTHER PERSON WHO COULD HAVE SHED SOME LIGHT ON THE INCIDENT.— This Court is not unaware of the settled rule that "the lone uncorroborated testimony of the offended victim, so long as the testimony is clear, positive, and probable, may prove the crime as charged." It should be noted however, that the establishment of such jurisprudential rule is attributed

to the fact that there are usually only two witnesses in rape cases; thus, if courts do not give due weight and credence to uncorroborated lone testimonies, convictions for rape cases would be next to impossible. However, We rule that such holding may not automatically be applied in the case at bar as there was another person — Sheryl Alvarez — who could have shed some light on the incident.

4. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUNESS; ELEMENT OF LEWDNESS; NOT PROVEN BEYOND REASONABLE DOUBT IN CASE AT BAR.— A thorough review of the records leads this Court to conclude that accused-appellant entered the room with lustful intentions of a sexual partner that, what he thought, were also shared by Jacqueline. Jurisprudence defines "lewd" as obscene, lustful, indecent, lecherous, a form of immorality that has relation to moral impurity, or that which is carried on a wanton manner. x x x The precise definition of the crime of Acts of Lasciviousness in Art. 336 of the RPC provides x x x that the lascivious act or lewdness must be under any of the circumstances provided for under Art. 335 of the RPC. x x x Given that the delineation is highly dependent on the surrounding circumstances, courts must be vigilant in appreciating the circumstances, as these factors spell the difference between an acquittal and a conviction for crimes characterized by lewdness. x x x We hold that the element that criminalizes lewdness, or the criminal circumstances of its commission were not proven beyond reasonable doubt. The facts indicate that the alleged acts of accused-appellant are in the nature of amorous advances made by an ardent lover or sexual partner, at the very least. Such conclusion can be drawn from the invitation made by the purported victim an hour before the said incident. Plainly, accused-appellant went to Jacqueline's bedroom with what he had reason to think was an invitation to a tryst. There was, however, either a change of mind or a completed teasing. x x x Although We recognize that prior consent in sexual acts does not amount to consent for subsequent sexual acts, We note that the circumstances in the case at bar call for a different treatment. The invitation indicative of the purported victim's consent must be interpreted *vis-a-vis* the incidents which occurred a few minutes before and after they parted ways.

APPEARANCES OF COUNSEL

Miriam S. Clorina for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

On appeal by *certiorari* is the February 28, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 35394 affirming the July 24, 2012 Order[2] of the Regional Trial Court (RTC), Branch 15, Naic Cavite, which in turn affirmed the November 28, 2011 Decision[3] of the 1st Municipal Circuit Trial Court (MCTC) in Maragondon, Cavite, in Criminal Case No. T-07-023, finding accused-appellant Avelino Angeles *y* Olano guilty beyond reasonable doubt of Acts of Lasciviousness penalized under Article 336 of the Revised Penal Code.

In an Information[4] dated June 1, 2007, the Cavite Provincial Prosecutor's Office charged accused-appellant with the crime of Acts of Lasciviousness. The accusatory portion of the Information reads:

"That on or about the 31st day of May 2007, in the Municipality of Ternate, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there, willfully, unlawfully and feloniously commit acts of lasciviousness upon one **JACQUELINE CRUZ y RIAZ**, by lying on top of her and sucking her breast, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW."

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[1] *Rollo*, pp. 32-40; penned by Associate Justice Amelita G. Tolentino, concurred by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba.

[2] *CA rollo*, pp. 28-31; penned by Judge Lerio C. Castigador.

[3] *Id.* at 50-53; records, pp. 530-533; penned by Judge Maria V. Espineli.

[4] Records, p. 1.

Upon being arraigned, accused-appellant entered a plea of NOT GUILTY to the crime charged.[5] At the pre-trial of the cases, the following stipulations were admitted by the court: (1) the identity of accused-appellant as the same person charged in the instant case; and (2) the jurisdiction of the court over his person and over the subject matter of the case.[6] Trial on the merits ensued thereafter.

The Facts

The private complainant's version of the facts as summarized by the CA, is as follows:

On May 31, 2007, Jacqueline and her housemaid, Sheryl, came from a 'videoke session' and got home at around 11 o'clock in the evening. After taking a bath, Jacqueline went to bed, with her body covered only with a bath towel.[7] She was later on awakened when she felt something heavy on top of her.[8] She also felt somebody licking and sucking her breasts; and when she opened her eyes, she saw accused-appellant lying on top of her.[9] She immediately pushed and kicked accused-appellant as she tried to get out of the bed as fast as she could. She exclaimed "*Putang ina mo ka, hayop ka, paano ka nakapasok dito!*"[10] She ran outside while accused-appellant followed her repeatedly saying "*Mare, pasensiya na, pasensiya na, mali ako ng inakala sa iyo.*"[11] Jacqueline saw Sheryl outside and asked her how accused-appellant was able to enter the house. Sheryl claimed that she did not know how accused-appellant managed to enter the house. Immediately thereafter, Jacqueline and Sheryl went to the PNP station in Ternate, Cavite to report the incident and to file a complaint against accused-appellant. A few hours later, accused-appellant was arrested.

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[5] *Id.* at 21.

[6] *Id.* at 45.

[7] TSN, April 10, 2008, p. 30; records, p. 113.

[8] *Id.* at 31; *id.* at 114.

[9] TSN, January 17, 2008, p. 9; records, p. 67.

[10] *Supra* note 7 at 32; records, p. 115.

[11] *Id.*

On cross-examination, Jacqueline revealed that prior to the incident or in the afternoon of May 31, 2007, at around 2 o'clock in the afternoon, she and her friend Zoray, along with Sheryl, went to accused-appellant's "*kubo*" for a karaoke session. They were singing and drinking when accused-appellant joined them at around 7 o'clock in the evening. When accused-appellant was about to leave, Jacqueline; requested him to stay longer, so the singing and drinking continued on. It was around 10 o'clock in the evening when Jacqueline and her companions headed home.

On the other hand, accused-appellant's version of the facts is as follows:

> Accused-appellant and Jacqueline both stood as godparents of Sheryl's child and from then on, they remained good friends. Accused-appellant claims that in the early evening of May 31, 2007, he went to the *kubo* because someone told him that his*kumareng* Jack was waiting for him. When he arrived, the people were already dancing and singing. He was sitting in front of Jacqueline before he transferred beside her upon her request. Jacqueline was so drunk, she started dancing and while dancing, she took off her bra and tossed it to Sheryl. She then sat down beside accused-appellant, kissed him and asked him if he could make her happy. Aware of the flirting, accused-applellant replied, "Try me".[12] Accused-appellant claimed that after he answered the call of nature, Jacqueline led him behind a mango tree. It was there when she pulled up her blouse and pulled accused-appellant's head towards her breasts. Accused-appellant admitted to sucking her breasts.[13] When they returned to the *kubo*, Jacqueline fell asleep on accused-appellant's lap. According to accused-appellant, Jacqueline wanted him to accompany her home but he opted to stay in the *kubo* to clean up.[14]

Maintaining that an invitation was extended to him, accused-appellant admitted that he proceeded to Jacqueline's house after cleaning up.[15] According to him, the gate was unlocked and the main door was left open.[16] He entered and found Jacqueline

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[12] TSN, January 22, 2009, p. 13; records, p. 167.

[13] *Id.* at 16; *id.* at 170.

[14] TSN, March 5, 2009, p. 10; records, p. 187.

[15] *Id.* at 11; *id.* at 188.

[16] *Id.* at 13; *id.* at 190.

and Sheryl lying on the bed. When Sheryl left the room, accused-appellant laid down beside Jacqueline but vehemently denied mounting her and sucking her breasts.[17] When Jacqueline was awakened, she pushed accused-appellant away demanding to know how he was able to enter the room.[18] She then left the room and proceeded to the kitchen while continuously berating accused-appellant. "*Mare, pasens'ya ka na't nabigyan ko ng masamang kahulugan iyong mga pinaggagawa mo sa akin*" was all that accused-appellant could say.[19]

Ismael T. Olano testified that on the night of the incident, he saw Jacqueline drinking and flirting with accused-appellant. Olano testified that Jacqueline took off her bra while dancing;[20] that he heard Jacqueline ask accused-appellant if he could make her happy;[21] that he saw Jacqueline pull accused-appellant's head towards her breasts;[22] and that before Jacqueline left, she told accused-appellant "*pare sumunod ka ha*."[23]

Ruling of the Municipal Circuit Trial Court

On November 28, 2011, the MCTC rendered a decision finding accused-appellant guilty of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this Court finds the accused AVELINO ANGELES *y* OLANO @ 'ANDY', GUILTY beyond reasonable doubt of acts of lasciviousness penalized under Article 336 of the Revised Penal code and is sentenced to suffer to indeterminate prison [term from] six (6) months arresto mayor as minimum to four (4) years and two (2) months prision correccional as maximum.

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[17] TSN, May 28, 2009, p. 21; records, p. 220.

[18] *Supra* note 14 at 16; records, p. 193.

[19] *Id.*

[20] TSN, August 27, 2009, p. 9; records, p. 251.

[21] *Id.*

[22] *Id.* at 11; *id.* at 253.

[23] *Id.* at 12; *id.* at 254.

Accused is ordered to pay the offended party ₱25,000.00 as moral damages and ₱20,000.00 as civil indemnity.

SO ORDERED."[24]

Ruling of the Regional Trial Court

Aggrieved, petitioner interposed an appeal to the RTC, assailing the MCTC's decision. Affirming the assailed decision, the RTC ruled that the previous flirting incidents cannot exonerate accused-appellant. The dispositive portion of its order reads:

"**WHEREFORE**, based on the foregoing, the instant appeal is hereby **DENIED** for lack of merit.

SO ORDERED."[25]

Ruling of the Court of Appeals

Seeking a reversal of the conviction, petitioner filed a Petition for Review before the CA. Upholding the conviction, the appellate court held that petitioner's denial cannot prevail over the positive and categorical testimony of the private complainant. The dispositive portion of the decision reads:

"**WHEREFORE**, premises considered, the instant *Petition for Review* is **DISMISSED**. The assailed order dated July 24, 2012 of the Regional Trial Court of Naic, Cavite, Branch 15 is **AFFIRMED**.

SO ORDERED."[26]

Our Ruling

In a Petition for Review on *Certiorari*[27] under Rule 45, petitioner now comes before this Court seeking a reversal of the CA decision affirming the conviction. After a thorough review of the facts and evidence on record, We rule for accused-appellant's acquittal as the degree of proof required in criminal cases has not been met.

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[24] *Supra* note 3 at 53; records, p. 533.

[25] *Supra* note 2 at 31.

[26] *Rollo*, p. 39.

[27] *Id.* at 3-30.

Acts of Lasciviousness

The crime Acts of Lasciviousness is punished under Article 336 of the Revised Penal Code, *viz*:

> Art. 336. *Acts of lasciviousness*.— Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

To secure a conviction, the confluence of the following elements must be established by the prosecution beyond reasonable doubt: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.[28]

The first element—that accused-appellant committed an act characterized by lewdness—was not proven beyond reasonable doubt. Accused-appellant conceded that he entered the purported victim's room and laid down beside her, but he vehemently denies mounting her and sucking her breasts. On the other hand, Jacqueline alleged that accused-appellant mounted her and sucked her breasts while she was asleep. In essence, the testimony of the purported victim is pitted against the testimony of the accused-appellant. The Court is faced with the challenge of deciding which of the two opposing testimonies should hold more weight. The Equipoise Rule thus comes into play. Under the said rule, "where the evidence on an issue of fact is in equipoise, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses."[29] Considering that nothing is more settled in criminal law than the rule that the prosecution has the burden of proof to establish the guilt of the accused

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[28] *People v. Victor*, 441 Phil. 798, 815-816 (2002).

[29] *People v. Gabo, et al.*, 640 Phil. 396, 414 (2010).

beyond reasonable doubt.[30] We hold that in the case at bar, the scales of justice should tip in favor of accused-appellant.

This Court is not unaware of the settled rule that "the lone uncorroborated testimony of the offended victim, so long as the testimony is clear, positive, and probable, may prove the crime as charged."[31] It should be noted however, that the establishment of such jurisprudential rule is attributed to the fact that there are usually only two witnesses in rape cases; thus, if courts do not give due weight and credence to uncorroborated lone testimonies, convictions for rape cases would be next to impossible. However, We rule that such holding may not automatically be applied in the case at bar as there was another person — Sheryl Alvarez — who could have shed some light on the incident.

On the Admissibility of the Belatedly Executed Affidavit

Sheryl A. Alvarez (Sheryl), the purported victim's housemaid, executed a *Sinumpaang Salaysay* dated June 1, 2007, to wit:[32]

"x x x x x x x x x

T: *Bakit ka naririto sa himpilan ng pulisya ng Ternate at nagbibigay ng salaysay?*

Sagot: *Dahil tetestigo po ako.*

T: *Patungkol saan naman ang iyong ibig testiguhan?*

Sagot: *Tungkol po sa pagpasok ni Pareng Andy Angeles sa bahay ni ate Jaq."*

x x x x x x x x x x x x

T: *Maari mo bang isalaysay sa maikling at kumpletong pangungusap ang mga pangyayari sa nabanggit na oras at petsa?*

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[30] *People v. Campos, et al.*, 668 Phil. 315, 324 (2011).

[31] *People v. Tubat*, 680 Phil. 730, 737 (2012).

[32] Records, p. 6.

Sagot: *Mga bandang alas 11:00 po ng gabi habang nanonood po ako ng t.v. sa loob ng kubo sa tabi ng bahay ay tinawag po aka ni ate Jaq papunta sa loob ng kuwarto niya para kausapin po si kuya Boggie na asawa ni ate Jaq sa telepono. Tapos po pinahintay pa po ako ni ate sa kuwarto niya baka daw tumawag pa [ulit] si kuya Boggie sa telepono. Sa paghihintay po namin pareho na po kami nakatulog ni ate Jaq sa kama niya. Pagkatapos po ay nagising na lang po ako kasi may kumalabit sa akin sa kaliwang braso. Nakilala ko po siya ay si kuya Andy Angeles. Tinanong ko siya kung ano ang ginagawa niya sa loob ng bahay at paano siya nakapasok. Sinabi niya po sa akin na gumawa daw po siya ng paraan para makapasok sa loob ng bahay at sinabi po niya sa akin na nagpapakita daw ng motibo si ate Jaq sa kanya. Ang sabi ko po ay kung gusto niyang makausap si ate Jaq ay labas ako dyan, bahala sila mag usap na dalawa. Tapos po [inulit-ulit] ko kay kuya Andy na wala po akong alam sa pagpasok niya sa loob ng bahay ni ate Jaq at lumabas na po ako ng kuwarto. Pagkatapos po ay narinig ko po na nagkakagulo po sila sa kuwarto. Tapos po ay pumunta na kami ni ate Jaq sa police Station sakay sa kotse ni ate Jaq para mag reklamo.*

x x x x x x x x x"

The prosecution intended to present Alvarez as a hostile witness,[33] but failed to do so. Curiously, Alvarez executed another Affidavit dated June 4, 2014, but this time, to support accused-appellant's Petition filed before this Court.[34] The second *Sinumpaang Salaysay* reads:

"Ako, si Sheryl Alvarez, may sapat na gulang, Pilipino, may asawa at naninirahan sa Mindoro Oriental, matapos na makapanumpa nang naaayon sa batas ay nagsasalaysay ng mga sumusunod:

x x x x x x x x x"

6. Na palubog na ang araw ng dumating si Avelino Angeles at ng dumating siya ay tinawag siya ni Jacqueline Cruz na umupo sa tabi niya.

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[33] TSN, November 15, 2007, p. 3; records, p. 41.

[34] CA *rollo*, pp. 129-132.

7. Na kumanta at sumayaw si Jacqueline Cruz sa tugtog na "Totoy Bibo" at habang sumasayaw ay hinubad niya ang bra niya at inihagis sa akin.

8. Na pagkatapos niyang kumanta ay lumapit sa amin at sa tabi ng mesa ay hinubad ang pants niya at umihi sa harap namin.

9. Maya maya ay pumunta si Jacqueline Cruz sa may punong mangga at tinawag si Avelino Angeles. Aka naman ay inutusan niyang bumili pa ng alak ngunit hindi ako bumili.

10. Paglingon ko, nakita ko na lang na naghahalikan na sina Jacqueline Cruz at Avelino Angeles sa may punong mangga.

11. Na nang pauwi na kami, nakita ko at dinig na dinig ko na sinabi ni Jacqueline Cruz kay Avelino Angeles na kung kaya daw siyang paligayahin ay sumunod siya at ibinigay pa ni Jacqueline Cruz ang kanyang cellphone number kay Avelino Angeles.

12. Na naiwan pa si Avelino Angeles sapagkat nagaayos pa siya sa kubo at kami naman ni Jacqueline Cruz ay naglakad na.

13. Nang huminto kami sa may waiting shed ang sabi ni Jacqueline Cruz ay "Ngarat nya, hindi niya ako matitikman, paglalawayin ko lang siya[."]

14. Maya maya ay tumawag sa telepono ang asawa ni Jacqueline Cruz at nag away silang mag asawa sa [telepono].

15. Tanggal ang kalasingan ni Jacqueline Cruz sa sigawan nila sa telepono at dalidali na siyang umuwi kasama ako.

16. Na pagdating [namin] sa bahay derecho si Jacqueline Cruz sa banyo at naligo. Hindi niya isinara ang pinto sa kuwarto niya.

[17.] Hindi niya rin iniutos na isara ko ang gate at main door. Iniisip ko na lamang na dahil narinig ko na pinasusunod niya si Avelino Angeles sa bahay.

[18.] Na mayamaya ay lumabas ng banyo si Jacqueline Cruz at walang kahit anong saplot sa katawan ay humiga sa kama, bukas ang pinto at nilagyan lang ng tuwalya ang ibabaw na

katawan. Walang bahid ng kalasingan sa mukha at kilos ni Jacqueline Cruz.

[19.] Maya maya ay nakila ko si Avelino Angeles sa kuwarto. Hindi na ako nagtaka dahil alam kong pinasunod ito ni Jacqueline Cruz.

[20.] Na nakita ko na akma pa lang gigisingin ni Avelino Angeles si Jacqueline Cruz pagdilat niya ay nakita niyang nakatingin ako, kaya bigla siyang sumigaw.

[21.] Na walang paghalik sa dibdib na nangyari sa kuwarto sapagkat nakikita ko kung ano ang nangyari. May halikan na nangyari sa dalawa ngunit hindi sa kuwarto kundi sa may puno ng mangga sa may videoke.

[22.] Mapatutunayan ko na walang puwersahan nangyari sa pagpasok ni Avelino Angeles sa kuwarto ni Jacqueline Cruz. Kagustuhan ni Jaqueline Cruz na pumunta sa bahay niya si Avelino Angeles para paligayahin siya, ayon sa nadinig kong sinabi niya kay Avelino Angeles.

[23.] Matapos akong palayasin ay umuwi na ako sa bayan namin at ang ayokong tumestigo sa kaso ni Jacqueline Cruz na ipakulong ang taong wala [namang] kasalanan sa kanya.

[24.] Na hindi ko inakala na maaari pa akong magbigay ng salaysay sapagkat pinapirma na ako ni Jacqueline. Nang mabalitaan ko sa Ternate na convicted daw si Avelino Angeles, nagtaka ako sapagkat hindi naman ako natuloy magtestigo. At alam kong walang kasalanan si Avelino Angeles.

[25.] Na hinihiling ko na bigyang halaga ng Kataas-taasang Hukuman ang aking pinanumpaang salaysay sapagkat hindi kaya ng konsensya ko ang hindi magsalita kung makukulong si Avelino Angeles na walang kasalanan kay Jacqueline Cruz.

[26.] Ngayon ko napagtanto na planado ni Jacqueline Cruz ang ginawa kay Avelino Angeles sapagkat matapos niyang imbitahan at pasunurin sa bahay niya para paligayahin niya at sasabihin niya sa akin na "Ngarat niya, paglalawayin ko lang siya, di niya ako matitikman."

Given that the second affidavit was belatedly executed, thus, not marked during pre-trial and not formally offered, the Court may not assign any evidentiary weight and value to the same. It

bears stressing that the affidavit is not in any way considered by this Court as proof of accused-appellant's non-guilt. The Court's appreciation of the second affidavit is highly limited. At most, the affidavit serves as further proof that another person was present when the incident happened. To the mind of this Court, such circumstance, when considered alongside the fact that the prosecution initially wanted to present Alvarez as a hostile witness but failed to do so, casts doubt on the conviction which was solely based on the purported victim's testimony. It is also worth noting that although the prosecution had an opportunity to attack the veracity of the second affidavit when they filed their Comment on the Petition for Review, they nevertheless failed to do so.

Denial versus Positive Identification

The CA dismissed as weak accused-appellant's defense of denial for the CA, the denial of accused-appellant cannot prevail over the positive and categorical testimony of the private complainant who testified that she was roused from her sleep by the weight of accused-appellant who was on top of her and sucking her breasts.[35]

The much debated and highly controversial case of *People v. Webb, et al.*[36] comes to mind. Indeed, we look forward to the day wrongful convictions become a thing of the past. We thus take this opportunity to reiterate and echo the discussion on denials and positive identification We made in *Webb*,[37] lest it be forgotten:

"But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, [']I saw him do it.['] Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the

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[35] *Rollo*, p. 37.

[36] 652 Phil. 512 (2010).

[37] *Id.* at 581.

truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?

There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, [']He did it![’] without blinking an eye."[38]

On the Element of Lewdness

A thorough review of the records leads this Court to conclude that accused-appellant entered the room with lustful intentions of a sexual partner that, what he thought, were also shared by Jacqueline. Jurisprudence[39] defines "lewd" as obscene, lustful, indecent, lecherous, a form of immorality that has relation to moral impurity, or that which is carried on a wanton manner. Such definition of "lewd" leaves Us with the question of "Are all lewd acts punishable?" The precise definition of the crime of Acts of Lasciviousness in Art. 336 of the RPC provides the answer, *i.e.*, that the lascivious act or lewdness must be under any of the circumstances provided for under Art. 335 of the RPC.[40]

Indeed, as discussed in *Amployo v. People*:[41]

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or

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[38] *Id.*

[39] *People v. Lizada*, 444 Phil. 67, 97 (2003).

[40] *People v. Victor*, *supra* note 28 at 811, 813 (2002).

[41] 496 Phil. 747, 756 (2005).

absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. xxx (Citations omitted)

Further on the point, the earlier case of *United States v. Gomez*[42] said:

It would be' somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of [Article] 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover. xxx.

Given that the delineation is highly dependent on the surrounding circumstances, courts must be vigilant in appreciating the circumstances, as these factors spell the difference between an acquittal and a conviction for crimes characterized by lewdness.

Putting into context the disquisitions above and the surrounding circumstances of the case at bar, We hold that the element that criminalizes lewdness, or the criminal circumstances of its commission were not proven beyond reasonable doubt. The facts indicate that the alleged acts of accused-appellant are in the nature of amorous advances made by an ardent lover or sexual partner, at the very least. Such conclusion can be drawn from the invitation made by the purported victim an hour before the said incident. Plainly, accused-appellant went to Jacqueline's bedroom with what he had reason to think was an invitation to a tryst. There was, however, either a change of mind or a completed teasing.

The RTC erred when it concluded that no testimony supported accused-appellant's allegation that an invitation

[42] 30 Phil. 22, 25 (1915).

was extended to him. A review of the records would reveal that accused-appellant's allegation was supported by the testimony of Ismael Olano, neither was there any categorical denial from Jacqueline that an invitation was extended. Moreover, an analysis of the other circumstances would strengthen accused-appellant's allegation that an invitation was indeed extended. First, the doors were unusually left unlocked, giving accused-appellant the impression that Jacqueline was still expecting him. Next, when accused-appellant entered the room, Sheryl simply left the room, a reaction completely contrary to that expected of a housemaid when she finds a non-member of the household in the premises at such a late hour.

On the other hand, the appellate court, practically dismissing the relevance of the invitation, concluded that the same did not mean that the purported victim would allow accused-appellant to do the alleged acts. We disagree. Although We recognize that prior consent in sexual acts does not amount to consent for subsequent sexual acts, We note that the circumstances in the case at bar call for a different treatment. The invitation indicative of the purported victim's consent must be interpreted *vis-a-vis* the incidents which occurred a few minutes before and after they parted ways.

The invitation was made when Jacqueline left the gathering, which was minutes after they were fondling each other and barely half an hour before the said incident. From the time the invitation was extended and until the time accused-appellant entered the room, there was no significant occurrence which could have led accused-appellant to conclude that Jacqueline changed her mind. Simply put, in the span of an hour, there was no reason for accused-appellant to believe that the invitation was withdrawn. Viewed in this light, accused-appellant's initial reaction of — "*Mare, pasensiya na, pasensiya na, mali ako ng inakala sa iyo*" — would make sense. It would then seem that there was a continuing acquiescence on the part of the purported victim as the fondling incident by the mango tree up to the time she reached home

would constitute an unbroken chain of events. The consent was only effectively and categorically withdrawn or revoked when she pushed accused-appellant away, exclaiming "*putang ina mo, bakit ka nakapasok dito?*" Upon witnessing Jacqueline's initial reaction, it being very clear that the consent and invitation were being revoked right then and there, accused-appellant immediately apologized and abandoned his intentions. That accused-appellant chose not to wake up Jacqueline upon entering the room should not be taken against him. Individuals have different preferences for sexual intercourse preliminaries and it is not for this Court to categorize a certain practice as unusual or contrary to normal human experience. Finally, We note that while the "sweetheart theory" does not often gain approval, We will not hesitate to set aside a judgment of conviction where the guilt of the accused has not been proven beyond reasonable doubt.

WHEREFORE, the foregoing premises considered, the Decision dated February 28, 2014 of the Court of Appeals in CA-G.R. CR No. 35394 is **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove his guilt beyond reasonable doubt, Avelino Angeles *y* Olano is hereby **ACQUITTED** of the charge of Acts of Lasciviousness. Where accused Avelino Angeles *y* Olano is not in detention as reported by his counsel, Atty. Miriam S. Clorina, let a copy of this Decision still be furnished the Director of the Bureau of Corrections, Muntinlupa City for information and guidance that accused has been acquitted of the charge in this case.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonardo-de Castro,*[*] *Peralta,* and *Reyes, JJ.*, concur.

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[*] Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated October 12, 2016.

THIRD DIVISION

[G.R. No. 213939. October 12, 2016]

LYLITH B. FAUSTO, JONATHAN FAUSTO, RICO ALVIA, ARSENIA TOCLOY, LOURDES ADOLFO and ANECITA MANCITA, *petitioners, vs.* **MULTI AGRI-FOREST AND COMMUNITY DEVELOPMENT COOPERATIVE (formerly MAF CAMARINES SUR EMPLOYEES COOPERATIVE, INC.)**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; REPUBLIC ACT NO. 7691; JURISDICTION OF METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS IN CIVIL CASES; THE INCREASE IN JURISDICTIONAL AMOUNT FOR ALL KINDS OF CLAIMS BEFORE FIRST LEVEL COURTS OUTSIDE OF METRO MANILA IS TO BE IMPLEMENTED IN A STAGGERED BASIS OVER A PERIOD OF TEN YEARS.— R.A. No. 7691, which amended Section 33 of Batas Pambansa Bilang 129 (BP 129), increased the jurisdictional amount pertaining to the MTCC. x x x It was emphasized in *Crisostomo v. De Guzman*, that the intent of R.A. No. 7691 was to expand the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts by amending the pertinent provisions of BP 129 or the Judiciary Reorganization Act of 1980. Under Section 5 of the said law, the increase in jurisdictional amount for all kinds of claims before first level courts outside of Metro Manila was to be implemented in a staggered basis over a period of 10 years. The first adjustment was to take place five years after the effectivity of the law. The second and final adjustment, on the other hand, would be made five years thereafter. In particular, the first adjustment in jurisdictional amount of first level courts outside of Metro Manila from ₱l00,000.00 to ₱200,000.00 took effect on March 20, 1999. Meanwhile, the second adjustment from ₱200,000.00 to ₱300,000.00 became

effective on February 22, 2004 in accordance with Circular No. 65-2004 issued by the Office of the Court Administrator on May 13, 2004.

2. ID.; ID.; ID.; TOTALITY OF CLAIMS RULE; APPLIES ONLY WHEN THERE ARE SEVERAL CLAIMS OR CAUSES OF ACTION BETWEEN THE SAME OR DIFFERENT PARTIES EMBODIED IN THE SAME COMPLAINT, IN WHICH CASE THE TOTAL AMOUNT OF THE CLAIMS SHALL BE DETERMINATIVE OF THE PROPER COURT WHICH HAS JURISDICTION OVER THE CASE.— Considering that the complaints were filed in 2000, the jurisdictional amount to be applied is ₱200,000.00, exclusive of interests, surcharges, damages, attorney's fees and litigation costs. This jurisdictional amount pertains to the totality of all the claims between the parties embodied in the same complaint or to each of the several claims should they be contained in separate complaints. This is the unequivocal meaning of the last proviso in Section 33(1) of B.P. 129 x x x. [T]he totality of claims rule applies only when there are several claims or causes of action between the same or different parties embodied in the ***same*** complaint, in which case the total amount of the claims shall be determinative of the proper court which has jurisdiction over the case. The instant case, however, does not call for the application of the rule since there are five complaints, each pertaining to a distinct and separate claim not exceeding ₱200,000.00. The petitioners' act of lumping altogether the amount of the claims in all of the complaints and arguing that the total amount of ₱l,216,342.91 exceeds the jurisdictional amount that pertains to the MTCC is a gross misinterpretation of the provision.

3. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CORPORATIONS; THE LACK OF AUTHORITY OF A CORPORATE OFFICER TO UNDERTAKE AN ACTION ON BEHALF OF THE CORPORATION OR COOPERATIVE MAY BE CURED BY RATIFICATION THROUGH A SUBSEQUENT ISSUANCE OF A BOARD RESOLUTION, RECOGNIZING THE VALIDITY OF THE ACTION OR THE AUTHORITY OF THE CONCERNED OFFICER.— [T]here were instances when the Court recognized the authority of some officers to file a case on behalf of the corporation even without the

presentation of the board resolution. x x x [H]owever, the Court clarified that the determination of the sufficiency of the authority of the concerned officers was done on a case to case basis. The rationale in justifying the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping is that they are in the best position to verify the truthfulness and correctness of the allegations in the petition. Nonetheless, this was not meant to trump the established rule of issuing a board resolution and appending a copy thereof to the complaint or petition so as to preclude any question on the authority to file the petition, particularly in signing the verification and certification against forum shopping. x x x [T]he lack of authority of a corporate officer to undertake an action on behalf of the corporation or cooperative may be cured by ratification through the subsequent issuance of a board resolution, recognizing the validity of the action or the authority of the concerned officer. x x x In this case, the respondent expressly recognized the authority of Nacario to file the complaints in Resolution No. 47, Series of 2008, in which the BOD resolved to recognize, ratify and affirm as if the same were fully authorized by the BOD, the filing of the complaints before the MTCC of Naga City by Nacario. x x x Here, considering that Nacario's authority had been ratified by the BOD, there is no reason for the Court not to uphold said authority.

4. ID.; THE COOPERATIVE CODE; SETTLEMENT OF DISPUTES; MEDIATION OR CONCILIATION; NOT A MANDATORY REQUIREMENT BEFORE SEEKING RECOURSE TO REGULAR COURTS.— [E]xpressed in Section 121 of the Cooperative Code is the preference for the amicable settlement of disputes before the CDA. It does not appear, however, that mediation or conciliation is a mandatory requirement that is considered fatal to a case directly filed in a regular court. The non-compulsory nature of the resort to mediation is evident from the language of the provision. The decision to mediate depends on the submission of one or both parties to undergo the procedure by requesting the CDA to mediate, coupled with the parties' mutual agreement to recognize its authority. The procedure therefore is optional and rests on the parties' agreement to submit to the same. Clearly, it is not mandatory to undergo mediation first before seeking

recourse to regular courts. This being the case, the respondent's direct resort to the court is not fatal to its cases.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DELAY; NOTICE OR DEMAND IS NOT NECESSARY BEFORE THE DEBTOR INCURS IN DELAY WHEN THE OBLIGATION EXPRESSLY SO DECLARES.— Article 1169, paragraph 1 of the Civil Code provides that demand is not necessary when the obligation or the law expressly so declares. In the promissory notes signed by the petitioners, there is a uniform provision which states that "[i]n case of default in payment of any installment due as herein agreed, the entire balance of this note shall immediately become due and payable at the option of the [respondent] *without any notice or demand."* This amounts to the express waiver of the need for demand before the debtor incurs in delay. The petitioners cannot evade liability by invoking that the stipulation on the waiver of notice applies only to the principal. It bears noting that the promissory notes state that the petitioners bound themselves jointly and severally liable with the principal debtor for the entire amount of the obligation. A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation. The petitioners being co-makers, their liability is immediate and absolute as the principal debtor. The terms of the promissory notes apply to co-makers in equal force as with the principal debtors. This includes stipulation on the waiver of notice from the creditor before the obligation becomes due and demandable.

6. ID.; ID.; ID.; INTEREST ON MONEY JUDGMENT; THE STIPULATION ON THE INTEREST RATE IS VOID WHEN THE STIPULATED INTEREST RATE IS UNCONSCIONABLE, IN WHICH CASE, COURTS MAY REDUCE THE INTEREST RATE AS REASON AND EQUITY DEMAND.— In this case, the RTC correctly ruled that the stipulated interest rate of 2.3% per month on the promissory notes and 2% per month surcharge are excessive, iniquitous, exorbitant and unconscionable, thus, rendering the same void. Since the stipulation on the interest rate is void, it is as if there was no express contract thereon, in which case, courts may reduce the interest rate as reason and equity demand. Thus, it is only just and reasonable for the RTC to reduce the interest to the acceptable legal rate of 1% per month or 12%

per annum. This ruling was affirmed by the CA. In view, however, of the ruling of this Court in *Nacar v. Gallery Frames, et al.*, there is a need to modify the rate of legal interest imposed on the money judgment in order to conform to the prevailing jurisprudence. In the said case, the Court discussed the modification on the rules in the imposition or computation of legal interest laid down in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*, brought about by Resolution No. 796 dated May 16, 2013 issued by the Bangko Sentral ng Pilipinas Monetary Board. x x x Consistent with the foregoing, the Court hereby reduces the rate of interest on the principal loans to six percent (6%) *per annum* and the surcharge imposed thereon also to the prevailing legal rate of six percent (6%) *per annum*.

APPEARANCES OF COUNSEL

Manuel P. Teoxon for petitioners.
Rolando Carandang 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, assailing the Decision[2] dated March 17, 2014 and the Resolution[3] dated August 4, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 123602.

Factual Antecedents

Multi Agri-Forest and Community Development Cooperative[4] (respondent) is a registered credit cooperative wherein Lylith

[1] *Rollo*, pp. 45-60.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla concurring; *id*. at 11-29.

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

[4] Formerly MAF Camarines Sur Employees Cooperative.

Fausto (Lylith), Jonathan Fausto (Jonathan), Rico Alvia (Rico), Arsenia Tocloy (Arsenia), Lourdes Adolfo (Lourdes) and Anecita Mancita (Anecita)[5] (collectively, the petitioners) are active members.[6]

On September 10, 1998, Lylith obtained a loan from the respondent in the amount of ₱80,000.00, with due date on January 8, 1999.[7] Subsequently, she secured another loan in the amount of ₱50,000.00 which will fall due on March 14, 1999.[8] Shortly thereafter, she procured a third loan from the respondent also in the amount of ₱50,000.00.[9] All of the mentioned transactions were evidenced by separate promissory notes, with Anecita and Lourdes signing as co-makers in the first and second loans, and Rico and Glicerio Barce (Glicerio) in the third loan.

Similarly, on October 27, 1998, Jonathan obtained a loan from the respondent in the amount of ₱60,000.00 to fall due on February 24, 1999, with Lylith and Glicerio as co-makers.[10] Thereafter, on December 10, 1998, he obtained a second loan in the amount of ₱100,000.00, with Lylith and Arsenia as his co-makers.[11] All five loans obtained by Lylith and Jonathan were imposed with an interest of 2.3% per month, with surcharge of 2% in case of default in payment of any installment due.

Lylith and Jonathan, however, failed to pay their loans despite repeated demands. Thus, on December 12, 2000, the respondent, through its Acting Manager Ma. Lucila G. Nacario (Nacario), filed five separate complaints[12] for Collection of Sum of Money

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[5] Anicia Mancita in GSIS ID, *see* CA *rollo*, p. 31.

[6] *Rollo*, p. 12.

[7] CA *rollo*, p. 81.

[8] *Id.* at 104.

[9] *Id.* at 97.

[10] *Id.* at 71.

[11] *Id.* at 89.

[12] *Id.* at 69-70, 79-80, 87A-88, 95-96, 102-103.

before the Municipal Trial Court in Cities (MTCC) of Naga City against the petitioners.

After the respondent rested its case, Rico, Glicerio, Lourdes, Arsenia and Anecita filed a motion to dismiss by way of a demurrer to evidence on the ground of lack of authority of Nacario to file the complaints and to sign the verification against forum shopping. They likewise claimed that the complaints were prematurely filed since no demand letters were sent to them.[13]

The respondent filed an opposition to the demurrer to evidence alleging that the petitioners expressly waived the need for notice or demand for payment in the promissory notes. It likewise averred that there was a subsequent board resolution confirming the authority of Nacario to file the complaints on behalf of the respondent.[14]

In an Order[15] dated July 24, 2009, the MTCC of Naga City, Branch 1 denied the petitioners' demurrer to evidence for lack of merit. It pointed out that the petitioners failed to raise the supposed lack of authority of Nacario in their Answer; hence, the said defense was deemed waived. As regards the lack of notice, it noted that the promissory notes evidencing the loans stipulated a waiver on the need for notice or demand in case of default in payment of any installment due, in which case the entire balance immediately becomes due and payable.

Subsequently, in a Decision[16] dated August 1, 2011, the MTCC ruled in favor of the respondent and held the petitioners liable for the payment of specified amount of loans, which include interests, penalties and surcharges, plus 12% interest thereon. The dispositive portion of the decision reads, as follows:

WHEREFORE, premises considered, the Court finds for the [respondent], ordering the following:

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

[14] *Id*. at 37.

[15] *Id*. at 188.

[16] Rendered by Presiding Judge Jose P. Nacional; *id*. at 43-47.

1. In Civil Case No. 11318, [Jonathan, Lylith and Glicerio] are hereby ordered jointly and severally to pay to [the respondent] the amount of Php 129,881.60 plus 12% interest thereon from the filing of the case until the whole amount is fully paid.

2. In Civil Case No. 11319, [Lylith, Lourdes and Anecita] are hereby ordered jointly and severally to pay to [the respondent] the amount of Php 178,564.79 plus 12% interest thereon from the filing of the case until the whole amount is fully paid.

3. In Civil Case No. 11438, [Jonathan, Lylith and Arsenia] are hereby ordered jointly and severally to pay to [the respondent] the amount of Php 166,756.39 plus 12% interest thereon from the filing of the case until the whole amount is fully paid.

4. In Civil Case No. 11439, [Lylith, Rico and Glicerio] are hereby ordered jointly and severally to pay to [the respondent] the amount of Php 30,700.00 plus 12% interest thereon from the filing of the case until the whole amount is fully paid.

5. In Civil Case No. 11440, [Lylith, Lourdes and Anecita] are hereby ordered jointly and severally to pay to [the respondent] the amount of Php 111,526.34 plus 12% interest thereon from the filing of the case until the whole amount is fully paid.

SO ORDERED.[17]

Unyielding, the petitioners appealed the foregoing decision with the Regional Trial Court (RTC) of Naga City. After the parties submitted their respective memoranda, the RTC rendered a Joint Decision[18] dated December 12, 2011, affirming with modification the decision of the MTCC. It reverted the liability of the petitioners to the original amount of the loan stated in the promissory notes and reduced the interest and surcharge to 12% *per annum*, respectively. The dispositive portion of the decision reads, thus:

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[17] *Id*. at 46-47.

[18] Rendered by Presiding Judge Bernhard B. Beltran; *id*. at 34-42.

WHEREFORE, premises considered, the assailed August 1, 2011 joint decision of the [MTCC] of Naga City, Branch 1 is hereby MODIFIED as follows:

1. In Civil Case No. 2011-0100 (MTCC 11318), [Jonathan, Lylith and Glicerio] are ordered jointly and severally to pay [the respondent] the Principal of loan under promissory note in the amount of ₱60,000.00 plus the following: a) 12% per annum on the said principal as interest and b) 12% per annum on the said principal as surcharge, both to be computed from the time of filing of this case until the whole amount is fully paid, AND c) attorney[']s fees in the amount of ₱6,000.00.

2. In Civil Case No. 2011-0101 (MTCC 11319), [Lylith, Lourdes and Anecita] are ordered jointly and severally to pay the Principal of loan under promissory note in the amount of *₱80,000.00 plus the following: a) 12% per annum on the said principal as interest and b) 12% per annum on the said principal as surcharge, both to be computed from the time of filing of this case until the whole amount is fully paid, AND c) attorney[']s fees in the amount of ₱8,000.00.*

3. In Civil Case No. 2011-0102 (MTCC 11438), [Jonathan & Lylith and Arsenia] are ordered jointly and severally to pay [the respondent] the Principal of loan under promissory note in the amount of *₱100,000.00 plus the following: a) 12% per annum on the said principal as interest and b) 12% per annum on the said principal as surcharge, both to be computed from the time of filing of this case until the whole amount is fully paid, AND c) attorney[']s fees in the amount of ₱10,000.00.*

4. In Civil Case No. 2011-0103 (MTCC 11439), [Lylith, Rico and Glicerio] are hereby ordered jointly and severally to pay [the respondent] the Principal of loan under promissory note in the amount of *₱50,000.00 plus the following: a) 12% per annum on the said principal as interest and b) 12% per annum on the said principal as surcharge, both to be computed from the time of filing of this case until the whole amount is fully paid, AND c) attorney[']s fees in the amount of ₱5,000.00.*

> *5. In Civil Case No. 2011-0104 (MTCC 11440), [Lylith, Lourdes and Anecita] are ordered to pay jointly and severally to pay [sic] [the respondent] the* Principal of loan under promissory note in the amount of ₱*50,000.00 plus the following: a) 12% per annum on the said principal as interest and b) 12% per annum on the said principal as surcharge, both to be computed from the time of filing of this case until the whole amount is fully paid, AND c) attorney[']s fees in the amount of* ₱*5,000.00.*
>
> SO ORDERED.[19]

On December 28, 2011, the petitioners filed a motion for reconsideration of the decision of the RTC. Thereafter, on February 2, 2012, the RTC issued a Joint Order,[20] specifically modifying its ruling in Civil Case No. 2011-0103, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, with respect to a) Civil Case No. 2011-0100; b) Civil Case No. 2011-0101; c) Civil Case No. 2011-0102; d) Civil Case No. 2011-0104, the instant motion for reconsideration, dated December 27, 2011 is DENIED, and consequently, the joint decision, dated December 12, 2011 in these cases is hereby AFFIRMED.
>
> Nonetheless, the decision in Civil Case No. 2011-0103 (MTCC Civil Case No. 11439) is hereby MODIFIED as to the Principal of loan from ₱50,000.00 to only ₱16,667.01. Consequently, with respect to this case, *[Lylith, Rico and Glicerio] are hereby ordered jointly and severally to pay [the respondent] the* Principal of loan under promissory note in the amount of ₱16,667.01, *plus the following: a) 12% per annum on the said principal as interest and b) 12% per annum on the said principal as surcharge, both to be computed from the time of filing of this case until the whole amount is fully paid, AND c) attorney[']s fees in the amount of* ₱*1,667.70.*
>
> SO ORDERED.[21]

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

[20] *Id*. at 32-33.

[21] *Id*. at 33.

On February 22, 2012, the petitioners filed a petition for review with the CA.[22] They reiterated their claim that Nacario lacked the authority to file the complaints on behalf of the respondent in the absence of a board resolution authorizing her to do so. They further questioned the respondent's failure to resort to mediation or conciliation before filing the cases in court.[23] They also pointed out that the RTC overlooked the fact that the respondent sent demand letters only to Lylith and Jonathan, to the exclusion of their co-makers.[24] Finally, they contended that the MTCC had no jurisdiction over the complaints considering that the total amount involved was way over its jurisdictional amount of ₱100,000.00 nor to the increase in the same in the amount of ₱200,000.00, brought about by the amendment provided in Republic Act (R.A.) No. 7691.[25]

On March 17, 2014, the CA rendered a Decision,[26] affirming the decision of the RTC, the dispositive portion of which reads, as follows:

> **WHEREFORE**, in view of the foregoing, the Petition for Review is **DENIED**. The Joint Decision dated December 12, 2011, and Joint Order dated February 2, 2012, rendered by the [RTC] of Naga City, Branch 24 in Civil Cases Nos. 2011-0100, 2011-0101, 2011-0102, 2011-0103 and 2011-0104, are **AFFIRMED**.
>
> **SO ORDERED**.[27] (Citations omitted)

The CA ruled that the MTCC had jurisdiction over the case considering that pursuant to R.A. No. 7691, the jurisdictional amount pertaining to its authority had been increased to ₱200,000.00, and each of the complaints filed by the respondent are within this stated amount. It pointed out

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[22] *Id*. at 3-30.

[23] *Id*. at 19.

[24] *Id*. at 21.

[25] *Id*. at 26.

[26] *Rollo*, pp. 11-29.

[27] *Id*. at 28.

that the totality rule raised by the petitioners does not apply since the respondent filed separate complaints pertaining to different loan transactions.[28] As regards the authority of Nacario to initiate the filing of the complaints, the same had been confirmed by a board resolution recognizing her authority to do so.[29] It also ruled that the lack of mediation does not affect the cases since resort to conciliation is not a pre-requisite to the filing of a case in court.[30] Finally, it dismissed the petitioners' argument on the lack of extrajudicial demand on each of the co-makers, holding that the same was not necessary since there was a stipulation in the promissory notes on the waiver of notice or demand.[31]

The petitioners filed a Motion for Reconsideration[32] but the CA, in its Resolution[33] dated August 4, 2014, denied the same.

On September 11, 2014, the petitioners interposed the present appeal with this Court. The petitioners contend that the CA erred in upholding the jurisdiction of the MTCC to hear the cases in contravention to the totality rule. They maintain that the MTCC has no jurisdiction over the complaints since the total amount of the claims exceeds the jurisdictional amount that pertains to the MTCC. They likewise point out the lack of authority of Nacario to act on behalf of the respondent, there being no board resolution empowering her to do so at the time she filed the complaints. Further, they argue that the respondent failed to resort to mediation or conciliation before filing the cases with the MTCC. Finally, they asseverate that the CA erred in overlooking the lack of demand or notice upon the co-makers of Lylith and Jonathan.

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[28] *Id*. at 19-20.

[29] *Id*. at 21.

[30] *Id*. at 24-25.

[31] *Id*. at 25-27.

[32] *Id*. at 30-36.

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

Ruling of the Court

The petition lacks merit.

The MTCC has jurisdiction over the complaints.

A reading of the petition shows that the issues raised herein had been thoroughly discussed and passed upon by the CA. On the issue of jurisdiction, the CA correctly upheld the jurisdiction of the MTCC of Naga City to hear the cases. R.A. No. 7691, which amended Section 33 of Batas Pambansa Bilang 129 (BP 129), increased the jurisdictional amount pertaining to the MTCC. Pertinently, Section 5 of R.A. No. 7691 reads:

> Sec. 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of Batas Pambansa Blg. 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (₱200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (₱300,000.00): Provided, however, That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (₱400,000.00).

It was emphasized in *Crisostomo v. De Guzman*,[34] that the intent of R.A. No. 7691 was to expand the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts by amending the pertinent provisions of BP 129 or the Judiciary Reorganization Act of 1980. Under Section 5 of the said law, the increase in jurisdictional amount for all kinds of claims before first level courts outside of Metro Manila was to be implemented in a staggered basis over a period of 10 years. The first adjustment was to take place five years after the effectivity of the law. The second and final adjustment, on the other hand, would be made five years thereafter.[35] In particular, the first adjustment in jurisdictional amount of first level courts outside of Metro

[34] 551 Phil. 951 (2007).

[35] *Id.* at 959.

Manila from ₱100,000.00 to ₱200,000.00 took effect on March 20, 1999. Meanwhile, the second adjustment from ₱200,000.00 to ₱300,000.00 became effective on February 22, 2004 in accordance with Circular No. 65-2004 issued by the Office of the Court Administrator on May 13, 2004.[36]

Considering that the complaints were filed in 2000, the jurisdictional amount to be applied is ₱200,000.00, exclusive of interests, surcharges, damages, attorney's fees and litigation costs. This jurisdictional amount pertains to the totality of all the claims between the parties embodied in the same complaint or to each of the several claims should they be contained in separate complaints. This is the unequivocal meaning of the last proviso in Section 33(1) of B.P. 129, which reads:

> **Sec. 33.** *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases.* – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
>
> (1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed One hundred thousand pesos (₱100,000.00) or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed Two hundred thousand pesos (₱200,000.00) exclusive of interest damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: **Provided, That where there are several claims or causes of action between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action**, irrespective of whether the causes of action arose out of the same or different transactions[.]
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> x x x (Emphasis ours)

Therefore, the CA correctly ruled that the totality rule does not apply in the case. As can be deduced from the

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[36] *Id.*

above stated provision, the totality of claims rule applies only when there are several claims or causes of action between the same or different parties embodied in the ***same*** complaint, in which case the total amount of the claims shall be determinative of the proper court which has jurisdiction over the case. The instant case, however, does not call for the application of the rule since there are five complaints, each pertaining to a distinct and separate claim not exceeding ₱200,000.00. The petitioners' act of lumping altogether the amount of the claims in all of the complaints and arguing that the total amount of ₱1,216,342.91 exceeds the jurisdictional amount that pertains to the MTCC is a gross misinterpretation of the provision.

The Board of Directors (BOD) ratified the acts of Nacario.

The petitioners asseverate that Nacario has no authority to file the complaints on behalf of the respondent. They argue that it is only by the authority of a board resolution that Nacario may be able to validly pursue acts in representation of the cooperative. They also contend that the applicable law is R.A. No. 6938 or the Cooperative Code of the Philippines (Cooperative Code),[37] and not the Corporation Code of the Philippines (Corporation Code).

That the applicable law should be the Cooperative Code and not the Corporation Code is not sufficient to warrant a different resolution of this case. Verily, both codes recognize the authority of the BOD, through a duly-issued board resolution, to act and represent the corporation or the cooperative, as the case maybe, in the conduct of official business. In Section 23[38] of the Corporation

[37] R.A. No. 6938, approved on March 10, 1990, was the law in force at the time of filing of the complaints. It was later amended by R.A. No. 9520 or the *Philippine Cooperative Code of 2008* approved on February 17, 2009.

[38] **Sec. 23.** ***The board of directors or trustees.*** — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Code, it is provided that all corporate powers of all corporations formed under the Code shall be exercised by the BOD. All businesses are conducted and all properties of corporations are controlled and held by the same authority. In the same manner, under Section 39 of the Cooperative Code, the BOD is given the power to direct and supervise the business, manages the property of the cooperative and may, by resolution, exercise all such powers of the cooperative. The BOD, however, may authorize a responsible officer to act on its behalf through the issuance of a board resolution attesting to its consent to the representation and providing for the scope of authority.

Nevertheless, there were instances when the Court recognized the authority of some officers to file a case on behalf of the corporation even without the presentation of the board resolution. In *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*,[39] it was noted, thus:

> In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

[39] 568 Phil. 572 (2008).

ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, **(3) the General Manager or Acting General Manager**, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.[40] (Citation omitted and emphasis ours)

In the abovementioned cases, however, the Court clarified that the determination of the sufficiency of the authority of the concerned officers was done on a case to case basis. The rationale in justifying the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping is that they are in the best position to verify the truthfulness and correctness of the allegations in the petition.[41] Nonetheless, this was not meant to trump the established rule of issuing a board resolution and appending a copy thereof to the complaint or petition so as to preclude any question on the authority to file the petition, particularly in signing the verification and certification against forum shopping.

Apart from the foregoing, the lack of authority of a corporate officer to undertake an action on behalf of the corporation or cooperative may be cured by ratification through the subsequent issuance of a board resolution, recognizing the validity of the action or the authority of the concerned officer. In *Yasuma v. Heirs of Cecilio S. de Villa*,[42] the Court emphasized, thus:

[T]he corporation may ratify the unauthorized act of its corporate officer. Ratification means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its behalf. It is this voluntary choice, knowingly made, which amounts

[40] *Id.* at 581.

[41] *Id.* at 581-582.

[42] 531 Phil. 62 (2006).

to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ratification can be made either expressly or impliedly. Implied ratification may take various forms—like silence or acquiescence, acts showing approval or adoption of the act, or acceptance and retention of benefits flowing therefrom.[43] (Citations omitted)

In this case, the respondent expressly recognized the authority of Nacario to file the complaints in Resolution No. 47, Series of 2008,[44] in which the BOD resolved to recognize, ratify and affirm as if the same were fully authorized by the BOD, the filing of the complaints before the MTCC of Naga City by Nacario. In a similar issue raised in *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*,[45] the Court upheld the subsequent issuance of a board resolution recognizing the authority of the corporation's finance manager as sufficient to acknowledge the authority of the said officer to file a petition with the RTC on behalf of the corporation. It ratiocinated that, by virtue of the issuance of the board resolution, the corporation ratified the authority of the concerned corporate officer to represent it in the petition filed before the RTC and consequently to sign the verification and certification of non-forum shopping on behalf of the corporation.[46] Here, considering that Nacario's authority had been ratified by the BOD, there is no reason for the Court not to uphold said authority.

Mediation before the Cooperative Development Authority (CDA) is not compulsory.

The petitioners likewise raised an issue with respect to the lack of effort on the part of the respondent to resort to mediation before the CDA prior to filing the complaints in court.

Indeed, expressed in Section 121 of the Cooperative Code is the preference for the amicable settlement of disputes before

[43] *Id*. at 68.
[44] CA *rollo*, p. 133.
[45] 713 Phil. 240 (2013).
[46] *Id*. at 248-251.

the CDA. It does not appear, however, that mediation or conciliation is a mandatory requirement that is considered fatal to a case directly filed in a regular court. The provision reads as follows:

> Sec. 121. *Settlement of Disputes.* Disputes among members, officers, directors and committee members, and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative, and in applicable laws.
>
> Should such a conciliation/mediation proceeding fail, the matter shall be settled in a court of competent jurisdiction.

The non-compulsory nature of the resort to mediation is evident from the language of the provision. The decision to mediate depends on the submission of one or both parties to undergo the procedure by requesting the CDA to mediate, coupled with the parties' mutual agreement to recognize its authority. The procedure therefore is optional and rests on the parties' agreement to submit to the same. Clearly, it is not mandatory to undergo mediation first before seeking recourse to regular courts. This being the case, the respondent's direct resort to the court is not fatal to its cases.

The requirement for demand or notice may be waived.

Anent the petitioners' claim that no notice or demand was sent to them, the CA correctly ruled that the instant case falls under the exceptions to he necessity of demand. Specifically, Article 1169, paragraph 1 of the Civil Code provides that demand is not necessary when the obligation or the law expressly so declares. In the promissory notes signed by the petitioners, there is a uniform provision which states that "[i]n case of default in payment of any installment due as herein agreed, the entire balance of this note shall immediately become due and payable at the option of the [respondent] *without any notice or demand*." This amounts to the express waiver of the need for demand before the debtor incurs in delay.

The petitioners cannot evade liability by invoking that the stipulation on the waiver of notice applies only to the principal. It bears noting that the promissory notes state that the

petitioners bound themselves jointly and severally liable with the principal debtor for the entire amount of the obligation. A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation.[47] The petitioners being co-makers, their liability is immediate and absolute as the principal debtor. The terms of the promissory notes apply to co-makers in equal force as with the principal debtors. This includes stipulation on the waiver of notice from the creditor before the obligation becomes due and demandable.

The interest imposed on the money judgment must be modified to conform to prevailing jurisprudence.

The RTC, in its decision, ruled that the stipulated interest rates of 2.3% per month and 2% surcharge per month are excessive and unconscionable as the combination of these rates already amounted to 51.6% of the principal. Finding such stipulation void for being exorbitant and therefore contrary to morals, if not against the law, it reduced the rate of interest and surcharge to 1% per month or twelve percent (12%) *per annum*, which was then the prevailing rate of legal interest.

Such ruling of the RTC finds support in a plethora of cases where this Court ruled that the imposition of iniquitous and unconscionable interest rate renders the same void and warrants the imposition of the legal interest rate. In *Ruiz v. CA*,[48] the Court found the 3% interest imposed on four promissory notes as excessive and equitably reduced the same to 12% *per annum*. Likewise, in *Chua, et al. v. Timan, et al.*,[49] the Court ruled that the stipulated interest rates of 7% and 5% per month imposed on loans are excessive and reduced the same to the legal rate of 1% per month or 12% *per annum*. And, in *Macalinao v. Bank of the Philippine Islands*,[50] the Court further reduced the 3% interest imposed by the CA on purchases made using Bank of the Philippine Islands credit card

[47] *Inciong, Jr. v. CA*, 327 Phil. 364, 372 (1996).
[48] 449 Phil. 419 (2003).
[49] 584 Phil. 144 (2008).
[50] 616 Phil. 60 (2009).

to 1% per month, finding that 36% *per annum* of interest, which even excludes penalty charges, is excessive and unconscionable.

In this case, the RTC correctly ruled that the stipulated interest rate of 2.3% per month on the promissory notes and 2% per month surcharge are excessive, iniquitous, exorbitant and unconscionable, thus, rendering the same void. Since the stipulation on the interest rate is void, it is as if there was no express contract thereon, in which case, courts may reduce the interest rate as reason and equity demand.[51] Thus, it is only just and reasonable for the RTC to reduce the interest to the acceptable legal rate of 1% per month or 12% *per annum*. This ruling was affirmed by the CA.

In view, however, of the ruling of this Court in *Nacar v. Gallery Frames, et al.*,[52] there is a need to modify the rate of legal interest imposed on the money judgment in order to conform to the prevailing jurisprudence. In the said case, the Court discussed the modification on the rules in the imposition or computation of legal interest laid down in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[53] brought about by Resolution No. 796 dated May 16, 2013 issued by the Bangko Sentral ng Pilipinas Monetary Board. The pertinent portion in *Nacar* reads as follows:

> Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:
>
> > The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
> >
> > **Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an**

[51] *Id*. at 69.

[52] 716 Phil. 267 (2013).

[53] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

> **express contract as to such rate of interest, shall be six percent (6%) *per annum*.**
>
> **Section 2.** In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
>
> This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be **six percent (6%) *per annum*** effective July 1, 2013. x x x.[54] (Citations omitted and emphasis ours)

Consistent with the foregoing, the Court hereby reduces the rate of interest on the principal loans to six percent (6%) *per annum* and the surcharge imposed thereon also to the prevailing legal rate of six percent (6%) *per annum*.

WHEREFORE, premises considered, the Decision dated March 17, 2014 and the Resolution dated August 4, 2014 of the Court of Appeals, in CA-G.R. SP No. 123602, are hereby **AFFIRMED with MODIFICATION** in that the interest rate on the principal amount of the loans stated in the promissory notes and the corresponding surcharge for default in payment are respectively reduced to the prevailing legal rate of six percent (6%) *per annum*.

SO ORDERED.

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

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[54] *Nacar v. Gallery Frames, et al., supra* note 52, at 279-281.

THIRD DIVISION

[G.R. Nos. 188642 & 189425. October 17, 2016]

AGDAO LANDLESS RESIDENTS ASSOCIATION, INC., THE BOARD OF DIRECTORS OF AGDAO LANDLESS ASSOCIATION, INC., in their personal capacity namely: ARMANDO JAVONILLO, MA. ACELITA ARMENTANO, ALEX JOSOL, ANTONIA AMORADA, JULIUS ALINSUB, POMPENIANO ESPINOSA, JR., SALCEDO DE LA CRUZ, CLAUDIO LAO, CONSORCIO DELGADO, ROMEO CABILLO, RICARDO BACONG, RODOLFO GALENZOGA, BENJAMIN LAMIGO, and ASUNCION A. ALCANTARA, *petitioners, vs.* **ROLANDO MARAMION, LEONIDAS JAMISOLA, VIRGINIA CANOY, ELIZABETH GONZALES, CRISPINIANO QUIRE-QUIRE, ERNESTINO DUNLAO, ELLA DEMANDANTE, ELLA RIA DEMANDANTE, ELGIN DEMANDANTE, SATURNINA WITARA, VIRGILIO DAYONDON, MELENCIA MARAMION, ANGELICA PENKIAN, PRESENTACION TAN, HERNANI GREGORY, RUDY GIMARINO, VALENTIN CAMEROS, RODEL CAMEROS, ZOILO JABONETE, LUISITO TAN, JOSEPH QUIRE-QUIRE, ERNESTO DUNLAO, JR., FRED DUNLAO, LIZA MARAMION, CLARITA ROBILLA, RENATO DUNLAO and PRUDENCIO JUARIZA, JR.,** *respondents.*

[G.R. Nos. 188888-89. October 17, 2016]

ROLANDO MARAMION, LEONIDAS JAMISOLA, VIRGINIA CANOY, ERNESTINO DUNLAO, ELLA DEMANDANTE, ELLA RIA DEMANDANTE, ELGIN DEMANDANTE, SATURNINA WITARA, MELENCIA MARAMION, LIZA MARAMION, ANGELICA PENKIAN, PRESENTACION TAN, as substituted by his legal heirs: HERNANI GREGORY, RUDY

GIMARINO, RODEL CAMEROS, VALENTIN CAMEROS, VIRGILIO DAYONDON, PRUDENCIO JUARIZA, JR., ZOILO JABONETE, LUISITO TAN, ERNESTINO DUNLAO, JR., FRED DUNLAO, CLARITA ROBILLA, and RENATO DUNLAO, *petitioners, vs.* **AGDAO LANDLESS RESIDENTS ASSOCIATION, INC., THE BOARD OF DIRECTORS OF AGDAO LANDLESS RESIDENTS ASSOCIATION, INC., in their personal capacity, namely: ARMANDO JAVONILLO, MA. ACELITA ARMENTANO, ALEX JOSOL, ANTONIA AMORADA, JULIUS ALINSUB, POMPENIANO ESPINOSA, JR., JACINTO BO-OC, HERMENIGILDO DUMAPIAS, SALCEDO DE LA CRUZ, CLAUDIO LAO, CONSORCIO DELGADO, ROMEO CABILLO, RICARDO BACONG, RODOLFO GALENZOGA, BENJAMIN LAMIGO, ROMEO DE LA CRUZ, ASUNCION ALCANTARA and LILY LOY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; FACTUAL FINDINGS MAY NOT BE REVIEWED THEREIN, FOR THE SUPREME COURT IS NOT A TRIER OF FACTS.— [O]nly questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, since "the Supreme Court is not a trier of facts." It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions in jurisprudence.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; NON-STOCK CORPORATIONS; TERMINATION OF MEMBERSHIP; MEMBERSHIP

SHALL BE TERMINATED IN THE MANNER AND FOR THE CASES PROVIDED IN THE ARTICLES OF CORPORATION OR THE BY-LAWS.— Section 91 of the Corporation Code of the Philippines (Corporation Code) provides that membership in a non-stock, non-profit corporation (as in petitioner ALRAI in this case) shall be terminated in the manner and for the cases provided in its articles of incorporation or the by-laws. Petitioners allege that the membership of respondents in ALRAI was terminated due to (a) non-payment of membership dues and (b) failure to consecutively attend meetings. However, petitioners failed to substantiate these allegations. x x x Even assuming that petitioners were able to prove these allegations, the automatic termination of respondents' membership in ALRAI is still not warranted. x x x Section 5 of the ALRAI Constitution does not state that the grounds relied upon by petitioners will cause the *automatic* termination of respondents' membership. Neither can petitioners argue that respondents' memberships in ALRAI were terminated under letter (c) of Section 5 x x x. Although termination of membership from ALRAI may be made by a majority of the members, the court *a quo* found that the "guideline (referring to Section 2, Article III of the ALRAI Constitution) was not followed, hence, complainants' ouster from the association was illegally done." x x x [T]he "notice for the July 29, [2001] meeting where the general membership of ALRAI approved the expulsion of some of the respondents was short of the three (3)-day notice requirement. More importantly, the petitioners have failed to adduce evidence showing that the expelled members were indeed notified of any meeting or investigation proceeding where they are given the opportunity to be heard prior to the termination of their membership."

3. **ID.; ID.; ID.; ID.; ID.; WHEN THE ACTIONS OF THE MEMBERS MAY WARRANT ONLY THE PENALTY OF SUSPENSION OR FINE, THE AUTOMATIC TERMINATION OF MEMBERSHIP CONSTITUTES AN INFRINGEMENT OF THEIR CONSTITUTIONAL RIGHTS TO DUE PROCESS AND IS NOT IN ACCORD WITH THE PRINCIPLES ESTABLISHED IN ARTICLE 19 OF THE CIVIL CODE.—** The requirement of due notice becomes more essential especially so since the ALRAI Constitution provides for the penalties to be imposed in cases

where any member is found to be in arrears in payment of contributions, or is found to be absent from any meeting without any justifiable cause. x x x [, pursuant to] Section 3, Article II and Section 3, Article III of the ALRAI Constitution x x x. Members proved to be in arrears in the payment of monthly dues, contributions, or assessments shall only be automatically suspended; while members who shall be absent from any meeting without any justifiable cause shall only be liable for a fine. Nowhere in the ALRAI Constitution does it say that the foregoing actions shall cause the automatic termination of membership. Thus, the CA correctly ruled that "respondents' expulsion constitutes an infringement of their constitutional right to due process of law and is not in accord with the principles established in *Article 19 of the Civil Code*, x x x."

4. ID.; ID.; ID.; INDIVIDUAL SUIT AND DERIVATIVE SUIT, DISTINGUISHED.— Individual suits are filed when the cause of action belongs to the stockholder personally, and not to the stockholders as a group, or to the corporation, *e.g.* denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group. A derivative suit, on the other hand, is one which is instituted by a shareholder or a member of a corporation, for and in behalf of the corporation for its protection from acts committed by directors, trustees, corporate officers, and even third persons. The whole purpose of the law authorizing a derivative suit is to allow the stockholders/members to enforce rights which are derivative (secondary) in nature, *i.e.*, to enforce a corporate cause of action.

5. ID.; ID.; ID.; DERIVATIVE SUIT; REQUISITES; AN INDIVIDUAL SUIT MAY BE TREATED AS A DERIVATIVE SUIT WHEN THE OCCASION FOR THE STRICT APPLICATION OF THE RULE THAT A DERIVATIVE SUIT SHOULD BE BROUGHT TO PROTECT AND VINDICATE THE INTEREST OF THE CORPORATION DOES NOT OBTAIN UNDER THE CIRCUMSTANCES OF THE CASE.— The nature of the action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is

entitled to recover upon all or some of the claims asserted therein. x x x In a strict sense, the first cause of action, and the reliefs sought, should have been brought through a derivative suit. The first cause of action pertains to the corporate right of ALRAI involving its corporate properties which it owned by virtue of the Deeds of Donation. In derivative suits, the real party-in-interest is the corporation, and the suing stockholder is a mere nominal party. A derivative suit, therefore, concerns "a wrong to the corporation itself." However, we liberally treat this case (in relation to the cause of action pertaining to ALRAI's corporate properties) as one pursued by the corporation itself, for the following reasons. First, the court *a quo* has jurisdiction to hear and decide this controversy. x x x [,pursuant to] Republic Act No. 8799 in relation to Section 5 of the Presidential Decree No. 902-A x x x. Second, we note that petitioners did not object to the institution of the case (on the ground that a derivative suit should have been lodged instead of an individual suit) in any of the proceedings before the court *a quo* or before the CA. Third, a reading of the complaint (in relation to the cause of action pertaining to ALRAI's corporate properties) shows that respondents do not pray for reliefs for their personal benefit; but in fact, for the benefit of the ALRAI x x x. The reliefs sought show that the complaint was filed ultimately to curb the alleged mismanagement of ALRAI's corporate properties. x x x In this case, the reliefs sought do not entail the premature distribution of corporate assets. On the contrary, the reliefs seek to preserve them for the corporate interest of ALRAI. Clearly then, any benefit that may be recovered is accounted for, not in favor of respondents, but for the corporation, who is the real party-in-interest. Therefore, the occasion for the strict application of the rule that a derivative suit should be brought in order to protect and vindicate the interest of the corporation does not obtain under the circumstances of this case. x x x Fourth, based on the records, we find that there is substantial compliance with the requirements of a derivative suit, to wit: a) [T]he party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) [H]e has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) [T]he cause of action actually devolves on the corporation, the wrongdoing or harm having

been, or being caused to the corporation and not to the particular stockholder bringing the suit.

6. ID.; ID.; ID.; CORPORATE POWERS AND CAPACITY; THE POWER OF A CORPORATION TO VALIDLY CONVEY ANY OF ITS REAL OR PERSONAL PROPERTIES MUST BE PURSUANT TO A LEGITIMATE CORPORATE PURPOSE, OR IS AT LEAST REASONABLE AND NECESSARY TO FURTHER ITS PURPOSE.— The Corporation Code x x x tells us that the power of a corporation to validly grant or convey any of its real or personal properties is circumscribed by its primary purpose. It is therefore important to determine whether the grant or conveyance is pursuant to a legitimate corporate purpose, or is at least reasonable and necessary to further its purpose. Based on the records of this case, we find that the transfers of the corporate properties to Javonillo, Armentano, Dela Cruz, Alcantara and Loy are bereft of any legitimate corporate purpose, nor were they shown to be reasonably necessary to further ALRAI's purposes. This is principally because, x x x petitioners "personally benefitted themselves by allocating among themselves vast track of lands at the dire expense of the landless general membership of the Association."

7. ID.; ID.; ID.; DEALINGS OF DIRECTORS, TRUSTEES OR OFFICERS WITH THE CORPORATION; THE DIRECTORS OR TRUSTEES AND OTHER OFFICERS OF A CORPORATION OCCUPY A FIDUCIARY RELATION TOWARDS IT, AND CANNOT BE ALLOWED TO CONTRACT WITH THE CORPORATION, DIRECTLY OR INDIRECTLY, OR TO SELL PROPERTY TO IT, OR PURCHASE PROPERTY FROM IT, WHEN THEY ACT BOTH FOR THE CORPORATION AND FOR THEMSELVES.— The lack of legitimate corporate purpose is even more emphasized when Javonillo and Armentano, as a director and an officer of ALRAI, respectively, violated the fiduciary nature of their positions in the corporation. x x x Being the corporation's agents and therefore, entrusted with the management of its affairs, the directors or trustees and other officers of a corporation occupy a fiduciary relation towards it, and cannot be allowed to contract with the corporation, directly or indirectly, or to sell property to it, or purchase property from it, where they act both for the corporation and for themselves.

One situation where a director may gain undue advantage over his corporation is when he enters into a contract with the latter.

APPEARANCES OF COUNSEL

Velasco Caranto & De Real Law Offices for petitioners Agdao Landless Residents Association, Inc., *et al.*

The Law Firm of Uy Cruz Lo & Associates for respondent Lily Loy.

Suelto Delgra Claudio Cosape Quilatan & Associates for respondent Rolando Maramion, *et al.*

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions for review on *certiorari* assailing the Court of Appeals' (CA) Decision[1] and Resolution[2] dated November 24, 2008 and June 19, 2009, respectively, in CA-G.R. SP No. 01858-MIN and CA-G.R. SP No. 01861-MIN. The CA affirmed with modification the Decision[3] of the Regional Trial Court (court *a quo*) dated July 11, 2007 which ruled in favor of respondents.

The Parties

Petitioners are Agdao Landless Residents Association, Inc. (ALRAI), a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines,[4] and its board of directors,[5] namely, Armando Javonillo (Javonillo), Ma. Acelita Armentano (Armentano), Alex

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[1] *Rollo* (G.R. Nos. 188642 & 189425), pp. 50-76.

[2] *Id*. at 79-83.

[3] *Id*. at 230-238.

[4] RTC records, Vol. VIII, p. 9. See also *rollo* (G.R. Nos. 188642 & 189425), pp. 53, 355.

[5] Hermenigildo Dumapias and Jacinto Bo-oc were not included as petitioners.

Josol, Salcedo de la Cruz, Jr., Claudio Lao, Antonia Amorada, Julius Alinsub, Pompeniano Espinosa, Consorcio Delgado, Romeo Cabillo, Benjamin Lamigo, Ricardo Bacong, Rodolfo Galenzoga, and Asuncion Alcantara (Alcantara).[6] Respondents are allegedly ousted members of ALRAI, namely, Rolando Maramion, Leonidas Jamisola, Virginia Canoy (Canoy), Elizabeth Gonzales, Crispiniano Quire-Quire, Ernestino Dunlao, Ella Demandante, Ella Ria Demandante, Elgin Demandante, Saturnina Witara (Witara), Virgilio Dayondon (Dayondon), Melencia Maramion, Angelica Penkian (Penkian), Presentacion Tan, Hernani Gregory (Gregory), Rudy Gimarino (Gimarino), Valentin Cameros, Rodel Cameros (Cameros), Zoilo Jabonete, Luisito Tan (Tan), Joseph Quire-Quire, Ernestino Dunlao, Jr., Fred Dunlao, Liza Maramion, Clarita Robilla (Robilla), Renato Dunlao and Prudencio Juariza, Jr. (Juariza).[7]

The Antecedents

Dakudao & Sons, Inc. (Dakudao) executed six Deeds of Donation[8] in favor of ALRAI covering 46 titled lots (donated lots).[9] One Deed of Donation[10] prohibits ALRAI, as donee, from partitioning or distributing individual certificates of title of the donated lots to its members, within a period of five years from execution, unless a written authority is secured from Dakudao.[11]

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[6] *Rollo* (G.R. Nos. 188642 & 189425), p. 53.

[7] *Id.*

[8] All notarized on September 2, 1999.

[9] *Rollo* (G.R. Nos. 188642 & 189425), pp. 84-112.

[10] This Deed of Donation covers the following titles: TCT Nos. T-41344 to T-41360, TCT Nos. T-41362 to T-41364, TCT Nos. T-41367 to T-41369, TCT Nos. T-41371 to T-41373, TCT No. T-41375, TCT Nos. T-297814 to T-297820, TCT No. T-297810, TCT No. T-297812 and TCT No. T- (*sic*). *Id.* at 84-95.

[11] The specific provision provides:

NOW, THEREFORE, for and in consideration of the foregoing premises, and as an act of liberality and generosity, the DONOR hereby voluntarily and freely gives, transfers, and conveys by way of donation unto said DONEE, all of the described parcels of land, subject to the terms and conditions hereinafter set forth:

A violation of the prohibition will render the donation void, and title to and possession of the donated lot will revert to Dakudao.[12] The other five Deeds of Donation do not provide for the five-year restriction.

In the board of directors and stockholders meetings held on January 5, 2000 and January 9, 2000, respectively, members of ALRAI resolved to directly transfer 10 of the donated lots to individual members and non-members of ALRAI.[13] Transfer Certificate of Title (TCT) Nos. T-62124 (now T-322968), T-297811 (now TCT No. T-322966), T-297813 (now TCT No. T-322967) and T-62126 (now TCT No. T-322969) were transferred to Romeo Dela Cruz (Dela Cruz). TCT Nos. T-41374 (now TCT No. T-322963) and T-41361 (now TCT No. T-322962) were transferred to petitioner Javonillo, the president of ALRAI. TCT Nos. T-41365 (now TCT No. T-322964) and T-41370 (now TCT No. T-322964) were transferred to petitioner Armentano,

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1. to attest that the members of the DONEE are really in need of home lots for residential purposes, thereby preventing land speculation, the certificate of title of the aforementioned parcels of land shall be registered in the name of the DONEE, and **the latter is prohibited from partitioning or distributing individual certificates of title of the aforementioned parcels of land to its members, within a period of FIVE (5) YEARS from execution hereof, unless a written authority is secured from the DONOR**;

x x x x x x x x x

5. that [non-compliance] with, or violation of, the conditions [set forth] in this DEED OF DONATION by the DONEE shall render the Donation VOID, and title to and possession of the property shall revert to the DONOR. *Id.* at 93. Emphasis supplied.

[12] *Id.*

[13] *Rollo* (G.R. Nos. 188642 & 189425), pp. 219-221. The Resolution states:

That the herein irrevocable confirmation is made in recognition of, and gratitude for the outstanding services rendered by said, Mr. Romeo de la Cruz, as provider of instant loans and financial assistance, Mrs. Asuncion Alcantara, wife of our able counsel, Atty. Pedro Alcantara, Mr. Armando Javonillo, our tireless President and Mrs. Acelita Armentano, our tactful, courageous, and equally tireless Secretary, without whose efforts and sacrifices to acquire a portion of the realty of Dacudao & Sons, Inc., would not have been attained[.]

the secretary of ALRAI. TCT Nos. T-41367 (now TCT No. T-322971) and T-41366 were transferred to petitioner Alcantara, the widow of the former legal counsel of ALRAI. The donated lot covered by TCT No. T-41366 (replaced by TCT No. T-322970) was sold to Lily Loy (Loy) and now covered by TCT No. T-338403.[14]

Respondents filed a Complaint[15] against petitioners. Respondents alleged that petitioners expelled them as members of ALRAI, and that petitioners are abusing their powers as officers.[16] Respondents further alleged that petitioners were engaged in the following anomalous and illegal acts: (1) requiring ALRAI's members to pay exorbitant arrear fees when ALRAI's By-Laws only set membership dues at ₱1.00 per month;[17] (2) partially distributing the lands donated by Dakudao to some officers of ALRAI and to some non-members in violation of the Deeds of Donation;[18] (3) illegally expelling them as members of ALRAI without due process;[19] and (4) being unable to show the books of accounts of ALRAI.[20] They also alleged that Loy (who bought one of the donated lots from Alcantara) was a buyer in bad faith, having been aware of the status of the land when she bought it.[21]

Thus, respondents prayed for: (1) the restoration of their membership to ALRAI; (2) petitioners to stop selling the donated lands and to annul the titles transferred to Javonillo, Armentano, Dela Cruz, Alcantara and Loy; (3) the production of the accounting books of ALRAI and receipts of payments from

[14] *Id.* at 69-70.

[15] *Id.* at 16, 153-169. Respondents amended their Complaint four times. The court *a quo*, however, denied the fourth amendment of the Complaint.

[16] *Id.* at 155.

[17] *Id.* at 158.

[18] *Id.* at 158-160.

[19] *Id.* at 161.

[20] *Id.* at 163.

[21] *Id.* at 162.

ALRAI's members; (4) the accounting of the fees paid by ALRAI's members; and (5) damages.[22]

In their Answer,[23] petitioners alleged that ALRAI transferred lots to Alcantara as attorney's fees ALRAI owed to her late husband, who was the legal counsel of ALRAI.[24] On the other hand, Javonillo and Armentano, as president and secretary of ALRAI, respectively, made a lot of sacrifices for ALRAI, while Dela Cruz provided financial assistance to ALRAI.[25] Petitioners also alleged that respondents who are non-members of ALRAI have no personality to sue. They also claimed that the members who were removed were legally ousted due to their absences in meetings.[26]

The Ruling of the RTC

On July 11, 2007, the court *a quo* promulgated its Decision,[27] the decretal portion of which reads:

> After weighing the documentary and testimonial evidence presented, as well as the arguments propounded by the counsels, this Court tilts the scale of justice in favor of complainants and hereby grants the following:
>
> 1. Defendants are enjoined from disposing or selling further the donated lands to the detriment of the beneficiary-members of the Association;
>
> 2. The Complainants and/or the ousted members are hereby restored to their membership with ALRAI, and a complete list of all bona fide members should be made and submitted before this Court;

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[22] *Id*. at 165.

[23] *Id*. at 170-176.

[24] *Id*. at 172.

[25] *Id*.

[26] *Rollo* (G.R. Nos. 188642 & 189425), pp. 173-174.

[27] *Id*. at 230-238.

3. The Register of Deeds of the City of Davao is directed to annul the Land Titles transferred to Armando Javonillo, Ma. Acelita Armentano, Romeo dela Cruz, Asuncion Alcantara and Lily Loy with TCT Nos. T-322962, T-322963, T-322964, T-322965, T-322966, T-322967, T-322968, T-322969, T-322971 and T-338403 (formerly T-322970), respectively; and to register said titles to the appropriate donee provided in the Deeds of Donation; and

4. Defendants are further directed to produce all the Accounting Books of the Association, receipts of the payments made by all the members, and for an accounting of the fees paid by the members from the time of its incorporation up to the present;

5. Moral, exemplary and attorney's fees being unsubstantiated, the same cannot be given due course; and

6. Defendants are ordered to shoulder the costs of suit.

SO ORDERED.[28]

The court *a quo* treated the case as an intra-corporate dispute.[29] It found respondents to be *bona fide* members of ALRAI.[30] Being *bona fide* members, they are entitled to notices of meetings held for the purpose of suspending or expelling them from ALRAI.[31] The court *a quo* however found that respondents were expelled without due process.[32] It also annulled all transfers of the donated lots because these violated the five-year prohibition under the Deeds of Donation.[33] It also found Loy a purchaser in bad faith.[34]

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[28] *Id*. at 237-238.

[29] *Id*. at 231.

[30] *Id*. at 235.

[31] *Id*. at 235-236.

[32] *Id*. at 236.

[33] *Id*.

[34] *Rollo* (G.R. Nos. 188642 & 189425), pp. 236-237.

Both Loy and petitioners filed separate appeals with the CA. Loy's appeal was docketed as CA-G.R. SP No. 01858;[35] while petitioners' appeal was docketed as CA-G.R. SP No. 1861.[36] In its Resolution[37] dated October 19, 2007, the CA ordered the consolidation of the appeals.

The Ruling of the Court of Appeals

The CA affirmed with modification the court *a quo*'s Decision. The decretal portion of the CA Decision[38] dated November 24, 2008 reads:

> **WHEREFORE**, the consolidated petitions are **PARTLY GRANTED**. The assailed Decision dated July 11, 2007 of the Regional Trial Court (RTC), Eleventh (11th) Judicial Region, Branch No. 10 of Davao City in *Civil Case No. 29,047-02* is hereby **AFFIRMED** with **MODIFICATION**.
>
> The following Transfer Certificates of Title are declared **VALID**:
>
> 1. **TCT Nos. T-322966, T-322967, T-322968 and T-322969** in the name of petitioner Romeo C. Dela Cruz; and
>
> 2. **TCT No. T-338403** in the name of petitioner Lily Loy.
>
> The following Transfer Certificates of Title are declared **VOID**:
>
> 1. **TCT Nos. T-322963** and **T-322962** in the name of Petitioner Armando Javonillo;

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[35] CA *rollo*, pp. 17-45.

[36] *Rollo* (G.R. Nos. 188642 & 189425), pp. 239-258.

[37] CA *rollo*, pp. 134-136.

[38] *Rollo* (G.R. Nos. 188642 & 189425), pp. 50-76. Penned by Associate Justice Mario V. Lopez, with the concurrence of Associate Justice Romulo V. Borja and Associate Justice Elihu A. Ybañez of the 21st Division of the Court of Appeals, Cagayan De Oro City.

2. **TCT Nos. T-322964** and **T-322965** in the name of petitioner Ma. Acelita Armentano; and

3. **TCT No. T-322971** in the name of petitioner Asuncion A. Alcantara.

Petitioners who are members of ALRAI may inspect all the records and books of accounts of ALRAI and demand accounting of its funds in accordance with *Section 1, Article VII* and *Section 6, Article V* of ALRAI's *Constitution and By-Laws*.

SO ORDERED.[39]

Under Section 2, Article III of ALRAI's Amended Constitution and By-Laws (ALRAI Constitution), the corporate secretary should give written notice of all meetings to all members at least three days before the date of the meeting.[40] The CA found that respondents were not given notices of the meetings held for the purpose of their termination from ALRAI at least three days before the date of the meeting.[41] Being existing members of ALRAI, respondents are entitled to inspect corporate books and demand accounting of corporate funds in accordance with Section 1, Article VII and Section 6, Article V of the ALRAI Constitution.[42]

The CA also noted that among the donated lots transferred, only one [under TCT No. T-41367 (now TCT No. 322971) and transferred to Alcantara] was covered by the five-year prohibition.[43] Although petitioners attached to their Memorandum[44] dated November 19, 2007 a Secretary's Certificate[45] of Dakudao resolving to remove the restriction from the land covered by TCT No. T-41367, the CA did not

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[39] *Id*. at 75. Emphasis in the original.

[40] *Id*. at 66.

[41] *Id*.

[42] *Rollo* (G.R. Nos. 188642 & 189425), p. 67.

[43] *Id*. at 69-70.

[44] *Rollo* (G.R. Nos. 188888-89), pp. 503-519.

[45] *Id.* at 558-559.

take this certificate into consideration because petitioners never mentioned its existence in any of their pleadings before the court *a quo*. Thus, without the required written authority from the donor, the CA held that the disposition of the land covered by TCT No. T-41367 is prohibited and the land's subsequent registration under TCT No. T-322971 is void.[46]

However, the CA nullified the transfers made to Javonillo and Armentano because these transfers violated Section 6 of Article IV of the ALRAI Constitution. Section 6 prohibits directors from receiving any compensation, except for *per diems*, for their services to ALRAI.[47] The CA upheld the validity of the transfers to Dela Cruz and Alcantara[48] because the ALRAI Constitution does not prohibit the same. The CA held that as a consequence, the subsequent transfer of the lot covered by TCT No. T-41366 to Loy from Alcantara was also valid.[49]

Both parties filed separate motions for reconsideration with the CA but these were denied in a Resolution[50] dated June 19, 2009.

Thus, the parties filed separate petitions for review on *certiorari* under Rule 45 of the Rules of Court with this Court. In a Resolution[51] dated September 30, 2009, we resolved to consolidate the petitions considering they assail the same CA Decision and Resolution dated November 24, 2008 and June 19, 2009, respectively. The petitions also involve the same parties and raise interrelated issues.

The Issues

Petitioners raise the following issues for resolution of the Court, to wit:

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[46] *Rollo* (G.R. Nos. 188642 & 189425), p. 72.

[47] *Id*. at 72-74.

[48] *Id.* at 74; pertaining only to TCT No. T-41366 (now TCT No. T-322970).

[49] *Id.*

[50] *Rollo* (G.R. Nos. 188642 & 189425), pp. 79-83.

[51] *Id*. at 405-406.

1. Whether respondents should be reinstated as members of ALRAI; and

2. Whether the transfers of the donated lots are valid.

Our Ruling

We find the petition partly meritorious.

I. Legality of respondents' termination

Petitioners argue that respondents were validly dismissed for violation of the ALRAI Constitution particularly for non-payment of membership dues and absences in the meetings.[52]

Petitioners' argument is without merit. We agree with the CA's finding that respondents were illegally dismissed from ALRAI.

We stress that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, since "the Supreme Court is not a trier of facts."[53] It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented.

When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unlesss the case falls under any of the recognized exceptions in jurisprudence.[54]

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[52] *Id.* at 31.

[53] *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, G.R. No. 148753, July 30, 2004, 435 SCRA 565, 580, citing *Far East Bank & Trust Co. v. Court of Appeals*, G.R. No. 123569, April 1, 1996, 256 SCRA 15, 18.

[54] The recognized exceptions are the following:

(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;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

The court *a quo* held that respondents are *bona fide* members of ALRAI.[55] This finding was not disturbed by the CA because it was not raised as an issue before it and thus, is binding and conclusive on the parties and upon this Court.[56] In addition, both the court *a quo* and the CA found that respondents were illegally removed as members of ALRAI. Both courts found that in terminating respondents from ALRAI, petitioners deprived them of due process.[57]

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(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) When the findings are contrary to those of the 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 petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc., G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

[55] *Rollo* (G.R. Nos. 188642 & 189425), p. 235. The RTC held:

It was established from the extant records that complainants are bona fide members of the association. As such, they are entitled to be notified of any action or change in their status, moreso, when it involves their suspension, in a meeting duly held for that purpose. x x x

[56] *Bank of the Philippine Islands v. Leobrera*, G.R. Nos. 137147-48, November 18, 2003, 416 SCRA 15, 18-19. We note that petitioners did not raise this issue in their appeal before the CA, nor in their Memorandum filed with the CA. [See CA Petition and Memorandum; *Rollo* (G.R. Nos. 188642 & 189425), pp. 249-250.] This is the reason why the CA proceeded to resolve the issue of whether respondents were legally ousted from ALRAI, an issue which presumes that all respondents were previously members of ALRAI. *Rollo* (G.R. Nos. 188642 & 189425), p. 65.

[57] *Rollo* (G.R. Nos. 188642 & 189425), pp. 67, 235-236.

Section 91[58] of the Corporation Code of the Philippines (Corporation Code)[59] provides that membership in a non-stock, non-profit corporation (as in petitioner ALRAI in this case) shall be terminated in the manner and for the cases provided in its articles of incorporation or the by-laws.

In turn, Section 5, Article II of the ALRAI Constitution[60] states:

> Sec. 5. – Termination of Membership – Membership may be lost in any of the following: a) **Delinquent in the payment of monthly dues;** b) **failure to [attend] any annual or special meeting of the association for three consecutive times without justifiable cause,** and c) expulsion may be exacted by majority vote of the entire members, on causes which herein enumerated: 1) Act and utterances which are derogatory and harmful to the best interest of the association; 2) Failure to attend any annual or special meeting of the association for six (6) consecutive months, which shall be construed as lack of interest to continue his membership, and 3) any act to conduct which are contrary to the objectives, purpose and aims of the association as embodied in the charter[.][61]

Petitioners allege that the membership of respondents in ALRAI was terminated due to (a) non-payment of membership dues and (b) failure to consecutively attend meetings.[62] However, petitioners failed to substantiate these allegations. In fact, the court *a quo* found that respondents submitted several receipts showing their compliance with the payment of monthly dues.[63] Petitioners likewise

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[58] Section 91 of the Corporation Code provides:

> Sec. 91. *Termination of membership.*— **Membership shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws.** Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. (Emphasis supplied.)

[59] *Batas Pambansa Bilang* 68.

[60] *Rollo* (G.R. Nos. 188642 & 189425), pp. 356-360.

[61] *Id.* at 356. Emphasis supplied.

[62] *Id.* at 31.

[63] *Id.* at 235-236.

failed to prove that respondents' absences from meetings were without any justifiable grounds to result in the loss of their membership in ALRAI.

Even assuming that petitioners were able to prove these allegations, the automatic termination of respondents' membership in ALRAI is still not warranted. As shown above, Section 5 of the ALRAI Constitution does not state that the grounds relied upon by petitioners will cause the *automatic* termination of respondents' membership. Neither can petitioners argue that respondents' memberships in ALRAI were terminated under letter (c) of Section 5, to wit:

> x x x c) expulsion may be exacted by majority vote of the entire members, on causes which herein enumerated: 1) Act and utterances which are derogatory and harmful to the best interest of the association; 2) Failure to attend any annual or special meeting of the association for six (6) consecutive months, which shall be construed as lack of interest to continue his membership, and 3) any act to conduct which are contrary to the objectives, purpose and aims of the association as embodied in the charter; x x x[64]

Although termination of membership from ALRAI may be made by a majority of the members, the court *a quo* found that the "guideline (referring to Section 2, Article III of the ALRAI Constitution) was not followed, hence, complainants' ouster from the association was illegally done."[65] The court *a quo* cited Section 2, Article III of the ALRAI Constitution which provides, thus:

> Sec. 2. – Notice – The Secretary shall give or cause to be given written notice of all meetings, regular or special to all members of the association at least three (3) days before the date of each meetings either by mail or personally. Notice for special meetings shall specify the time and the purposes or purpose for which it was called; x x x[66]

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[64] *Id.* at 356.

[65] *Id.* at 236.

[66] *Id.* at 236, 357.

The CA concurred with the finding of the court *a quo*.[67] The CA noted that the evidence presented revealed that the General Meeting for the termination of membership was to be held on July 29, 2001, at 2 o'clock in the afternoon; but the Notice to all officers and members of ALRAI informing them about the General Meeting appeared to have been signed by ALRAI's President only on July 27, 2001.[68] Thus, the CA held that the "notice for the July 29, [2001] meeting where the general membership of ALRAI approved the expulsion of some of the respondents was short of the three (3)-day notice requirement. More importantly, the petitioners have failed to adduce evidence showing that the expelled members were indeed notified of any meeting or investigation proceeding where they are given the opportunity to be heard prior to the termination of their membership."[69]

The requirement of due notice becomes more essential especially so since the ALRAI Constitution provides for the penalties to be imposed in cases where any member is found to be in arrears in payment of contributions, or is found to be absent from any meeting without any justifiable cause. Section 3, Article II and Section 3, Article III of the ALRAI Constitution provide, to wit:

Article II

x x x x x x x x x

Sec. 3. - Suspension of members – Any member who shall be six (6) months in arrears in the payment of monthly dues or additional contributions or assessments shall be automatically suspended and may be reinstated only upon payment of the corresponding dues in arrears or additional contributions and after approval of the board of Directors.[70]

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[67] *Id*. at 65.

[68] *Id*. at 66, 195. The CA Decision states that the Notice was signed on July 27, 2007, however, it appears in the Notice that the President signed it on July 27, 2001.

[69] *Id*. at 66.

[70] *Id.* at 356.

x x x x x x x x x

Article III

x x x x x x x x x

Sec. 3. – Any member who shall be absent from any meeting without justifiable causes shall be liable to a fine of Two Pesos (₱ 2.00);[71]

Clearly, members proved to be in arrears in the payment of monthly dues, contributions, or assessments shall only be automatically suspended; while members who shall be absent from any meeting without any justifiable cause shall only be liable for a fine. Nowhere in the ALRAI Constitution does it say that the foregoing actions shall cause the automatic termination of membership. Thus, the CA correctly ruled that "respondents' expulsion constitutes an infringement of their constitutional right to due process of law and is not in accord with the principles established in *Article 19 of the Civil Code*, x x x."[72]

There being no valid termination of respondents' membership in ALRAI, respondents remain as its existing members.[73] It follows that as members, respondents are entitled to inspect the records and books of accounts of ALRAI subject to Section 1, Article VII[74] of ALRAI's Constitution, and they can demand the accounting of its funds in accordance with Section 6, Article V of the ALRAI Constitution.[75] In addition,

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[71] *Id.* at 357.

[72] *Id*. at 67.

[73] *Id*.

[74] Section 1, Article VII of the ALRAI Constitution provides:

Sec. 1 – Inspection of Accounts – All the records and books of accounts of the association shall be open for inspection by the Board of Directors at all times. The members of the association may conduct such inspection of records and books of accounts at reasonable time during office hours of any business day. *Rollo* (G.R. Nos. 188642 & 189425), p. 360.

[75] Section 6, Article V of the ALRAI Constitution provides:

Sec. 6. – The Auditor shall x x x periodically examine and audit the Book of Accounts of the association, its assets and liabilities, require the

Sections 74[76] and 75[77] of the Corporation Code also sanction the right of respondents to inspect the records and books of accounts of ALRAI and demand the accounting of its funds.

II. On the validity of the donated lots

We modify the decision of the CA.

At the onset, we find that the cause of action and the reliefs sought in the complaint pertaining to the donated lands (ALRAI's corporate property) strictly call for the filing of a derivative suit, and not an individual suit which respondents filed.

Individual suits are filed when the cause of action belongs to the stockholder personally, and not to the stockholders as a group, or to the corporation, *e.g.* denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group.[78]

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production of supporting papers in all cases of income and disbursements; x x x. *Id*. at 359.

[76] Section 74 of the Corporation Code provides:

Sec. 74. *Books to be kept; stock transfer agent*. – x x x

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

x x x x x x x x x

[77] Section 75 of the Corporation Code provides:

Sec. 75. *Right to financial statements.* – Within ten (10) days from receipt of a written request of any stockholder or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations.

x x x x x x x x x

[78] *Villamor, Jr. v. Umale*, G.R. Nos. 172843 & 172881, September 24, 2014, 736 SCRA 325, 348.

A derivative suit, on the other hand, is one which is instituted by a shareholder or a member of a corporation, for and in behalf of the corporation for its protection from acts committed by directors, trustees, corporate officers, and even third persons.[79] The whole purpose of the law authorizing a derivative suit is to allow the stockholders/members to enforce rights which are derivative (secondary) in nature, *i.e.*, to enforce a corporate cause of action.[80]

The nature of the action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[81]

In this case, the complaint alleged, thus:

FIRST CAUSE OF ACTION

9. Sometime in 2001, Complainants accidentally discovered that portions of the aforementioned donated lands were partially distributed by the Officers of said association, AMONG THEMSELVES, without knowledge of its members.

x x x x x x x x x

11. Then there was illegal partial distribution of the donated lands. Not only the President and Secretary of the Association, but also some personalities who are not members of the association and who themselves own big tracts of land, are the recipients of the donated lands, which acts are contrary to the clear intents as indicated in the deed of donation. x x x[82]

In the same complaint, respondents prayed for the following reliefs, among others, to wit:

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[79] Villanueva and Villanueva-Tiansay, *Philippine Corporate Law*, 2013 ed., p. 474.

[80] *R.N. Symaco Trading Corporation v. Santos*, G.R. No. 142474, August 18, 2005, 467 SCRA 312, 328-329.

[81] *Ching v. Subic Bay Golf and Country Club, Inc.*, G.R. No. 174353, September 10, 2014, 734 SCRA 569, 581.

[82] *Rollo* (G.R. Nos. 188642 & 189425), pp. 157-158. Emphasis omitted.

a) An Order for a writ of PRELIMINARY PROHIBITORY MANDATORY INJUNCTION to stop the Defendants from disposing the donated lands to the detriment of the beneficiary-members of the Association[.]

x x x x x x x x x

c) To cease and desist from selling donated lands subject of this case and to annul the titles transferred x x x.

d) To annul the Land Titles fraudulently and directly transferred from the Dacudao in the names of Defendants Javonillo, Armentano, Romeo de la Cruz and Alcantara, and subsequently to defendant Lily Loy in the name of Agdao Landless Association.[83]

In a strict sense, the first cause of action, and the reliefs sought, should have been brought through a derivative suit. The first cause of action pertains to the corporate right of ALRAI involving its corporate properties which it owned by virtue of the Deeds of Donation. In derivative suits, the real party-in-interest is the corporation, and the suing stockholder is a mere nominal party.[84]

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[83] *Id.* at 165. Underscoring in the original.

[84] *Villamor, Jr. v. Umale*, G.R. No. 172843, September 24, 2014, 736 SCRA 325, 341, citing *Hi-Yield Realty, Incorporated v. Court of Appeals*, G.R. No. 168863, June 23, 2009, 590 SCRA 548, 556, also citing *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 471. See also *Cua, Jr. v. Tan*, G.R. Nos. 181455-56, December 4, 2009, 607 SCRA 645, 692-693, which held that:

> As the Supreme Court has explained: "A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, 'the action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' x x x
>
> x x x Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation." (Citations omitted, underscoring supplied.)

A derivative suit, therefore, concerns "a wrong to the corporation itself."[85]

However, we liberally treat this case (in relation to the cause of action pertaining to ALRAI's corporate properties) as one pursued by the corporation itself, for the following reasons.

First, the court *a quo* has jurisdiction to hear and decide this controversy. Republic Act No. 8799,[86] in relation to Section 5 of Presidential Decree No. 902-A,[87] vests the court *a quo* with original and exclusive jurisdiction to hear and decide cases involving:

Sec. 5. x x x x x x x x x

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

Second, we note that petitioners did not object to the institution of the case (on the ground that a derivative suit should have been lodged instead of an individual suit) in any of the proceedings before the court *a quo* or before the CA.[88]

Third, a reading of the complaint (in relation to the cause of action pertaining to ALRAI's corporate properties) shows that

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[85] *Florete v. Florete*, G.R. No. 174909, January 20, 2016.

[86] The Securities Regulation Code (2000). Section 5.2 provides:

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the courts of general jurisdiction or the appropriate Regional Trial Court: x x x

[87] Reorganization of the Securities and Exchange Commission with Additional Power and Placing the said Agency under the Administrative Supervision of the Office of the President (1976).

[88] See Answer, *rollo* (G.R. Nos. 188642 & 189425), pp. 170-176; Memorandum for Petitioners, *id.* at 309-326; Memorandum for Loy, *rollo* (G.R. Nos. 188888-89), pp. 473-502; Comment on the Petition, *id.* at 675-683; Comment, *id.* at 690-696.

respondents do not pray for reliefs for their personal benefit; but in fact, for the benefit of the ALRAI, to wit:

> c) To cease and desist from selling donated lands subject of this case and to annul the titles transferred to Armando Javonillo, Ma. Acelita Armentano, Romeo de la Cruz, Asuncion Alcantara and Lily Loy x x x.
>
> d) To annul the Land Titles fraudulently and directly transferred from the (*sic*) Dacudao in the names of Defendants Javonillo, Armentano, Romeo de la Cruz and Alcantara, and subsequently to Defendant Lily Loy in the name of Agdao Landless Assiociation.[89]

The reliefs sought show that the complaint was filed ultimately to curb the alleged mismanagement of ALRAI's corporate properties. We note that the danger sought to be avoided in *Evangelista v. Santos*[90] does not exist in this case. In *Santos*, plaintiff stockholders sought damages against the principal officer of the corporation, alleging that the officer's mismanagement of the affairs and assets of the corporation brought about the loss of the value of its stocks. In ruling against the plaintiff-stockholders, this Court held that "[t]he stockholders may not directly claim those damages *for themselves* for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation x x x."[91] More, in *Santos*, if only the case was brought before the proper venue, this Court added, "we note that the action stated in their complaint is susceptible of being converted into a derivative suit for the benefit of the corporation by a mere change in the prayer."[92]

In this case, the reliefs sought do not entail the premature distribution of corporate assets. On the contrary, the reliefs seek to preserve them for the corporate interest of ALRAI. Clearly

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[89] *Rollo* (G.R. Nos. 188642 & 189425), p. 165.

[90] 86 Phil. 387 (1950).

[91] *Id.* at 393-394. Emphasis supplied.

[92] *Id.* at 395.

then, any benefit that may be recovered is accounted for, not in favor of respondents, but for the corporation, who is the real party-in-interest. Therefore, the occasion for the strict application of the rule that a derivative suit should be brought in order to protect and vindicate the interest of the corporation does not obtain under the circumstances of this case.

Commart (Phils.), Inc. v. Securities and Exchange Commission (SEC)[93] upholds the same principle. In that case, the chairman and board of directors of Commart were sued for diverting into their private accounts amounts due to Commart as commissions. Respondents argued that the Hearing Panel of the SEC should dismiss the case on the ground that it has no jurisdiction over the matter because the case is not a derivative suit. The Hearing Panel denied the motion, and was affirmed by the SEC. Upon appeal, this Court affirmed the decision of the SEC, to wit:

> The complaint in SEC Case No. 2673, particularly paragraphs 2 to 9 under First Cause of Action, readily shows that it avers the *diversion of corporate income* into the private bank accounts of petitioner x x x and his wife. Likewise, the principal relief prayed for in the complaint is the recovery of a sum of money *in favor of the corporation*. This being the case, the complaint is definitely a derivative suit. x x x
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> x x x x x x x x x
>
> In any case, the suit is for the benefit of Commart itself, for a judgment in favor of the complainants will necessarily mean recovery by the corporation of the US$2.5 million alleged to have been diverted from its coffers to the private bank accounts of its top managers and directors. Thus, the prayer in the Amended Complaint is for judgment ordering respondents x x x, "to account for and to turn over or deliver to the Corporation" the aforesaid sum, with legal interest, and "ordering all the respondents, as members of the Board of Directors to take such remedial steps as would protect the corporation from further depredation of the funds and property."[94]

Fourth, based on the records, we find that there is substantial compliance with the requirements of a derivative suit, to wit:

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[93] G.R. No. 85318, June 3, 1991, 198 SCRA 73.

[94] *Id.* at 80-81.

a) [T]he party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;

b) [H]e has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

c) [T]he cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[95]

Here, the court *a quo* found that respondents are *bona fide* members of ALRAI.[96] As for the second requisite, respondents also have tried to demand appropriate relief within the corporation, but the demand was unheeded. In their Memorandum before the CA, respondents alleged, thus:

4.18 The occurrence of the series of distressing revelation prompted Respondents to confront Defendant Armentano on the accounting of all payments made including the justification for the illegal distribution of the Donated Land to four persons mentioned in preceding paragraph (4.12) of this memorandum. Unfortunately, Petitioner Armentano merely reasoned their (referring to the four persons) right to claim ownership of the land as compensation for their service and attorney's fees;

4.19 Anxious of the plan of action taken by the Respondents against the Petitioners, the latter started harassing the unschooled Respondents by unduly threatening them. Respondents simply wanted the land due them, an accounting of the finances of the Association and justification of the illegal disposition of the Donated Land which was donated for the landless members of the Association;

4.20 As a consequence, Petitioners on their own, with grave abuse of power and in violation of the Constitution and By-Laws of the Association maliciously expelled the Respondents particularly those

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[95] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 471-472. Citation omitted.

[96] *Rollo* (G.R. Nos. 188642 & 189425), p. 235.

persistently inquisitive about Petitioners' moves and acts which only emphasized their practice of upholding the MOB RULE by presenting solicited signatures of alleged members and non-members written on a scrap of paper signifying confirmation of the ouster (*sic*) members. x x x[97]

We note that respondents' demand on Armentano substantially complies with the second requirement. While it is true that the complaining stockholder must show that he has exhausted all the means within his reach to attain within the corporation the redress for his grievances, demand is unnecessary if the exercise will result in futility.[98] Here, after respondents demanded Armentano to justify the transfer of ALRAI's properties to the individual petitioners, respondents were expelled from the corporation, which termination we have already ruled as invalid. To our mind, the threat of expulsion against respondents is sufficient to forestall any expectation of further demand for relief from petitioners. Ultimately, to make an effort to demand redress within the corporation will only result in futility, rendering the exhaustion of other remedies unnecessary.

Finally, the third requirement for the institution of a derivative suit is clearly complied with. As discussed in the previous paragraphs, the cause of action and the reliefs sought ultimately redound to the benefit of ALRAI. In this case, and as in a proper derivative suit, ALRAI is the party-in-interest and respondents are merely nominal parties.

In view of the foregoing, and considering further the interest of justice, and the length of time that this case has been pending, we liberally treat this case as one pursued by the corporation to protect its corporate rights. As the court *a quo* noted, this case "commenced [on] April 2, 2002, blossomed in a full-blown trial and ballooned into seven (7) voluminous rollos."[99]

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[97] *Rollo* (G.R. Nos. 188888-89), p. 448. Underscoring supplied.

[98] See *Hi-Yield Realty, Incorporated v. Court of Appeals*, G.R. No. 168863, June 23, 2009, 590 SCRA 548, 557; *Republic Bank v. Cuaderno*, G.R. No. L-22399, March 30, 1967, 19 SCRA 671; and *Everett v. Asia Banking Corporation*, 49 Phil. 512 (1926).

[99] *Rollo* (G.R. Nos. 188642 &189425), p. 231.

We now proceed to resolve the issue of the validity of the transfers of the donated lots to Javonillo, Armentano, Dela Cruz, Alcantara and Loy. We agree with the CA in ruling that the TCTs issued in the names of Javonillo, Armentano and Alcantara are void.[100] We modify the ruling of the CA insofar as we rule that the TCTs issued in the names of Dela Cruz and Loy are also void.[101]

One of the primary purposes of ALRAI is the giving of assistance in uplifting and promoting better living conditions to all members in particular and the public in general.[102] One of its objectives includes "to uplift and promote better living condition, education, health and general welfare of all members in particular and the public in general by providing its members humble shelter and decent housing."[103] Respondents maintain that it is pursuant to this purpose and objective that the properties subject of this case were donated to ALRAI.[104]

Section 36, paragraphs 7 and 11 of the Corporation Code provide:

> Sec. 36. *Corporate powers and capacity*. – Every corporation incorporated under this Code has the power and capacity:
>
> x x x x x x x x x
>
> 7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
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> x x x x x x x x x

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[100] *Id.* at 75.

[101] *Id.*

[102] Respondents' Comment, *rollo* (G.R. Nos. 188642 & 189425), p. 446.

[103] *Rollo* (G.R. Nos. 188888-89), pp. 561-562.

[104] *Id.* at 438, 561-562; *Rollo* (G.R. Nos. 188642 & 189425), p. 446.

> 11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.[105]

The Corporation Code therefore tells us that the power of a corporation to validly grant or convey any of its real or personal properties is circumscribed by its primary purpose. It is therefore important to determine whether the grant or conveyance is pursuant to a legitimate corporate purpose, or is at least reasonable and necessary to further its purpose.

Based on the records of this case, we find that the transfers of the corporate properties to Javonillo, Armentano, Dela Cruz, Alcantara and Loy are bereft of any legitimate corporate purpose, nor were they shown to be reasonably necessary to further ALRAI's purposes. This is principally because, as respondents argue, petitioners "personally benefitted themselves by allocating among themselves vast track of lands at the dire expense of the landless general membership of the Association."[106]

We take first the cases of Dela Cruz, Alcantara and Loy.

We disagree with the CA in ruling that the TCTs issued in the name of Dela Cruz are valid. The transfer of property to him does not further the corporate purpose of ALRAI. To justify the transfer to Dela Cruz, petitioners merely allege that, "[o]n the other hand, the lots given by ALRAI to Romeo de la Cruz were compensation for the financial assistance he had been extending to ALRAI."[107] Records of this case do not bear any evidence to show how much Dela Cruz has extended to ALRAI as financial assistance. The want of evidence to support this allegation cannot allow a determination whether the amount of the financial help that Dela Cruz extended to ALRAI is commensurate to the amount of the property transferred to him. The lack of evidence on this point is prejudicial to ALRAI because ALRAI had parted with its property without any means by which

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[105] Underscoring supplied.

[106] *Rollo* (G.R. Nos. 188642 & 189425), p. 445.

[107] *Id.* at 20.

to determine whether the transfer is fair and reasonable under the circumstances.

The same is true with the transfer of properties to Alcantara. Petitioners allege that Alcantara's husband, Atty. Pedro Alcantara, "handled all the legal work both before the Regional Trial Court in Davao City (Civil Case No. 16192) and the Court of Appeals in Manila (CA GR No. 13744). He agreed to render his services although he was being paid intermittently, with just small amounts, in the hope that he will be compensated when ALRAI triumphs in the litigation."[108] Petitioners thus claim that "[b]ecause of the legal services of her husband, who is now deceased, petitioner Alcantara was given by ALRAI two (2) lots x x x."[109]

Petitioners admit that Atty. Pedro Alcantara represented ALRAI as counsel on part contingency basis.[110] In their Memorandum before the court *a quo*, respondents alleged that, "[i]n fact, Complainants have duly paid Atty. Alcantara's legal fees as evidence (*sic*) by corresponding receipts issued by the receiving Officer of the Association."[111] The aforementioned receipts[112] show that Atty. Pedro Alcantara had already been paid the total amount of ₱16,845.00.

In *Rayos v. Hernandez*,[113] we held that a contingent fee arrangement is valid in this jurisdiction. It is generally recognized as valid and binding, but must be laid down in an express contract. In the same case, we have identified the circumstances to be considered in determining the reasonableness of a claim for

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[108] *Id.* at 19. From 1976 to 1996, ALRAI was embroiled in a litigation with Dakudao and Sons, Inc. over the lands in Agdao. The case started in the RTC as Civil Case No. 16192 and reached the Court of Appeals as CA G.R. No. 13744.

[109] *Id.* at 20.

[110] *Id.* at 19.

[111] *Id.* at 385. Referring to Exhibits "DD" to "DD-54."

[112] See Formal Offer of Exhibits, *rollo* (G.R. Nos 188888-89), pp. 191-193; RTC records, Vol. V-A, pp. 159-188.

[113] G.R. No. 169079, February 12, 2007, 515 SCRA 517.

attorney's fees as follows: (1) the amount and character of the service rendered; (2) labor, time, and trouble involved; (3) the nature and importance of the litigation or business in which the services were rendered; (4) the responsibility imposed; (5) the amount of money or the value of the property affected by the controversy or involved in the employment; (6) the skill and experience called for in the performance of the services; (7) the professional character and social standing of the attorney; (8) the results secured; (9) whether the fee is absolute or contingent, it being recognized that an attorney may properly charge a much larger fee when it is contingent than when it is not; and (10) the financial capacity and economic status of the client have to be taken into account in fixing the reasonableness of the fee.[114]

In this case however, petitioners did not substantiate the extent of the services that Atty. Pedro Alcantara rendered for ALRAI. In fact, no engagement or retainer contract was ever presented to prove the terms of their agreement. Petitioners did not also present evidence as to the value of the ALRAI properties at the time of transfer to Alcantara. There is therefore no proof that the amount of the properties transferred to Alcantara, in addition to the legal fees he received, is commensurate (as compensation) to the reasonable value of his legal services. Using the guidelines set forth in *Rayos*, absent proof, there is no basis to determine whether the transfer of the property to Alcantara is reasonable under the circumstances.[115]

The importance of this doctrine in *Rayos* is emphasized in the Canons of Professional Ethics[116] and the Rules of

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[114] *Id.* at 531. Citations omitted.

[115] We agree with the CA that the transfer to Alcantara (TCT No. T-322971) violated the restriction in the Deed of Donation. As correctly held by the CA, the Secretary's Certificate which "attempt[ed] to remove TCT No. T-322971 (formerly TCT No. T-41367) from the mantle of the '5-year restriction'" cannot be used for that purpose for being belatedly raised for the first time on appeal. *Rollo* (G.R. Nos. 188642 & 189425), p. 71.

[116] 13. Contingent fees.

Court.[117] In both, the overriding consideration is the reasonableness of the terms of the contingent fee agreement, so much so that the grant of the contingent fee is subject to the supervision of the court.[118]

Spouses Cadavedo v. Lacaya[119] further illustrates this principle. In that case, this Court was confronted with the issue of whether the contingent attorney's fees consisting of one-half of the property that was subject of litigation was valid and reasonable. This Court ruled that the attorney's fee is excessive and unconscionable, and is therefore void. The Court said that as "matters then stood, [there] was not a sufficient reason to justify a large fee in the absence of any showing that special skills and additional work had been involved."[120] The Court also noted that Spouses Cadavedo and Atty. Lacaya already made arrangements for the cost and expenses for the cases handled.[121]

Similarly in this case, there is no proof that special skills and additional work have been put in by Atty. Pedro Alcantara.

A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness.

[117] Rule 138, Sec. 24. *Compensation of attorneys; agreement as to fees.* – An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

[118] See *Licudan v. Court of Appeals*, G.R. No. 91958, January 24, 1991, 193 SCRA 293, 300.

[119] G.R. No. 173188, January 15, 2014, 713 SCRA 397.

[120] *Id.* at 418.

[121] *Id.* at 419.

Further, as adverted to in previous paragraphs, receipts show that intermittent payments as legal fees have already been paid to him. We also note that in this case, not only one-half of a property was transferred to Alcantara as compensation; but two whole parcels of land – one with more or less 400 square meters (TCT No. 41366), and the other with more or less 395 square meters (TCT No. 41367).[122] The amount of fee contracted for, *standing alone and unexplained* would be sufficient to show that an unfair advantage had been taken of the client, or that a legal fraud had been perpetrated on him.[123]

Consequently, we also find that Alcantara's subsequent sale to Loy is not valid. Alcantara cannot sell the property, over which she did not have the right to own, in the first place. More, based on the records, the court *a quo* had already made a finding that Loy is guilty of bad faith as to render her purchase of the property from Alcantara void.[124]

We likewise find that there is failure to show any legitimate corporate purpose in the transfer of ALRAI's corporate properties to Javonillo and Armentano.

The Board Resolution[125] confirming the transfer of ALRAI's corporate properties to Javonillo and Armentano merely read, "[t]hat the herein irrevocable confirmation is made in recognition of, and gratitude for the outstanding services rendered by x x x

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[122] Partial Division and Distribution of Donated Land, RTC records, Vol. V-A, pp. 131-132.

[123] *Rayos v. Hernandez*, *supra* note 113 at 530. Citations omitted, emphasis supplied.

[124] "As for Lily Loy, she is not an innocent purchaser in good faith as she personally claimed. From the start she knew, and in fact, her husband Eduardo Loy, verified the cloud of doubt or the land dispute that existed before they bought the property. x x x Furthermore, the fair market value of said land was two million four hundred thousand pesos (₱2,400,000.00) but Lily Loy bought the same for a consideration of two hundred fifty thousand pesos (₱250,000.00) only. This discrepancy is highly suspicious if one claims to be a buyer in good faith." *Rollo* (G.R. Nos. 188642 & 189425), pp. 236-237.

[125] Dated January 5, 2000, *rollo* (G.R. Nos. 188888-89), pp. 110-111.

Mr. Armando Javonillo, our tireless President and Mrs. Acelita Armentano, our tactful, courageous, and equally tireless Secretary, without whose efforts and sacrifices to acquire a portion of the realty of Dacudao & Sons, Inc., would not have been attained."[126] In their Memorandum, petitioners also alleged that "[t]he most difficult part of their (Javonillo and Armentano) job was to raise money to meet expenses. x x x It was very difficult for petitioners Javonillo and Armentano when they needed to pay ₱300,000.00 for realty tax on the land donated by Dakudao and Sons, Inc. to ALRAI. It became more difficult when the Bureau of Internal Revenue was demanding ₱6,874,000.00 as donor's tax on the donated lands. Luckily, they were able to make representation with the BIR to waive the tax."[127]

These reasons cannot suffice to prove any legitimate corporate purpose in the transfer of the properties to Javonillo and Armentano. For one, petitioners cannot argue that the properties transferred to them will serve as reimbursements of the amounts they advanced for ALRAI. There is no evidence to show that they indeed paid the realty tax on the donated lands. Neither did petitioners present any proof of actual disbursements they incurred whenever Javonillo and Armentano allegedly helped Atty. Pedro Alcantara in handling the cases involving ALRAI.[128] Like in the cases of Dela Cruz and Alcantara, absent proof, there was no basis by which it could have been determined whether the transfer of properties to Javonillo and Armentano was reasonable under the circumstances at that time. Second, petitioners cannot argue that the properties are transferred as compensation for Javonillo. It is well settled that directors of corporations presumptively serve without compensation; so that while the directors, in assigning themselves additional duties, act within their power, they nonetheless act in excess of their

[126] *Id.* at 110.

[127] *Rollo* (G.R. Nos. 188642 & 189425), p. 314.

[128] *Id.* at 313-315.

authority by voting for themselves compensation for such additional duties.[129] Even then, aside from the claim of petitioners, there is no showing that Javonillo rendered extraordinary or unusual services to ALRAI.

The lack of legitimate corporate purpose is even more emphasized when Javonillo and Armentano, as a director and an officer of ALRAI, respectively, violated the fiduciary nature[130] of their positions in the corporation.

Section 32 of the Corporation Code provides, thus:

> Sec. 32. *Dealings of directors, trustees or officers with the corporation.* – A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all of the following conditions are present:
>
> 1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;
>
> 2. That the vote of such director or trustee was not necessary for the approval of the contract;
>
> 3. That the contract is fair and reasonable under the circumstances; and
>
> 4. That in case of an officer, the contract has been previously authorized by the board of directors.
>
> Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock

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[129] *Central Cooperative Exchange, Inc. v. Enciso*, G.R. No. L-35603, June 28, 1998, 162 SCRA 706, 712.

[130] See De Leon and De Leon, Jr., *The Corporation Code of the Philippines (Annotated)*, 11th ed., 2013, p. 292, citing *Jackson v. Ludeling*, 21 Wall. [U.S.] 616. "In the performance of their official duties, they [directors of the corporation] are under obligations of trust and confidence to the corporation and its stockholders and must act in good faith and for the interest of the corporation or its stockholders with due care and diligence and within the scope of their authority." (Italics omitted.)

or of at least two-thirds (2/3) of the members in a meeting called for the purpose: Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: Provided, however, That the contract is fair and reasonable under the circumstances.

Being the corporation's agents and therefore, entrusted with the management of its affairs, the directors or trustees and other officers of a corporation occupy a fiduciary relation towards it, and cannot be allowed to contract with the corporation, directly or indirectly, or to sell property to it, or purchase property from it, where they act both for the corporation and for themselves.[131] One situation where a director may gain undue advantage over his corporation is when he enters into a contract with the latter.[132]

Here, we note that Javonillo, as a director, signed the Board Resolutions[133] confirming the transfer of the corporate properties to himself, and to Armentano. Petitioners cannot argue that the transfer of the corporate properties to them is valid by virtue of the Resolution[134] by the general membership of ALRAI confirming the transfer for three reasons.

First, as cited, Section 32 requires that the contract should be ratified by a vote representing at least two-thirds of the members in a meeting called for the purpose. Records of this case do not show whether the Resolution was indeed voted by the required percentage of membership. In fact, respondents take exception to the credibility of the signatures of the persons who voted in the Resolution. They argue that, "from the alleged 134 signatures, 24 of which are non-members, 4 of which were signed twice under different numbers, and 27 of which are apparently proxies unequipped with the proper authorization.

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[131] De Leon and De Leon, Jr., *The Corporation Code of the Philippines (Annotated)*, 11th ed., 2013, p. 297, citing 3 Fletcher, p. 387.

[132] Campos, *The Corporation Code, Comments, Notes and Selected Cases,* Vol. 1, 1990, p. 687.

[133] *Rollo* (G.R. Nos. 188888-89), pp. 110-121.

[134] Dated January 9, 2000, *id.* at 112-121.

Obviously, on such alleged general membership meeting the majority of the entire membership was not attained."[135]

Second, there is also no showing that there was full disclosure of the adverse interest of the directors involved when the Resolution was approved. Full disclosure is required under the aforecited Section 32 of the Corporation Code.[136]

Third, Section 32 requires that the contract be fair and reasonable under the circumstances. As previously discussed, we find that the transfer of the corporate properties to the individual petitioners is not fair and reasonable for (1) want of legitimate corporate purpose, and for (2) the breach of the fiduciary nature of the positions held by Javonillo and Armentano. Lacking any of these (full disclosure and a showing that the contract is fair and reasonable), ratification by the two-thirds vote would be of no avail.[137]

In view of the foregoing, we rule that the transfers of ALRAI's corporate properties to Javonillo, Armentano, Dela Cruz, Alcantara and Loy are void. We affirm the finding of the court *a quo* when it ruled that "[n]o proof was shown to justify the transfer of the titles, hence, said transfer should be annulled."[138]

WHEREFORE, in view of the foregoing, the petitions for review on *certiorari* in G.R. Nos. 188642 & 189425 and in G.R. Nos. 188888-89 are **PARTIALLY GRANTED.** The Decision of the CA dated November 24, 2008 and its Resolution dated June 19, 2009 ruling that respondents are reinstated as members of ALRAI are hereby **AFFIRMED**. The Decision of the CA dated November 24, 2008 and its Resolution dated June 19, 2009 are **MODIFIED** as follows:

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[135] *Id.* at 467.

[136] Records do not show that the Minutes of the Meeting of the General Membership was presented as evidence.

[137] Campos, *The Corporation Code, Comments, Notes and Selected Cases*, Vol. 1, 1990, pp. 688-689.

[138] *Rollo* (G.R. Nos. 188642 & 189425), p. 236.

The following Transfer Certificates of Title are **VOID**:

(1) TCT Nos. T-322962 and T-322963 in the name of Armando Javonillo;

(2) TCT Nos. T-322964 and T-322965 in the name of Ma. Acelita Armentano;

(3) TCT Nos. T-322966, T-322967, T-322968, and T-322969 in the name of Romeo Dela Cruz;

(4) TCT No. T-338403 in the name of Lily Loy; and

(5) TCT No. T-322971 in the name of Asuncion Alcantara.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192679. October 17, 2016]

ANTONIO ESCOTO, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; THE COURT OF APPEALS' (CA) DETERMINATION THAT THE ISSUES WERE PURELY LEGAL QUESTIONS DESERVED RESPECT IN THE ABSENCE OF A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— [T]he determination of whether or not the appeal was upon a question of law was within the discretion of the CA as the appellate court. In making its determination thereon, the CA correctly relied on the assignment of errors expressly made in the

appellant's brief of the petitioner. Its determination that the issues were purely legal questions deserved respect. The correctness of the determination should be assumed unless there is a clear showing of the CA thereby committing error or gravely abusing its discretion. Regrettably, the petitioner did not show so herein. x x x [A] question of fact arises when the doubt or difference arises as to the truth or falsehood of alleged facts, and a question of law exists when the doubt or difference arises as to what the law is on a certain set of facts. The test of whether the question is one of law or of fact is not met by considering the appellation given to such question by the party raising it; rather, it is whether the appellate court can determine the issue without reviewing or evaluating the evidence. If no review or evaluation of the evidence is necessary, the question is one of law; otherwise, it is a question of fact.

2. ID.; ID.; ID.; AS TO WHICH LAW SHOULD BE CONTROLLING IS A PURELY LEGAL QUESTION; APPEAL TO THE CA BEING IMPROPER, DISMISSAL OF THE APPEAL WAS THE ONLY PROPER AND UNAVOIDABLE OUTCOME.— [O]bviously decisive herein is the ascertainment of which law – Republic Act No. 7227 (*The Bases Conversion and Development Act of 1992*) or Republic Act No. 7160 (*The Local Government Code*) – would be controlling. This ascertainment involves a purely legal question. In view of such nature of the question being sought to be presented for review, the appeal to the CA was improper. The dismissal of the appeal by the CA was the only proper and unavoidable outcome.

3. ID.; ID.; ID.; WHERE THE PARTIES EXPRESSLY AGREED ON THE ATTORNEY'S FEES, IT BECOMES A PURELY LEGAL QUESTION; THE COURT HAS NO ALTERNATIVE BUT TO ENFORCE THE ENTITLEMENT OF THE SUCCESSFUL PARTY TO THE FEES THAT HAVE BEEN TRANSFORMED INTO LIQUIDATED DAMAGES.— Subordinate to the ascertainment of the applicable law is the matter of attorney's fees. The latter is similarly a purely legal question. This is because the parties had expressly agreed on the attorney's fees, inclusive of the amount thereof. In other words, the Court no longer has to delve into and resolve whether or not any of the parties had been compelled to litigate to protect their respective rights as to warrant

the grant of attorney's fees under Article 2208 of the *Civil Code* in order to decide the matter. Verily, the Court has no alternative but to enforce the entitlement of the successful party to the fees that have been thereby transformed into liquidated damages. Liquidated damages, unlike other kinds of actual damages, require no proof.

APPEARANCES OF COUNSEL

Maria Rosario S. Cesa for petitioner.
PAGCOR Internal Counsels for respondent.

D E C I S I O N

BERSAMIN, *J.*:

An appeal of the decision of a trial court upon a question of law must be by petition for review on *certiorari* to be filed in this Court.

The Case

The petitioner challenges the resolutions promulgated on December 23, 2009[1] and June 2, 2010,[2] whereby the Court of Appeals (CA) respectively affirmed the decision rendered on October 28, 2004[3] by the Regional Trial Court (RTC) in Olongapo City granting the respondent's motion to dismiss in Civil Case No. 215-0-2003, and denying the petitioner's motion for reconsideration.

Antecedents

The petitioner and the late Edgar Laxamana were promoters/agents of Legend International Resort Limited (LIRL). As one

[1] *Rollo*, pp. 34-40; penned by Associate Justice Romeo F. Barza, and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Magdangal M. de Leon.

[2] *Id.* at 42.

[3] *Id.* at 43-54; penned by Judge Eliodoro G. Ubiadas (retired).

of their promotional schemes, they organized a tourist-oriented cockfighting derby to be held on May 8 and 10, 2003 within the premises of LIRL within the Subic Bay Freeport Zone. For this purpose, they obtained a permit to conduct the event from the Subic Bay Metropolitan Authority (SBMA).[4] Learning of the event, the respondent immediately advised LIRL to desist because cockfighting activity was outside its competence as a hotel casino resort.[5]

This prompted the promoters to bring their suit for injunction with application for a temporary restraining order (TRO) and writ of preliminary injunction in the RTC (Civil Case No. 215-0-2003). They averred that the respondent should be enjoined from ordering LIRL to desist from holding the cockfighting derby because the charter of the respondent did not include the supervision, control and regulation of cockfighting activities in the premises of LIRL within the Subic Bay Freeport Zone; that the authority to regulate such activities was within the powers of the SBMA under Republic Act No. 7227; and that there was nothing that should prevent LIRL from holding the cockfighting derby after the SBMA had issued the permit for such purpose.

Initially, the RTC issued a 20-day TRO to preserve the *status quo* between the parties.

On its part, the respondent objected to the issuance of the TRO, and urged the dismissal of Civil Case No. 215-0-2003 on the following grounds, namely: (a) the promoters were not the real parties in interest to maintain the suit; (b) they had no clear legal right to be protected; and (c) the conduct of the cockfighting derby was not a right but a mere privilege, and that, as such, the compliance with the law was mandatory before anyone could exercise the privilege. The respondent stated that one of the laws that the promoters had not complied with was Presidential Decree No. 449 (*Cockfighting Law of 1974*), which required a license for the cockfighting event to be issued by the relevant city or municipality.[6]

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[4] *Id*. at 43.

[5] *Id*. at 43-44.

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

Eventually, on October 28, 2004, the RTC dismissed the complaint, disposing:

> WHEREFORE, in view of the foregoing considerations, judgment is rendered in favor of the defendant and against the plaintiffs as follows:
>
> 1. Dismissing the plaintiffs' complaint for permanent injunction against the defendants implementing the cease and desist order for the holding of cockfight derby within the Subic Bay Freeport Zone;
>
> 2. Declaring that only the local government units can issue cockfighting license or permits to be held at [a] licensed cockpit arena within the Subic Bay Freeport Zone; and
>
> 3. Ordering plaintiffs to pay defendant the amount of ₱70,000.00 as attorney's fees plus the costs of the suit.
>
> SO ORDERED.[7]

The RTC declared that the plaintiffs were not the real parties in interest because the permit for the event had been issued by SBMA in favor of LIRL; that they had no right to be protected by of injunction; that the licensing authority of the SBMA for tourism-related activities did not include cockfighting derbies even if the same were tourism-related; that the power to grant licenses and permits to conduct cockfighting derbies belonged to the local government units concerned (*i.e.*, the City of Olongapo, and the Municipalities of Morong, Bataan and Subic, Zambales); that the conduct of the cockfighting derby in question could not be allowed because no permit had been issued by any of the local government units concerned; that damages for lost earnings could not be granted to the respondent because its claim had not been established; that attorney's fees were justified because the parties had stipulated during the pre-trial on their entitlement therefor, and had agreed on the amounts to be granted for that purpose; and that the respondent as the victorious litigant and the based on the court's discretion should recover ₱70,000.00 as attorney's fees.

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[7] *Id.* at 54.

The plaintiffs appealed, assigning errors to the RTC, as follows:

First Assigned Error: The issue raised on the merits of the case is already moot and academic; *alternatively*, the Court *a quo* committed an error in declaring that the permission or license to hold a one-time cockfight held (sic) at the Subic Bay Free Port Zone does not full [sic] within the authority of the Subic Bay Metropolitan Authority (SBMA) under Republic Act No. 7227.

Second Assigned Error: The Court *a quo* committed an error in awarding attorney's fees in favor of the defendants and against the plaintiffs.[8]

On its part, the respondent moved to dismiss the appeal, arguing that based on their appellant's brief, the promoters were submitting issues of a purely legal nature; and that consequently their appeal should be taken to the Court by petition for review on *certiorari* to raise only questions of law.

As stated, on December 23, 2009, the CA dismissed the appeal for raising only pure questions of law that were outside the competence of an ordinary appeal under Rule 41 of the *Rules of Court*.[9] It ruled that the propriety of the award of attorney's fees had ceased to be a factual issue after the parties had admitted that the winning party would be entitled to the award, as in fact they had even stipulated on the amount to be thus awarded; and that it would be unjust to allow the promoters to renege on their admissions regarding the recovery of the award of attorney's fees. The *fallo* reads:

WHEREFORE, the Motion to Dismiss is **GRANTED** and the appeal is **DISMISSED**.

SO ORDERED.[10]

After the CA denied his motion for reconsideration, the petitioner now appeals to the Court.

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[8] *Id*. at 59-60.

[9] *Supra*, note 1.

[10] *Id*. at 39-40.

Issue

Did the CA err in dismissing the appeal?

Ruling of the Court

We affirm the CA.

To start with, the determination of whether or not the appeal was upon a question of law was within the discretion of the CA as the appellate court. In making its determination thereon, the CA correctly relied on the assignment of errors expressly made in the appellant's brief of the petitioner. Its determination that the issues were purely legal questions deserved respect. The correctness of the determination should be assumed unless there is a clear showing of the CA thereby committing error or gravely abusing its discretion.[11] Regrettably, the petitioner did not show so herein.

The modes of appealing a judgment or final order of a court of law have been outlined in Section 2, Rule 41 of the *Rules of Court, viz.*:

Section 2. *Modes of appeal*.—

(a) *Ordinary appeal*.— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*.— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*.— **In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45**. (n)

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[11] *First Bancorp, Inc. v. Court of Appeals*, G.R. No. 151132, June 22, 2006, 494 SCRA 221, 238.

For purposes of item (c), supra, a question of fact arises when the doubt or difference arises as to the truth or falsehood of alleged facts, and a question of law exists when the doubt or difference arises as to what the law is on a certain set of facts.[12] The test of whether the question is one of law or of fact is not met by considering the appellation given to such question by the party raising it; rather, it is whether the appellate court can determine the issue without reviewing or evaluating the evidence. If no review or evaluation of the evidence is necessary, the question is one of law; otherwise, it is a question of fact.[13]

And, secondly, obviously decisive herein is the ascertainment of which law – Republic Act No. 7227 (*The Bases Conversion and Development Act of 1992*) or Republic Act No. 7160 (*The Local Government Code*) – would be controlling. This ascertainment involves a purely legal question. In view of such nature of the question being sought to be presented for review, the appeal to the CA was improper. The dismissal of the appeal by the CA was the only proper and unavoidable outcome. Indeed, Section 2, Rule 50 of the *Rules of Court* mandates the dismissal, *viz.*:

> Section 2. *Dismissal of improper appeal to the Court of Appeals*. — **An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court**. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.
>
> **An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright**.

Subordinate to the ascertainment of the applicable law is the matter of attorney's fees. The latter is similarly a purely

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[12] *Tamondong v. Court of Appeals*, G.R. No. 158397, November 26, 2004, 444 SCRA 509, 517-518.

[13] *Ortiz v. San Miguel Corporation*, G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654, 667.

legal question. This is because the parties had expressly agreed on the attorney's fees, inclusive of the amount thereof. In other words, the Court no longer has to delve into and resolve whether or not any of the parties had been compelled to litigate to protect their respective rights as to warrant the grant of attorney's fees under Article 2208 of the *Civil Code* in order to decide the matter. Verily, the Court has no alternative but to enforce the entitlement of the successful party to the fees that have been thereby transformed into liquidated damages. Liquidated damages, unlike other kinds of actual damages, require no proof.

Attempting to convince the Court that the issues raised before the CA concerned mixed questions of fact and law, the petitioner argues that there were factual issues to be resolved concerning the nature of the contract between the promoters and LIRL, and the nature of the cockfighting activity to be undertaken. The Court ignores the argument, however, because the petitioner is making it for the first time in this appeal. As a rule, points of law, theories, issues and arguments not brought to the attention of the CA as an appellate court cannot be raised for the first time at this late stage, and will not be considered by the Court on appeal. Considerations of due process impel this rule.[14]

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the resolutions promulgated on December 23, 2009 and June 2, 2010; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

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[14] *Del Rosario v. Bonga*, G.R. No. 136308, January 23, 2001, 350 SCRA 101, 108.

SECOND DIVISION

[G.R. No. 205090. October 17, 2016]

GREENSTAR EXPRESS, INC. and FRUTO L. SAYSON, JR., *petitioners, vs.* **UNIVERSAL ROBINA CORPORATION and NISSIN UNIVERSAL ROBINA CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; IN CASES WHERE BOTH ARTICLE 2180 OF THE CIVIL CODE AND THE REGISTERED-OWNER RULE APPLY, THE PLAINTIFF MUST FIRST ESTABLISH THAT THE EMPLOYER IS THE REGISTERED OWNER OF THE VEHICLE IN QUESTION AND ONCE THE PLAINTIFF SUCCESSFULLY PROVES OWNERSHIP, THERE ARISES A DISPUTABLE PRESUMPTION THAT THE REQUIREMENTS OF ARTICLE 2180 HAVE BEEN PROVEN.— In *Caravan Travel and Tours International, Inc. v. Abejar*, the Court made the following relevant pronouncement: "**The resolution of this case must consider two (2) rules. First, Article 2180's specification that '[e]mployers shall be liable for the damages caused by their employees ... acting within the scope of their assigned tasks [.]' Second, the operation of the registered-owner rule that registered owners are liable for death or injuries caused by the operation of their vehicles.** These rules appear to be in conflict when it comes to cases in which the employer is also the registered owner of a vehicle. Article 2180 requires proof of two things: first, an employment relationship between the driver and the owner; and second, that the driver acted within the scope of his or her assigned tasks. On the other hand, applying the registered-owner rule only requires the plaintiff to prove that the defendant-employer is the registered owner of the vehicle. x x x **Therefore, the appropriate approach is that in cases where both the registered-owner rule and Article 2180 apply, the plaintiff must first establish that the employer is the registered owner of the vehicle in**

question. Once the plaintiff successfully proves ownership, there arises a disputable presumption that the requirements of Article 2180 have been proven. As a consequence, the burden of proof shifts to the defendant to show that no liability under Article 2180 has arisen." x x x In the present case, it has been established that on the day of the collision – or on February 25, 2003 - URC was the registered owner of the URC van, although it appears that it was designated for use by NURC, as it was officially assigned to the latter's Logistics Manager, Florante Soro-Soro (Soro-Soro); that Bicomong was the Operations Manager of NURC and assigned to the First Cavite Industrial Estate; that there was no work as the day was declared a national holiday; that Bicomong was on his way home to his family in Quezon province; that the URC van was not assigned to Bicomong as well, but solely for Soro-Soro's official use; that the company service vehicle officially assigned to Bicomong was a Toyota Corolla, which he left at the Cavite plant and instead, he used the URC van; and that other than the Cavite plant, there is no other NURC plant in the provinces of Quezon, Laguna or Bicol. Applying the x x x pronouncement in the *Caravan Travel and Tours case*, it must be said that when by evidence the ownership of the van and Bicomong's employment were proved, the presumption of negligence on respondents' part attached, as the registered owner of the van and as Bicomong's employer. The burden of proof then shifted to respondents to show that no liability under Article 2180 arose. This may be done by proof of **any** of the following: "1. That they had no employment relationship with Bicomong; or 2. That Bicomong acted outside the scope of his assigned tasks; or 3. That they exercised the diligence of a good father of a family in the selection and supervision of Bicomong."

2. ID.; ID.; ID.; LEASE; COMMON CARRIERS; THE LAW EXACTS FROM COMMON CARRIERS THE HIGHEST DEGREE OF DILIGENCE.— [T]he evidence suggests that the collision could have been avoided if Sayson exercised care and prudence, given the circumstances and information that he had immediately prior to the accident. x x x Despite having seen Bicomong drive the URC van in a precarious manner while the same was still a good 250 meters away from his bus, Sayson did not take the necessary precautions, as by reducing speed and adopting a defensive stance to avert any untoward incident

that may occur from Bicomong's manner of driving. This is precisely his testimony during trial. When the van began to swerve toward his bus, he did not reduce speed nor swerve his bus to avoid collision. Instead, he maintained his current speed and course, and for this reason, the inevitable took place. An experienced driver who is presented with the same facts would have adopted an attitude consistent with a desire to preserve life and property; for common carriers, the diligence demanded is of the highest degree. x x x The collision was certainly foreseen and avoidable but Sayson took no measures to avoid it. Rather than exhibit concern for the welfare of his passengers and the driver of the oncoming vehicle, who might have fallen asleep or suddenly fallen ill at the wheel, Sayson coldly and uncaringly stood his ground, closed his eyes, and left everything to fate, without due regard for the consequences. Such a suicidal mindset cannot be tolerated, for the grave danger it poses to the public and passengers availing of petitioners' services. To add insult to injury, Sayson hastily fled the scene of the collision instead of rendering assistance to the victims – thus exhibiting a selfish, cold-blooded attitude and utter lack of concern motivated by the self-centered desire to escape liability, inconvenience, and possible detention by the authorities, rather than secure the well-being of the victims of his own negligent act.

APPEARANCES OF COUNSEL

Aris J. Talens for petitioners.

Reyes-Beltran Gomez Flores & Ballicud Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside: a) the September 26, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 96961 affirming the April 4, 2011

[1] *Rollo*, pp. 3-20.

[2] *Id.* at 22-38; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan.

Decision[3] of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31 in Civil Case No. SPL-0969; and b) the CA's December 28, 2012 Resolution[4] denying herein petitioners' Motion for Reconsideration.[5]

Factual Antecedents

Petitioner Greenstar Express, Inc. (Greenstar) is a domestic corporation engaged in the business of public transportation, while petitioner Fruto L. Sayson, Jr. (Sayson) is one of its bus drivers.

Respondents Universal Robina Corporation (URC) and Nissin Universal Robina Corporation (NURC) are domestic corporations engaged in the food business. NURC is a subsidiary of URC.

URC is the registered owner of a Mitsubishi L-300 van with plate number WRN 403 (URC van).[6]

At about 6:50 a.m. on February 25, 2003, which was then a declared national holiday,[7] petitioner's bus, which was then being driven toward the direction of Manila by Sayson, collided head-on with the URC van, which was then being driven Quezon province-bound by NURC's Operations Manager, Renante Bicomong (Bicomong). The incident occurred along Km. 76, Maharlika Highway, Brgy. San Agustin, Alaminos, Laguna. Bicomong died on the spot, while the colliding vehicles sustained considerable damage.

On September 23, 2003, petitioners filed a Complaint[8] against NURC to recover damages sustained during the collision,

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[3] *Id*. at 47-54; penned by Judge Sonia T. Yu-Casano.

[4] *Id*. at 41.

[5] *Id*. at 495-507.

[6] *Id*. at 94.

[7] Presidential Proclamation No. 331, issued on February 19, 2003, declared February 25, 2003 as a special national holiday "to honor the memory of the EDSA People Power Revolution."

[8] *Rollo*, pp. 59-63.

premised on negligence. The case was docketed as Civil Case No. SPL-0969 and assigned to Branch 31 of the RTC of San Pedro, Laguna. An Amended Complaint[9] was later filed, wherein URC was impleaded as additional defendant.

URC and NURC filed their respective Answers,[10] where they particularly alleged and claimed lack of negligence on their part and on the part of Bicomong.

After the issues were joined, trial proceeded. During trial, only Sayson was presented by petitioners as eyewitness to the collision.

Ruling of the Regional Trial Court

On April 4, 2011, the RTC issued its Decision, which decreed thus:

> During the trial on the merits, plaintiffs[11] presented five witnesses namely Josephine Gadiaza, Miguel Galvan, SPO3 Ernesto Marfori, Fruto Sayson and Lilia Morales.
>
> x x x x x x x x x
>
> Plaintiff Fruto Sayson testified that on that fateful day, he was driving the plaintiff passenger bus from Lucena City going to Manila at a speed of more or less 60 kilometers per hour when he met a vehicular accident at Barangay San Agustin, Alaminos, Laguna. He saw from afar an L-300 UV coming from the shoulder going on the opposite direction to Lucena City. Said vehicle was already near his bus when it (UV) managed to return to its proper lane, then hit and swerved his vehicle. He tried to prevent the collision by swerving to the right but it was too late. As a result, the left front portion of the bus was damaged while the front portion of the L-300 UV was totally wrecked. He and his conductor, one Mendoza, managed to get out of the bus by forcibly opening the automatic door which was also damaged due to the impact. After getting out of the bus, he looked for the driver of the L-300 UV but he was informed by a bystander that he was thrown in a canal and already dead. For fear

[9] *Id.* at 69-74.

[10] *Id*. at 127-133, 134-138.

[11] Herein petitioners.

of possible reprisals from bystanders as experienced by most drivers involved in an accident, he boarded another bus owned by his employer. Before he left, he indorsed the matter to his conductor and line inspector. Thereafter, he reported to their office at San Pedro, Laguna. He executed a statement on the same day x x x and submitted the same to their operations department. He likewise testified that before the incident, he was earning ₱700.00 to ₱900.00 a day on commission basis and he drives 25 days in a month. However, after the incident, he was not able to drive for almost two months.

On cross-examination, it was established that the incident happened along the Maharlika Highway along Kilometer 72. There were no structures near the site of the incident. The highway has two lanes which can accommodate the size of the bus about 3 meters wide and a light vehicle. He was bound for Manila and had about ten passengers. He saw the L-300 UV on the shoulder of the opposite lane about 250 meters away from his bus while he was driving [at] a speed of 60 kilometers per hour. He did not sense any danger when he saw the vehicle from afar. He cannot drive fast as there were five vehicles ahead of his bus. When the L-300 UV managed to return to its proper lane coming from the shoulder, it was heading directly towards his direction at a distance of more or less five meters away from his bus. He noticed that the L-300 UV was running at full speed as he saw dust clouds. The point of impact happened on his lane. He tried to swerve his bus to prevent the impact but he admitted that at his speed, it was difficult for him to maneuver his vehicle.

Investigator SPO3 Ernesto Marfori of the Alaminos Police Station testified that at about 7:00 in the morning, he received a report from the Barangay Chairman of a vehicular accident that occurred at Brgy. San Agustin, Alaminos, Laguna. He proceeded to the site with SPO2 Rolando Alias. Upon arrival at the scene of the accident, he attended to the victim but found him dead inside the L-300 UV. He came to know later that he was Renante Bicomong. He immediately called up his office and requested that funeral services for the dead man be arranged. Thereafter, he photographed the damaged vehicles (Exhibits "F" and sub-markings) and interviewed some witnesses. He made a sketch depicting the damages suffered by both vehicles (Exhibit "D-2"), the L-300 IV at the front portion (Exhibit "D-4") while the bus at the left side of its front portion (Exhibit "D-3"). Based on the sketch he prepared, the impact happened almost at the right lane which was the bus lane (Exhibit "D-6"). He likewise noticed some debris also found at the bus lane. He was able to interview the bus

conductor and a fruit store owner in [sic] the names of Apolinar Devilla and Virgilio Adao. He did not see the driver of the bus at the scene of the accident and he was told that he had left the place. Based on his investigation, the possible cause of the accident was the swerving to the left lane [by] the driver of the L-300 UV which resulted in the encroaching of the bus' lane. He reduced his findings into writing in a Report dated February 28, 2003 (Exhibits "D" and sub-markings).

On cross-examination, the witness admitted that he was not present when the vehicles collided. The entries he made in the blotter report were mainly based on the accounts of the witnesses he was able to interview who however did not give their written statements. When he arrived at the scene of the accident, the L-300 UV was already on the shoulder of the road and it was totally wrecked. According to reports, the van spun around when it was hit causing the metal scar found on the road.

On the other hand, the defendants[12] presented three witnesses: its employees Alexander Caoleng and John Legaspi and deceased Renante Bicomong's widow, Gloria Bicomong. These witnesses were presented to prove that deceased Bicomong was acting in his personal capacity when the mishap happened on February 25, 2003 as that day had been declared an official holiday and the L-300 UV he was driving had not been issued to him, among others.

Alexander Caoleng, HR Manager of defendant NURC, testified that deceased Bicomong worked as the Operations Manager of defendant NURC until his death as evidenced by a Certificate of Employment dated December 9, 2008 (Exhibit "I"). His last assignment was in First Cavite Industrial Estate (FCIE). He died in a vehicular accident in Alaminos, Laguna on February 25, 2003 which was declared a holiday by virtue of Proclamation No. 331 (Exhibit "2"). Despite having been issued his own service vehicle (Exhibits "3", "4" and "5"), he used the L-300 UV which was not officially issued to him but in the name of Florante Soro-Soro, defendant NURC's Logistics Manager at that time (Exhibits "7" and "8"). The said vehicle was used mainly to transport items coming from their office at Pasig to Cavite and vice versa (Exhibit "9").

John Legaspi, Project Manager of defendant NURC, testified that he was first assigned in its Cavite Plant in 1999 with deceased Bicomong as his immediate supervisor being the Production Manager then. He last saw him in the afternoon of February 24, 2003 at about

[12] Herein respondents.

6:00 pm when they had a short chat. He (Bicomong) was then transferring his things from his executive vehicle which was a Toyota Corolla to the L-300 UV which was a company vehicle. He (Bicomong) shared that he would go home to Quezon Province the following day (February 25) to give money to his daughter. He knew that his trip to Quezon was not work-related as February 25, 2003 was declared a holiday. Besides, there exists no plant owned by defendant NURC in the provinces of Quezon, Laguna or Bicol as attested to by the General Manager of defendant NURC in a Certification to that effect (Exhibit "11").

On cross-examination, he distinguished the use of an executive vehicle assigned to an executive officer for his personal use and the company vehicle which was supposed to be for official use only.

Finally, Gloria Bicomong, widow of deceased Reynante Bicomong testified that she knew that her husband was going home to Calendaria (sic), Quezon on February 25, 2003 because he informed their daughter. He was on his way home when he met a vehicular accident in Alaminos, Laguna which claimed his life. She was informed about the accident involving her husband by a high school friend who was also traveling to Quezon at that time. She filed a criminal complaint at Alaminos, Laguna but it was dismissed for reasons unknown to her. She likewise filed a civil complaint for damages before the Regional Trial Court of Lucena City docketed as Civil Case No. 2103-135.

On cross-examination, she narrated that aside from the Toyota Corolla service of her husband, he would use the L-300 UV whenever he had to bring bulky things home. As far as she can recall, he used the L-300 UV about 5 times.

After an evaluation of the foregoing testimonies and documentary evidence of the parties, the court had [sic] arrived at the following findings and conclusions:

Plaintiff has no cause of action and cannot recover from the defendants even assuming that the direct and proximate cause of the accident was the negligence of the defendant's employee Renato Bicomong.

Pursuant to Article 2184 of the New Civil Code, the owner of a motor vehicle is solidarily liable with his driver if at the time of the mishap, the owner was in the vehicle and by the use of due diligence could have presented (sic) the misfortune; if the owner is not in the

motor vehicle, the provision of Article 2180 is applicable. The defendants being juridical persons, the first paragraph of Article 2184 is obviously not applicable.

Under Article 2180, "employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. "In other words, for the employer to be liable for the damages caused by his employee, the latter must have caused the damage in the course of doing his assigned tasks or in the performance of his duties" (Yambao vs. Zuñiga, G.R. No. 146173, December 11, 2003)

In this case, it is beyond cavil that the deceased Renante Bicong [sic] was not in the performance of his duty on that fateful day of February 25, 2003. In the first place that day was a holiday; there was no work and it was not shown that he was working as indeed his work assignment is operations manager of the company's plant in Cavite while the accident happened while he was in Alaminos, Laguna on his way home to Candelaria, Quezon. Secondly, as an operations manager, he was issued an executive car for his own use, a Toyota Corolla vehicle and he merely preferred to use the L-300 UV when going home to his family in Quezon. Even assuming that the company allowed or tolerated this, by itself, the tolerance did not make the employer liable in the absence of showing that he was using the vehicle in the performance of a duty or within the scope of his assigned tasks. But as clearly relayed by defendant's witnesses, defendants have no business or plant in Quezon. The L-300 vehicle was for the hauling of items between their Pasig and Cavite offices and was merely borrowed by Bicomong in going to Candelaria, Quezon on that day.

The accident having occurred outside Renante Bicomong's assigned tasks, defendant employers cannot be held liable to the plaintiffs, even assuming that it is the fault of defendants' employee that was the direct and proximate cause of their damages.

However, the question of whose fault or negligence was the direct and proximate cause of the mishap is material to the resolution of defendants' counterclaim.

The rule is that the burden of proof lies on him who claims a fact (Federico Ledesma vs. NLRC, G.R. No. 175585, October 19, 2007). Therefore, to be able to recover in their counterclaim, the defendants

must prove by preponderance of evidence that the direct and proximate cause of their losses was the fault of the plaintiff-driver.

Defendants were not able to present any witness as to how the mishap occurred. Their witnesses were limited to proving that Renante Bicomong was not in the performance of his assigned task when the incident happened.

A reading of their answer would reveal that their attribution of fault to the plaintiff-driver is based only on the point of impact of the two vehicles. Thus:

> *'4.3 Based on the damage sustained by the passenger bus, plaintiffs' claim that Renante Bicomong swerved on the left lane and encroached on the path of the said bus moments before the accident could not have been true. Such claim would have resulted to a head-on collision between the vehicle driven by Mr. Bicomong and the bus; the latter would have sustained damage on its front side. However, based on Annexes "B" and "C" of the Complaint, the said bus sustained damage on its left side. Clearly, it was the passenger bus that swerved on the left lane, which was being traversed by Renante Bicomong, and while returning to the right lane, said bus hit the vehicle being driven by Mr. Bicomong. Thus, explaining the damage sustained by the said bus on its left side just below the driver's seat.'*

The foregoing however is a mere interpretation or speculation and not supported by any account, either by an eyewitness [or by] a explanation tracing the relative positions of the two vehicles in relation to the road at the time of impact and the movements of the two vehicles after the impact. For this reason, it will be unfair to make an interpretation of the events based alone on the point of impact [on] the vehicles. The points of impact by themselves cannot explain the positions of the vehicles on the road.

Defendants Memorandum attributed the cause of the mishap to the excessive speed of the bus. In their Memorandum, the defendants content [sic] that if the driver had seen the L-300 UV meters away in front of him running along the shoulder and negotiating back to its lane, the bus driver would have watched out and slackened his speed. Considering the damage to both the vehicles and the fact that the L-300 UV span [sic] and was thrown 40 feet away from the point of impact and its driver was thrown 14 feet away from his

vehicle, defendant argued that the bus could not be running at 60 kilometers only. But assuming the bus indeed was running at high speed that alone does not mean that the negligence of the driver was the direct and proximate cause. If it is true that the L-300 UV ran from the right shoulder, climbed up to the right lane but overshoot [sic] it and occupied the bus' lane, the speed of the bus cannot be considered the proximate and direct cause of the collision. But as stated earlier, this were [sic] merely conjectures and surmises of the defendants and not proven by competent evidence.

All told, defendants were not able to prove by their own evidence that the direct and proximate cause of the collision was the fault of plaintiff's driver. Hence, they cannot hold plaintiffs liable for the loss of their L-300 UV. As both parties failed to prove by their respective evidence where the fault that occasioned their losses lie, they must bear their respective losses.

Anent defendants' counterclaim for attorney's fees and exemplary damages, there is no evidence to show that the filing of this suit was motivated [by] malice. It cannot be denied that plaintiffs suffered damages. The court mainly dismissed the complaint for lack of cause of action as Renante Bicomong was not performing his assigned tasks at the time of the incident. Besides, to hold them liable to defendants for attorney's fees and exemplary damages simply because they failed to come up with sufficient evidence will be tantamount to putting a price on one's right to sue.

WHEREFORE, judgment is hereby rendered dismissing the complaint as well as the counterclaim.

No costs.

SO ORDERED.[13]

Ruling of the Court of Appeals

Petitioners filed an appeal before the CA, docketed as CA-G.R. CV No. 96961. They argued that Bicomong's negligence was the proximate cause of the collision, as the van he was driving swerved to the opposite lane and hit the bus which was then traveling along its proper lane; that Bicomong's act of occupying the bus's lane was illegal and thus constituted a traffic

[13] *Rollo,* pp. 49-54.

violation; that respondents are liable for damages as the registered owner of the van and failing to exercise due diligence in the selection and supervision of its employee, Bicomong. Respondents countered that the bus driven by Sayson was running at high speed when the collision occurred, thus indicating that Sayson was in violation of traffic rules; and that Sayson had the last clear chance to avert collision but he failed to take the necessary precaution under the circumstances, by reducing his speed and applying the brakes on time to avoid collision.

On September 26, 2012, the CA rendered the assailed Decision containing the following pronouncement:

> The present case involving an action for damages based on quasi-delict is governed by Articles 2176 and 2180 of the New Civil Code, pertinent provisions of which read:
>
> > 'ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.
> >
> > ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
> >
> > x x x x x x x x x
> >
> > Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks even though the former are not engaged in any business or industry.'
>
> Under Article 2180 of the New Civil Code, employers shall be held primarily and solidarily liable for damages caused by their employees acting within the scope of their assigned tasks. To hold the employer liable under this provision, it must be shown that an employer-employee relationship exists, and that the employee was acting within the scope of his assigned task when the act complained of was committed.
>
> Records bear that the vehicular collision occurred on February 25, 2003 which was declared by former Executive Secretary Alberto

G. Romulo, by order of former President Gloria Macapagal-Arroyo, as a special national holiday, per Proclamation No. 331 dated February 19, 2003. Renante Bicomong had no work on that day and at the time the accident occurred, he was on his way home to Candelaria, Quezon. There was no showing that on that day, Renante Bicomong was given by defendants-appellees[14] an assigned task, much less instructed to go to Quezon. As testified to by Renante Bicomong's widow Gloria Bicomong, Renante Bicomong was on the road that day because he was going home to Candelaria, Quezon. Thus, he was then carrying out a personal purpose and not performing work for defendants-appellees.

Apropos is *Castilex Industrial Corp. vs. Vicente Vasquez, Jr.*,[15] wherein the Supreme Court held that the mere fact that an employee was using a service vehicle at the time of the injurious incident is not of itself sufficient to charge his employer with liability for the operation of said vehicle unless it appeared that he was operating the vehicle within the course or scope of his employment. Thus:

x x x x x x x x x

> 'The court *a quo* and the Court of Appeals were one in holding that the driving by a messenger of a company-issued vehicle is within the scope of his assigned tasks regardless of the time and circumstances.
>
> We do not agree. The mere fact that ABAD was using a service vehicle at the time of the injurious incident is not of itself sufficient to charge petitioner with liability for the negligent operation of said vehicle unless it appears that he was operating the vehicle within the course or scope of his employment.
>
> The following are principles in American Jurisprudence on the employer's liability for the injuries inflicted by the negligence of an employee in the use of an employer's motor vehicle.
>
> x x x x x x x x x
>
> III. Use of Employer's Vehicle Outside Regular Working Hours
>
> An employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is

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[14] Herein respondents.

[15] 378 Phil. 1009, 1019-1022 (1999).

generally not liable for the employees negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employees negligent operation of the vehicle during the return trip.

The foregoing principles and jurisprudence are applicable in our jurisdiction albeit based on the doctrine of *respondeat superior*, not on the principle of *bonus pater familias* as in ours. Whether the fault or negligence of the employee is conclusive on his employer as in American law or jurisprudence, or merely gives rise to the presumption *juris tantum* of negligence on the part of the employer as in ours, it is indispensable that the employee was acting in his employer's business or within the scope of his assigned task.

In the case at bar, it is undisputed that ABAD did some overtime work at the petitioner's office, which was located in Cabangcalan, Mandaue City. Thereafter, he went to Goldie's Restaurant in Fuente Osmeña, Cebu City, which is about seven kilometers away from petitioner's place of business. A witness for the private respondents, a sidewalk vendor, testified that Fuente Osmeña is a lively place even at dawn because Goldie's Restaurant and Back Street were still open and people were drinking thereat. Moreover, prostitutes, pimps, and drug addicts littered the place.

x x x x x x x x x

To the mind of this Court, ABAD was engaged in affairs of his own or was carrying out a personal purpose not in line with his duties at the time he figured in a vehicular accident. It was then about 2:00 a.m. of 28 August 1988, way beyond the normal working hours. ABAD's working day had ended; his overtime work had already been completed. His being at a place which, as petitioner put it, was known as a haven for prostitutes, pimps, and drug pushers and addicts, had no connection to petitioner's business; neither had it any relation to his duties as a manager.

> Rather, using his service vehicle even for personal purposes was a form of a fringe benefit or one of the perks attached to his position.
>
> Since there is paucity of evidence that ABAD was acting within the scope of the functions entrusted to him, petitioner CASTILEX had no duty to show that it exercised the diligence of a good father of a family in providing ABAD with a service vehicle. Thus, justice and equity require that petitioner be relieved of vicarious liability for the consequences of the negligence of ABAD in driving its vehicle.

Accordingly, in the absence of showing that Renante Bicomong was acting within the scope of his assigned task at the time of the vehicular collision, defendants-appellees had no duty to show that they exercised the diligence of a good father of a family in providing Renante Bicomong with a service vehicle. Thus, the trial court did not err in holding that:

> 'Under Article 2180, 'employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. 'In other words, for the employer to be liable for the damages caused by his employee, the latter must have caused the damage in the course of doing his assigned tasks or in the performance of his duties.' (Yambao vs. Zuñiga, G.R. No. 146173, December 11, 2003.)
>
> In this case, it is beyond cavil that the deceased Renante Bicong [sic] was not in the performance of his duty on that fateful day of February 25, 2003. In the first place that day was a holiday; there was no work and it was not shown that he was working as indeed his work assignment [was as] operations manager of the company's plant in Cavite while the accident happened while he was in Alaminos, Laguna on his way home to Candelaria, Quezon. Secondly, as an operations manager, he was issued an executive car for his own use, a Toyota Corolla vehicle and he merely preferred to use the L-300 UV when going home to his family in Quezon. Even assuming that the company allowed or tolerated this, by itself, the tolerance did not make the employer liable in the absence of showing that he was using the vehicle in the performance of a duty or within the scope of his assigned tasks. But as clearly relayed by

> defendant's witnesses, defendants have no business or plant in Quezon. The L-300 vehicle was for the hauling of items between their Pasig and Cavite offices and was merely borrowed by Bicomong in going to Candelaria, Quezon on that day.
>
> The accident having occurred outside Renante Bicomong's assigned tasks, defendant employers cannot be held liable to the plaintiffs, even assuming that it is the fault of defendants' employee that was the direct and proximate cause of their damages.'

In sum, squarely applicable in this case is the well-entrenched doctrine that the assessment of the trial judge as to the issue of credibility binds the appellate court because he is in a better position to decide the issue, having heard the witnesses and observed their deportment and manner of testifying during the trial, except when the trial court has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case, or where the assessment is clearly shown to be arbitrary. Plaintiffs-appellants have not shown this case to fall under the exception.

WHEREFORE, the trial court's Decision dated April 4, 2011 is affirmed.

SO ORDERED.[16]

Petitioners filed a Motion for Reconsideration, which the CA denied in its subsequent December 28, 2012 Resolution. Hence, the present Petition.

Issues

In a July 14, 2014 Resolution,[17] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN ISSUING THE ASSAILED DECISION AND RESOLUTION THAT RESPONDENTS ARE NOT LIABLE TO PETITIONERS FOR THE

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[16] *Rollo*, pp. 29-37.

[17] *Id.* at 558-559.

DAMAGES THEY SUSTAINED CONSIDERING THAT THE ACCIDENT WAS ATTRIBUTED TO THE NEGLIGENCE OF RENANTE BICOMONG.

II.

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING DEFENSES NOT PLEADED IN THE MOTION TO DISMISS OR IN RESPONDENTS' ANSWER.[18]

Petitioners' Arguments

Petitioners insist that respondents should be held liable for Bicomong's negligence under Articles 2176, 2180, and 2185 of the Civil Code;[19] that Bicomong's negligence was the direct and proximate cause of the accident, in that he unduly occupied the opposite lane which the bus was lawfully traversing, thus resulting in the collision with Greenstar's bus; that Bicomong's driving on the opposite lane constituted a traffic violation, therefore giving rise to the presumption of negligence on his part; that in view of this presumption, it became incumbent upon respondents to rebut the same by proving that they exercised care and diligence in the selection and supervision of their employees; that in their respective answers and motion to dismiss, respondents did not allege the defense. which they tackled only

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

[19] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

during trial, that since February 25, 2003 was a declared national holiday, then Bicomong was not acting within the scope of his assigned tasks at the time of the collision; that for failure to plead this defense or allegation in their respective answers and pleadings, it is deemed waived pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure[20] (1997 Rules); that just the same, respondents failed to prove that Bicomong was not in the official performance of his duties or that the URC van was not officially issued to him at the time of the accident – and for this reason, the presumption of negligence was not overturned; and that URC should be held liable as the registered owner of the van.

In their Reply,[21] petitioners add that while some of the issues raised in the Petition are factual in nature, this Court must review the case as the CA gravely erred in its appreciation of the evidence and in concluding that respondents are not liable. Finally, they argue that URC should be held liable for allowing "a non-employee to use for his personal use the vehicle owned" by it.

Respondents' Arguments

Pleading affirmance, respondents argue in their Comment[22] that the issues raised in the Petition are factual in nature; that the collision occurred on a holiday and while Bicomong was using the URC van for a purely personal purpose, it should be sufficient to absolve respondents of liability as evidently, Bicomong was not performing his official duties on that day; that the totality of the evidence indicates that it was Sayson

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[20] Rule 9, Effect of Failure to Plead

Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[21] *Rollo*, pp. 542-555.

[22] *Id*. at 518-535.

who was negligent in the operation of Greenstar's bus when the collision occurred; that Bicomong was not negligent in driving the URC van; that petitioners' objection – pertaining to their defense that the collision occurred on a holiday, when Bicomong was not considered to be at work – was belatedly raised; and that in any case, under Section 5, Rule 10 of the 1997 Rules,[23] their pleadings should be deemed amended to conform to the evidence presented at the trial, which includes proof that the accident occurred on a holiday and while Bicomong was not in the performance of his official tasks and instead going home to his family in Quezon province.

Our Ruling

The Court denies the Petition.

In *Caravan Travel and Tours International, Inc. v. Abejar*,[24] the Court made the following relevant pronouncement:

The resolution of this case must consider two (2) rules. First, Article 2180's specification that '[e]mployers shall be liable for the damages caused by their employees . . . acting within the scope of their assigned tasks[.]' Second, the operation of the registered-owner rule that registered owners are liable for death or injuries caused by the operation of their vehicles.

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[23] Rule 10, Amended and Supplemental Pleadings

Sec. 5. Amendment to conform to or authorize presentation of evidence. – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[24] G.R. No. 170631, February 10, 2016.

These rules appear to be in conflict when it comes to cases in which the employer is also the registered owner of a vehicle. Article 2180 requires proof of two things: first, an employment relationship between the driver and the owner; and second, that the driver acted within the scope of his or her assigned tasks. On the other hand, applying the registered-owner rule only requires the plaintiff to prove that the defendant-employer is the registered owner of the vehicle.

The registered-owner rule was articulated as early as 1957 in *Erezo, et al. v. Jepte*,[25] where this court explained that the registration of motor vehicles, as required by Section 5(a) of Republic Act No. 4136, the Land Transportation and Traffic Code, was necessary 'not to make said registration the operative act by which ownership in vehicles is transferred, . . . but to permit the use and operation of the vehicle upon any public highway[.]' Its 'main aim . . . is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner.'

x x x x x x x x x

Aguilar, Sr. v. Commercial Savings Bank[26] recognized the seeming conflict between Article 2180 and the registered-owner rule and applied the latter.

x x x x x x x x x

Preference for the registered-owner rule became more pronounced in *Del Carmen, Jr. v. Bacoy*:[27]

x x x x x x x x x

Filcar Transport Services v. Espinas[28] stated that the registered owner of a vehicle can no longer use the defenses found in Article 2180:

x x x x x x x x x

Mendoza v. Spouses Gomez[29] reiterated this doctrine.

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[25] 102 Phil. 103 (1957).

[26] 412 Phil. 834 (2001).

[27] 686 Phil. 799 (2012).

[28] 688 Phil. 430 (2012).

[29] 736 Phil. 460 (2014).

However, *Aguilar, Sr., Del Carmen, Filcar,* and *Mendoza* should not be taken to mean that Article 2180 of the Civil Code should be completely discarded in cases where the registered-owner rule finds application.

As acknowledged in *Filcar*, there is no categorical statutory pronouncement in the Land Transportation and Traffic Code stipulating the liability of a registered owner. The source of a registered owner's liability is not a distinct statutory provision, but remains to be Articles 2176 and 2180 of the Civil Code:

> While Republic Act No. 4136 or the Land Transportation and Traffic Code does not contain any provision on the liability of registered owners in case of motor vehicle mishaps, Article 2176, in relation with Article 2180, of the Civil Code imposes an obligation upon Filcar, as registered owner, to answer for the damages caused to Espinas' car.

Thus, it is imperative to apply the registered-owner rule in a manner that harmonizes it with Articles 2176 and 2180 of the Civil Code. Rules must be construed in a manner that will harmonize them with other rules so as to form a uniform and consistent system of jurisprudence. In light of this, the words used in *Del Carmen* are particularly notable. There, this court stated that Article 2180 'should defer to' the registered-owner rule. It never stated that Article 2180 should be totally abandoned.

Therefore, the appropriate approach is that in cases where both the registered-owner rule and Article 2180 apply, the plaintiff must first establish that the employer is the registered owner of the vehicle in question. Once the plaintiff successfully proves ownership, there arises a disputable presumption that the requirements of Article 2180 have been proven. As a consequence, the burden of proof shifts to the defendant to show that no liability under Article 2180 has arisen.

This disputable presumption, insofar as the registered owner of the vehicle in relation to the actual driver is concerned, recognizes that between the owner and the victim, it is the former that should carry the costs of moving forward with the evidence. The victim is, in many cases, a hapless pedestrian or motorist with hardly any means to uncover the employment relationship of the owner and the driver, or any act that the owner may have done in relation to that employment.

The registration of the vehicle, on the other hand, is accessible to the public.

Here, respondent presented a copy of the Certificate of Registration of the van that hit Reyes. The Certificate attests to petitioner's ownership of the van. Petitioner itself did not dispute its ownership of the van. Consistent with the rule we have just stated, a presumption that the requirements of Article 2180 have been satisfied arises. It is now up to petitioner to establish that it incurred no liability under Article 2180. **This it can do by presenting proof of any of the following: first, that it had no employment relationship with Bautista; second, that Bautista acted outside the scope of his assigned tasks; or third, that it exercised the diligence of a good father of a family in the selection and supervision of Bautista**. (Emphasis supplied)

In the present case, it has been established that on the day of the collision – or on February 25, 2003 – URC was the registered owner of the URC van, although it appears that it was designated for use by NURC, as it was officially assigned to the latter's Logistics Manager, Florante Soro-Soro (Soro-Soro); that Bicomong was the Operations Manager of NURC and assigned to the First Cavite Industrial Estate; that there was no work as the day was declared a national holiday; that Bicomong was on his way home to his family in Quezon province; that the URC van was not assigned to Bicomong as well, but solely for Soro-Soro's official use; that the company service vehicle officially assigned to Bicomong was a Toyota Corolla, which he left at the Cavite plant and instead, he used the URC van; and that other than the Cavite plant, there is no other NURC plant in the provinces of Quezon, Laguna or Bicol.

Applying the above pronouncement in the *Caravan Travel and Tours* case, it must be said that when by evidence the ownership of the van and Bicomong's employment were proved, the presumption of negligence on respondents' part attached, as the registered owner of the van and as Bicomong's employer. The burden of proof then shifted to respondents to show that no liability under Article 2180 arose. This may be done by proof of **any** of the following:

1. That they had no employment relationship with Bicomong; or

2. That Bicomong acted outside the scope of his assigned tasks; or

3. That they exercised the diligence of a good father of a family in the selection and supervision of Bicomong.

In denying liability, respondents claimed in their respective answers the defense of absence of negligence on their part. During trial, they presented evidence to the effect that on the day of the collision, which was a declared national non-working holiday, Bicomong was not performing his work, but was on his way home to Quezon on a personal undertaking, that is, to give money to his daughter and spend the holiday with his family; and that the vehicle he was driving was not an NURC vehicle, nor was it assigned to him, but was registered to URC and assigned to its Logistics Manager, Soro-Soro. Petitioners object to this, claiming that this defense was not alleged in the respondents' respective answers. The Court disagrees. The failure to allege these facts in the answers does not preclude respondents from proving them during trial; these facts are precisely illustrative of their defense of absence of negligence. Just the same, petitioners' failure to object to the respondents' presentation of such evidence below is tantamount to a waiver; Section 5, Rule 10 of the 1997 Rules – on amendments to conform to or authorize presentation of evidence – will have to apply, but the failure to amend the pleadings does not affect the result of the trial of these issues.

The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude an adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings, or serve as a basis for a higher award of damages. Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the basis of issues discussed and the assertions of fact proved in the course of trial. The court may

treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended. x x x[30]

Respondents succeeded in overcoming the presumption of negligence, having shown that when the collision took place, Bicomong was not in the performance of his work; that he was in possession of a service vehicle that did not belong to his employer NURC, but to URC, and which vehicle was not officially assigned to him, but to another employee; that his use of the URC van was unauthorized – even if he had used the same vehicle in furtherance of a personal undertaking in the past,[31] this does not amount to implied permission; that the accident occurred on a holiday and while Bicomong was on his way home to his family in Quezon province; and that Bicomong had no official business whatsoever in his hometown in Quezon, or in Laguna where the collision occurred, his area of operations being limited to the Cavite area.

On the other hand, the evidence suggests that the collision could have been avoided if Sayson exercised care and prudence, given the circumstances and information that he had immediately prior to the accident. From the trial court's findings and evidence on record, it would appear that immediately prior to the collision, which took place very early in the morning – or at around 6:50 a.m., Sayson saw that the URC van was traveling fast Quezon-bound on the shoulder of the opposite lane about 250 meters away from him; that at this point, Sayson was driving the Greenstar bus Manila-bound at 60 kilometers per hour; that Sayson knew that the URC van was traveling fast as it was creating dust clouds from traversing the shoulder of the opposite lane; that Sayson saw the URC van get back into its proper lane but directly toward him; that despite being apprised of the foregoing information, Sayson, instead of slowing down,

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[30] *Philippine National Bank v. Manalo*, G.R. No. 174433, February 24, 2014, 717 SCRA 254, citing *Talisay-Silay Milling Co., Inc. v. Associacion de Agricultores de Talisay-Silay, Inc.*, 317 Phil. 432, 452-453 (1995).

[31] His wife testified that in the past, he had used the same vehicle in getting home to Quezon.

maintained his speed and tried to swerve the Greenstar bus, but found it difficult to do so at his speed; that the collision or point of impact occurred right in the middle of the road;[32] and that Sayson absconded from the scene immediately after the collision.

From the foregoing facts, one might think that from the way he was driving immediately before the collision took place, Bicomong could have fallen asleep or ill at the wheel, which led him to gradually steer the URC van toward the shoulder of the highway; and to get back to the road after realizing his mistake, Bicomong must have overreacted, thus overcompensating or oversteering to the left, or toward the opposite lane and right into Sayson's bus. Given the premise of dozing off or falling ill, this explanation is not far-fetched. The collision occurred very early in the morning in Alaminos, Laguna. Sayson himself testified that he found Bicomong driving on the service road or shoulder of the highway 250 meters away, which must have been unpaved, as it caused dust clouds to rise on the heels of the URC van. And these dust clouds stole Sayson's attention, leading him to conclude that the van was running at high speed. At any rate, the evidence places the point of impact very near the middle of the road or just within Sayson's lane. In other words, the collision took place with Bicomong barely encroaching on Sayson's lane. This means that prior to and at the time of collision, Sayson did not take any defensive maneuver to prevent the accident and minimize the impending damage to life and property, which resulted in the collision in the middle of the highway, where a vehicle would normally be traversing. If Sayson took defensive measures, the point of impact should have occurred further inside his lane or not at the front of the bus – but at its side, which should have shown that Sayson either slowed down or swerved to the right to avoid a collision.

Despite having seen Bicomong drive the URC van in a precarious manner while the same was still a good 250 meters

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[32] *Rollo*, p. 162; Police Sketch of the collision, petitioners' Exhibit "D-2," admitted in evidence.

away from his bus, Sayson did not take the necessary precautions, as by reducing speed and adopting a defensive stance to avert any untoward incident that may occur from Bicomong's manner of driving. This is precisely his testimony during trial. When the van began to swerve toward his bus, he did not reduce speed nor swerve his bus to avoid collision. Instead, he maintained his current speed and course, and for this reason, the inevitable took place. An experienced driver who is presented with the same facts would have adopted an attitude consistent with a desire to preserve life and property; for common carriers, the diligence demanded is of the highest degree.

The law exacts from common carriers (i.e., those persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public) the highest degree of diligence (i.e., extraordinary diligence) in ensuring the safety of its passengers. Articles 1733 and 1755 of the Civil Code state:

> Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.
>
> Art. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

In this relation, Article 1756 of the Civil Code provides that '[i]n case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755. x x x'[33]

However, Sayson took no defensive maneuver whatsoever in spite of the fact that he saw Bicomong drive his van in a

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[33] *G.V. Florida Transport, Inc. v. Heirs of Battung, Jr.*, G.R. No. 208802, October 14, 2015.

precarious manner, as far as 250 meters away – or at a point in time and space where Sayson had all the opportunity to prepare and avert a possible collision. The collision was certainly foreseen and avoidable but Sayson took no measures to avoid it. Rather than exhibit concern for the welfare of his passengers and the driver of the oncoming vehicle, who might have fallen asleep or suddenly fallen ill at the wheel, Sayson coldly and uncaringly stood his ground, closed his eyes, and left everything to fate, without due regard for the consequences. Such a suicidal mindset cannot be tolerated, for the grave danger it poses to the public and passengers availing of petitioners' services. To add insult to injury, Sayson hastily fled the scene of the collision instead of rendering assistance to the victims – thus exhibiting a selfish, cold-blooded attitude and utter lack of concern motivated by the self-centered desire to escape liability, inconvenience, and possible detention by the authorities, rather than secure the well-being of the victims of his own negligent act.

x x x The doctrine of last clear chance provides that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence. x x x[34]

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[34] *Philippine National Railways Corporation v. Vizcara*, 682 Phil. 343, 358 (2012), citing *Canlas v. Court of Appeals*, 383 Phil. 315, 324 (2000), citing *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 680 (1997), citing *LBC Air Cargo, Inc. v. Court of Appeals*, 311 Phil. 715, 722-724 (1995); *Picart v. Smith*, 37 Phil. 809, 814 (1918); *Pantranco North Express, Inc. v. Baesa*, 258-A Phil. 975, 980 (1989); *Glan Peoples Lumber and Hardware v. Intermediate Appellate Court*, 255 Phil. 447, 456-457 (1989).

Petitioners might object to the treatment of their case in the foregoing manner, what with the additional finding that Sayson was negligent under the circumstances. But their Petition, "once accepted by this Court, throws the entire case open to review, and x x x this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."[35]

WHEREFORE, the Petition is **DENIED**. The September 26, 2012 Decision and December 28, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 96961 are **AFFIRMED *in toto***.

SO ORDERED.

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

Leonen, J., on official leave.

THIRD DIVISION

[G.R. No. 209086. October 17, 2016]

ANGELITO R. PUBLICO, *petitioner, vs.* **HOSPITAL MANAGERS, INC., ARCHDIOCESE OF MANILA - DOING BUSINESS UNDER THE TRADENAME AND STYLE OF "CARDINAL SANTOS MEDICAL CENTER",** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES; GROSS AND HABITUAL NEGLECT OF DUTIES;

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[35] *Barcelona v. Lim*, 734 Phil. 766, 795 (2014); *Carvajal v. Luzon Development Bank*, 692 Phil. 273, 282 (2012).

FAILURE OF A SUPERVISOR TO PERFORM HIS DUTIES, A CASE OF.— Under Article 282(b) of the Labor Code, an employer may terminate an employment on the ground of "[g]ross and habitual neglect by the employee of his duties." In the instant case, Publico was entrusted by HMI to take on the role of Chief, Blood Bank Section of the Laboratory Department, and with this carried the reasonable expectation that he would assiduously perform the demands of his position. x x x The anomalous, transactions in the Blood Bank Section were found to have persisted for almost two years. Had PubIico been not negligent in the performance of his duties, the wrongful dealings could have been prevented, or immediately discovered and rectified. The excuses advanced by Publico to evade any liability for the acts of his personnel only reinforce HMI's finding that he was negligent in the performance of his responsibilities as Section Chief. x x x Publico was careless in the performance of his responsibilities. He remained unmindful of the extent of his obligations as Section Chief. Personnel supervision was only one of his several functions, all intended to ensure proper and orderly operations within his department. These responsibilities included all matters affecting the laboratory, such as workflow supervision, record management, equipment and inventory control. He was duty-bound to monitor and supervise all equipment, supplies, work, and personnel operating in his department, regardless of whether these people were under his direct supervision and the shift when they reported for work. x x x Publico could not have simply relied on the laboratory log book to monitor activities within his department, especially since the erring employees would not have recorded their illegal activities, to be able to perpetuate the commission thereof. The foregoing circumstances show that Publico's neglect was gross and habitual. "Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."

2. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS, IN THE EXERCISE OF ITS ORIGINAL JURISDICTION OVER PETITIONS FOR *CERTIORARI* IN LABOR CASES, IS SPECIFICALLY GIVEN THE POWER TO PASS UPON

THE EVIDENCE AND TO RESOLVE FACTUAL ISSUES WHEN NECESSARY.— [T]he CA, pursuant to the exercise of its original jurisdiction over petitions for *certiorari*, is specifically given the power to pass upon the evidence, if and when necessary to resolve factual issues. Moreover, while factual findings of labor tribunals are generally accorded not only respect but finality, they may be examined by the courts when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record.

APPEARANCES OF COUNSEL

Salonga Hernandez Mendoza Law Offices for petitioner.

De Guzman Dionido Caga Jucaban & Associates Law Offices for respondent Hospital Managers Inc.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent Archdiocese of Manila.

R E S O L U T I O N

REYES, *J.*:

This resolves the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Angelito R. Publico (Publico) to assail the Decision[2] dated August 29, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 118222, which dismissed his complaint for illegal dismissal against Hospital Managers, Inc. (HMI), its officers,[3] and Archdiocese of Manila or Roman Catholic Archbishop of Manila (RCAM), which owned Cardinal Santos Medical Center (CSMC).

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[1] *Rollo,* pp. 29-49.

[2] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring; *id.* at 13-27.

[3] President, Ricardo Murillo, and the officers of the Human Resource Department, namely, Annalyn Brillantes, Carina Afuang and Resty Dela Cruz, *see* CA Decision dated August 29, 2013, *id.* at 14.

The Antecedents

The case stems from a complaint for illegal dismissal and other monetary claims filed by Publico against HMI and RCAM (respondents), among several other respondents, with the National Capital Region Arbitration Branch in Quezon City.

Publico was employed to work at CSMC in 1989, and was the hospital's Chief of Blood Bank Section, Laboratory Department when he was dismissed from employment by HMI in 2008.[4] The dismissal was founded on Publico's gross and/or habitual negligence, as penalized under the following provisions of the HMI's Code of Discipline for employees, and indicated in an inter-office memo dated March 19, 2008 that directed Publico to answer the charges:

FIRST CHARGE – Rule 005-05, Work Performance, Section 10.4.f — Gross and/or Habitual Negligence —

Blatant disregard to perform the required care or diligence demanded by the situation tantamount to wanton or reckless disregard, of established rules and regulations.

SECOND CHARGE – Operating Policies and Procedures

Rule 011-05, Operating Policies and Procedures

In the conduct of its business and affairs, the Company has established procedures, which are communicated to the employees. These procedures have been thought out and prescribed in order to protect the life of the patients, guard against losses to the Company and to assure effective operations of all levels.

Section 1

Willful or intentional Non-observance of Standard Operating Procedures in Handling of Any Transaction or Work Assignment for Purposes of Personal or Another Person's Gain, Profit or Advantage.[5]

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[4] *Id.* at 66.

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

Prior to Publico's dismissal, HMI discovered incidents of unauthorized sale of blood and apheresis units by laboratory personnel, who also issued fake receipts and failed to remit payments to the hospital. When asked to explain his side on the issue, Publico denied any participation in the anomalous transactions. He claimed to have known of the incidents of unauthorized sale only when he was asked to participate in the investigation. He further evaded any responsibility by claiming that while five employees were investigated for the scheme, only one of them was under his supervision in the blood bank section. He was also tasked to supervise only personnel assigned in the morning shift, while the supposed unauthorized transactions happened during the night shift.[6]

Further investigations conducted by HMI's Management Investigation Committee eventually led to Publico's dismissal on May 9, 2008, through a Notice of Termination served upon him.[7] Feeling aggrieved, Publico charged the respondents with illegal dismissal before the Labor Arbiter (LA).[8]

HMI and CSMC presented their respective defenses. HMI, which was the operator of CSMC from 1988 to August 14, 2008, maintained their claim of unauthorized sale of blood and apheresis units during the time that Publico was Section Chief of the Pathology and Laboratory Services. The illegal transactions went on for three years, leading to the dismissal of five employees who participated therein. HMI insisted that the wrongful scheme persisted because of Publico's failure to properly supervise, monitor and adopt preventive measures within his section.[9]

For its part, RCAM explained that it is a corporation sole and the registered owner of the parcel of land being occupied

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[6] *Id.* at 16.

[7] *Id.* at 16, 33-34.

[8] *Id.* at 16.

[9] *Id.* at 17.

by CSMC. On August 1, 1988, it entered into an Agreement for Joint Apostolate with HMI, whereby the latter was given the use and possession of the land and hospital. Also part of the agreement was HMI's assumption as the new employer of CSMC's existing personnel. Given the set-up, RCAM argued that it could not be held liable for Publico's charge of illegal dismissal. It farther cited a compromise agreement executed by HMI and RCAM, whereby all liabilities such as third party claims, salaries, wages and separation pay of HMI's employees shall be for the account of HMI. Publico was hired in 1989, or during the effectivity of the Agreement for Joint Apostolate.[10]

Ruling of the LA

The LA ruled in favor of Publico. He was declared illegally dismissed from employment, but only RCAM and CSMC were declared liable for the monetary claims. The LA believed that Publico was employed by CSMC in 1986, or prior to the effectivity of the Agreement for Joint Apostolate with HMI. The change in the hospital's operator could not have affected Publico's status as an employee of RCAM.[11]

The decretal portion of the LA's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering [RCAM] and [CSMC] to jointly and severally pay [Publico] the amount of TWO HUNDRED NINETY[-]ONE (THOUSAND) SIX HUNDRED THIRTY[-]FIVE PESOS and 13/100 (₱291,635.13) representing the backwages, accrued leave and attorney's fees.
>
> Respondents are further ordered to reinstate [Publico] to his former position without loss of seniority rights.
>
> The complaint against [HMI and its officers] and all other claims are dismissed for lack of merit.
>
> SO ORDERED.[12]

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[10] *Id.*

[11] *Id.*

[12] *Id.*

Dissatisfied, RCAM appealed to the National Labor Relations Commission (NLRC).

Ruling of the NLRC

On August 6, 2010, the NLRC rendered its Decision[13] favoring RCAM. The NLRC found Publico employed in 1989, instead of 1986 as mentioned by the LA in its decision. HMI was declared the employer of Publico, and as such was solely liable for the illegal dismissal. Per its agreement with RCAM, HMI became the employer of Publico when it became the operator of CSMC. Reinstatement, however, was no longer feasible considering that a new entity had taken over the hospital.[14] The dispositive portion of the NLRC decision reads:

> WHEREFORE, premises considered, [RCAM's] appeal is GRANTED. The Decision of the Executive [LA] dated March 12, 2009 is hereby REVERSED and SET ASIDE, and a NEW ONE is rendered finding [HMI] solely liable for illegal dismissal and ordered to pay [Publico]:
>
> 1. Backwages computed [from] the time his wages [were] withheld up to September 1, 2009;
> 2. Separation pay equivalent to one month pay for every year of service computed from 1989, the year [Publico] was employed;
> 3. Proportionate 13th month pay for the years 2008 and 2009;
> 4. Unused vacation leave equivalent to the amount of ₱18,910.11;
> 5. Unused sick leave equivalent to the amount of ₱14,952.18; and
> 6. Attorney's fees equivalent to ten [percent] (10%) of the total monetary award.

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[13] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go concurring; *id.* at 65-72.

[14] *Id.* at 69-71.

The Computation Unit of the [NLRC] is hereby directed to compute the aforesaid awards, and the computation shall form part of this decision.

SO ORDERED.[15]

HMI's motion for reconsideration was denied by the NLRC,[16] which prompted it to file a petition for *certiorari* with the CA.

Ruling of the CA

On August 29, 2013, the CA rendered its Decision[17] reversing the NLRC. For the appellate court, Publico was validly dismissed for gross and habitual neglect of duties. Given his position in the hospital, Publico could have prevented, or at least discovered and reported, the anomalous transactions of his personnel. His failure to do so evidenced the neglect.[18]

Besides the just cause, the requirement of procedural due process was satisfied through the opportunity given to Publico to explain his side prior to his dismissal, as well as the chance to seek a reconsideration of the action or ruling complained of. Given its ruling on the legality of the dismissal, the CA found it unnecessary to rule on the entity that should be declared liable for Publico's monetary claims.[19] The CA decision's dispositive portion states:

WHEREFORE, premises considered[,] the instant petition is hereby **GRANTED**. Accordingly, the Decision dated August 6, 2010 and Resolution dated December 13, 2010 of the [NLRC] in NLRC NCR Case No. 00-056-06841-08 are hereby **REVERSED**

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[15] *Id.* at 71.

[16] *Id.* at 73-88.

[17] *Id.* at 13-27.

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

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

and SET ASIDE and a new one is entered declaring [Publico] to have been validly dismissed. Necessarily, the backwages, separation pay, 13th month pay, unused vacation leave pay and attorney's fees awarded in his favor are hereby **DELETED.**

SO ORDERED.[20]

Hence, this petition.

The Issue

The core issue raised in the petition is whether the CA committed a reversible error in declaring Publico validly dismissed from employment.

Ruling of the Court

The Court denies the petition. There is no cogent reason to reverse the CA's dismissal of Publico's complaint for illegal dismissal and monetary claims.

Under Article 282(b) of the Labor Code, an employer may terminate an employment on the ground of "[g]ross and habitual neglect by the employee of his duties." In the instant case, Publico was entrusted by HMI to take on the role of Chief, Blood Bank Section of the Laboratory Department, and with this carried the reasonable expectation that he would assiduously perform the demands of his position.

In affirming the CA's finding that Publico was validly dismissed, the Court takes into account the duties and responsibilities attached to Publico's position as Section Chief, as cited by the CA in the now assailed decision, to wit:

2. DUTIES AND RESPONSIBILITIES:

2.1. ADMINISTRATIVE FUNCTIONS
2.1.1. Organizes work and maintain[s] [general] efficiency in the Section assigned.
2.1.2. Preserves discipline in the section.
2.1.3. Maintains Quality Control Program in a Section.

[20] *Id.* at 26.

2.1.4. Takes full charge of Laboratory equipment and supplies in their respective Section entrusted to them by the Laboratory Administrative Head and Chief Medical Technologist.
2.1.5. Controls the traffic flow of the Section activities from receiving the specimen, processing of test procedures and documentation before (presenting) results to the Pathologist/Administrative Head and Chief Medical Technologist.
2.1.6. Assist in any section where any need may arise.

x x x x x x x x x

2.3. PERSONNEL SUPERVISION

2.3.1. Directly supervises the personnel assigned in the section.
2.3.2. Responsible for evaluation of assigned staff.
2.3.3. Assures that staff are properly evaluated.
2.3.4. Monitors the completion time of various procedures [.]
2.3.5. Monitors the performance of the test/procedures.
2.3.6. Submits and implements work improvement plans.

x x x x x x x x x

2.5. RECORD MANAGEMENT

2.5.1. Makes daily, biweekly, monthly and annual statistical reports of Laboratory Procedures.
2.5.2. Documents all laboratory results in a section.
2.5.3. Maintains the period of retention for materials and records proposed by the College of American Pathologists.

2.6. SCHEDULE

2.6.1. Prepares monthly schedules of staff.
2.6.2. Assigns staff reliever or overtime when section is short staff.
2.6.3. Delegation of workload to staff.

2.7. INVENTORY CONTROL AND REQUISITION

2.7.1. Maintains inventory level in the section.
2.7.2. Prepares weekly order request.
2.7.3. Monitors inventory in the section.[21]

The anomalous transactions in the Blood Bank Section were found to have persisted for almost two years.[22] Had Publico been not negligent in the performance of his duties, the wrongful dealings could have been prevented, or immediately discovered and rectified. The excuses advanced by Publico to evade any liability for the acts of his personnel only reinforce HMI's finding that he was negligent in the performance of his responsibilities as Section Chief. Among these defenses, he insisted that: *first,* some of the wrongdoers were not under his watch; *second,* the transactions happened during the night shift when he supervised only those in the morning shift; and *third,* the questioned transactions were not recorded in the log book.[23]

Clearly from these defenses, Publico was careless in the performance of his responsibilities. He remained unmindful of the extent of his obligations as Section Chief. Personnel supervision was only one of his several functions, all intended to ensure proper and orderly operations within his department. These responsibilities included all matters affecting the laboratory, such as workflow supervision, record management, equipment and inventory control. He was duty-bound to monitor and supervise all equipment, supplies, work, and personnel operating in his department, regardless of whether these people were under his direct supervision and the shift when they reported for work. As correctly observed by the CA:

Publico cannot escape liability by merely claiming that he has no knowledge of the alleged anomalies or that the staff involved

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

[22] *Id.* at 23-24.

[23] *Id.* at 15.

in the illegal transactions were not under his watch. As head of the Pathology and Laboratory Section, it is his job to monitor all the properties and supplies under his custody and maintain accurate records of the same. Besides, as correctly pointed out by HMI, his duties and responsibilities as chief of the Pathology and Laboratory Department is not only limited to the supervision of staff during the time that he reports to work, which is during the morning shift. His job description did not say so that he is only in charge of the personnel in the morning shift. Logic dictates that as head of a section or department, such is responsible for all employees under the said division regardless of whether an employee belongs to the morning or evening shift.[24]

In addition to the foregoing, Publico could not have simply relied on the laboratory log book to monitor activities within his department, especially since the erring employees would not have recorded their illegal activities, to be able to perpetuate the commission thereof.

The foregoing circumstances show that Publico's neglect was gross and habitual. "Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances."[25]

Publico insists that the CA should have relied on the factual findings of the LA and NLRC that made them conclude that he was illegally dismissed. He refers to the NLRC's declaration on the failure of HMI to prove that Publico's negligence was gross and habitual. There was also no evidence directly linking Publico to the commission of the dubious scheme.

The Court has, however, repeatedly held that the CA, pursuant to the exercise of its original jurisdiction over

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[24] *Id.* at 24.

[25] *St. Luke's Medical Center, Inc., et al. v. Notario*, 648 Phil. 285, 297 (2010).

petitions for *certiorari,* is specifically given the power to pass upon the evidence, if and when necessary to resolve factual issues. Moreover, while factual findings of labor tribunals are generally accorded not only respect but finality, they may be examined by the courts when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record.[26]

Additionally, it should be emphasized that the offense and liability of Publico were for neglect of duties, which allowed the repeated commission of anomalous transactions in his department. Contrary to the LA's and NLRC's reasons in finding insufficient ground to support dismissal from employment, the liability of Publico did not depend on his knowledge or direct participation in the wrongful sale of blood and apheresis units. Even as the Court considers the inter-office memo sent by HMI to inform Publico of the charges, references were on negligence and non-observance of operating policies and procedures. The accusations pertained to his failure to perform his duties as a supervisor, rather than his own participation in the unlawful sales.

WHEREFORE, the petition is **DENIED.** The Decision dated August 29, 2013 of the Court of Appeals in CA-G.R. SP No. 118222 is **AFFIRMED.**

SO ORDERED.

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

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[26] *Prince Transport, Inc., et al. v. Garcia, et al.,* 654 Phil. 296, 309 (2011).

THIRD DIVISION

[G.R. No. 211539. October 17, 2016]

THAMERLANE M. PEREZ, *petitioner, vs.* **DOMINADOR RASACEÑA, PRISCILLA NAVARRO and ADELFA LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; EJECTMENT SUITS; FIRST LEVEL COURTS EXERCISE EXCLUSIVE ORIGINAL JURISDICTION OVER EJECTMENT SUITS AND THE PROCEEDINGS ARE GOVERNED BY THE RULES ON SUMMARY PROCEDURE.— [I]n summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of the contested property. The Municipal Trial Courts, Metropolitan Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure. The summary character of the proceedings is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.

2. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; COMPLAINT FOR UNLAWFUL DETAINER, WHEN SUFFICIENT.— It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it states the following: "(a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession; (c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment." A review of petitioner's complaint

shows that: (a) by tolerance of the previous owner, LNC, respondents were allowed to occupy the property on the promise to vacate upon demand; (b) in a letter dated April 19, 2010, petitioner demanded the respondents to vacate the property; (c) the respondents refused to vacate; (d) petitioner filed the complaint on August 18, 2010 or within one year from the formal demand to vacate was made. Clearly, the Complaint established a case for unlawful detainer as to vest the MeTC jurisdiction over it.

3. ID.; ACTIONS; EJECTMENT SUITS; POSSESSION BY TOLERANCE; CONCEPT.— Case law introduced the concept of possession by tolerance in ejectment cases as follows—upon failure of the tenant to pay the stipulated rents, the landlord might consider the contract broken and demand immediate possession of the rented property, thus, converting a legal possession into illegal possession. However, the landlord might choose to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property, such that during that period, the tenant would not be in illegal possession of the property and the landlord could not maintain an action of *desahucio* until after the latter had taken steps to convert the legal possession into illegal possession.

4. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; A REQUISITE FOR A VALID CAUSE OF ACTION IS THAT THE POSSESSION WAS ORIGINALLY LAWFUL, BUT TURNED UNLAWFUL ONLY UPON THE EXPIRATION OF THE RIGHT TO POSSESS.— A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established. Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for him to occupy the disputed property. x x x [P]etitioner was able to establish that respondents' possession was by tolerance of his predecessors. As such, they are necessarily bound by an implied promise that they will vacate upon demand, *failing which a summary action for ejectment is the proper remedy against them*.

5. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; ENJOY A PRESUMPTION OF

REGULARITY WHICH MAY ONLY BE REBUTTED BY CLEAR, STRONG AND CONVINCING EVIDENCE AS TO EXCLUDE ALL CONTROVERSY AS TO FALSITY.— There is no rule which requires a party, who relies on a notarized deed of sale for establishing his ownership, to present further evidence of such deed's genuineness lest the presumption of its due execution be for naught. Regarded as evidence of the facts therein expressed in a clear, unequivocal manner, public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The burden of proof to overcome said presumptions lies with the party contesting the notarial document.

6. ID.; CIVIL PROCEDURE; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT WILL NOT BE CONSIDERED BY THE REVIEWING COURT, AS THESE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— We note that the respondents presented a Certification dated November 15, 2011 that the Notary Public who signed and affixed his notarial seal on the deed has not yet submitted his notarial report for 2010 intending to prove that the deed was not a public document. However, the same was only alleged and offered before the CA. Basic consideration of due process impels the rule that points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. It is erroneous for the CA to base its ruling that the deed is dubious on the certification that was not presented before the trial courts. As such, respondents failed to present clear and convincing evidence as to overcome the presumption of regularity of the notarized deed, from which petitioner anchored his claim of ownership.

7. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; DEED OF SALE; ALTHOUGH DENOMINATED AS CONDITIONAL, A DEED OF SALE IS ABSOLUTE IN NATURE IN THE ABSENCE OF ANY STIPULATION RESERVING TITLE TO THE SELLER UNTIL FULL PAYMENT OF THE PURCHASE PRICE, SUCH THAT OWNERSHIP OF THE THING SOLD PASSES TO THE BUYER UPON ACTUAL OR CONSTRUCTIVE DELIVERY.— Anent respondents' argument that petitioner

had no right to evict them on April 19, 2010 since he became the owner only on July 29, 2010, this Court is not persuaded. Although denominated as conditional, a deed of sale is absolute in nature in the absence of any stipulation reserving title to the seller until full payment of the purchase price. In such case, ownership of the thing sold passes to the buyer upon actual or constructive delivery. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. On the other hand, in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price. A perusal of the contract readily reveals that there was nothing in the Deed of Conditional Sale which expressly provides for LNC's retention of title or ownership of the property until full payment of the purchase price or any provision which would impose payment of the price as a condition for the contract's entering into force. The condition imposed was only on the performance of the obligations of the parties. As such, there was already a perfected contract, and the ownership of the property already passed to petitioner as the buyer upon the execution of the deed of conditional sale on January 13, 2010. Thus, petitioner was deemed to have been unlawfully deprived of the lawful possession of the property upon respondents' failure to heed his demand to vacate on April 19, 2010.

8. ID.; PRESIDENTIAL DECREE NO. 1517 (THE URBAN LAND REFORM LAW); RIGHT OF FIRST REFUSAL; THE LEGITIMATE TENANT'S RIGHT OF FIRST REFUSAL TO PURCHASE THE LEASED PROPERTY DEPENDS ON WHETHER THE DISPUTED PROPERTY IN METRO MANILA IS SITUATED IN AN AREA SPECIFICALLY DECLARED TO BE BOTH AN AREA FOR PRIORITY DEVELOPMENT AND URBAN LAND REFORM ZONE.— It is settled in the case of *Spouses Frilles v. Spouses Yambao* that the purpose of P.D. No. 1517 is to protect the rights of legitimate tenants who have resided for 10 years or more on specific parcels of land situated in declared Urban Land Reform Zones or Urban Zones, and who have built their homes thereon. These **legitimate tenants have the right not to be dispossessed** and to have the **right of first refusal to purchase the property** under reasonable terms and conditions to be determined by the appropriate government agency. Thus, a legitimate tenant's right of first refusal to purchase the leased property under P.D. No. 1517 depends on whether the

disputed property in Metropolitan Manila is situated in an area specifically declared to be **both** an *Area for Priority Development* **and** *Urban Land Reform Zone*. These circumstances do not obtain in the present case as it was not alleged nor proven that respondents built their dwelling on the land. They merely presented certification that they were paying rentals since 1984. Assuming the aforementioned circumstances are present, the respondents still cannot qualify under P.D. No. 1517 in the absence of any showing that the subject land had been declared an area for priority development and urban land reform zone. x x x Lastly, P.D. No. 1517 will still not apply as the issue raised in the case at bar was respondents' refusal to vacate the subject property and not their right of first refusal.

APPEARANCES OF COUNSEL

Henecito F. Balasolla for petitioner.
Cris T. Paculanang for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's Resolution is a Petition for Review on *Certiorari* filed by petitioner Thamerlane M. Perez assailing the Decision[1] dated July 29, 2013 and Resolution[2] dated March 4, 2014 of the Court of Appeals (*CA*) in CA-G.R. SP No. 124234. The CA reversed the Decision[3] dated September 30, 2011 of the Regional Trial Court (*RTC*) of Manila, Branch 42, in Civil Case No. 11-125644, which affirmed the April 13, 2011 Metropolitan Trial Court (*MeTC*) Decision.[4]

The factual and procedural antecedents follow.

The dispute centers on the right of possession of the subject property denominated as Lot 28, Block No. 2 located at 800

[1] Penned by Associate Justice Florito S. Macalino, with Associate Justices Normandie B. Pizarro and Pedro B. Corales, concurring, *rollo,* pp. 22-29.

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

[3] Penned by Judge Dinnah C. Aguila Topacio; *id.* at 124-126.

[4] Penned by Judge J. Ermin Ernest Louie R. Miguel; *id.* at 85-88.

Loyola Street corner San Diego Street, Sampaloc, Manila, with a total area of 187.50 square meters, more or less, covered by Transfer Certificate of Title (*TCT*) No. 284213 registered under the name of LNC 3 Asset Management, Inc. (*LNC*).

On August 18, 2010, petitioner filed a Complaint[5] for unlawful detainer before the MeTC of Manila, Branch 11 against respondents Dominador Rasaceña, Priscilla Navarro, and Adelfa Lim. He alleged that he is the absolute owner of the property in controversy. He acquired the property from LNC through a Deed of Conditional Sale dated January 13, 2010 and, subsequently, through a Deed of Absolute Sale dated July 29, 2010. The previous owner, LNC, tolerated respondents' occupancy of the subject property.

In a letter dated April 19, 2010, petitioner, through his counsel, demanded respondents to vacate the property, but the latter refused to heed. At the proceedings initiated by petitioner before the *Lupong Tagapamayapa* of *Barangay* 521, Manila, the parties failed to settle amicably. Hence, the complaint, praying that respondents be ordered to vacate the premises and restore the possession of the property to the petitioner; to pay a reasonable rent in the amount of ₱30,000.00 for the use and occupation of the same; and, to pay ₱100,000.00 as moral damages, ₱30,000.00 as attorney's fees and costs.

In their Answer with Counterclaim,[6] respondents alleged that they leased the property from Agus Development Corporation (*Agus*). They contended that: the court has no jurisdiction over the person of the respondents; the case is barred by prior judgment or *res judicata*; there is no lessor-lessee relationship between the parties; petitioner has no cause of action against respondents; and the condition precedent for the filing of the complaint was not complied with as there was no demand to vacate.

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

[6] *Id.* at 46-50.

In a Decision dated April 13, 2011, the MeTC ruled in favor of petitioner, with the following dispositive portion:

> WHEREFORE, judgment is hereby rendered in favor of [petitioner] and against the [respondents]. The court orders the [respondents]:
>
> 1. To immediately vacate and peacefully surrender the possession of the occupied subject premises located at 800 Loyola corner San Diego Streets, Sampaloc, Manila;
> 2. To pay the [petitioner] [₱]5,000.00 as reasonable monthly compensation for the use and occupancy of the premises beginning April 2010 and every month thereafter until [respondents] shall have finally and actually vacated the subject premises;
> 3. To pay the amount of [₱]10,000.00 as and for attorney's fees;
> 4. To pay the costs of the suit.
>
> SO ORDERED.[7]

Thereafter, respondents elevated the case before the RTC of Manila. On September 30, 2011, the RTC affirmed *in toto* the Decision of the MeTC.

Aggrieved, respondents filed a petition for review before the CA. The CA reversed and set aside the decision of the RTC. Petitioner failed to prove that his predecessor-in-interest tolerated respondents' possession of the property. He did not offer any evidence attesting that LNC tolerated the occupation. His complaint was silent as to the factual circumstances surrounding the alleged tolerance, or averment of an overt act indicative of LNC's permission. The CA considered the Deed of Absolute Sale from which petitioner anchors his right of possession highly dubious and questionable because: the same was not registered with the proper Registry of Deeds; no affidavit of the lawyer who notarized the same was submitted; and there was no proof of authority of the persons who signed in the contract for LNC. The *fallo* of the decision reads:

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[7] *Id.* at 87-88.

WHEREFORE, premises considered, the petition is GRANTED. The September 30, 2011 Decision and the February 24, 2012 Omnibus Order of the Regional Trial Court of Manila, Branch 42 in Civil Case No. 11-125644 are REVERSED and SET ASIDE. Civil Case No. 187245-CV for unlawful detainer filed by Thamerlane M. Perez against Dominador Rasaceña, Priscilla Navarro and Adelfa Lim before the Metropolitan Trial Court, Branch 11 of Manila is hereby DISMISSED.

SO ORDERED.[8]

On March 4, 2014, the CA denied the motion for reconsideration filed by petitioner.[9]

Hence, the instant petition, raising the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN RULING THAT PETITIONER FAILED TO ALLEGE AND PROVE THAT RESPONDENTS[’] POSSESSION WAS BY MERE TOLERANCE OF HIS PREDECESSORS-IN-INTEREST.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN RULING THAT THE DEED OF ABSOLUTE SALE OF THE PETITIONER IS HIGHLY DUBIOUS AND QUESTIONABLE CONSIDERING THAT THE SAME WAS NOT REGISTERED WITH THE PROPER REGISTRY OF DEEDS; NO AFFIDAVIT BY THE LAWYER WHO NOTARIZED THE SAME WAS SUBMITTED AND NO PROOF WAS SHOWN THAT THE PERSONS WHO SIGNED FOR THE REGISTERED OWNER, LNC ASSET MANAGEMENT, INC., WERE AUTHORIZED TO DO SO.[10]

To begin with, in summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of

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[8] *Id.* at 28.

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

[10] *Id*. at 11.

the contested property. The Municipal Trial Courts, Metropolitan Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure.[11] The summary character of the proceedings is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.[12]

We note that the arguments raised here would necessarily require a re-evaluation of the parties' submissions and the CA's factual findings. Ordinarily, this course of action is proscribed in a petition for review on *certiorari*, *i.e.*, a Rule 45 petition resolves only questions of law. By way of exception, however, the Court resolves factual issues when the findings of the MTCC and the RTC differ from those of the CA, as in the case at bar.[13]

Petitioner averred that he sufficiently alleged in his Complaint and established that respondents' possession of the subject property is by mere tolerance of his predecessor-in-interest. That LNC has allowed several years to pass without requiring respondents to vacate the premises nor filed an ejectment case against them supports the fact that LNC has acquiesced to respondents' possession and use of the property.

It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

(a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

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[11] *Norberte, Jr. v. Mejia*, G.R. No. 182886, March 9, 2015, 752 SCRA 120, 124.

[12] *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, November 24, 2014, 742 SCRA 426, 441.

[13] *Nenita Quality Foods Corp. v. Galabo, et al.*, 702 Phil. 506, 515 (2013).

(b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;
(c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and
(d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.[14]

A review of petitioner's complaint shows that: (a) by tolerance of the previous owner, LNC, respondents were allowed to occupy the property on the promise to vacate upon demand; (b) in a letter dated April 19, 2010, petitioner demanded the respondents to vacate the property; (c) the respondents refused to vacate; (d) petitioner filed the complaint on August 18, 2010 or within one year from the formal demand to vacate was made. Clearly, the Complaint established a case for unlawful detainer as to vest the MeTC jurisdiction over it.

Case law introduced the concept of possession by tolerance in ejectment cases as follows -– upon failure of the tenant to pay the stipulated rents, the landlord might consider the contract broken and demand immediate possession of the rented property, thus, converting a legal possession into illegal possession. However, the landlord might choose to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property, such that during that period, the tenant would not be in illegal possession of the property and the landlord could not maintain an action of *desahucio* until after the latter had taken steps to convert the legal possession into illegal possession.[15]

As held in *Canaynay v. Sarmiento*:[16]

x x x There is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several

[14] *Macaslang v. Spouses Zamora,* 664 Phil. 337, 351 (2011).

[15] *Lucido and Lucido v. Vita*, 25 Phil. 414, 425 (1913), as cited in *Dela Cruz v. Court of Appeals,* 539 Phil. 158, 176 (2006).

[16] 79 Phil. 36 (1947).

years, or even decades. That consent, no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession.[17]

We further elucidated the concept of possession by mere tolerance in *Calubayan, et al. v. Pascual*,[18] thus:

x x x **In allowing several years to pass without requiring the occupant to vacate the premises nor filing an action to eject him, plaintiffs have acquiesced to defendant's possession and use of the premises**. It has been held that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against them. x x x.

x x x x x x x x x

Even assuming, for the sake of argument, that the various notifications for defendant to see the plaintiffs could be construed as demands upon the defendant to vacate**, the length of time that defendant detained the premises is to be reckoned with from the date of the last demand**. **Plaintiffs' failure to file an action in court shortly after defendant had ignored their previous notices is to be considered as a waiver on their part to eject the defendant in the meantime**.

x x x x x x x x x.[19]

A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established. Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for him to occupy the disputed property.[20]

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[17] *Canaynay v. Sarmiento, supra*, at 40.

[18] 128 Phil. 160 (1967).

[19] *Calubayan, et al. v. Pascual, supra,* at 163-164. (Emphases supplied)

[20] *Quijano v. Amante*, G.R. No. 164277, October 8, 2014, 737 SCRA 552, 564-565.

To establish the tolerance on the part of petitioner's predecessor, petitioner presented a letter[21] dated October 15, 2002 wherein Agus apprised one Isidra Millanes, who was a lessee on a month-to-month basis, the transfer of ownership of Lot No. 28, Block No. 2 at 800 Loyola Street corner San Diego Street, Sampaloc, Manila to Metropolitan Bank and Trust Company (*Metrobank*); and a letter dated March 25, 2004, wherein Metrobank, through its counsel, demanded the spouses Ricardo and Precilla[22] Navarro and all persons claiming title or rights under him to vacate the premises and pay rental in arrears.[23]

Respondents, as lessees of Agus and then Metrobank, were the legal possessors of the subject property by virtue of a contract of lease. Metrobank's failure to file an action in court shortly after respondents failed to heed to its demand to vacate in 2004 was a waiver on its part to eject respondents in the meantime. It would appear that Metrobank permitted or tolerated respondents' possession of the property even before LNC acquired the property and eventually sold the same to petitioner. It can be surmised that LNC maintained the *status quo*. Otherwise, petitioner would not have found respondents on the premises. Hence, petitioner was able to establish that respondents' possession was by tolerance of his predecessors. As such, they are necessarily bound by an implied promise that they will vacate upon demand, *failing which a summary action for ejectment is the proper remedy against them*.[24]

With the issue on possession by tolerance settled, We now scrutinize the issue of who is entitled to physical possession of the property or possession *de facto.*

To reiterate, the only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the

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[21] *Rollo,* p. 73.

[22] As spelled in the demand letter.

[23] *Rollo,* p. 74.

[24] *Calubayan, et al. v. Pascual, supra* note 18, at 163.

premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property.[25]

In the case at bar, petitioner anchors his claim of ownership and right to possess the property on the strength of a notarized Deed of Conditional Sale and a notarized Deed of Absolute Sale between him and LNC.

The CA opined that the Deed of Absolute Sale invoked by petitioner is highly dubious and questionable considering that the same was not registered with the proper Registry of Deeds, no affidavit by the lawyer who notarized the same was submitted, and no proof was shown that the persons who signed for LNC were authorized to do so.

We disagree. There is no rule which requires a party, who relies on a notarized deed of sale for establishing his ownership, to present further evidence of such deed's genuineness lest the presumption of its due execution be for naught.[26] Regarded as evidence of the facts therein expressed in a clear, unequivocal manner, public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The burden of proof to overcome said presumptions lies with the party contesting the notarial document.[27]

We note that the respondents presented a Certification dated November 15, 2011 that the Notary Public who signed and affixed his notarial seal on the deed has not yet submitted his notarial report for 2010 intending to prove that the deed was not a public document.[28] However, the same was only alleged and offered before the CA. Basic consideration of due process impels the rule that

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[25] *Barrientos v. Rapal*, 669 Phil. 438, 444 (2011).

[26] *Destreza v. Atty. Riñoza-Plazo, et al.*, 619 Phil. 775, 783 (2009).

[27] *Dela Peña, et al. v. Avila, et al.*, 681 Phil. 553, 567 (2012).

[28] CA *rollo*, p. 153.

points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.[29] It is erroneous for the CA to base its ruling that the deed is dubious on the certification that was not presented before the trial courts. As such, respondents failed to present clear and convincing evidence as to overcome the presumption of regularity of the notarized deed, from which petitioner anchored his claim of ownership.

As to respondents, it appears that they initially admitted that they were lessees of Agus. They merely denied petitioner's ownership and contested the notarized deed of sale through bare allegations. According to respondents, petitioner has no right to demand on April 19, 2010 for them to vacate since the alleged undated deed of absolute sale was notarized on July 29, 2010. Thus, there was no demand to vacate the premises. On appeal before the RTC, the respondents, to bolster their claim of better right of possession, alleged that the premises which they occupied are covered by Presidential Decree (*P.D.*) No. 1517 or the *Urban Land Reform Law*. They insist that they are qualified and legitimate beneficiaries of the property. They have been paying rental deposits since August 1, 1984 as proved by a certification dated September 14, 2010.[30]

In their Comment on the instant petition, respondents reiterate that the MeTC and the RTC have no jurisdiction over herein subject property as there is a pending expropriation case filed by the City Government of Manila before the RTC of Manila, Branch 17, in connection with its distribution to qualified beneficiaries like the respondents.[31]

From the foregoing, this Court rules in favor of the petitioner. We agree with the MeTC, as affirmed by the RTC, that petitioner has proven that he is better entitled to the material possession of the property as against the unsubstantiated claims of respondents.

Respondents admitted in their Answer that they were lessees of Agus, predecessor of petitioner. As such, they recognized the

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[29] *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, 632 Phil. 143, 155 (2010).

[30] CA *rollo*, pp. 112-122.

[31] *Rollo*, pp. 242-243.

ownership of the lot by the petitioner, which includes the right of possession. As discussed, respondents failed to rebut the deed of sale from which petitioner anchored his claim of ownership and right of possession of the property. Also, they belatedly alleged and presented evidence to substantiate their claim of better right of possession.

Anent respondents' argument that petitioner had no right to evict them on April 19, 2010 since he became the owner only on July 29, 2010, this Court is not persuaded. Although denominated as conditional, a deed of sale is absolute in nature in the absence of any stipulation reserving title to the seller until full payment of the purchase price. In such case, ownership of the thing sold passes to the buyer upon actual or constructive delivery. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. On the other hand, in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price.[32]

A perusal of the contract readily reveals that there was nothing in the Deed of Conditional Sale[33] which expressly provides for LNC's retention of title or ownership of the property until full payment of the purchase price or any provision which would impose payment of the price as a condition for the contract's entering into force. The condition imposed was only on the performance of the obligations of the parties. As such, there was already a perfected contract, and the ownership of the property already passed to petitioner as the buyer upon the execution of the deed of conditional sale on January 13, 2010. Thus, petitioner was deemed to have been unlawfully deprived of the lawful possession of the property upon respondents' failure to heed his demand to vacate on April 19, 2010.

Respondents insisted that petitioner has no right to eject them since the subject property is covered by P.D. No. 1517, and that they are qualified beneficiaries under the same.

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[32] *Norberte, Jr. v. Mejia, supra* note 11, at 125.

[33] *Rollo,* pp. 65-68.

It is settled in the case of *Spouses Frilles v. Spouses Yambao*[34] that the purpose of P.D. No. 1517 is to protect the rights of legitimate tenants who have resided for 10 years or more on specific parcels of land situated in declared Urban Land Reform Zones or Urban Zones, and who have built their homes thereon. These **legitimate tenants have the right not to be dispossessed** and to have the **right of first refusal to purchase the property** under reasonable terms and conditions to be determined by the appropriate government agency. Thus, a legitimate tenant's right of first refusal to purchase the leased property under P.D. No. 1517 depends on whether the disputed property in Metropolitan Manila is situated in an area specifically declared to be **both** an *Area for Priority Development* **and** *Urban Land Reform Zone*.[35]

These circumstances do not obtain in the present case as it was not alleged nor proven that respondents built their dwelling on the land. They merely presented certification that they were paying rentals since 1984. Assuming the aforementioned circumstances are present, the respondents still cannot qualify under P.D. No. 1517 in the absence of any showing that the subject land had been declared an area for priority development and urban land reform zone. The said documents, letters and memorandum which purportedly establish that the respondents' occupied property is covered by P.D. No. 1517 pertain to the implementation of Ordinance No. 8022 concerning the expropriation of parcels of land, which specifically mentioned *Barangay* 536, Zone 53.[36] However, the said documents did not prove that the area of *Barangay* 521 where the property (TCT No. 284213) was situated was declared as Area for Priority Development and Urban Land Reform Zone. A copy of the said Ordinance was not even presented. Lastly, P.D. No. 1517 will still not apply as the issue raised in the case at bar was

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[34] 433 Phil. 715, 721-724 (2002). (Citations omitted)

[35] *Esteban v. Spouses Marcelo,* 715 Phil. 806, 815 (2013), citing *Sps. Frilles v. Sps. Yambao, supra*. (Emphases supplied).

[36] CA *rollo,* pp. 123-126.

respondents' refusal to vacate the subject property and not their right of first refusal.

As to the issue of the pending expropriation case filed by the City Government of Manila raised for the first time in the RTC by the respondents, the same is proscribed as all issues raised for the first time in the reviewing court are proscribed.[37] Assuming *arguendo* that We entertain the issue, We rule that the pending expropriation will not affect the resolution of this petition. *First*, respondents can raise their issue in the appropriate legal proceeding. *Second*, respondents' pieces of evidence, which include a certification[38] from the Urban Settlement Office, that a pending expropriation case was filed relative to the implementation of Ordinance No. 8022, were silent as to the scope of the said Ordinance, or that the subject property was indeed included therein.

It must be stressed that the ruling in the instant case is limited only to the determination as to who between the parties has a better right to possession. It will not bar any of the parties from filing an action with the proper court to resolve conclusively the issue of ownership.

WHEREFORE, the petition for review on *certiorari* filed by petitioner Thamerlane M. Perez, assailing the Decision dated July 29, 2013 and the Resolution dated March 4, 2014 of the Court of Appeals in CA-G.R. SP No. 124234, is hereby **GRANTED**. The Decision dated April 13, 2011 of the Metropolitan Trial Court in Civil Case No. 187245-CV is hereby **REINSTATED.**

SO ORDERED.

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

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[37] *Nuñez v. SLTEAS Phoenix Solutions, Inc., supra* note 29.

[38] CA *rollo,* p. 125.

FIRST DIVISION

[G.R. No. 214875. October 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIEL LAYAG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; THE SUPREME COURT HAS THE POWER TO RELAX THE DOCTRINE IF THERE EXISTS A SPECIAL OR COMPELLING CIRCUMSTANCE WARRANTING THE RE-EXAMINATION OF THE CASE DESPITE ITS FINALITY.— In a Resolution dated August 3, 2015 (August 3, 2015 Resolution), the Court adopted *in toto* the Decision dated January 29, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05383 finding accused-appellant Ariel Layag (Layag) guilty beyond reasonable doubt of one (1) count of Qualified Rape by Sexual Intercourse, two (2) counts of Qualified Rape by Sexual Assault, and one (1) count of Acts of Lasciviousness x x x Subsequently, the Court issued an Entry of Judgment dated October 14, 2015 declaring that the aforesaid Resolution had already become final and executory. However, the Court received a Letter dated July 18, 2016 from the Bureau of Corrections informing us of the death of accused-appellant on July 30, 2015, as evidenced by the Certificate of Death attached thereto. In light of the foregoing circumstances, the Court is constrained to re-open the case despite the finality of the August 3, 2015 Resolution. In *Bigler v. People*, the Court explained that it has the power to relax the doctrine of immutability of judgment if, *inter alia*, there exists a special or compelling circumstance warranting the same x x x. In this case, Layag's death which occurred prior to the promulgation of the Resolution dated August 3, 2015 – a matter which the Court was belatedly informed of – clearly shows that there indeed exists a special or compelling circumstance warranting the re-examination of the case despite its finality.

2. CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; UPON THE DEATH OF THE ACCUSED PENDING APPEAL OF HIS CONVICTION, THE CRIMINAL ACTION IS EXTINGUISHED AND THE CIVIL ACTION INSTITUTED THEREIN FOR RECOVERY OF THE CIVIL LIABILITY *EX DELICTO* IS *IPSO FACTO* EXTINGUISHED, BUT A SEPARATE CIVIL ACTION MAY BE FILED AGAINST THE ESTATE OF THE ACCUSED FOR HIS CIVIL LIABILITY BASED ON SOURCES OTHER THAN DELICTS.— Under prevailing law and jurisprudence, Layag's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused x x x. [U]pon Layag's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that Layag's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of Layag, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

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

R E S O L U T I ON

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated August 3, 2015 (August 3, 2015 Resolution), the Court adopted *in toto* the Decision[2] dated January

[1] See Notice signed by Division Clerk of Court Edgar O. Aricheta; *rollo*, pp. 44-46.

[2] *Id*. at 2-25. Penned by Associate Justice Romeo F. Barza with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz concurring.

29, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05383 finding accused-appellant Ariel Layag (Layag) guilty beyond reasonable doubt of one (1) count of Qualified Rape by Sexual Intercourse, two (2) counts of Qualified Rape by Sexual Assault, and one (1) count of Acts of Lasciviousness, the pertinent portion of which reads:

> WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the January 29, 2014 Decision of the CA in CA-G.R. [CR-H.C.] No. 05383 and **AFFIRMS** said Decision finding accused-appellant Ariel Layag **GUILTY** beyond reasonable doubt of committing one (1) count of Qualified Rape by Sexual Intercourse, as defined and penalized under Article 266-A paragraph 1 in relation to Article 266-B (1) of the Revised Penal Code (RPC), two (2) counts of Qualified Rape by Sexual Assault, as defined and penalized under paragraph 2, Article 266-A in relation to Article 266-B (1) of the RPC, and one (1) count of Acts of Lasciviousness, as defined and penalized under Article 336 of the RPC, **WITH MODIFICATION** as to the award of damages, sentencing him to suffer the following penalties: (*a*) in Crim. Case No. 2007-9591-MK for Qualified Rape by Sexual Intercourse, he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; (*b*) in Crim. Case Nos. 2007-9592-MK and 2007-9593-MK for Qualified Rape by Sexual Assault, he is sentenced to suffer the penalty of imprisonment for the indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum, and ordered to pay the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for each count; and (*c*) in Crim. Case No. 2007-9594-MK for Acts of Lasciviousness, he is sentenced to suffer the penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and ordered to pay the amounts of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In addition, all monetary awards shall earn legal interest of six percent (6%) per annum, to be reckoned from the date of finality of this Resolution until full payment.[3]

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[3] *Id*. at 44-45.

Subsequently, the Court issued an Entry of Judgment[4] dated October 14, 2015 declaring that the aforesaid Resolution had already become final and executory. However, the Court received a Letter[5] dated July 18, 2016 from the Bureau of Corrections informing us of the death of accused-appellant on July 30, 2015, as evidenced by the Certificate of Death[6] attached thereto.

In light of the foregoing circumstances, the Court is constrained to re-open the case despite the finality of the August 3, 2015 Resolution. In *Bigler v. People*,[7] the Court explained that it has the power to relax the doctrine of immutability of judgment if, *inter alia*, there exists a special or compelling circumstance warranting the same, *viz.*:

> Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. **Nonetheless, the immutability of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering:** (*a*) matters of life, liberty, honor, or property; (*b*) **the existence of special or compelling circumstances**; (*c*) the merits of the case; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) that the other party will not be unjustly prejudiced thereby.[8] (Emphases and underscoring supplied)

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[4] *Id*. at 47-48. Signed by Deputy Clerk of Court & Chief Judicial Records Officer Basilia T. Ringol.

[5] *Id*. at 55. Signed by New Bilibid Prison Superintendent P/Supt. II Richard W. Schwarzkopf, Jr.

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

[7] See G.R. No. 210972, March 19, 2016.

[8] See *id*.

In this case, Layag's death which occurred prior to the promulgation of the Resolution dated August 3, 2015 – a matter which the Court was belatedly informed of – clearly shows that there indeed exists a special or compelling circumstance warranting the re-examination of the case despite its finality.

As will be explained hereunder, there is a need to reconsider and set aside said Resolution and enter a new one dismissing the criminal cases against Layag.

Under prevailing law and jurisprudence, Layag's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

> Article 89. *How criminal liability is totally extinguished*. – Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x x x x x x

In *People v. Egagamao*,[9] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be

[9] See G.R. No. 218809, August 3, 2016.

predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) x x x
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[10]

Thus, upon Layag's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that Layag's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of Layag, as may be warranted by law and procedural rules.[11]

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[10] See *id*., citing *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

[11] See *id*.; citations omitted.

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolution dated August 3, 2015 in connection with this case; (*b*) **DISMISS** Crim. Case Nos. 2007-9591-MK, 2007-9592-MK, 2007-9593-MK, and 2007-9594-MK before the Regional Trial Court of Marikina City, Branch 156 by reason of the death of accused-appellant Ariel Layag; and (*c*) **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 215038. October 17, 2016]

NORMA C. MAGSANO, ISIDRO C. MAGSANO, RICARDO C. MAGSANO, ROQUE C. MAGSANO, JR., NIDA M. CAGUIAT, PERLITA MAGSANO, and SALVADOR C. MAGSANO, *petitioners, vs.* **PANGASINAN SAVINGS AND LOAN BANK, INC. and SPOUSES EDDIE V. MANUEL and MILAGROS C. BALLESTEROS, substituted by her heirs: GEMMA C. MANUEL-PEREZ, ANGELO JOHNDREW MANUEL, and RESSY C. MANUEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; CONTEMPLATES ONLY QUESTIONS OF LAW, NOT OF FACT; EXCEPTION.— [T]he remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law, not of fact. While it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties, there are, however,

recognized exceptions, one of which is when the inference drawn from the facts was manifestly mistaken, as in this case.

2. CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CO-OWNERSHIP; UPON THE DEATH OF A SPOUSE, THE CONJUGAL PARTNERSHIP IS DISSOLVED AND AN IMPLIED ORDINARY CO-OWNERSHIP BETWEEN THE SURVIVING SPOUSE AND THE OTHER HEIRS OF THE DECEASED SPOUSE ARISES.— It is undisputed that at the time the Real Estate Mortgage was constituted on July 1, 1991, Roque was already deceased. Upon his death on April 17, 1991, the conjugal partnership between him and his spouse, Susana, was dissolved pursuant to Article 126 (1) of the Family Code, and an implied ordinary co-ownership arose among Susana and the other heirs of Roque with respect to his share in the assets of the conjugal partnership pending liquidation. The ensuing implied ordinary co-ownership is governed by Article 493 of the Civil Code x x x. [A]lthough Susana is a co-owner with her children with respect to Roque's share in the conjugal partnership, she could not yet assert or claim title to any specific portion thereof without an actual partition of the property being first done either by agreement or by judicial decree. While she herself as co-owner had the right to mortgage or even sell her undivided interest in the subject property, she could not mortgage or otherwise dispose of the same in its entirety without the consent of the other co-owners. Consequently, the validity of the subject Real Estate Mortgage and the subsequent foreclosure proceedings therefor conducted in favor of respondent bank should be limited only to the portion which may be allotted to it, as Susana's successor-in-interest, in the event of partition, thereby making it a co-owner with petitioners pending partition.

3. ID.; ID.; SPECIAL CONTRACTS; SALES; WHERE THE LAND SOLD IS A REGISTERED LAND, THE PURCHASER MAY RELY ON THE CORRECTNESS OF THE CERTIFICATE OF TITLE, BUT WHEN THE LAND IS IN THE POSSESSION OF A PERSON OTHER THAN THE VENDOR, THE PURCHASER MUST GO BEYOND THE CERTIFICATE OF TITLE AND MAKE INQUIRIES CONCERNING THE ACTUAL POSSESSOR.— While the rule is that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor

and the law will in no way oblige him to go beyond the certificate to determine the condition of the property, **where the land sold is in the possession of a person other than the vendor, *as in this case*, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor.** x x x Here, petitioners were in possession of the subject property when Sps. Manuel bought the same on February 19, 1997 (and even up to the filing of the amended complaint before the RTC on September 3, 2007). However, records do not show that Sps. Manuel inspected the property and inquired into the nature of petitioners' possession and/or the extent of their possessory rights as a measure of precaution which may reasonably be required of a prudent man in a similar situation, and thereby discover the irregularity in the acquisition of title by the respondent bank. Sps. Manuel, therefore, failed to exercise the diligence required in protecting their rights; as such, the Court cannot ascribe good faith to them.

4. REMEDIAL LAW; EVIDENCE; DEFENSES; THE CLAIM THAT ONE IS AN INNOCENT PURCHASER FOR VALUE IS A MATTER OF DEFENSE AND HE WHO ASSERTS IT HAS THE BURDEN OF PROVING THE SAME.— [T]he claim that one is an innocent purchaser for value is a matter of defense. Hence, while petitioners alleged that Sps. Manuel were purchasers in bad faith, the rule is that he who asserts the status of a purchaser in good faith and for value has the burden of proving the same, and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith, *i.e.*, that everyone is presumed to act in good faith.

5. CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CO-OWNERSHIP; MORTGAGE OF A CO-OWNED PROPERTY BY A CO-OWNER WITHOUT THE CONSENT OF THE OTHER CO-OWNERS, EFFECT.— [T]he fact that respondent bank succeeded in consolidating ownership over the subject property in its name did not terminate the existing co-ownership between it and petitioners. x x x Sps. Manuel merely stepped into the shoes of respondent bank and acquired only the rights and obligations appertaining thereto. Thus, while they have been issued a certificate of title over the entire property, they shall: (*a*) only acquire what validly pertains to respondent bank as successor-in-interest of Susana in the event of partition; and

(*b*) hold the shares therein pertaining to the co-owners who did not consent to the mortgage, *i.e.*, petitioners, in trust for the latter pending partition.

CAGUIOA, *J., concurring opinion*:

CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; WHERE THE SURVIVING SPOUSE EXECUTED A MORTGAGE OVER THE ENTIRE CONJUGAL PROPERTY WITHOUT THE CONSENT OF THE OTHER HEIRS OF THE DECEASED SPOUSE, THE CONTRACT ENTERED INTO IS CHARACTERIZED AS "INEFFECTIVE", WHICH MAY BE VALIDATED BY THE SUBSEQUENT RATIFICATION OF THE OTHER CO-OWNERS OR BY THE SUBSEQUENT ACQUISITION OF THE DISPOSING CO-OWNER OF THE OTHER CO-OWNERS' UNDIVIDED INTERESTS.— In sustaining the validity of the mortgage on the subject conjugal property insofar as the aliquot or pro-indiviso share or interest of Susana is concerned, the *ponencia* relies on Article 493 of the Civil Code. I believe this is inaccurate. x x x This article recognizes the absolute ownership by a co-owner of his aliquot or undivided share and his right to alienate, assign or mortgage and even substitute another person in its enjoyment. However, the co-owner's right to alienate is limited to only his undivided share and does not in any way affect any definite portion of the thing owned in common since before partition a co-owner will not know what portion of the property will actually belong to him. The situation in this case involved Susana, the surviving spouse, executing a mortgage over the entire subject conjugal property without the consent of the other heirs of Roque, Susana's deceased husband. This is a situation different from Article 493 because, clearly, Susana did not mortgage only her pro-indiviso share therein, but the entire property. x x x In *Estoque*, a specific portion of a co-owned property was sold, albeit a specific portion of a land that was owned in common. x x x [T]he rationale for not recognizing the effectivity of the disposition over a specific portion equally applies to the disposition by a co-owner of the entire co-owned or undivided property that is more than the undivided share rightfully pertaining to the disposing co-owner. *Estoque* characterizes the contract entered into by the disposing co--owner as "ineffective, for lack of power in the vendor to sell the specific

portion described in the deed." This characterization makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner acquires subsequently the undivided interests of the other co-owners. Such subsequent ratification or acquisition will validate and make the contract fully effective.

APPEARANCES OF COUNSEL

Decano Law Office for petitioners.
Fernandez Law Office for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated February 14, 2014 and the Resolution[3] dated October 2, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 99519, which affirmed the Decision[4] dated April 27, 2012 of the Regional Trial Court of Dagupan City, Branch 41 (RTC) dismissing the complaint for annulment of real estate mortgage, certificate of sale, sheriff's final sale, deed of sale, and Transfer Certificate of Title (TCT) No. 48754[5] filed by herein petitioners Norma, Isidro, Ricardo, Roque, Jr., Perlita, and Salvador, all surnamed Magsano, and Nida M. Caguiat (petitioners) against herein respondent Pangasinan Savings and Loan Bank, Inc.[6] (respondent bank), respondents-spouses Eddie V. Manuel and Milagros C. Ballesteros (Sps. Manuel), and Sheriff Reynaldo

[1] *Rollo*, pp. 8-18.

[2] *Id*. at 24-37. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

[3] *Id*. at 39.

[4] *Id*. at 85-96. Penned by Judge Emma M. Torio.

[5] Should be TCT No. 65394 and all derivative titles therefrom.

[6] Formerly "Pangasinan Savings and Loan Association, Inc."

C. Daroy (Sheriff Daroy), but deleted the awards of exemplary damages, attorney's fees, appearance fee, and litigation expenses in the latter's favor.

The Facts

On July 1, 1991, spouses Roque Magsano (Roque) and Susana Capelo (Susana; collectively, mortgagors), the parents of petitioners,[7] purportedly executed in favor of respondent bank a Real Estate Mortgage[8] over a 418 square-meter parcel of land located in Dagupan City, covered by TCT No. 48754,[9] as well as the improvements thereon (subject property), as security for the payment of their ₱35,000.00 loan.[10]

The mortgagors, however, defaulted in the payment of their loan obligation when it fell due, causing respondent bank to extra-judicially foreclose the mortgaged property[11] in accordance with Act No. 3135,[12] as amended, with notice to the mortgagors,[13] and, in the process, respondent bank emerged as the highest bidder in the public auction sale held on March 21, 1994 for a total bid price of ₱65,826.69.[14] The mortgagors then failed to redeem the property within the redemption period[15] which led to the cancellation of TCT No. 48754 and the issuance of TCT No. 65394[16] in the name of respondent bank.[17] The latter

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[7] See *rollo*, pp. 41-42.

[8] *Id*. at 46-47.

[9] Not attached to the *rollo*.

[10] See *rollo*, pp. 68 and 86.

[11] See *id*.

[12] Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES" (March 6, 1924).

[13] See *rollo*, pp. 94-95.

[14] See Certificate of Sale dated April 5, 1994 signed by Sheriff IV Vinez A. Hortaleza for Clerk of Court & City Sheriff, *Ex-Officio* Alicia Bravo-Fabia; *id*. at 48, including dorsal portion.

[15] See Sheriff's Final Sale dated February 12, 1996; *id*. at 49-50.

[16] *Id*. at 51, including dorsal portion.

[17] See *id*. at 86.

subsequently sold[18] the same to Sps. Manuel who were issued TCT No. 67491.[19]

Despite repeated demands, the mortgagors refused to vacate the premises; hence, respondent bank applied for[20] and was granted a writ of possession[21] over the subject property and, thereafter, a writ of demolition,[22] resulting in the demolition of petitioners' houses.[23]

Consequently, on September 6, 2004, petitioners filed a complaint[24] for annulment of Real Estate Mortgage, Certificate of Sale, Sheriff's Final Sale, Deed of Sale, and TCT No. 48754[25] against respondent bank, Sps. Manuel, and Sheriff Daroy (defendants) before the RTC, docketed as Civil Case No. 2004-0316-D, which they amended[26] on September 3, 2007.[27] They averred that Roque had already passed away on April 17, 1991,[28] or prior to the execution of the Real Estate Mortgage on July 1, 1991; hence, the said mortgage was null and void, and could not have conferred any right on the subject property in favor of respondent bank which it could pass to Sps. Manuel.[29] They further claimed that the said property is their family home,

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[18] See Deed of Absolute Sale dated February 19, 1997; *id*. at 67, including dorsal portion.

[19] *Id*. at 52, including dorsal portion.

[20] See *Ex-Parte* Motion/Petition for Issuance of Writ of Possession dated June 6, 1997; *id*. at 53-56.

[21] Not attached to the *rollo*.

[22] See Order dated July 20, 2004 signed by Judge Silverio O. Castillo; *rollo*, p. 66.

[23] See *id*. at 69 and 72.

[24] Not attached to the *rollo*. See *id*. at 9.

[25] Should be TCT No. 65394 and all derivative titles therefrom.

[26] See Amended Complaint dated August 30, 2007; *rollo*, pp. 41-45.

[27] See *id*. at 9.

[28] See Certificate of Death; *id*. at 56A, including dorsal portion.

[29] See *id*. at 43-44.

but the consent of the majority of the beneficiaries had not been secured. They likewise asserted that Sps. Manuel were aware that: (*a*) the foreclosure proceedings were invalid; and (*b*) petitioners were in possession of the subject property, hence, purchasers in bad faith.[30]

For their part,[31] defendants denied knowledge of the death of Roque,[32] and averred that petitioners have no cause of action to seek the annulment of the Real Estate Mortgage since they were not parties thereto.[33] They contended that assuming that the latter have a cause of action, the same had prescribed pursuant to Articles 1144, 1149, and 1150 of the Civil Code.[34] They further argued that petitioners are estopped from questioning the validity of the Real Estate Mortgage, considering that they: (*a*) are bound by the acts of their mother, Susana, who signed the same, and is presumed to be the author of the misrepresentation/falsification, and benefited from the proceeds of the loan;[35] and (*b*) participated in the proceedings for the issuance of the writ of possession.[36]

The RTC Ruling

In a Decision[37] dated April 27, 2012, the RTC dismissed the complaint for lack of merit.[38] It declared that petitioners have no cause of action against the defendants,[39] holding them bound by the misrepresentation of their mother who signed the Real

[30] See *id*. at 43.

[31] Except Milagros C. Ballesteros who is already dead at the time of the filing of defendants' answer. See Amended Answer with Counterclaim and Affirmative Defenses dated March 18, 2009; *id*. at 57-63.

[32] *Id*. at 57.

[33] *Id*. at 59.

[34] See *id*. at 60.

[35] See *id*. at 61.

[36] See *id*. at 60.

[37] *Id*. at 85-96.

[38] *Id*. at 96.

[39] *Id*. at 92.

Estate Mortgage, the authenticity of whose signature they never contested.[40] And even assuming that petitioners have a cause of action, the RTC ruled that the same is barred by prescription, considering that the action to annul the Real Estate Mortgage and the foreclosure sale was filed beyond the prescriptive period from the time their causes of action accrued,[41] pursuant to Articles 1144,[42] 1149,[43] and 1150[44] of the Civil Code. Moreover, the RTC deemed it proper to grant respondent bank's claims for attorney's fees, appearance fees, litigation expenses, exemplary damages, and costs of suit.[45]

Aggrieved, petitioners elevated[46] the matter before the CA.

The CA Ruling

In a Decision[47] dated February 14, 2014, the CA affirmed the RTC's findings, but deleted the awards of exemplary damages, attorney's fees, appearance fees, and litigation expenses for lack of factual and legal bases.[48] On the main, it held that while

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

[41] See *id*. at 95.

[42] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[43] Art. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

[44] Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

[45] See *rollo*, p. 96.

[46] See Brief for the Plaintiffs-Appellants dated February 4, 2013; *id*. at 74-84.

[47] *Id*. at 24-37.

[48] *Id*. at 35-37.

the Real Estate Mortgage was void as to the share of Roque who was shown to be already deceased at the time the same was executed, rendering respondent bank a mortgagee in bad faith, it declared Sps. Manuel innocent purchasers for value whose rights may not be prejudiced.[49]

Petitioners filed a motion for reconsideration,[50] which was, however, denied in a Resolution[51] dated October 2, 2014; hence, the instant petition.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not: (*a*) the Real Estate Mortgage was void; and (*b*) Sps. Manuel were purchasers in good faith.

The Court's Ruling

The petition is partly granted.

Preliminarily, the rule is settled that the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law, not of fact. While it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties,[52] there are, however, recognized exceptions,[53] one of which is when the inference drawn from the facts was manifestly mistaken, as in this case.

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[49] See *id*. at 33-35.

[50] Not attached to the *rollo*.

[51] *Rollo*, p. 39.

[52] *Almagro v. Sps. Amaya, Sr.*, 711 Phil. 493, 503 (2013).

[53] Recognized exceptions to the rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the

It is undisputed that at the time the Real Estate Mortgage was constituted on July 1, 1991, Roque was already deceased. Upon his death on April 17, 1991, the conjugal partnership between him and his spouse, Susana, was dissolved pursuant to Article 126 (1)[54] of the Family Code,[55] and an implied ordinary co-ownership arose among Susana and the other heirs of Roque with respect to his share in the assets of the conjugal partnership pending liquidation. The ensuing implied ordinary co-ownership is governed by Article 493 of the Civil Code,[56] to wit:

> Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But **the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership**. (Emphasis supplied)

Thus, although Susana is a co-owner with her children with respect to Roque's share in the conjugal partnership, she could not yet assert or claim title to any specific portion thereof without an actual partition of the property being first done either by

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petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (See footnote 20 of *Almagro v. Sps. Amaya, Sr.*, *id*. at 503-504; citations omitted.)

[54] Art. 126. The conjugal partnership terminates:

(1) Upon the death of either spouse;

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[55] In relation thereto, Article 105, Chapter 4 of the Family Code provides that "the provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code x x x."

[56] See *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*, 672 Phil. 447, 457 (2011).

agreement or by judicial decree.[57] While she herself as co-owner had the right to mortgage or even sell her undivided interest in the subject property, she could not mortgage or otherwise dispose of the same in its entirety without the consent of the other co-owners. Consequently, the validity of the subject Real Estate Mortgage and the subsequent foreclosure proceedings therefor conducted in favor of respondent bank should be limited only to the portion which may be allotted to it, as Susana's successor-in-interest, in the event of partition, thereby making it a co-owner[58] with petitioners pending partition. Thus, in *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*,[59] the Court held:

> While Erna, as herself a co-owner, by virtue of Article 493 of the Civil Code, had the right to mortgage or even sell her undivided interest in the said properties, she, could not, however, dispose of or mortgage the subject properties in their entirety without the consent of the other co-owners. Accordingly, the validity of the subject real estate mortgage and the subsequent foreclosure proceedings therefor conducted in favor of RBCI **should be limited only to the portion which may be allotted to it (as the successor-in-interest of Erna) in the event of partition**. In this relation, the CA's directive to remand the case to the RTC in order to determine the exact extent of the respective rights, interests, shares and participation of respondents and RBCI over the subject properties, and thereafter, effect a final division, adjudication and partition in accordance with law remains in order. Meanwhile, the writ of possession issued in favor of RBCI, and all proceedings relative thereto should be set aside considering that the latter's specific possessory rights to the said properties remain undetermined.[60] (Emphasis and underscoring supplied)

Moreover, although the Court concurs with the CA's finding that respondent bank was a mortgagee in bad faith for having failed to exercise greater care and due diligence in verifying the ownership of the subject property,[61] contrary to the CA, the

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[57] See *id.*

[58] See *id.* at 458.

[59] G.R. No. 178451, July 30, 2014, 731 SCRA 244.

[60] *Id.* at 257-259.

[61] See *rollo*, pp. 34-35.

Court finds that Sps. Manuel are not innocent purchasers for value who can acquire title to the subject entire property.

While the rule is that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property, **where the land sold is in the possession of a person other than the vendor*, as in this case*, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor**.[62] As this Court explained in the case of *Sps. Mathay v. CA*:[63]

> Although it is a recognized principle that a person dealing [with] a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, **it is, of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants**, *i.e.*, whether or not the occupants possess the land *en concepto de dueño*, in concept of owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. **The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a "purchaser in good faith."**[64] (Emphases and underscoring supplied)

Here, petitioners were in possession of the subject property when Sps. Manuel bought the same on February 19, 1997 (and even up to the filing of the amended complaint before the RTC on September 3, 2007).[65] However, records do not show that

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[62] See *Sia Tio v. Abayata*, 578 Phil. 731, 746 (2008).

[63] 356 Phil. 870 (1998).

[64] *Id*. at 892.

[65] See *rollo*, pp. 41-43 and 67.

Sps. Manuel inspected the property and inquired into the nature of petitioners' possession and/or the extent of their possessory rights as a measure of precaution which may reasonably be required of a prudent man in a similar situation, and thereby discover the irregularity in the acquisition of title by the respondent bank. Sps. Manuel, therefore, failed to exercise the diligence required in protecting their rights; as such, the Court cannot ascribe good faith to them.[66]

Furthermore, as correctly pointed out[67] by petitioners, the claim that one is an innocent purchaser for value is a matter of defense.[68] Hence, while petitioners alleged that Sps. Manuel were purchasers in bad faith,[69] the rule is that he who asserts the status of a purchaser in good faith and for value has the burden of proving the same, and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith, *i.e.*, that everyone is presumed to act in good faith.[70]

Besides, the fact that respondent bank succeeded in consolidating ownership over the subject property in its name did not terminate the existing co-ownership between it and petitioners.[71] In *Nufable v. Nufable*,[72] the Court had the occasion to rule:

> [A] co-owner does not lose his part ownership of a co-owned property when his share is mortgaged by another co-owner without the former's knowledge and consent as in the case at bar. It has likewise been ruled that the mortgage of the inherited property is not binding against co-heirs who never benefitted.

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[66] See *Rufloe v. Burgos*, 597 Phil. 261, 272 (2009).

[67] See *rollo*, pp. 12-13.

[68] See *Pabalan v. Santarin*, 441 Phil. 462, 473 (2002).

[69] See *rollo*, p. 43.

[70] Spouses *Mathay v. CA*, *supra* note 63, at 891; citations omitted.

[71] See *Nufable v. Nufable*, 369 Phil. 135, 148 (1999).

[72] *Id*.

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x x x [W]hen the subject property was mortgaged by Angel Custodio, he had no right to mortgage the entire property but only with respect to his ¼ *pro indiviso* share as the property was subject to the successional rights of the other heirs of the late Esdras. Moreover, **in case of foreclosure, a sale would result in the transmission of title to the buyer which is feasible only if the seller can be in a position to convey ownership of the things sold**. And in one case, it was held that a foreclosure would be ineffective unless the mortgagor has title to the property to be foreclosed. Therefore, **as regards the remaining ¾ *pro indiviso* share, the same was held in trust for the party rightfully entitled thereto**, who are the private respondents herein.

Pursuant to Article 1451 of the Civil Code, when land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner. Likewise, under Article 1456 of the same Code, if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. In the case of *Noel vs. [CA]*, this Court held that **"a buyer of a parcel of land at a public auction to satisfy a judgment against a widow acquired only one-half interest on the land corresponding to the share of the widow and the other half belonging to the heirs of her husband became impressed with a constructive trust in behalf of said heirs."**

Neither does the fact that DBP succeeded in consolidating ownership over the subject property in its name terminate the existing co-ownership. Registration of property is not a means of acquiring ownership. When the subject property was sold to and consolidated in the name of DBP, it being the winning bidder in the public auction, DBP merely held the ¾ portion in trust for the private respondents. **When petitioner Nelson purchased the said property, he merely stepped into the shoes of DBP and acquired whatever rights and obligations appertain thereto.**[73] (Emphases supplied)

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[73] *Id*. at 146-148; citations omitted.

In light of the foregoing, Sps. Manuel merely stepped into the shoes of respondent bank and acquired only the rights and obligations appertaining thereto. Thus, while they have been issued a certificate of title over the entire property, they shall: (*a*) only acquire what validly pertains to respondent bank as successor-in-interest of Susana in the event of partition; and (*b*) hold the shares therein pertaining to the co-owners who did not consent to the mortgage, *i.e.*, petitioners, in trust for the latter[74] pending partition.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 14, 2014 and the Resolution dated October 2, 2014 of the Court of Appeals in CA-G.R. CV No. 99519 are hereby **REVERSED** and **SET ASIDE**. A new judgment is **ENTERED** as follows:

(1) **DECLARING** the Real Estate Mortgage dated July 1, 1991 **VOID** with respect to the share of deceased Roque Magsano;

(2) **DECLARING** respondents-spouses Eddie V. Manuel and Milagros C. Ballesteros (Sps. Manuel) as co-owners of the subject property with respect to the undivided share of Susana Capelo therein, together with petitioners Norma, Isidro, Ricardo, Roque, Jr., Perlita, and Salvador, all surnamed Magsano, and Nida M. Caguiat (petitioners);

(3) **CANCELLING** Transfer Certificate of Title No. 67491 in the name of Sps. Manuel; and

(4) **REMANDING** the records of the case to the Regional Trial Court of Dagupan City to determine the exact extent of the respective rights, interests, shares, and participation of petitioners and Sps. Manuel over the subject property and, thereafter, effect a final division, adjudication, and partition in accordance with law.

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[74] See *id.* at 147-148.

The Writ of Possession issued in favor of respondent Pangasinan Savings and Loan Bank, Inc., formerly Pangasinan Savings and Loan Association, Inc., and all proceedings relative thereto, are further **SET ASIDE**, considering that the latter's specific possessory rights to the said properties remain undetermined.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, and *Bersamin, JJ.,* concur.

Caguioa, J., see separate concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur in the result.

In sustaining the validity of the mortgage on the subject conjugal property insofar as the aliquot or pro-indiviso share or interest of Susana is concerned, the *ponencia* relies on Article 493 of the Civil Code. I believe this is inaccurate. Article 493 provides:

> ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

This article recognizes the absolute ownership by a co-owner of his aliquot or undivided share and his right to alienate, assign or mortgage and even substitute another person in its enjoyment. However, the co-owner's right to alienate is limited to only his undivided share and does not in any way affect any definite portion of the thing owned in common

since before partition a co-owner will not know what portion of the property will actually belong to him.[1]

The situation in this case involved Susana, the surviving spouse, executing a mortgage over the entire subject conjugal property without the consent of the other heirs of Roque, Susana's deceased husband. This is a situation different from Article 493 because, clearly, Susana did not mortgage only her pro-indiviso share therein, but the entire property. That being the case, the ruling of the Supreme Court in *Estoque v. Pajimula*,[2] through Justice J. B. L. Reyes, observed:

> x x x The deed of sale to Estoque x x x clearly specifies the object sold as the southeastern third portion of Lot 802 of the Rosario Cadastre, with an area of 840 square meters, more or less. Granting that the seller, Crispina Perez Vda. de Aquitania could not have sold this particular portion of the lot owned in common by her and her two brothers, Lorenzo and Ricardo Perez, by no means does it follow that she intended to sell to appellant Estoque her 1/3 undivided interest in the lot aforementioned. There is nothing in the deed of sale to justify such inference. That the seller could have validly sold her one-third undivided interest to appellant is no proof that she did choose to sell the same. *Ab posse ad actu non valet illatio*.

In *Estoque*, a specific portion of a co-owned property was sold, albeit a specific portion of a land that was owned in common. I believe that this is no different from the situation of Susana who sold the entire co-owned property, that is, a specific parcel of land when she only had an undivided interest therein. Stated differently, the rationale for not recognizing the effectivity of the disposition over a specific portion equally applies to the disposition by a co-owner of the entire co-owned or undivided property that is more than the undivided share rightfully pertaining to the disposing co-owner.

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[1] *Ramirez v. Bautista*, 14 Phil. 528 (1909).

[2] 133 Phil. 55, 58 (1968).

Estoque characterizes the contract entered into by the disposing co-owner as "ineffective, for lack of power in the vendor to sell the specific portion described in the deed."[3] This characterization makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner acquires subsequently the undivided interests of the other co-owners. Such subsequent ratification or acquisition will validate and make the contract fully effective.

Estoque was a decision rendered by this Court *en banc*, and has not been expressly overturned[4]; hence, it remains a sound case law, which I believe should be the controlling jurisprudence.

Even if Article 493 is inapplicable in this case, I concur in the conclusion that the validity of the mortgage executed by Susana binds her undivided interest in the subject conjugal property based on the principle of estoppel. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

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[3] *Estoque v. Pajimula*, *id*. at 58-59.

[4] 1987 Constitution, Article VIII, Section 4(3) states that "Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided *en banc*: ***Provided***, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

THIRD DIVISION

[G.R. No. 218902. October 17, 2016]

HELEN EDITH LEE TAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS.— In *Rivera v. People*, this Court held that to justify an indictment under x x x [S]ection [3(e) of R.A. No. 3019], the existence of the following elements must be established: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) that the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the action of the accused caused undue injury to any party, including the government, **or** gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.

2. ID.; ID.; HOW COMMITTED.— There are two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions, to wit: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. 3019.

3. ID.; ID.; FOR PRIVATE PERSONS TO BE CHARGED WITH AND CONVICTED THEREOF, IT MUST BE SATISFACTORILY PROVEN THAT THEY HAVE ACTED IN CONSPIRACY WITH PUBLIC OFFICERS.— Private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, including (e) thereof. This is in consonance with the avowed policy of the anti-graft law to repress certain acts of **public officers and private**

persons alike constituting graft or corrupt practices act or which may lead thereto. Thus, for a private person to be charged with and convicted of Violation of certain offenses under Section 3 of R.A. 3019, which in this case (e), it must be satisfactorily proven that he/she has acted in conspiracy with the public officers in committing the offense; otherwise, he/she cannot be so charged and convicted thereof. In conspiracy, the act of one is the act of all; thus, it is never presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. **While direct proof is not essential to establish conspiracy, it must be established by positive and conclusive evidence. And conviction must be founded on facts, not on mere inferences and presumptions.**

4. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF EVIDENCE; PUBLIC DOCUMENTS; NOTARIZATION OF A PRIVATE DOCUMENT CONVERTS SUCH DOCUMENT INTO A PUBLIC ONE, AND RENDERS IT ADMISSIBLE IN COURT WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.— [T]he MOA signed by petitioner Tan dated 27 June 1996 was duly notarized on 28 June 1996. x x x The notarization of a document carries considerable legal effect. **Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity.** With that notarial act, the MOA became a public document. As such, it is a perfect evidence of the fact which gives rise to its execution and of its date so long as the act which the officer witnessed and certified to or the date written by him is not shown to be false. To overcome the presumption, the rules require not just a preponderance of evidence, but evidence that is "clear and convincing" as to exclude all reasonable controversy as to the falsity of the certificate. In the absence of such proof, the document must be upheld.

5. ID.; ID.; JUDICIAL ADMISSION; REMOVES AN ADMITTED FACT FROM THE FIELD OF CONTROVERSY AND THE PRODUCTION OF EVIDENCE IS DISPENSED WITH.— A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations **or stipulations,** or (c) in other stages of the judicial proceeding. It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, as in this case, no amount of rationalization can offset it. Also, in *Republic of the Philippines v. De Guzman* citing *Alfelor v. Halasan*, this Court held that "a party who judicially admits a fact cannot later challenge that 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."** With the foregoing, the Sandiganbayan is precluded from ruling that the MOA was actually executed sometime in September 1997 as it would run counter to the stipulated fact of the parties that it was entered into on 27 June 1996, which stipulation was not shown to have been made through palpable mistake.

APPEARANCES OF COUNSEL

Arturo M. Alinio and *Estelito P. Mendoza* for petitioner.

D E C I S I O N

PEREZ, ***J.*:**

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1] and the Resolution[2] dated 7 November 2013 and 30 June 2015, respectively, of the

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[1] Penned by Associate Justice Alexander G. Gesmundo with Associate Justices Roland B. Jurado and Amparo M. Cabotaje-Tang concurring; *rollo*, pp. 88-130.

[2] *Id.* at 131-136.

Sandiganbayan in Criminal Case No. 25674. The questioned Decision found herein petitioner Helen Edith Lee Tan (Tan), President/Proprietor of International Builders Corporation (IBC),[3] together with her co-accused therein, namely: Rene Mondejar (Mondejar), Municipal Mayor; Francisco Tolentino (Tolentino), *Sangguniang Bayan* Secretary; Ildefonso Espejo (Espejo), *Sangguniang Bayan* Member; Margarita Gumapas (Gumapas), *Sangguniang Bayan* Member; Manuel Piolo (Piolo), *Sangguniang Bayan* Member; and Roberto Velasco (Velasco), *Sangguniang Bayan* Member; all of Maasin, Iloilo City, guilty beyond reasonable doubt of Violation of Section 3(e) of Republic Act (R.A.) No. 3019,[4] as amended. Each of them was meted with the penalty of imprisonment of six (6) years and one (1) month, as minimum, to 10 years, as maximum, as well as perpetual disqualification to hold public office.[5] The questioned Resolution, on the other hand, denied for lack of merit the separate Motions for Reconsideration of petitioner and Mondejar, as well as the joint Motion for Reconsideration of Tolentino, Gumapas, Velasco and Espejo.[6]

The antecedents of this case are:

To protect Barangay Naslo in Maasin, Iloilo City, from the dangers posed by the Tigum River, which usually overflows during the rainy season, its *Sangguniang Barangay* enacted on 16 June 1996 Resolution No. 9[7] requesting the IBC to rechannel the path of the Tigum River and, after the temporary river control

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[3] A domestic corporation duly organized and existing under the laws of the Philippines and based in Iloilo City.

[4] Also known as the "Anti-Graft and Corrupt Practices Act."

[5] Sandiganbayan Decision dated 7 November 2013; *rollo*, p. 128.

[6] *Id.* at 135.

[7] Entitled "*A Resolution Requiring The [IBC] For Rechanneling Of The Tigum River Path At Barangay Naslo*. "Those present during its enactment were: Rolando Sison (*Punong Barangay*/Presiding Officer), Allan Maderista (*Barangay* Secretary), Patricia Somo, Nora Bombita, Erwin Dumadaug, Edwin Maderista, Juan Cabrera, Nelson Bombita (all *Sangguniang Barangay* Members/*Barangay* Councilors) and Ed Son Garcia (*Sangguniang Kabataan* Chairman/*Sangguniang Barangay* Member).

is replenished, to extract whatever surplus of sand and gravel supply, as payment for its services.[8] A day after, or on 17 June 1996, the Municipal Development Council (MDC) of Maasin, Iloilo City, adopted a similar resolution, *i.e.*, Resolution No. 9,[9] also requesting the IBC to perform the rechanneling of the Tigum River path because it has the necessary equipment for that kind of work, as well as the Department of Environment and Natural Resources (DENR) to issue the Environmental Clearance Certificate (ECC) in connection with the implementation of the project.[10] With these in view, the *Sangguniang Bayan* of Maasin, Iloilo City, enacted on 21 June 1996 the questioned (1) Resolution No. 30-A[11] strongly endorsing the resolutions of Barangay Naslo and MDC; and (2) Resolution No. 30-B[12] authorizing Mondejar to exercise his emergency powers to negotiate with the IBC for the rechanneling of the Tigum River path.[13]

On 27 June 1996, pursuant to the aforesaid *Sangguniang Bayan* resolutions, the Municipality of Maasin, Iloilo City, through Mondejar, entered into a Memorandum of Agreement

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[8] Resolution No. 9, Series of 1996, of the *Sangguniang Barangay* of Barangay Naslo; *rollo*, p. 231.

[9] Entitled "*A Resolution Requesting For Rechanneling Of The Tigum River At Barangay Naslo*." Those present during its enactment were: Rene M. Mondejar (Municipal Mayor/Chairman/Presiding Officer), Ildefonso P. Espejo (*Sangguniang Bayan* Member/Congressman's Representative), Jose S. Navarra (*Sangguniang Bayan* Member/Chairman on Appropriation), Benedicto Mandate (PEC), Sherlito Reyes (NGO), Francisco C. Tolentino (NGO), Engineer Juan Rentoy, Jr. (Municipal Planning Development Officer), Bienvenido P. Espino (ABC President), Elsa C. Maternal [NGO (SDAI)] and 48 *Barangay* Captains, as members.

[10] Resolution No. 9, Series of 1996, of the MDC; *rollo*, p. 232.

[11] Entitled "*A Resolution Strongly Endorsing Resolution No. 9, of Barangay Naslo and Resolution No. 9, Series of 1996 of the [MDC]*."

[12] Entitled "*A Resolution authorizing Mayor [Mondejar] to exercise his Emergency Powers*."

[13] Office of the Ombudsman Memorandum dated 16 September 1999, which was approved by the Acting Ombudsman on 17 September 1999; *rollo*, p. 213; Respondent Comment dated 26 February 2016; *rollo*, p. 262.

(MOA)[14] with the IBC, through petitioner Tan, for the rechanneling of the Tigum River path. Per the said MOA, the parties agreed that the IBC will do the rechanneling for no monetary considerations whatsoever, except that it can get the surplus supply of sand and gravel taken out therefrom after the necessary dike has been established, as what has been provided for in the alleged Resolution No. 30-A, on account of financial constraints since the municipality has already exhausted all its resources due to a series of calamities.[15]

Soon thereafter, Criminal Complaints for Falsification under Article 171 of the Revised Penal Code (RPC) and for Violation of Section 3(e) of R.A. 3019 were filed before the Office of the Ombudsman–Visayas (OMB-Visayas) against the local officials involved in the project of rechanneling the Tigum River path, including petitioner Tan.[16] The case was docketed as OMB-VIS-CRIM-98-0372.

The alleged Falsification was committed by Mondejar, Arnaldo Partisala (Partisala),[17] Tolentino, Espejo, Gumapas, Piolo, and Velasco when they made it appear in the Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, held on 21 June 1996, that Resolution No. 30-A and Resolution No. 30-B were deliberated, approved and/or enacted by the *Sangguniang Bayan* on the said date. Allegedly, no such resolutions were passed and/or enacted by the said body on that date. It was argued that this was done to give Mondejar legal basis or authority to enter into a MOA with the IBC, through petitioner Tan, for the supposed rechanneling of the Tigum River path. In reality, however, such MOA is a grant of an authority for the IBC to engage into massive quarrying activities in the area even without the required permit. As the argument

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[14] *Id*. at 229-230.

[15] Memorandum of Agreement, *id*. at 229.

[16] Office of the Ombudsman (Visayas) Resolution dated 31 May 1999, *id*. at 207.

[17] Vice-Mayor of Maasin, Iloilo City.

ran, all the local officials involved in the project of rechanneling the Tigum River path, in conspiracy with petitioner Tan, indubitably committed also a Violation of Section 3(e) of R.A. 3019 inasmuch as they gave unwarranted benefits, advantage and displayed manifest partiality in favor of the IBC. They entered into a contract that is grossly disadvantageous to the government, particularly to the Municipality of Maasin, Iloilo City, as it has been deprived of the revenues, which could have been collected from the IBC out of the hauling activities of the latter for sand and gravel if there was no such MOA.[18]

On 31 May 1999, the OMB-Visayas, through Special Prosecution Officer II Raul V. Cristoria, issued a Resolution[19] recommending the (1) dismissal of the charge against the local officials involved in the project of rechanneling the Tigum River path, except for Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco, for insufficiency of evidence; (2) filing of separate Informations for Falsification under Article 171 of the RPC and for Violation of Section 3(e) of R.A. 3019 against the afore-named public officials before the Sandiganbayan; and (3) inclusion of petitioner Tan as one of the accused in the Information for Violation of Section 3(e) of R.A. 3019.[20]

Upon review, the OMB, through Graft Investigation Officer II Julita M. Calderon, issued a Memorandum dated 16 September 1999[21] approving the Resolution dated 31 May 1999 of the OMB–Visayas, thus, approving the filing of the Informations against the mentioned individuals. The said OMB Memorandum was later approved by the Acting Ombudsman Margarito P. Gervacio, Jr. on 17 September 1999.[22]

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[18] Office of the Ombudsman (Visayas) Resolution dated 31 May 1999; *rollo*, pp. 207-209; Office of the Ombudsman Memorandum dated 16 September 1999, which was approved by the Acting Ombudsman on 17 September 1999; *rollo*, p. 213.

[19] *Supra* note 16, at 206-211.

[20] *Id*. at 210-211.

[21] *Supra* note 13, at 212-214.

[22] *Id*. at 214.

Accordingly, two separate Informations were filed against Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco, before the Sandiganbayan, to wit: **(1) for Violation of Section 3(e) of R.A. 3019 docketed as Criminal Case No. 25674,**[23] **where petitioner Tan was included as one of the accused**; and (2) for Falsification under Article 171 of the RPC docketed as Criminal Case No. 25675.[24]

The Information docketed as Criminal Case No. 25674 charging Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo, Velasco and petitioner Tan with Violation of Section 3(e) of R.A. 3019, *by giving the latter unwarranted benefits, advantage and preference, to the damage and prejudice of the government*, reads:

> That on or about the 27th day of June 1996, and for sometime prior or subsequent thereto, in the Municipality of Maasin, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, above-named accused [Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco], public officers, having been duly elected, appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to Office, **and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with [herein petitioner Tan], a private individual and President/ Proprietor of [IBC] Iloilo City with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously make it appear that Resolution No. 30-B, series of 1996, was validly enacted by the *Sangguniang Bayan* of Maasin, Iloilo, authorizing Mayor [Mondejar] to exercise his emergency powers as in fact accused [Mondejar], entered into a [MOA] with [petitioner Tan] of IBC authorizing the said IBC to engage in massive quarrying in the guise of rechan[n]eling the Tigum River in Maasin, Iloilo, thus accused in the performance of their official functions had given unwarranted benefits, advantage and preference to [petitioner Tan]** and themselves, to the damage and prejudice of the government, particularly the Municipality of Maasin.

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[23] *Id.* at 215-217.

[24] *Id.* at 218-220.

CONTRARY TO LAW.[25] (Emphasis and italics supplied)

Criminal Case No. 25674 and Criminal Case No. 25675[26] were eventually consolidated.

Upon arraignment, petitioner Tan and her co-accused in Criminal Case No. 25674, except for Partisala, who still remains at large, pleaded NOT GUILTY to the charge.[27] The parties then entered into a Joint Stipulation of Facts, which states, among others:

1. That at the time material in the Information, accused were public officials holding the following official positions in the government:

a. [MONDEJAR] – Municipal Mayor, Maasin, Iloilo;
b. [TOLENTINO] – S. B. Member, Maasin, Iloilo;
c. [ESPEJO] – S. B. Member, Maasin, Iloilo;
d. [GUMAPAS] – S. B. Member, Maasin, Iloilo;
e. [PIOLO] – S. B. Member, Maasin, Iloilo;
f. [VELASCO] – S. B. Member, Maasin, Iloilo;

While [herein petitioner Tan] was the President of [IBC].

2. **That <u>on 27 June 1996</u> a [MOA] was entered into between the Municipality of Maasin, Iloilo represented by Mayor [Mondejar] as the First Party and [IBC] represented by [petitioner Tan] as the Second Party, for the Rechanneling of the Tigum River path at Barangay Naslo, Maasin, Iloilo**.

3. That Resolution No. 9 Series of 1996 was passed by Barangay Naslo, Maasin, Iloilo, relative to the rechanneling of the Tigum River Path at Barangay Naslo.

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[25] *Id*. at 215-217.

[26] This Court finds it no longer necessary to quote the text of the Information for Falsification under Article 171 of the RPC lodged against the accused public officials since Criminal Case No. 25674 (for Violation of Section 3[e] of R.A. 3019) against petitioner Tan is the only subject of this Petition and only in the said case that the latter was named as an accused.

[27] The accused in Criminal Case No. 25675 made the same plea.

4. That Resolution No. 9 was also passed by the Members of the [MDC] of Maasin, Iloilo endorsing the rechanneling of the said River Path.[28] (Emphasis and underscoring supplied.)

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Thereafter, the Sandiganbayan jointly tried Criminal Case No. 25674 and Criminal Case No. 25675.

The prosecution presented eight witnesses, namely, Jose S. Navarra (Navarra),[29] Imelda Maderada (Maderada),[30] Soledad R. Sucaldito (Sucaldito),[31] Rogelio T. Trinidad (Trinidad),[32] Elisa L. Trojillo (Trojillo),[33] Darell A. Cabanero (Cabanero),[34] Dr. Vicente Albacete (Dr. Albacete)[35] and Ernie Jesus Lee Malaga (Malaga).[36] All together, their testimonies tend to establish that (1) the accused public officials falsified the Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, held on 21 June 1996 by making it appear that the body enacted on that date Resolution No. 30-A and Resolution No. 30-B, which resolutions led to the signing of the MOA between Mondejar and petitioner Tan for the alleged rechanneling of the Tigum River path; and (2) the quarrying activities of petitioner

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[28] Joint Stipulation of Facts dated 2 September 2003; *rollo*, pp. 221-222.

[29] *Sangguniang Bayan* Member of Maasin, Iloilo City from 1 July 1992 to 30 June 1998.

[30] Clerk of Court of the 12th Municipal Circuit Trial Court (MCTC) of Cabatuan, Iloilo and a resident of Barangay Madriz, Maasin, Iloilo City.

[31] Provincial Environmental and Natural Resources Officer (PENRO) of Iloilo Provincial Government.

[32] Director III, DENR, Iloilo.

[33] *Sangguniang Bayan* Member of Maasin, Iloilo City from 1992-2001.

[34] Resident of Barangay Naslo, Maasin, Iloilo City and Chairman of the Save Naslo Movement.

[35] Elected as *Sangguniang Bayan* Member of Maasin, Iloilo City, in 1996.

[36] Municipal Councilor of Maasin, Iloilo City, from 1995-2001.

Tan's IBC at the Tigum River in the guise of rechanneling the same.[37]

After the prosecution's formal offer of documentary evidence was admitted by the Sandiganbayan in its Order dated 23 May 2006 over the objection of petitioner Tan and her co-accused,[38] the latter separately filed Demurrers to Evidence (with prior leave of court), which were denied in a Resolution dated 16 March 2007. They moved for its reconsideration but it was again denied in a Resolution dated 22 January 2008.[39]

Petitioner Tan and her co-accused then proceeded in presenting themselves as witnesses, together with Rolando B. Sison (Sison),[40] Engineer Juan Rentoy, Jr. (Engr. Rentoy, Jr.)[41] and Abner Tudela (Tudela).[42] Their testimonies as a whole tend to prove, among others, that (1) the old flood control system of Barangay Naslo, Maasin, Iloilo City, was almost destroyed by the previous typhoons that hit the community; thus, there is a great need to construct or build another flood control system and, that is, the rechanneling of the Tigum River path since that river always inundated Barangay Naslo during the rainy season; (2) resolutions were passed by both the *Sangguniang Barangay* of Barangay Naslo and the MDC requesting the IBC to do the rechanneling since the latter has the necessary equipment for that kind of work; (3) the resolutions of *Sangguniang Barangay* of Barangay Naslo and the MDC were endorsed by the *Sangguniang Bayan* of Maasin, Iloilo City, *via* Resolution No. 30-A; and Resolution No. 30-B authorized Mondejar to exercise his emergency powers to negotiate with the IBC for

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[37] *Supra* note 5, at 92-101.

[38] *Id*. at 101.

[39] *Id*. at 101-102.

[40] Barangay Captain of Barangay Naslo from October 1993 to October 2007.

[41] Municipal Planning and Development Coordinator (MPDC) of Maasin, Iloilo City from 1988 to present.

[42] Operations Manager of IBC Equipment Division since 1984.

the rechanneling of the Tigum River path, which resolutions were validly enacted by the body on 21 June 1996; (4) pursuant thereto, the Municipality of Maasin, Iloilo City, through Mondejar, and the IBC, through petitioner Tan, entered into a MOA for the rechanneling of the Tigum River path; and (5) the IBC was able to rechannel the Tigum River path.[43]

Petitioner Tan and her co-accused subsequently made a formal offer of evidence, which was admitted by the Sandiganbayan in its Order dated 13 January 2011 despite the objection of the prosecution.[44]

Thereafter, the prosecution presented Shirlito A. Reyes (Reyes)[45] and Sucaldito as rebuttal witnesses. On 20 July 2012, the prosecution submitted its supplemental offer of evidence, which the Sandiganbayan admitted in its Order dated 21 September 2012 over the objection of petitioner Tan.[46]

Once the parties submitted their respective Memoranda, the Sandiganbayan accordingly rendered a joint Decision on 7 November 2013 in Criminal Case No. 25674 and in Criminal Case No. 25675, which dispositive portion reads:

WHEREFORE, premises considered, the Court hereby rules as follows:

1. **In Criminal Case No. 25674**, the Court finds the accused [MONDEJAR], [TOLENTINO], [ESPEJO], [GUMAPAS], [PIOLO], [VELASCO] and [HEREIN PETITIONER TAN] **GUILTY** beyond reasonable doubt of the offense of [V]iolation of Section 3 (e) of [RA 3019], as amended, and sentences each of them to suffer an indeterminate penalty of six (6) years and one (1) month[,] as minimum[,] to ten (10) years[,] as maximum; and to suffer perpetual disqualification from public office. Insofar as [PARTISALA] is

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[43] *Supra* note 5, at 102-114.

[44] *Id*. at 114.

[45] MDC Member between1994 and 1998 in his capacity as NGO Representative (as President of the Maasin Market Vendors).

[46] *Supra* note 5, at 114-116.

concerned, since he is still at large up to the present, let the case be **ARCHIVED** and let an *alias* warrant of arrest issue against him.

2. In Criminal Case No. 25675, the Court finds the accused [MONDEJAR], [TOLENTINO], [ESPEJO], [GUMAPAS], [PIOLO] and [VELASCO] **GUILTY** beyond reasonable doubt of Falsification defined under Article 171 of the [RPC] and sentences each of them to suffer the penalty of imprisonment of six (6) months [and] one (1) day of *prision correccional*[,] as minimum[,] to eight (8) years and one (1) day of *prision mayor*[,] as maximum in the absence of any mitigating and aggravating circumstance in accordance with the provisions of the Indeterminate Sentence Law; to pay a fine of Five Thousand Pesos ([₱]5,000.00); and to further suffer temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage. Insofar as [PARTISALA] is concerned, since he is still at large up to the present, let the case be **ARCHIVED** and let an *alias* warrant of arrest issue against him.[47] (Emphasis partly in the original and partly supplied; italics supplied)

In arriving at such conclusion (in Criminal Case No. 25674), the Sandiganbayan elucidated, thus:

To be convicted of [V]iolation of Section 3 (e) of [RA 3019], the prosecution must prove the following:

1) The accused must be a public officer discharging administrative, judicial or official functions;

2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The first element has been established as the accused public officials have stipulated on their public functions. **[Herein petitioner Tan], on the other hand, is charged in conspiracy with the public officials**.

The second element is likewise present x x x It was established by the prosecution that the SB never passed Resolution No. 30-B

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[47] *Supra* note 5, at 128-129.

authorizing accused Mondejar to exercise his emergency powers and for him to carry out emergency measures relative to the rechanneling of the Tigum River. This means that accused Mondejar did not have the authority to enter into a MOA with the IBC for the rechanneling of the Tigum River. Knowing this, the accused public officials falsified Exh. "F" [Minutes of the 21 June 1996 *Sangguniang Bayan* Session] thereby making it appear that the SB gave such authority to accused Mondejar. This act was done in evident bad faith as they deliberately covered-up an illegal act thus justifying the extraction of sand and gravel by the IBC at the Tigum River. Without such act by the accused, IBC would not have any right to haul any and all "excess" sand and gravel from the said site x x x

As to third element, it was shown by the prosecution that the only way for the IBC to legally extract sand and gravel from the Tigum River was if it could secure a quarrying permit from the provincial government of Iloilo. This is stated clearly in Provincial Ordinance No. 11 of the *Sangguniang Panlalawigan* of Iloilo dated [14 August 1995] x x x

The municipality of Maasin, through its Mayor and the SB, did not have the authority to issue quarrying permit. What the accused were able to accomplish through the MOA was to allow IBC to engage in quarrying activities without having to go through the trouble of securing a quarrying permit on the justification that IBC was performing a service for the townspeople by constructing a temporary dike and by rechanneling the Tigum River and that the extraction of sand and gravel as its compensation for services rendered.

In effect, the accused public officers and the IBC owner [petitioner] Tan effectively bypassed the provincial government and circumvented the requirement for a quarrying permit, with all its conditions and limitations. By so doing, the accused gave unwarranted favor or unwarranted benefit to [petitioner] Tan, the owner of the IBC, in the exercise of their official functions x x x

x x x Worse the MOA did not put in necessary safeguards to prevent any abuses by the IBC. It did not require the municipality to supervise the construction of the dike and the rechanneling of the river nor did it require monitoring of the sand and gravel being extracted by the IBC thereby giving IBC unfettered discretion in its implementation of the MOA and allowing indiscriminate quarrying in the area.[48]

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[48] *Id*. at 125-127.

Aggrieved, petitioner Tan moved for its reconsideration[49] but it was denied for lack of merit in the questioned Resolution dated 30 June 2015.

The Sandiganbayan held that:

> Contrary to [herein petitioner] Tan's argument, **the prosecution has proven her complicity by her act of signing the MOA ostensibly dated 28 June 1996 but was actually executed sometime after September 1997 which act indicates a common purpose to make it appear that accused Mondejar had the authority to enter into said MOA with [petitioner] Tan's IBC**. **While such finding had not been expressly stated in the assailed Decision, such is necessarily implied from the finding that the falsified Minutes was executed only sometime in 1997**.
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> x x x x x x x x x
>
> The Information states that unwarranted benefit was given [petitioner] Tan by the act of the accused public officers in making it appear that Resolution No. 30-B series of 1996 was passed authorizing accused Mondejar to exercise his emergency powers and that, in fact, Mondejar did enter into a MOA with [petitioner] Tan of IBC authorizing it to engage in massive quarrying in the guise of rechanneling the Tigum River. These are the ultimate facts that go into the sufficiency of the Information and which the prosecution had proven beyond reasonable doubt. The discussion by the Court that the acts of the accused had the effect of circumventing the rules on securing a quarry permit and that the MOA unduly benefited [petitioner] Tan's IBC are mere details that go into the whys and the hows of the authority granted [petitioner] Tan's IBC. Verily, an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage or unwarranted benefit.[50] (Emphasis supplied.)

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[49] Petitioner Tan's co-accused in Crim. Case No. 25674 also filed their separate Motions for Reconsideration of the Sandiganbayan Decision dated 7 November 2013 but their motions were also denied in the same Resolution dated 30 June 2015.

[50] Sandiganbayan Resolution dated 30 June 2015; *supra* note 2, at 134-135.

Hence, this Petition by petitioner Tan raising the following grounds: **(1)** the Sandiganbayan Decision is void on its face for non-compliance with Section 14, Article VIII of the Constitution; **(2)** the Information in Criminal Case No. 25674, in regard petitioner Tan, is void as it does not conform to the OMB-Visayas Resolution finding no probable cause to charge the latter with Falsification of Resolution No. 30-B of the *Sangguniang Bayan* of Maasin, Iloilo City; **(3)** the Information does not allege an offense constitutive of violation of Section 3(e) of R.A. 3019 with regard to petitioner Tan who is a private individual; **(4)** The Sandiganbayan Decision imputes to the accused public officials in Criminal Case No. 25674, including petitioner Tan, the grant of unwarranted benefits to the IBC as the latter was able to quarry in the Tigum River without any permit from the provincial government of Iloilo, which fact is not alleged in the Information, much less supported by any evidence, thus, in violation of petitioner Tan's constitutional right to be informed of the nature and cause of the accusations against her, making the entire proceedings void; **(5)** the Sandiganbayan Decision violated petitioner Tan's right to due process and even the fundamental rules of evidence as it appreciated the evidence presented in Criminal Case No. 25675 (for Falsification) in convicting the latter in Criminal Case No. 25674 (for Violation of Section 3(e) of R.A. 3019) even though such evidence was never offered in the latter case; **(6)** both the Sandiganbayan Decision and Resolution contain no finding of the commission of any act by petitioner Tan, either by herself or in conspiracy with her co-accused in Criminal Case No. 25674, that established beyond reasonable doubt the violation of each and every element of the offense punishable under Section 3(e) of R.A. 3019 in relation to Section 4(b) of the same law; and **(7)** the Sandiganbayan Decision and Resolution were rendered in violation of the Constitution, thus, merits reversal and the petitioner deserves an acquittal.[51]

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[51] Petition for Review on *Certiorari* dated 19 August 2015; *id*. at 50-52.

With the foregoing arguments, the main issue to be resolved in the present recourse is whether the Sandiganbayan erred in finding petitioner Tan guilty beyond reasonable doubt of Violation of Section 3(e) of R.A. 3019 in conspiracy with the accused public officials of Maasin, Iloilo City.

The Petition is meritorious.

Section 3(e) of R.A. 3019, under which petitioner Tan is charged, provides:

> **Section 3.** *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Rivera v. People*,[52] this Court held that to justify an indictment under this section, the existence of the following elements must be established: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) that the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the action of the accused caused undue injury to any party, including the government, **or** gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.[53]

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[52] *Rivera v. People,* G.R. No. 156577, 3 December 2014, 743 SCRA 476.

[53] *Id*. at 496.

There are two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions, to wit: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. 3019.[54]

Private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, including (e) thereof. This is in consonance with the avowed policy of the anti-graft law to repress certain acts of **public officers and private persons alike** constituting graft or corrupt practices act or which may lead thereto.[55]

Thus, for a private person to be charged with and convicted of Violation of certain offenses under Section 3 of R.A. 3019, which in this case (e), it must be satisfactorily proven that he/she has acted in conspiracy with the public officers in committing the offense; otherwise, he/she cannot be so charged and convicted thereof.

In conspiracy, the act of one is the act of all; thus, it is never presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.[56] To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[57] **While direct proof**

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[54] *Id*.

[55] *Go v. The Fifth Division, Sandiganbayan, et al.*, 549 Phil. 783, 799 (2007).

[56] *Froilan v. The Honorable Sandiganbayan*, 385 Phil. 32, 42 (2000).

[57] *Id*.

is not essential to establish conspiracy, it must be established by positive and conclusive evidence. And conviction must be founded on facts, not on mere inferences and presumptions.[58]

In this case, petitioner Tan was charged with and convicted of Violation of Section 3(e) of R.A. 3019 because of the alleged conspiracy between her and her co-accused public officials of Maasin, Iloilo City, in committing the said offense. But, a perusal of the Sandiganbayan Decision showed no instance how petitioner Tan could have conspired with her co-accused public officials. Petitioner Tan, thus, raised this point in her Motion for Reconsideration. The Sandiganbayan, however, in disposing the same, simply stated:

> **x x x the prosecution has proven her complicity by her act of signing the MOA ostensibly dated 28 June 1996 but was actually executed sometime after September 1997 which act indicates a common purpose to make it appear that accused Mondejar had the authority to enter into said MOA with [petitioner] Tan's IBC**. While such finding had not been expressly stated in the assailed Decision, such is necessarily implied from the finding that the falsified Minutes was executed only sometime in 1997.

It can be gleaned from the aforesaid Sandiganbayan disposition that their only basis in declaring that the MOA was actually executed sometime after September 1997 was their finding that the falsified Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, was executed only sometime in 1997. To the mind of this Court, this is a patently erroneous conclusion.

There was no iota of evidence ever presented by the prosecution in Criminal Case No. 25674 that would prove that the MOA entered into between Mondejar and petitioner Tan was actually executed on a date other than 27 January 1996. There was also nothing on the face of the MOA that would

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[58] *People v. Carpio Vda. De Quijano*, G.R. No. 102045, 17 March 1993, 220 SCRA 66, 72.

show any irregularity in its execution. To note, the MOA signed by petitioner Tan dated 27 June 1996 was duly notarized on 28 June 1996. Section 30 of Rule 132 of the Rules of Criminal Procedure provides:

> SECTION 30. *Proof of notarial document*. – Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgement being *prima facie* evidence of the execution of the instrument or document involved. (Italics supplied)

The notarization of a document carries considerable legal effect. **Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity**.[59] With that notarial act, the MOA became a public document. As such, it is a perfect evidence of the fact which gives rise to its execution and of its date so long as the act which the officer witnessed and certified to or the date written by him is not shown to be false.[60] To overcome the presumption, the rules require not just a preponderance of evidence, but evidence that is "clear and convincing" as to exclude all reasonable controversy as to the falsity of the certificate. In the absence of such proof, the document must be upheld.[61]

Further, in the parties' Joint Stipulation of Facts before the Sandiganbayan, one of facts they agreed on was:

> 2. That on 27 June 1996 a Memorandum of Agreement was entered into between the Municipality of Maasin, Iloilo represented by Mayor Rene Mondejar as the First Party, International Builders Corporation (IBC) represented by Helen Edith Lee Tan as the Second Party, for the Rechanneling of the Tigum River path at Barangay Naslo, Maasin, Iloilo.

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[59] *Tigno v. Spouses Aquino,* 486 Phil. 254, 267 (2004).

[60] *Fernandez v. Fernandez,* 416 Phil. 322, 338 (2001).

[61] *St. Mary's Farm, Inc. v. Prime Real Properties, Inc.,* 582 Phil. 673, 681 (2008).

As the aforesaid Joint Stipulation of Facts was reduced into writing and signed by the parties and their counsels, thus, they are bound by it and the same becomes judicial admissions of the facts stipulated.[62] Section 4, Rule 129 of the Rules of Court states:

> **Section 4.** *Judicial Admissions.* An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations **or stipulations**, or (c) in other stages of the judicial proceeding. It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, as in this case, no amount of rationalization can offset it.[63] Also, in *Republic of the Philippines v. De Guzman*[64] citing *Alfelor v. Halasan*,[65] this Court held that "a party who judicially admits a fact cannot later challenge that 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**."

With the foregoing, the Sandiganbayan is precluded from ruling that the MOA was actually executed sometime in September 1997 as it would run counter to the stipulated fact of the parties that it was entered into on 27 June 1996, which stipulation was not shown to have been made through palpable mistake.

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[62] *Bayas v. Sandiganbayan*, 440 Phil. 54, 69 (2002).

[63] *Sps. Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 366 (2006), citing *Yuliongsiu v. Philippine National Bank*, 130 Phil. 575, 580 (1968).

[64] 667 Phil. 229, 247 (2011).

[65] 520 Phil. 982, 991 (2006).

Having established that the MOA was entered into on 27 June 1996 and not in September 1997 as what the Sandiganbayan would make it appear, petitioner Tan's act of signing the same did not in anyway prove that she had conspired with her co-accused public officials in committing the offense charged. To repeat, there is nothing in the MOA that would apprise petitioner Tan of any irregularity or illegality that led to its execution. More so, the prosecution did not even present evidence in Criminal Case No. 25674 to prove that petitioner Tan (1) has knowledge that Resolution No. 30-B was a product of a falsified document, *i.e.*, Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, and that Mondejar has no authority to enter into a MOA with her; and that (2) despite knowledge thereof, still entered into a MOA with Mondejar. It also bears stressing that none of those who testified for the prosecution ever linked petitioner Tan to the alleged falsification committed by the accused public officials of Maasin, Iloilo City. In fact, petitioner Tan was not among those charged with Falsification.

Since petitioner Tan's conviction was based on the presence of conspiracy, which the prosecution was not able to prove beyond reasonable doubt, her conviction of the offense charged must be reversed.

WHEREFORE, premises considered, the present Petition is hereby **GRANTED**. The Sandiganbayan Decision and Resolution dated 7 November 2013 and 30 June 2015, respectively, in Criminal Case No. 25674 insofar as petitioner Tan is concerned are hereby **REVERSED and SET ASIDE**. Accordingly, petitioner Tan is **ACQUITTED** from the charge of Violation of Section 3(e) of Republic Act No. 3019.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 219584. October 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PLACIDO GOCO *y* OMBROG**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES CONFERS THE APPELLATE COURT FULL JURISDICTION OVER THE CASE AND OPENS THE ENTIRE CASE FOR REVIEW.— [A]n appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must establish the following: (*a*) the identities of the buyer, seller, object, and consideration; and (*b*) the delivery of the thing sold and the payment for it. What remains material for conviction is proof that the transaction took place, coupled with the presentation in court of the *corpus delicti.*

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [I]n order to convict an accused for illegal possession of dangerous drugs, the prosecution must prove that: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

4. ID.; ID.; CHAIN OF CUSTODY RULE; FAILURE TO STRICTLY COMPLY THEREWITH DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER

THE SEIZED ITEMS VOID; CONDITIONS.— Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. x x x As a general rule, the apprehending team must strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR. However, their failure to do so does not *ipso facto* render the seizure and custody over the items as void and invalid if: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.

5. ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED; THE EXHIBIT'S LEVEL OF SUSCEPTIBILITY TO ALTERATION OR TAMPERING DICTATES THE LEVEL OF STRICTNESS IN THE APPLICATION OF THE CHAIN OF CUSTODY RULE.— Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the moment of seizure, to receipt of the same by the forensic laboratory, to safekeeping, and finally to the presentation of the drugs or chemicals in court for destruction. The chain of custody requirement is strictly applied when the evidence sought to be presented is not distinctive and not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard applies to evidence susceptible to alteration, tampering, contamination, and substitution or exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration, or tampering dictates the level of strictness in the application of the chain of custody rule. One of the physical characteristics of *shabu* is that it is fungible in nature, and similar in appearance to substances used by people in their daily activities. As it is not readily distinguishable from other substances, and from other samples of *shabu*, the chain of custody requirement must be strictly complied with in order to render it improbable that the seized items are exchanged with another, or contaminated, or tampered with.

6. ID.; ID.; ID.; THE PROSECUTION MUST PRESENT TESTIMONIES ABOUT EVERY LINK IN THE CHAIN, FROM THE SEIZURE OF THE ITEMS UP UNTIL THEIR PRESENTATION IN COURT AS EVIDENCE.— In order to fulfill the chain of custody requirement, the prosecution must

identify the persons who handled the seized items from seizure up until their presentation in court as evidence. **To do so, the prosecution must present testimonies about every link in the chain, in such a way that every person who touched the illegal drugs would describe how and from whom they were received, where they were and what happened to them while in his or her possession, the condition in which he or she received them, and their condition upon delivery. The witnesses must describe the precautions taken to ensure that there was no change in the condition of the illegal drugs and no opportunity for someone not in the chain to have possessed the said items. Also, crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.** In this instance, the prosecution failed to show who handled the seized items after PO2 Emano took hold of them, how their custody was transferred to another, who marked the seized sachets of drugs, and when and how they were marked.

7. ID.; ID.; ID.; MARKING; PURPOSE; MARKING THE DRUGS OR OTHER RELATED ITEMS IMMEDIATELY UPON SEIZURE FROM THE ACCUSED IS CRUCIAL IN PROVING THE CHAIN OF CUSTODY AS IT IS THE STARTING POINT IN THE CUSTODIAL LINK.— [M]arking the drugs or other related items immediately upon seizure from the accused is crucial in proving the chain of custody as it is the starting point in the custodial link. The marking upon seizure serves a twin purpose, **first** is to give the succeeding handlers of the specimen a reference, and **second** to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting", or contamination of evidence. The police officers' failure to mark the seized items may lead to the acquittal of the accused based on reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Placido Goco *y* Ombrog (Goco) assailing the Decision[2] dated June 30, 2014 of the Court of Appeals (CA) in CA-G.R. CR. No. 00737, which affirmed with modification the Decision[3] dated July 23, 2007 of the Regional Trial Court of Catarman, Northern Samar, Branch 19 (RTC) in Criminal Case Nos. C-3520 and C-3521, finding Goco guilty of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from two (2) Informations filed before the RTC accusing Goco of violating Sections 5[5] and 11,[6] Article II of RA 9165, *viz.*:

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[1] See Notice of Appeal dated July 23, 2014; *rollo*, pp. 20-21.

[2] *Id*. at 4-19. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco concurring.

[3] CA *rollo*, pp. 39-44. Penned by Judge Norma Megenio-Cardenas.

[4] 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.

[5] The pertinent portions of Section 5, Article II of RA 9165 reads:

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

x x x x x x x x x

[6] The pertinent portions of Section 11, Article II of RA 9165 provides:

Criminal Case No. C-3520

The undersigned Provincial Prosecutor of Northern Samar accuses PLACIDO GOCO y OMBROG of the crime of VIOLATION OF SECTION 5 ARTICLE II OF REPUBLIC ACT 9165 (Sale of Dangerous Drugs), committed as follows:

That on or about the 25th day of June 2003, at about 9:30 o'clock in the morning, in Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to violate said provisions of law, while the joint team of the Philippine Drug Enforcement Agency (PDEA) and the Northern Samar Police Provincial Office (NSPPO) were conducting a buy-bust operation in said place, did then and there willfully, unlawfully and feloniously sale [sic], distribute and deliver to PO[2] Joel Emano the policeman who acted as poseur-buyer, One (1) sachet of Methamphetamine Hydrochloride known as "Shabu", a regulated drug, weighing 0.4 grams, valued at TWO HUNDRED PESOS (Php.200.00) without securing the necessary permit or license to do the same from any competent authority.

CONTRARY TO LAW.[7]

Section 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[7] Records (I.S. No. 2003-189), p. 27.

Criminal Case No. C-3521

The undersigned Provincial Prosecutor of Northern Samar accuses PLACIDO GOCO Y OMBROG of the crime of VIOLATION OF SECTION 11 ARTICLE II OF REPUBLIC ACT 9165, otherwise known as DANGEROUS DRUG[S] ACT of 2002, committed as follows:

That on or about the 25th day of June 2003 at about 9:30 o'clock in the morning, in Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the said provisions of law, did then and there, willfully, unlawfully, and feloniously have in his possession, custody and control 3 sachets of metamphetamine hydrochloride locally known as "*Shabu*" with estimated weight of One point four (1.4) grams, a regulated drug without first securing the necessary permit or license to possess the same from competent authority.

CONTRARY TO LAW.[8]

The prosecution alleged that on June 24, 2003 PO2 Joel Emano,[9] (PO2 Emano) a Philippine Drug Enforcement Agency (PDEA) agent, received a tip from a civilian informant that a shipment of *shabu* had arrived in Catarman and Goco was one of the recipients. He relayed the information to P/Insp. Arnel Gualvez, Chief of Police of Catarman station, who formed a team composed of PO2 Emano, SPO3 Rogelio Belga (SPO3 Belga), and SPO4 Jesus Cabagsang (SPO4 Cabagsang). PO2 Emano was designated as the poseur-buyer for the entrapment operation and was thus provided with marked money in the amount of ₱200.00. Later that evening, PO2 Emano and the informant surveilled Goco's drug activities.[10]

At around 7:00 o'clock in the morning of June 25, 2003, PO2 Emano and the informant met Goco at the market of Barangay Narra, Catarman, where the informant introduced PO2 Emano as the buyer of the drugs. After ordering ₱200.00 worth

[8] Records (I.S. No. 2003-188), p. 26.

[9] "PO2 Joel Emarno" in some parts of the records.

[10] *Rollo*, pp. 4-5.

of *shabu* from Goco, the latter instructed PO2 Emano to meet him in front of the Fajardo residence in Barangay Jose Abad Santos as he did not have the *shabu* at the time. PO2 Emano returned to the Catarman Police Station to plan the operation with the other team members, and they agreed that he would remove his hat to signify the consummated sale. Later that day, the buy-bust team proceeded to Barangay Jose Abad Santos. Upon their arrival at around 9:30 in the morning, they stationed themselves near the Fajardo residence. PO2 Emano met with Goco, who handed him a sachet containing a white crystalline substance in exchange for the buy-bust money. With the sale consummated, PO2 Emano gave the pre-arranged signal by removing his hat, prompting the back-up officers to rush in and arrest Goco. PO2 Emano read to Goco his constitutional rights and frisked him, which yielded three (3) more sachets of *shabu*, the buy-bust money, and cash amounting to ₱320.00. After the arrest, Goco and the seized drugs were transported to the police station for investigation. PO2 Emano turned over the seized items to the investigator who, in turn, handed them over to the PDEA Provincial Office. The items were then brought to the Crime Laboratory for examination, which were received by a certain PO1 Dennis Ecito (PO1 Ecito) and examined by P/Insp. Benjamin Aguirre Cruto, Jr., (P/Insp. Cruto). The items yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, an illegal drug.[11]

In his defense, Goco denied selling or possessing the illegal drugs. He claimed that in the morning of June 25, 2003, he went to a quack doctor for treatment. After the said visit, he went to the house of Manuel Ching (Ching) to buy fish, but as the latter was leaving to buy fish feed, Goco accompanied him. They then walked to the house of a certain de Guzman and waited to hail a pedicab. While waiting, PO2 Emano and SPO3 Belga arrived on a motorcycle, parked in front of them, and alighted from the vehicle. SPO3 Belga held Goco's hand, while PO2 Emano frisked him. Goco was made to ride the motorcycle

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

with PO2 Emano and SPO3 Belga, and was brought to the police station. Goco was then investigated and detained.[12]

Upon arraignment on October 10, 2003, Goco pleaded not guilty to both charges against him.[13]

The RTC Ruling

In a Decision[14] dated July 23, 2007, the RTC found Goco guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years and ordered to pay a fine in the amount of ₱200,000.00 for each violation of Section 5 and Section 11, Article II of RA 9165.

The RTC held that the prosecution had established all the elements to secure convictions under Sections 5 and 11, Article II of RA 9165 for illegal sale and illegal possession of dangerous drugs, respectively. It observed that the sale of *shabu* between Goco and PO2 Emano was consummated, and when arrested, a search made on Goco's person yielded three (3) more sachets of *shabu*. The four (4) sachets of *shabu* were presented in court and identified by PO2 Emano as the same sachets taken from Goco. Further, it gave no credence to Goco's defense of alibi and denial, which paled in light of PO2 Emano's positive identification of Goco as the seller of *shabu*.[15]

Dissatisfied, Goco elevated his conviction before the CA.[16]

The CA Ruling

In a Decision[17] dated June 30, 2014, the CA affirmed Goco's conviction with modification, sentencing Goco to suffer the

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[12] *Id*. at 7.

[13] Records (I.S. No. 2003-189), p. 35.

[14] CA *rollo*, pp. 39-44. Penned by Judge Norma Megenio-Cardenas.

[15] *Id*. at 42-43.

[16] *Id*. at 20-38.

[17] *Rollo*, pp. 4-19.

penalty of life imprisonment and ordering him to pay a fine in the amount of ₱500,000.00 for violating Section 5, Article II of RA 9165.

The CA held that the testimonies of PO2 Emano, SPO3 Belga, and SPO4 Cabagsang only differed on minor points but they were all consistent on material points, *i.e.*, that Goco sold the drugs to PO2 Emano on June 25, 2003, and three (3) more sachets of *shabu* were recovered from him. It gave no credence to Goco's defense of denial, and noted that he failed to adduce sufficient evidence to overcome the presumption of regularity accorded to police officers in the performance of their official duties.[18]

Undaunted, Goco filed the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Goco's conviction for illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 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 an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[19] 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.[20]

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[18] *Id.* at 8-17.

[19] *People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233; citation omitted.

[20] See *People v. Comboy*, G.R. No. 218399, March 2, 2016; citation omitted.

Goco was charged with illegal sale and illegal possession of dangerous drugs defined and penalized under Sections 5 and 11, Article II of RA 9165, respectively.

In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must establish the following: (*a*) the identities of the buyer, seller, object, and consideration; and (*b*) the delivery of the thing sold and the payment for it.[21] What remains material for conviction is proof that the transaction took place, coupled with the presentation in court of the *corpus delicti*.[22] On the other hand, in order to convict an accused for illegal possession of dangerous drugs, the prosecution must prove that: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[23]

In both cases, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[24]

In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[25] Under the said

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[21] *People v. Sorin*, G.R. No. 212635, March 25, 2015, 754 SCRA 594, 603; citation omitted.

[22] *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 149; citation omitted.

[23] *People v. Bio*, G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578; citation omitted.

[24] *People v. Viterbo*, G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680; citations omitted.

[25] *People v. Sumili*, *supra* note 22, at 150-151.

section, the apprehending team shall, **immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items** in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same.[26] The Implementing Rules and Regulations (IRR) mirror the content of Section 21 of RA 9165 but adds that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and **that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**[27]

As a general rule, the apprehending team must strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR. However, their failure to do so does not *ipso facto* render the seizure and custody over the items as void and invalid if: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[28]

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the moment of seizure, to receipt of the same by the forensic laboratory, to safekeeping, and finally to the presentation of the drugs or chemicals in court for destruction.[29] The chain of custody requirement is strictly applied when the evidence sought

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[26] See Section 21 (1), Article II of RA 9165.

[27] See Section 21 (a), Article II of the IRR of RA 9165.

[28] *People v. Viterbo*, *supra* note 24, at 683; citation omitted.

[29] See *Sanchez v. People*, G.R. No. 204589, November 19, 2014, 741 SCRA 294, 317, citing *People v. Guzon*, 719 Phil. 441, 451 (2013).

to be presented is not distinctive and not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard applies to evidence susceptible to alteration, tampering, contamination, and substitution or exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration, or tampering dictates the level of strictness in the application of the chain of custody rule.[30] One of the physical characteristics of *shabu* is that it is fungible in nature, and similar in appearance to substances used by people in their daily activities. As it is not readily distinguishable from other substances, and from other samples of *shabu*, the chain of custody requirement must be strictly complied with in order to render it improbable that the seized items are exchanged with another, or contaminated, or tampered with.[31]

After a judicious perusal of the records, the Court finds that the prosecution failed to show that the integrity and evidentiary value of the seized items were preserved, and that the police officers' non-compliance with Section 21 of RA 9165 and the IRR was justified. Resultantly, the integrity and identity of the items purportedly seized from Goco are put into question, militating against a finding of guilt beyond reasonable doubt.

In order to fulfill the chain of custody requirement, the prosecution must identify the persons who handled the seized items from seizure up until their presentation in court as evidence. **To do so, the prosecution must present testimonies about every link in the chain, in such a way that every person who touched the illegal drugs would describe how and from whom they were received, where they were and what happened to them while in his or her possession, the condition in which he or she received them, and their condition upon delivery. The witnesses must describe the precautions taken**

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[30] *People v. Guzon*, 719 Phil. 441, 453-454 (2013), citing *Mallillin v. People*, 576 Phil. 576, 587-588 (2008).

[31] See *People v. Abetong*, G.R. No. 209785, June 4, 2014, 725 SCRA 304, 314.

to ensure that there was no change in the condition of the illegal drugs and no opportunity for someone not in the chain to have possessed the said items. Also, crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.[32]

In this instance, the prosecution failed to show who handled the seized items after PO2 Emano took hold of them, how their custody was transferred to another, who marked the seized sachets of drugs, and when and how they were marked.

PO2 Emano's testimony as the poseur-buyer, as well as the initial link in the chain of custody, is sparse on the matters of marking of the seized items and the transfer of custody:

[Prosecutor Leo C. Francisco (Pros. Francisco)]: Now, you said that you arrested [Goco] together with the members of the group after arresting him what did you do?
[PO2 Emano]: After arresting him we noticed a pack of marlboro on his waist we took it from his waist and we still found another three (3) more sachets of *shabu*, the marked money and another ₱320.00 aside from the marked money.
Q: Then what did you do after that?
A: **We brought him to the police station for investigation; we turned over him to the investigation room and I do not know what happened there.**

x x x x x x x x x

Q: Now, when [Goco] was brought to the investigation section was there an investigation conducted upon him?
A: **I don't know, because I just brought him to the investigation section after his arrest then I left.**

x x x x x x x x x

Q: What did you do with the *shabu* which you confiscated from the accused?

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[32] See *People v. Flores*, G.R. No. 201365, August 3, 2015, citations omitted.

A: **The chief of police turned over it to the Provincial Director of the PDEA and turned it over to the Crime Laboratory in Palo, Leyte**.[33]

x x x (Emphases and underscoring supplied)

Similarly, the testimony of SPO3 Belga exhibited a dearth of information as to who had custody over the illegal drugs after PO2 Emano seized the same from Goco, and whether the same were even marked:

[Pros. Francisco]: You mentioned of that *shabu,* where did you recovered [*sic*] that *shabu*?
[SPO3 Belga]: It was only [PO2 Emano] and the investigator who recovered it at the police station.

x x x x x x x x x

Q: Where were you when that transaction transpired?
A: In Barangay Abad Santos.
Q: Did you witness?
A: Yes, sir, because of the short distance.
Q: Who were involved?
A: [PO2 Emano]
Q: Of course there were also other persons and who was that?
A: **[SPO4 Cabagsang]**
Q: Who buy-bust the item?
A: [PO2 Emano]
Q: From whom?
A: [Goco]

x x x x x x x x x

Q: Now, after this [Goco] was brought to the PNP what happened there?
A: We took him to the investigator.

x x x x x x x x x

[Court]: [Were you] actually involved in the actual buy-bust?
A: Yes, sir. Your Honor.

[33] TSN, October 12, 2005, pp. 12-13 and 15.

Q: So, you acted as what?
A: Team Leader.
Q; Aside from being a team leader what other role, did you act as a poseur-buyer?
A: No, Your Honor.
Q: What was your role?
A: To arrest.
Q; Did you actually see the actual buy-bust?
A: Yes, Your Honor.
Q; What did you see?
A: What I saw was [PO2 Emano] stopped a person and inform him [*sic*] by saying "we are arresting you and we are policemen and you are in possession of *shabu*."[34] (Emphasis and underscoring supplied)

Meanwhile, SPO4 Cabagsang denied any involvement in the buy-bust operation, despite being tagged by both SPO3 Belga[35] and PO2 Emano[36] as a member of the buy-bust team:

[Pros. Francisco]: How about you were you not a member of the team who conducted the buy-bust operation? [sic]
[SPO4 Cabagsang]: **No, I am not a member of the team but I just stay in the Office.** [sic]

x x x x x x x x x

Q: In view of the apprehension of [Goco] what did you do?
A: Nothing. (witness is shaking his head)[37]

x x x (Emphasis and underscoring supplied.)

While the records support PO2 Emano's claim[38] that P/Supt. Isaias Bañez Tonog (P/Supt. Tonog) turned over the seized items to the PDEA Regional Office, where the items were received by PO1 Ecito, who in turn, delivered the items with the request for

[34] TSN, December 7, 2005, pp. 4-7.
[35] TSN, December 7, 2005, pp. 3 and 5-6.
[36] TSN, October 12, 2005, pp. 7-8.
[37] TSN, March 6, 2006, pp. 4-5.
[38] TSN, October 12, 2005, p. 15.

examination to the PNP Crime Laboratory, where these were examined by P/Insp. Cruto,[39] the crucial link between PO2 Emano and P/Supt. Tonog was, however, left unexplained by the testimonies nor accounted for by any evidence on record. Moreover, there is an unignorable hiatus of detail on how the four (4) sachets of illegal drugs were marked, who marked them, and when they were marked.

Verily, marking the drugs or other related items immediately upon seizure from the accused is crucial in proving the chain of custody as it is the starting point in the custodial link. The marking upon seizure serves a twin purpose, **first** is to give the succeeding handlers of the specimen a reference, and **second** to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting", or contamination of evidence.[40] The police officers' failure to mark the seized items may lead to the acquittal of the accused based on reasonable doubt.[41]

Taken together, the lapses committed by the police officers in accounting for the procedure laid out in Section 21 of RA 9165 and the IRR, more so their questionable handling of the seized drugs cast serious doubt on the integrity and evidentiary value of the seized items. As the said drugs presented before the court as evidence constitute the *corpus delicti* of the offenses charged, it must be proven with moral certainty that these are the same items seized from Goco during the buy-bust operation and the ensuing search. As the prosecution failed to do so, Goco must be acquitted on the ground of reasonable doubt.[42]

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 30, 2014 of the Court of Appeals in CA-G.R. CR.

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[39] Records (I.S. No. 2003-189), pp. 14-19.

[40] See *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 328-329.

[41] See *People v. Dacuma*, G.R. No. 205889, February 4, 2015, 750 SCRA 65, 75, citing *People v. Sabdula*, 733 Phil. 85, 94-95 (2014).

[42] See *People v. Viterbo*, G.R. No. 203434, July 23, 2014, note 24, at 688-690.

No. 00737 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Placido Goco *y* Ombrog is **ACQUITTED** of the crimes for violation of Sections 5 and 11, Article II of Republic Act No. 9165 as charged. The Director of the Bureau of Corrections is **ORDERED** to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-10-1755. October 18, 2016]

WILFREDO F. TUVILLO, *complainant, vs.* **JUDGE HENRY E. LARON,** *respondent.*

[A.M. No. MTJ-10-1756. October 18, 2016]

MELISSA J. TUVILLO *a.k.a.* MICHELLE JIMENEZ, *complainant, vs.* **JUDGE HENRY E. LARON**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF JUDICIAL ETHICS; A JUDGE MUST BEHAVE WITH PROPRIETY AT ALL TIMES BOTH IN HIS PROFESSIONAL AND PRIVATE LIFE; VIOLATED WHEN JUDGE HAD AN AFFAIR WITH A MARRIED WOMAN.— The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety both in his professional and private conduct in order to preserve the good name and integrity of the court. As the judicial front-liners, judges must behave with propriety at all times as they are the intermediaries between conflicting interests and the

embodiments of the people's sense of justice. These most exacting standards of decorum are demanded from the magistrates in order to promote public confidence in the integrity and impartiality of the Judiciary. No position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench. As the epitome of integrity and justice, a judge's personal behavior, both in the performance of his official duties and in private life should be above suspicion. For moral integrity is not only a virtue but a necessity in the judiciary. In these cases at bench, the conduct of Judge Laron fell short of this exacting standard. By carrying an affair with a married woman, Judge Laron violated the trust reposed on his office and utterly failed to live up to noble ideals and strict standards of morality required of the members of the judiciary.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; IMMORALITY; PENALTIES.—** Immorality under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001 on the discipline of Justices and Judges, is a serious charge which carries any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

3. **LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; GROSS MISCONDUCT; JUDGE STRONGLY CONDEMNED FOR DEMANDING MONEY FROM A PARTY LITIGANT WHO HAS A PENDING CASE BEFORE HIM.—** The Court finds Judge Laron guilty of gross misconduct for violating the Code of Judicial Conduct. This is another serious charge under Rule 140, Section 8 of the Rules of Court. The illicit relationship started because Melissa sought the help of Judge Laron with respect to her pending B.P. Blg. 22 cases and, apparently, he entertained the request for assistance. x x x Another situation of impropriety was when Judge Laron asked money from Melissa who was a litigant in a case pending before his court. This is also a serious charge under Section 8, Rule 140 of the Rules of

Court. x x x She further claimed that Judge Laron would physically hurt her whenever she could not give him money and this averment was corroborated by her sons x x x All these conduct and behavior are contrary to the canons of judicial conduct and ethics. Judges are held to higher standards of integrity and ethical conduct than other persons not vested with public trust and confidence. Judges should uplift the honor of the judiciary rather than bring it to disrepute. Demanding money from a party-litigant who has a pending case before him is an act that this Court condemns in the strongest possible terms. In the words of *Velez v. Flores,* such act corrodes respect for the law and the courts, committed as it was by one who was tasked with administering the law and rendering justice.

LEONEN, *J., separate opinion*:

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; IMMORALITY; PENALTY.—** Rule 140, Section 8(8) of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies immorality as a serious charge. As penalty, Section 11(A)(1) allows for the imposition of dismissal from service, forfeiture of all benefits except accrued leave credits, and disqualification from holding any public office, including those in government-owned or controlled corporations.

2. **LEGAL ETHICS; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; INTEGRITY IS ESSENTIAL NOT ONLY TO THE PROPER DISCHARGE OF THE JUDICIAL OFFICE BUT ALSO TO THE PERSONAL DEMEANOR OF JUDGES.—** Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary provides: Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges. x x x Judges decide not only on matters of law, but also of equity. They determine what is right and wrong in the cases before them. A judge should, therefore, be able to walk the talk. He or she should be and appear to be a person with integrity and credibility. x x x Judge Laron's words and actions reflect on the judiciary as a whole. He is expected to avoid conflicts of interest and instances where the morality and legality of his actions are cast in a bad light. Judge Laron cannot simply accept the perks of his position but shy away from the discomfort and responsibilities involved. He should embrace both the boons

and banes of the job, which he willingly entered into. x x x Under Section 1 of Canon 4, judges have the duty to "avoid impropriety and the appearance of impropriety in all of their activities." x x x Under Section 2 of Canon 4, "judges shall conduct themselves in a way that is consistent with the dignity of the judicial office." x x x For transgressing public morals and defiling the image of the judiciary, he must be stripped of his judicial robe and dismissed from service.

3. ID.; ID.; ID.; GROSS MISCONDUCT WARRANTS DISMISSAL FROM SERVICE.— Section 8(3), in relation to Section 11(A)(1) of Rule 140 of the Rules of Court, supports Judge's Laron's dismissal from service. [G]ross misconduct constituting violations of the Code of Judicial Conduct" is a serious charge allowing for a judge's removal from service. x x x For a judge, having a close friendship with the litigant is to be avoided at all costs. With more reasons should a romantic relationship with one be shunned as this destroys the litigants' confidence in the "judge's impartiality and[,] eventually, undermine the people's faith in the administration of justice." x x x Fraternizing with litigants taints a judge's appearance of impartiality. Canon 1, Section 3 states that "[j]udges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency." x x x Likewise, Judge Laron's asking for money from a litigant constitutes gross misconduct.

BRION, *J., concurring and dissenting opinion*:

1. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; A JUDGE SHOULD BE THE EMBODIMENT OF COMPETENCE, INTEGRITY AND INDEPENDENCE.— The Code of Judicial Conduct mandates that a judge should be the embodiment of competence, integrity, and independence. He should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety in all activities. His personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for he is, as he so aptly is perceived to be, the visible personification of law and justice.

2. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; SERIOUS CHARGES; IMMORALITY; IMMORAL CONDUCT IS BEHAVIOR THAT IS WILLFUL, FLAGRANT, OR SHAMELESS, AND THAT SHOWS A MORAL INDIFFERENCE TO THE OPINION OF GOOD AND RESPECTABLE MEMBERS OF THE COMMUNITY.— Section 8, Rule 140 of the Rules of Court enumerate[d][immorality as one of the transgressions] classified as serious x x x Immoral conduct is behavior that is willful, flagrant, or shameless, and that shows a moral indifference to the opinion of good and respectable members of the community. It refers not only to sexual matters but also to "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.

3. ID.; ID.; ID.; A JUDGE OUGHT TO LIVE UP TO THE STRICTEST STANDARDS OF HONESTY, INTEGRITY AND UPRIGHTNESS; HAVING AND MAINTAINING A MISTRESS ARE NOT ACTS OF A JUDGE WITH HIGHEST STANDARD OF MORALITY AND DECENCY.— It was incumbent upon Judge Laron – as a married person and a member of the Judiciary – to have distanced himself from any woman with whom he felt he could have an emotional attachment. Being the visual representation of justice, Judge Laron should have exercised restraint, and not have given in to whatever feelings he might have had for Melissa. I cannot agree, too, with Judge Laron's pronouncement that his affair with Melissa was a purely personal matter that does not affect his professional responsibilities as a judge and as a lawyer. The faith and confidence of the people in the administration of justice cannot be maintained if a judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity and, more so, who obtusely continues to commit an affront to public decency. x x x Thus, a judge ought to live up to the strictest standards of honesty, integrity, and uprightness. To be sure, having and maintaining a mistress are not acts one would expect of a judge who is expected to possess the highest standard of morality and decency.

4. ID.; ID.; ID.; GROSS MISCONDUCT; THE MISCONDUCT MUST IMPLY WRONGFUL INTENTION AND NOT A MERE ERROR OF JUDGMENT.— Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection with one's performance of official functions and duties. For grave or gross misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law or by a persistent disregard of well-known rules. The misconduct must imply wrongful intention and not a mere error of judgment.

5. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES, WHETHER IN PUBLIC OR PRIVATE LIFE.— Judge Laron's frequent fraternizing with a litigant who has a pending case in a court where he is a pairing judge is **highly condemnable**. x x x Canon 2 of the Code of Judicial Conduct x x x and the Canons of Judicial Ethics x x x require judges to avoid **not only impropriety, but even the appearance of impropriety in all their conduct, whether in their public or private life**. The proscription includes a judge's meddling with judicial processes in courts other than his own and acting in a manner that would arouse suspicion that he is meddling with such court processes.

6. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS MISCONDUCT AND IMMORALITY; PROPER PENALTY.— Under Section 8 of A.M. No. 01-8-10-SC amending Rule 140 of the Rules of Court on the Discipline of Justices and Judges, which took effect on October 1, 2001, gross misconduct and immorality are classified as serious charges, each of which carry with it a penalty of either (a) **dismissal from the service**, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

7. ID.; ID.; ID.; ID.; DISBARMENT ALSO PROPER.— A.M. No. 02-9-02-SC (which took effect on October 1, 2002) provides that an administrative case against a judge of a regular court based on grounds which are also grounds for disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. It also states that **judgment in both respects may be incorporated in one decision or resolution**. Section 27, Rule 138 of the Rules of Court, on the other hand, provides that a lawyer may be removed or suspended from the practice of law, *among others*, for gross misconduct and grossly immoral conduct: x x x In *Office of the Court Administrator v. Judge Indar*, the Court automatically disbarred the respondent judge pursuant to the provisions of A.M. No. 02-9-02-SC, x x x The Court had a similar ruling in the fairly recent case of *Office of the Court Administrator v. Presiding Judge Joseph Cedrick O. Ruiz* where we dismissed the erring judge from the service and at the same time disbarred him. Judge Laron is a disgrace to both the bar and the bench. Considering that Judge Laron is guilty of immorality and gross misconduct, I maintain that – aside from being **dismissed from the service** – he should likewise be **disbarred** and his name stricken out from the roll of attorneys.

BERSAMIN, *J., dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; IMMORALITY; PENALTY SHOULD BE COMMENSURATE WITH THE OFFENSE.— No offense by the respondent should go unsanctioned because the law will be less in the eyes of the people otherwise. It is punishment that is one of the major moving factors for the people do what is legal and proper, and for individuals to keep within the bounds of what is right and just. But the punishment should not exceed what is condign and commensurate to the act or omission, and should be meted in consideration of all the circumstances that have affected the offense as well as the offender. This is the reason why the Court has calibrated the sanctions to be prescribed on members of the Bench and the Bar who have erred with a view to serving the essence of justice and equity in administrative proceedings.

D E C I S I ON

***Per Curiam*:**

This is a consolidation of two cases filed against Judge Henry Laron, Presiding Judge of Branch 65, Metropolitan Trial Court, Makati City *(MeTC)*. The first case arose from the complaint of Wilfredo Tuvillo *(Wilfredo)* for immoral conduct, and the second case from the complaint of Melissa Tuvillo *(Melissa)* for unexplained wealth and immorality.

Wilfredo and Melissa Tuvillo are husband and wife. Wilfredo works as a seaman and is out of the country most of the time. Melissa is a businesswoman with several B.P. Blg. 22 cases filed against her in the MeTC of Makati City. In her desire to have her cases resolved, she approached the respondent Judge Henry Laron *(Judge Laron)*. The respondent is married but his wife was in the United States at the time the events of this case transpired. Due to their frequent interaction with each other, Melissa and Judge Laron became intimate with each other and their relationship gave rise to these administrative cases.

The Complaint of Wilfredo Tuvillo

On May 2, 2008, Wilfredo wrote a letter-complaint against Judge Laron to the Court Administrator for immorality and unacceptable wrongdoing. He submitted a Complaint-Affidavit[1] where he alleged, among others, that his wife Melissa sought the help of Judge Laron for the resolution of the cases filed against her; that, in turn, Judge Laron asked money from Melissa and forced her to produce it whenever he needed it; that they lost all their savings and their two houses and lots because of Judge Laron's constant requests for money from Melissa; that Judge Laron would physically hurt Melissa when she could not produce the money he needed; and that Judge Laron "*transgressed, intruded and besmirched the tranquility*

[1] *Rollo* (A.M. No. MTJ-10-1755), pp. 24-26.

and sacredness of our marital union and family unity." To support his complaint, Wilfredo attached Melissa's complaint-letter and her affidavit where she admitted having illicit relations with Judge Laron.[2]

Wilfredo also submitted the Joint Affidavit of his two sons[3] wherein they alleged:

> 6. That sometime in the year 2007, we were living in our house in Antipolo city; We were surprised that certain Tito Henry Laron used to go to our house in Antipolo; He slept in our house twice or thrice a week specially during weekends; Nagtaka kami mga magkakapatid bakit natutulog si Tito Henry Laron sa bahay namin at sinusundo na kami at ang mama namin tuwing umaga minsan gamit ang kanyang sasakyan minsan aming sasakyan ang ginagamit niya at sunduin kami sa school tuwing hapon.

This allegation was confirmed by their caretaker in her Affidavit[4] stating that Judge Laron slept in the Antipolo house during weekends, picked up Melissa and her children in the morning, and fetched them from school in the afternoon using either his own or Melissa's car.

In his July 2, 2008 Comment,[5] Judge Laron averred that he had already confessed his affair with Melissa to his wife. In his December 18, 2008 Comment,[6] he claimed that Melissa told him that she was a widow and explained that his relationship with her was an intimate emotional and personal attachment that did not involve any sexual liaison.

Wilfredo subsequently filed an adultery case against Melissa and Judge Laron before the City Prosecutor's Office of Makati but it was later dismissed for lack of probable cause.[7] Wilfredo's

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[2] *Id*. at 31.

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

[4] *Id*. at 36.

[5] *Id*. at 20-23.

[6] *Id*. at 52-65.

[7] *Id*. at 95-99.

petition for review was also dismissed by the Department of Justice[8] for failure to comply with DOJ Circular No. 70 and for lack of reversible error.[9]

The Complaint of Melissa Tuvillo

This case was initiated by Melissa on May 14, 2008 when she wrote a letter to the Court Administrator accusing Judge Laron of unexplained wealth and immorality. In her letter, she asked that Judge Laron be investigated because based on his salary as a judge, he could not have acquired their ₱9 million house. She also claimed that Judge Laron could not have afforded to buy several Lamarroza paintings, four Plasma televisions, expensive furniture, a Nissan Patrol, and to send his three children to private schools. Her letter also bore her admission that she was his mistress for three years.

In his July 21, 2008 Comment,[10] Judge Laron explained how he was able to afford and own the properties that Melissa claimed were beyond his means. He said that he and his wife sold their townhouse for ₱1.7M and obtained a ₱3.2M loan from Land Bank to cover the ₱4.4M construction cost of his house.[11] The Nissan Patrol, a 2001 model, was allegedly bought for ₱1.15M with money borrowed from his father's retirement proceeds.[12] The Lamarroza paintings, accumulated through the years from 2004 to 2007[13] for a total value of ₱410,000.00, were purchased at a low price because the artist was his wife's friend. The two (2) plasma televisions, on the other hand, were gifts to them while the other two were purchased in 2000 and 2002. His children's tuition fees were covered by educational plans[14] and their furniture was part of his wife's commission as a dealer in his relative's furniture shop.

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[8] *Id*. at 99-100.

[9] The verification of the petition was made, not by Wilfredo Tuvillo as required by the DOJ Circular, but by Wilfredo's counsel.

[10] *Rollo (*A.M. No. MTJ-10-1756), pp. 22-25.

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

[12] *Id*. at 31.

[13] *Id*. at 29.

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

In her July 31, 2008 Complaint-Affidavit,[15] Melissa admitted that she had approached Judge Laron when she needed help regarding the pending cases against her. Her liaisons with Judge Laron started in November 2005 in his office *(doon una niya akong naangkin).* She said that he slept in their house in Antipolo and was in her Pasong Tamo condominium almost daily from August 2007 to January 2008. At that time, Melissa was receiving a monthly allowance of US$2,000.00 from her husband while Judge Laron would ask money from her every month and whenever he needed it. She cited several occasions when she gave him money. Judge Laron would hurt her physically and threaten to tell her husband about their relationship every time she would refuse to give him money. To meet Judge Laron's demand for money, she said that she sold her house and lot in Taguig City and her two vehicles – a Pajero and a Honda CRV. Yet, only two of her four pending cases were settled. She also mentioned an incident in Judge Laron's office in April 2008 when a lawyer attempted to effect a reconciliation between her and Judge Laron.

Defense of Judge Laron

In his October 27, 2008 Comment,[16] Judge Laron related that Melissa was introduced to him in November 2005 and that in December 2005, she informed him about her B.P. Blg. 22 cases. He refuted the alleged sexual liaisons that happened in his chambers by attaching affidavits of his staff who swore that the door to his chambers was necessarily open because the air conditioner that supplied the cold air to the staff room, the telephones, the fax machine, the coffee maker, and the refrigerator were all in his chambers. He likewise denied that he had asked Melissa for money or that she gave him money. He pointed out that Melissa could have settled the cases against her by paying the complainants because she had the money. The cases against her were violations of B.P. Blg. 22: two counts for ₱20,000.00, two counts for ₱19,377.00, and two counts for ₱24,620.00. He

[15] *Id*. at 36-39.

[16] *Id*. at 58-65.

also mentioned that the threats and harassment against him started when he began avoiding her.

A member of the staff of Judge Laron, Ma. Anicia Razon, related in her affidavit that on April 16, 2008, a woman went inside the chamber of Judge Laron and started shouting and berating the judge.[17] A man, who was then with her, pulled the woman away and brought her out of the room. She, however, continued her outburst even when they were already along the corridor. Seven other staff members executed a joint affidavit[18] about the incident narrating that they ran to his chambers after they heard a woman shouting and then saw the woman berating Judge Laron *(minumura at inaalipusta)* while the judge just remained quiet *(nanatiling tahimik)*. The woman's shouts were heard even in the courtroom. They recounted that the woman told the judge: *"IDEDEMANDA KITA!"* to which the judge retorted: *"Idedemanda ka rin ng misis ko."*

Imelda Laron, the wife of Judge Tuvillo, also executed an affidavit where she recounted that sometime in January 2008, she lifted their home phone and heard a conversation between her husband and another person.[19] She confronted her husband about what she overheard and they had a serious talk about Melissa. She also stated that after that incident, "nasty text messages with threats from different cellphone numbers were sent to me;" that their sons also received the same messages in their cell phones; and that her relatives in the province, whose cellphone numbers were listed in her list of contacts, called her "about the damaging text messages they received about my husband and the woman named Michelle."

The Office of the Court Administrator in its Report[20] recommended the consolidation of the two complaints as all the allegations in both were rooted on the alleged affair between

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[17] *Id*. at 72.

[18] *Id*. at 73-74.

[19] *Id*. at 70-71.

[20] *Rollo* (A.M. No. MTJ-1755), p. 118.

Judge Laron and Melissa.[21] After its evaluation, the OCA recommended that Judge Laron be found guilty of conduct unbecoming of a judge and be fined ₱10,000.00, and that the case for unexplained wealth be dismissed for being unsubstantiated.

The Court's Ruling

Unexplained Wealth

The charge of unexplained wealth was disputed by Judge Laron who was able to explain the source of the money he used to pay for the construction of his house and the purchase of his vehicle, televisions and furniture. He also attached copies of the educational plans of his children. On the other hand, Melissa failed to substantiate her claim that Judge Laron, by his salary, could not afford to buy those properties and send his children to private schools. For said reason, the Court agrees with the OCA's recommendation that the complaint for unexplained wealth against Judge Laron be dismissed.

Immorality

The charge of immorality, however, is a serious one covered by Section 8, Rule 140 of the Rules of Court. The penalty therefor includes dismissal from the service. Section 8 of Rule 140 provides:

> Serious charges include:
>
> 1. Bribery, direct or indirect;
>
> 2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
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> 3. Gross misconduct constituting violations of the Code of Judicial Conduct;
>
> 4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

[21] *Rollo* (A.M. No. MTJ-1756), pp. 80-84.

5. Conviction of a crime involving moral turpitude;

6. Willful failure to pay a just debt;

7. Borrowing money or property from lawyers and litigants in a case pending before the court;

8. Immorality;

9. Gross ignorance of the law or procedure;

10. Partisan political activities; and

11. Alcoholism and/or vicious habits. [Emphasis Supplied]

Moreover, members of the judiciary are essentially guided by the Code of Judicial Conduct and the Canons of Judicial Ethics in their acts. Canon 4, Section 1 of the Code of Judicial Conduct mandates that a judge should avoid impropriety and the appearance of impropriety in all activities. Judge Laron's conduct of carrying on an affair with a married woman is highly improper. Pertinently, Paragraph 3 of the Canons of Judicial Ethics provides:

3. Avoidance of appearance of impropriety.

> A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of official duties, *but also in his everyday life, should be beyond reproach.*

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety both in his professional and private conduct in order to preserve the good name and integrity of the court.[22] As the judicial front-liners, judges must behave with propriety at all times as they are the intermediaries between conflicting interests and the embodiments of the people's sense of justice.[23] These most exacting standards of decorum are demanded from the magistrates in order to

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[22] *Garcia v. Valdez*, 354 Phil. 475, 480 (1998).

[23] *Calilung v. Suriaga*, 393 Phil. 739, 764 (2000).

promote public confidence in the integrity and impartiality of the Judiciary.[24] No position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench.[25] As the epitome of integrity and justice, a judge's personal behavior, both in the performance of his official duties and in private life should be above suspicion. For moral integrity is not only a virtue but a necessity in the judiciary.[26]

In these cases at bench, the conduct of Judge Laron fell short of this exacting standard. By carrying an affair with a married woman, Judge Laron violated the trust reposed on his office and utterly failed to live up to noble ideals and strict standards of morality required of the members of the judiciary.[27] As the Court wrote in *Re: Letter of Judge Augustus Diaz*,[28] "a judge is the visible representation of the law and of justice. He must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties but also as to his behavior outside his sala and as a private individual. His character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system."

In these cases, both Judge Laron and Melissa admitted the affair. In the case filed by Wilfredo, the July 2, 2008 Comment[29] of Judge Laron reads:

1. Sometime in November 2005, Melissa Tuvillo was introduced to me. In December 2005, Melissa approached me regarding problems about a vehicular accident she was involved in. She later informed me about the bouncing checks filed against her. At that time, I had been married for more than 17 years, and

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[24] *Vedaña v. Valencia*, 356 Phil. 317, 329 (1998).

[25] *Naval v. Judge Panday*, 378 Phil. 924, 939 (1999).

[26] *Talens-Dabon v. Arceo*, 328 Phil. 692-707 (1996).

[27] *Naval v. Panday*, 378 Phil. 937 (1999).

[28] 560 Phil. 1, 4-5 (2007).

[29] *Rollo* (A.M. No. MTJ-10-1755), pp. 20-23.

my wife was in the United States attending to her ailing father. Melissa was likewise then without a husband and Mr. Tuvillo was out at sea. She was aware of my marital status and that I have three sons. **We were both mature lonely people whose marriages had lessened sheen. She brought me a sense of soul connection, understanding and great company**. [Emphasis supplied]

2. On the week of the May 2007 elections, Melissa called and told me that her husband Wilfredo died of illness in China. She even told me that the remains were cremated, that a *padasal* was held at Brgy. Pitogo, Makati City, the place of her husband. After that, she frequently asked for my presence and company, she even asked me to help her guide her four children, and ***we developed an intimate personal attachment to each other. She showered me with the affection I felt I needed, and I reciprocated. We however tried our best to be discreet and sensitive to the sensibilities of those around us.***

3. September of 2007 was a turning point. Imelda, my previously distant wife became ever present. My wife was all over me, ever caring and loving. On November 2007, I started to distance myself from Melissa.

4. Around the first week of January 2008, Imelda would later hear of the affair, she confronted me and I soon had to choose between the mother of my three children, or Melissa, the woman who made me feel needed and cared for. One look at my three sons made the choice plainly clear. I could not abandon my family. ***I confessed to the affair***, and vowed that I would immediately mend my ways. I started to exercise more self-discipline, and became more aware of my responsibilities to my family. I now persevere in keeping true to the straight and narrow path." [Emphases supplied]

The affidavit of Melissa, on the other hand, stated that:[30]

2. I have been maintaining an illicit relation with the said Judge above-named since November 2005 until March 2008. **Our relation is known among the personnel in the court's premises in Makati City.**

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[30] *Rollo* (A.M. No. MTJ-10-1756), p. 5.

3. To support my complaint are the various text messages and videos, ATM cards, bank checks which I am willing to present in the proper forum. [Emphasis supplied]

The illicit affair must have been known to the staff of the court because in their joint affidavit recounting the scene created by Melissa when she berated the judge in his office, none of them attempted to stop her harangue which was highly disrespectful of the judge's status. Judge Laron's inaction on the face of Melissa's verbal attack was a strong indication that they had a relationship which was more than official or professional.

In finding Judge Laron guilty of immorality, the Court is guided by the ruling in *Geroy v. Calderon*[31] where it was written:

> The bottom line is that respondent failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe. Respondent is a married man, yet he engaged in a romantic relationship with complainant. *Granting arguendo that respondent's relationship with complainant never went physical or intimate,* still he cannot escape the charge of immorality, for his own admissions show that his relationship with her was more than professional, more than acquaintanceship, more than friendly.

As the Court held in *Madredijo v. Loyao, Jr.*:[32]

> *[I]mmorality has not been confined to sexual matters,* but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community and an inconsiderate attitude toward good order and public welfare. [Italics Supplied]

Immorality under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001 on the discipline of Justices and Judges, is a serious charge which carries any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court

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[31] 593 Phil. 585, 597 (2008).

[32] 375 Phil. 1, 17 (1999), citing *Alfonso v. Juanson,* A.M. No. RTJ-92-904, December 7, 1993, 228 SCRA 239.

may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

The Court also finds Judge Laron guilty of gross misconduct for violating the Code of Judicial Conduct. This is another serious charge under Rule 140, Section 8 of the Rules of Court. The illicit relationship started because Melissa sought the help of Judge Laron with respect to her pending B.P. Blg. 22 cases and, apparently, he entertained the request for assistance. Canon 2 of the Code of Judicial Conduct provides:

> Rule 2.04.—A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

Judge Laron admitted that Melissa had informed him about the four B.P. Blg. 22 cases against her one month after she was introduced to him. One of those cases was before Judge Laron himself. The case was dismissed upon agreement of the parties.[33] Another case was pending before the sala of another judge which was provisionally dismissed.[34] The situation highly smacked of impropriety because Judge Laron, at the very least, "aided" Melissa in a case pending before him and before another judge.

Another situation of impropriety was when Judge Laron asked money from Melissa who was a litigant in a case pending before his court. This is also a serious charge under Section 8 Rule 140 of the Rules of Court. Wilfredo and Melissa alleged in their complaints that Judge Laron continuously demanded money from Melissa which led to the sale of their houses and vehicles. Melissa claimed that: *Judge Henry Laron was asking an amount of money on a monthly basis. In addition, he is also asking me*

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[33] *Rollo (*A.M. No. MTJ-10-1756), p. 50a.

[34] *Id*. at 51.

to purchased his medicines (Teveten, Forecad. I even shoulder the expenses of his executive check-up (07-08 June 2007) and also the normal visitation to his doctor (Dr. Antonio Sibulo, St. Luke's Hospital) in which he kept all the receipt. He was also asking for cell phone load, gasoline, and monthly groceries (Puregold). Judge Henry Laron even ask for an allowance when he was sent to Canada (a total of 2,000 US dollars) for a study grant last year.[35] She further claimed that Judge Laron would physically hurt her whenever she could not give him money and this averment was corroborated by her sons who stated in their affidavit that "*he is hurting physically our mother because we saw once our mother having maraming paso, the result of the physical punishment made by Tito Henry Laron."*[36] Melissa also submitted a photocopy of a Bank of Philippine Islands deposit slip for US$200 deposited in the account of "Henry E. Laron."[37]

All these conduct and behavior are contrary to the canons of judicial conduct and ethics. Judges are held to higher standards of integrity and ethical conduct than other persons not vested with public trust and confidence. Judges should uplift the honor of the judiciary rather than bring it to disrepute. Demanding money from a party-litigant who has a pending case before him is an act that this Court condemns in the strongest possible terms. In the words of *Velez v. Flores*,[38] such act corrodes respect for the law and the courts, committed as it was by one who was tasked with administering the law and rendering justice.

Judge Laron's immorality and serious misconduct have repercussions not only on the judiciary but also on the millions of overseas Filipino workers *(OFW)* like Wilfredo. While Wilfredo was working hard abroad to earn for his family, Judge Laron was sleeping with his wife in his bed in his house and

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[35] *Id*. at 15.

[36] *Rollo* (A.M. No. MTJ-10-1755), p. 34.

[37] *Rollo (*A.M. No. MTJ-10-1756), p. 50.

[38] 445 Phil. 54, 64 (2003).

spending his hard-earned dollars. What was even worse was the flaunting of the illicit relationship before his young boys (aged 13 and 14) who related it to him upon his return from abroad. This is the nightmare scenario of every OFW – to be confronted upon their return with stories from their own children about the "other man or woman" sleeping in their house while they were away enduring the bitter cold or searing heat, homesickness, culture shock, and occasional inhumane treatment just to earn the dollars for the food, shelter, clothing, and education of their family back home.

Under these circumstances, the Court finds itself unable to adopt the recommendation of the OCA that Judge Laron be simply found guilty of conduct unbecoming of a public official and be fined ₱10,000.00. The OCA's recommended dismissal of the charge of immorality is not warranted by the evidence on hand. Judge Laron himself admitted his immorality and even prayed that he be forgiven and that no disciplinary action be taken against him.[39] To disregard Judge Laron's admission and grant his plea would mean a betrayal of the public trust.

WHEREFORE, finding Judge Henry Laron, Presiding Judge of Branch 65, Metropolitan Trial Court, Makati City, **GUILTY** of **IMMORALITY** and **SERIOUS MISCONDUCT,** the Court hereby metes him the maximum penalty of **DISMISSAL** from the service, with forfeiture of all benefits except accrued leave credits. He is likewise disqualified from reinstatement or appointment to any public office, including government-owned or controlled corporations.

This decision is **IMMEDIATELY EXECUTORY**.

The charge of Unexplained Wealth is **DISMISSED** for insufficient evidence.

SO ORDERED.

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

Leonen, J., see separate opinion.

[39] *Rollo (*A.M. No. MTJ-10-1755), p. 22.

Brion, J., see concurring and dissenting opinion.

Velasco, Jr., Peralta, Jardeleza, and *Caguioa, JJ.*, join the dissent of *J. Bersamin.*

Bersamin, J., dissents, see dissenting opinion.

Del Castillo, J., concurs with the dissent of *J. Bersamin.*

Perez, J., no part, acted on the matter as Court Administrator.

SEPARATE OPINION

LEONEN, *J.*:

A married judge who enters into an illicit relationship with a married woman commits conduct unbecoming of a judge. When their affair is flaunted in front of her young children, and his other woman is a party-litigant from whom he solicits money, the married judge defiles the integrity of the judiciary even further.

I concur with the ponencia's findings that respondent Judge Henry E. Laron is guilty of immorality and serious misconduct. However, looking into the odious conduct with which Judge Laron comported himself, I vote to impose the more severe penalty of his dismissal from service.

On December 17, 2004, Judge Henry E. Laron (Judge Laron) was appointed to Branch 65 of the Metropolitan Trial Court of Makati City.[1] He was concurrently Branch 66 Pairing Judge for the Pilot Project of the Small Claims Court.[2] Before the same metropolitan trial court, Melissa J. Tuvillo (Melissa) was charged

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[1] Masterlist of Incumbent Judges as of August 19, 2016 ≤http://jbc.judiciary.gov.ph/masterlist/_MeTC.pdf> (visited October 1, 2016).

[2] http://jbc.judiciary.gov.ph/masterlist/_MeTC.pdfId. The Small Claims-Pilot Project officially took effect on October 1, 2008. *See* Adm. Order No. 141-2008, Re: Designation of Pilot Courts for Small Claims Cases dated September 29, 2008, appointing Judge Laron as Pairing Judge for the Small Claims Pilot Court of Makati City, Branch 66.

with criminal cases[3] for violation of Batas Pambansa Blg. 22. The first two (2) informations were filed on May 27, 2005,[4] which were followed by two (2) more on September 15, 2005.[5]

On the third week of October 2005, Melissa was allegedly introduced to Judge Laron by a certain Fiscal Giorsioso, her godfather, as she needed help with the four (4) pending cases filed against her.[6] According to Melissa, Judge Laron promised to provide her assistance.[7]

On the second week of November 2005, Melissa visited Judge Laron in his office to follow up on these cases. He allegedly kissed her on the cheeks.[8] Taken aback, Melissa asked why he did that, and Judge Laron said it was simply *beso-beso*.[9] According to Melissa, the *beso-beso* became a regular habit of Judge Laron on her visits to his office.[10]

Judge Laron admitted that they were introduced sometime in November 2005[11] and that he knew of the bouncing checks cases filed against her.[12] At that time, Judge Laron was also aware that Melissa is married to Wilfredo F. Tuvillo (Wilfredo), who works as a seafarer.[13] Melissa and Wilfredo have four (4) children.[14] Judge

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[3] *Rollo* (A.M. No. MTJ-10-1755), pp. 66-67, 70–71; *rollo* (A.M. No. MTJ-10-1755), pp. 68-69.

[4] *Rollo* (A.M. No. MTJ-10-1755), pp. 66-67.

[5] *Id*. at 68-69.

[6] *Rollo* (A.M. No. MTJ-10-1756), p. 36, Complaint Affidavit.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Rollo* (A.M. No. MTJ-10-1755), p. 20, Comment.

[12] *Id*.

[13] *Id*.

[14] *Id*.

Tuvillo is likewise married and has three (3) sons.[15] His wife, Imelda B. Laron[16] (Imelda), was in the United States to attend to her ailing father.[17]

Melissa alleged that their affair began on November 28, 2005.[18] According to her, while in his office, Judge Laron asked her if she knows how to eat *hamon* (Christmas ham).[19] He then pulled her close, held her by her nape, and forced her[20] towards the front of his pants.[21] He unzipped his pants and made her suck his genital.[22] Later, he told her to lie on the table, where he "owned" her.[23] Judge Laron relieved himself without having to insert his whole genital into her hers.[24]

Melissa did not specify if the act complained of happened during office hours, or whether it happened after work was finished, when no one could possibly witness the scene.

In his defense, Judge Laron alleged that they merely shook hands and that he never promised to help her.[25] He claimed to have been busy conducting hearings on November 28, 2005, which was a Monday.[26] To back up his claims, he attached the affidavits of his staff.[27]

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[15] *Id*.

[16] *Rollo* (A.M. No. MTJ-10-1756), p. 70, Imelda B. Laron Affidavit.

[17] *Rollo*, (A.M. No. MTJ-10-1755), p. 20.

[18] *Rollo* (A.M. No. MTJ-10-1756), p. 36.

[19] *Id.*

[20] *Id*. at 36-37. Melissa alleged that "bigla akong isinubsob" toward the front of his pants.

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

[22] *Id*. at 37.

[23] *Id.*

[24] *Id*.

[25] *Rollo* (A.M. No. MTJ-10-1755), p. 58, Comment.

[26] *Id*.

[27] *Rollo* (A.M. No. MTJ-10-1756), pp. 68-69.

In their Joint Affidavit, Branch 65 Criminal Case In-Charge Amabelle C. Feraren and Court Aide Nelly A. Montealegre claimed that it was impossible for Judge Laron to have laid a hand on Melissa without anyone witnessing it.[28] All employees in the staff room were said to have access to Judge Laron's chamber at any given time,[29] as the fax machine, telephone, refrigerator, and coffee maker were inside his chamber.[30]

According to Branch 65 Court Stenographers Lylanie U. Cayetano[31] and Nelia B. Nanat,[32] Judge Laron's chamber was inside the staff room.[33] The door between the staff room and his chamber was allegedly always kept open for the employees to enjoy the cool air from his chamber.[34] The staff room may also get cool air from the adjacent court room,[35] which was cold as it had its own air-conditioning.[36]

Melissa alleged that the "unforgivable moments of [their] indecent affair"[37] continued on December 3, 2005, a Saturday, in Judge Laron's office, and then from December 15, 2005 to October 2007, where they checked in at Silver Place Hotel, located beside the new City Hall Building.[38] The new City Hall Building houses the Metropolitan Trial Court of Makati City.[39] According to Melissa, Judge Laron would sometimes sleep in

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[28] *Id*.

[29] *Id*. at 66-67.

[30] *Id*. at 66.

[31] *Id*.

[32] *Id*. at 67.

[33] *Id*. at 66-67.

[34] *Id*. at 67.

[35] *Id*. at 68.

[36] *Id*.

[37] *Id*. at 37.

[38] *Rollo* (A.M. No. MTJ-10-1756), p. 37.

[39] *Rollo* (A.M. No. MTJ-10-1755), p. 58.

the Tuvillos' conjugal house in Antipolo, and almost daily in her condo in Pasong Tamo, Makati City, from August 2007 to January 2008.[40]

For his part, Judge Laron admitted that his marriage to Imelda had "lessened [its] sheen" and that Imelda was distant to him.[41] Melissa "brought [him] a sense of soul connection, understanding and great company."[42] He stated that he reciprocated Melissa's affection to him.[43]

According to Socorro R. Divina (Divina), caretaker of the Tuvillo Family House in Antipolo, Judge Laron would come and sleep over in Antipolo on weekends.[44] Divina herself opened and closed the gate whenever Judge Laron would fetch Melissa and the children in the morning.[45] She would also see Judge Laron fetching the children back from school in the afternoon, sometimes using his own car, and on other times, using Melissa's car.[46]

Wilfredo and Melissa's sons, Renz Don Willie (14 years old) and Raphael Thom (13 years old) Tuvillo, corroborated Divina's statement.[47] They stated that Judge Laron would pick them up from home to school.[48] According to them, "Tito Henry Laron used to go to our house in Antipolo; [h]e slept in our house twice or thrice a week specially during weekends[.]"[49]

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[40] *Rollo* (A.M. No. MTJ-10-1756), p. 37.

[41] *Rollo* (Adm. Matter No. MTJ-10-1755), pp. 20 and 21, Laron Comment to Wilfredo's Complaint.

[42] *Id.*

[43] *Id*. at 21.

[44] *Id*. at 36, Affidavit of Socorro R. Divina.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 34.

[48] *Id*.

[49] *Id*.

On one occasion, they saw their mother bruised and found out that Judge Laron inflicted the injury on her.[50] Judge Laron assailed the allegation of hitting Melissa as hearsay,[51] as the children did not mention seeing the incident or having personal knowledge of it.[52]

Melissa would receive a monthly allotment of US$2,000.00 from Wilfredo, who works as Chief Officer/Chief Mate at sea.[53] He has been an Overseas Filipino Worker for more than 20 years.[54] Melissa claimed that in exchange for his help, Judge Laron asked her for money every month, and whenever he needed it.[55]

On April 10, 2006, Judge Laron ordered the dismissal of a civil case, *YL Finance Corp. v. Tuvillo, et al.*, with prejudice.[56] This was in lieu of the parties' Joint Motion to Dismiss.[57] The other cases remained pending against Melissa.

As regards Judge Laron's alleged extortion, Melissa cited that Judge Laron asked her for money to treat his office staff on his birthday on July 3, 2006.[58] Melissa paid a total of ₱25,000.00 for this birthday treat at Firewood, Mandaluyong.[59] Another time, when he went to Canada for a study grant on the second week of March 2007, he solicited US$2,000.00 from her as pocket money.[60] Melissa likewise advanced the payment

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[50] *Id.*

[51] *Id.* at 56.

[52] *Id.*

[53] *Rollo* (A.M. No. MTJ-10-1756), pp. 43-45, Allotment Slip.

[54] *Rollo* (A.M. No. MTJ-10-1755), p. 24, Complaint Affidavit.

[55] *Rollo* (A.M. No. MTJ-10-1756), p. 36, Complaint Affidavit.

[56] *Id.* at 50A, Order.

[57] *Id.*

[58] *Id.* at 37.

[59] *Id.*

[60] *Id.*

for his executive check up in June 2007 at St. Luke's Hospital.[61] Judge Laron again asked her for allowance when he attended a seminar in Baguio City on November 13 to 16, 2007, and she gave him US$700.00.[62]

Melissa alleged that she had to sell their house and lot in Taguig and two (2) vehicles, a Pajero and a Honda CR-V, to satisfy Judge Laron's financial pleas.[63] She presented a Bank of Philippine Islands deposit slip for US$200.00 addressed to one "Henry E. Laron," dated February 1, 2008.[64]

Judge Laron allegedly became uncontrollable and would hurt Melissa when she refused to give him money.[65] According to Melissa, Judge Laron threatened to divulge their relationship to Wilfredo.[66] Thus, she "was forced to follow all his caprices with . . . closed eyes[.]"[67]

Judge Laron gave bare denials.[68] He claimed that he never received these amounts from Melissa, nor did she give him money on such occasions.[69] He added that Melissa never attached any sworn medical certificate to prove that she sustained an injury.[70] Judge Laron also alleged that he did not blackmail her.[71]

Judge Laron claimed that he "always [slept] with [his] wife in [their] house."[72] He attached his wife's affidavit to support

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[61] *Id*.

[62] *Id*.

[63] *Id*. at 38.

[64] *Id*. at 50, Deposit Slip.

[65] *Id*. at 37.

[66] *Id*.

[67] *Id*.

[68] *Id*. at 59, Comment.

[69] *Id*. at 59-60, Comment.

[70] *Rollo* (A.M. No. MTJ-10-1755), p. 56, Comment.

[71] *Rollo* (A.M. No. MTJ-10-1756), p. 60, Comment.

[72] *Id*. at 59.

this.[73] Imelda, however, had been in the United States to look after her ailing father.[74] Neither she nor Judge Laron mentioned when she actually came back home and slept with him.

Sometime in May 2007, more than one (1) year since the start of their extramarital affair, Melissa allegedly told Judge Laron that Wilfredo died of illness in China.[75] To support his allegation, Judge Laron presented the affidavits of Branch Clerk of Court Romualdo I. Balancio[76] and Clerk III Jeffrey C. Bat-og[77] of Branch 67 of the Municipal Trial Court of Makati City. Melissa questioned their affidavits for being "unbelievable and unreliable because of the enormous influence and authority over them by respondent Laron."[78]

Wilfredo averred that Judge Laron's alibi "was a big lie, because on the [third] week of May 2007, [Judge Laron] visited [the Tuvillo Family] house in Antipolo at the early time of the day[.]"[79] Judge Laron allegedly told Wilfredo of his meeting with an attorney in Ynares Stadium, Antipolo, Rizal.[80] A purported record from the Bureau of Immigration, which Judge Laron himself attached and relied on,[81] showed that Wilfredo was indeed in the Philippines on the third week of May 2007, specifically: from May 17, 2007 to June 9, 2007.[82]

On September 18, 2007, two (2) more criminal cases for violation of Batas Pambansa Blg. 22 were filed against Melissa.

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[73] *Id*. at 70-71.

[74] *Rollo* (A.M. No. MTJ-10-1755), p. 20, Comment.

[75] *Id*.

[76] *Id.* at 73-74.

[77] *Id*. at 72.

[78] *Rollo* (A.M. No. MTJ-10-1755), p. 96.

[79] *Rollo* (A.M. No. MTJ-10-1756), p. 77.

[80] *Id*.

[81] *Id*. at 62, Comment.

[82] *Id.* at 75, Travel Information of Wilfredo F. Tuvillo.

Prosecutor III George V. De Joy impleaded Melissa's husband, Wilfredo.[83]

On October 23, 2007, Presiding Judge Rico Sebastian D. Liwanag of Branch 67 of the Metropolitan Trial Court of Makati City provisionally dismissed the first two (2) cases of bouncing checks against Melissa.[84]

Imelda learned of her husband's affair in January 2008[85] after she overheard a telephone conversation between Judge Laron and Melissa.[86] Judge Laron then confessed the affair to his wife and vowed to mend his ways.[87] Their three (3) sons, aged 18, 17, and 15, also found out about his indiscretion.[88] Judge Laron acknowledged that his family was hurt.[89]

On April 16, 2008, one Atty. Jun Laguilles[90] (Atty. Laguilles) came with Melissa to see Judge Laron in his chamber. Atty. Laguilles is the husband[91] of Former Makati City Regional Trial Court Judge Zenaida T. Galapate-Laguilles. He allegedly sought to settle the differences between Melissa and Judge Laron.[92] Melissa averred that Judge Laron cursed at her and ordered to have her sent out of his office.[93] Melissa also cursed and shouted at Judge Laron.[94] She demanded that he return all the money

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[83] *Rollo* (A.M. No. MTJ-10-1755), pp. 70-71, Informations for Violation of Batas Pambansa Blg. 22.

[84] *Rollo* (A.M. No. MTJ-10-1756), p. 51.

[85] *Rollo* (A.M. No. MTJ-10-1755), p. 21.

[86] *Rollo* (A.M. No. MTJ-10-1756), p. 70.

[87] *Rollo* (A.M. No. MTJ-10-1755), p. 21.

[88] *Id.*

[89] *Id.*

[90] *Rollo* (A.M. No. MTJ-10-1756), p. 37.

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

he took from her.[95] He said he would, to which she replied that he include everything he received from her, even his underwear.[96] Atty. Laguilles helped Melissa out of Judge Laron's chamber.[97]

In May 2008, Wilfredo arrived from abroad.[98] The children reported to their father what happened at home: "Tito Henry" would sleep in the Antipolo home, especially on weekends, and he physically hurt their mother.[99]

Wilfredo filed a case for adultery against Judge Laron and Melissa. The Makati City Prosecution Office later dismissed it for lack of probable cause (for failure to establish all the elements of the crime).[100] This was affirmed by the Department of Justice.[101]

On May 23, 2008, Melissa entered into the police blotter Judge Laron's alleged threats on her life. According to her, Judge Laron told her, "*ipapayari kita o kaya ipapatumba nalang kita*."[102]

Judge Laron admitted the existence of their extramarital relationship.[103] However, he denied that he ever asked money,[104] committed violence against her, or violated her marital union and family unity.[105]

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[95] *Id.*

[96] *Id.*

[97] *Id.* at 72.

[98] *Rollo* (A.M. No. MTJ-10-1755), p. 34.

[99] *Id.*

[100] *Id.* at 95-98.

[101] *Id.* at 99-100.

[102] *Rollo* (A.M. No. MTJ-10-1756), p. 18, Police Blotter Certification.

[103] *Rollo* (A.M. No. MTJ-10-1755), p. 21.

[104] *Rollo* (A.M. No. MTJ-10-1756), p. 59.

[105] *Rollo* (A.M. No. MTJ-10-1755), p. 52.

Wilfredo maintained that Judge Laron "capitaliz[ed] and abus[ed] the innocence, trust and confidence of [Melissa]."[106] Judge Laron's extortion allegedly led to the depletion of all their savings, including their houses and lots.[107] He called Judge Laron "a hoodlum in robes who should be removed from the judiciary before he can commit more atrocities."[108]

I

Regir v. Regir[109] has defined immorality as:

> [I]mmorality is not based alone on illicit sexual intercourse. It is not confined to sexual matters, but *includes conducts inconsistent with rectitude,* or indicative of corruption, *indecency, depravity*, and dissoluteness; or is willful, *flagrant or shameless conduct showing moral indifference* to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare[110] (Emphasis supplied)

Rule 140, Section 8(8) of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[111] classifies immorality as a serious charge.[112] As penalty, Section 11(A)(1) allows for the imposition of dismissal from service, forfeiture of all benefits except accrued leave credits, and disqualification from holding any public office, including those in government-owned or controlled corporations.[113]

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[106] *Id.* at 24.

[107] *Id.* at 25.

[108] *Id.*

[109] 612 Phil. 771 (2009) [Per *J.* Leonardo-De Castro, First Division].

[110] *Id.* at 779.

[111] Proposed Amendment to Rule 140 of the Rules of Court Re Discipline of Justices and Judges (2001).

[112] A.M. No. 01-8-10-SC, Sec. 8 provides:

> SECTION 8. Serious charges. — Serious charges include . . . [i]mmorality[.]

[113] A.M. No. 01-8-10-SC, Sec.11(A)(1) provides:

> Section 11. Sanctions.

In *Perfecto v. Judge Esidera*,[114] we have ruled that lawyers and judges are bound to uphold secular morality, not religious morality.[115] We look past religious doctrine and determine what is good or right based on shared community standards and values:

> This court may not sit as judge of what is moral according to a particular religion. We do not have jurisdiction over and is not the proper authority to determine which conduct contradicts religious doctrine. We have jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.
>
> Thus, for purposes of determining administrative liability of lawyers and judges, "immoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the public's confidence in the Rule of Law.[116]

Guided by this standard, I find Judge Laron's actions to be indicative of his moral indifference and questionable integrity, amounting to immorality.

Although it may be true that they were lonely people[117] who reciprocated each other's affections,[118] it is also true that Melissa was desperate to wriggle out of the criminal cases that had

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A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits[.]

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

[115] *Id.* at 8.

[116] *Id.* at 9.

[117] *Rollo* (A.M. No. MTJ-10-1755), p. 20.

[118] *Id.* at 21.

strangled her.[119] It is likewise true that both of them are married,[120] and their extramarital relationship was not kept hidden, especially from Melissa's children.[121]

That Melissa first approached or sought Judge Laron[122] is immaterial as a defense. Judge Laron knew that she was in dire need, and he took advantage of her weaknesses. He was in a position of power: unlike Melissa, he has legal expertise, and he was not facing a string of criminal cases. He is a judge of the Metropolitan Trial Court of Makati City, before which she was charged.

Judge Laron claims to have been fooled of Wilfredo's alleged death in 2007. This does not convince. Judge Laron himself has shown that he is capable of acquiring Wilfredo's 2006-2008 travel information from the Bureau of Immigration.[123]

Even if Judge Laron believed Wilfredo's death to be true, it still does not exonerate him. His attempts to dangle a red herring must fail. Judge Laron entered into a relationship with Melissa beginning in 2005.[124] At that time, he was fully aware that her husband was simply at sea, alive and working.[125]

As the affair broke down, Judge Laron now paints himself as victim of Melissa's calls and text messages, as well as threats to embarrass him and cause his dismissal from service.[126] He attempts to soften the impact of his actions by stating that they were "mature people"[127] when they entered into the extramarital

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[119] *Id.* at 24.

[120] *Id.* at 20.

[121] *Id.* at 34.

[122] *Id.* at 59.

[123] *Id.* at 75.

[124] *Rollo* (A.M. No. MTJ-10-1756), p. 36.

[125] *Rollo* (A.M. No. MTJ-10-1755), p. 20.

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

[127] *Id.* at 20.

affair. However, when it comes to facing the consequences, Judge Laron bails out and blames Melissa for allegedly hurting his wife and children with her news of the affair.[128]

Maturity does not consist of welcoming a mistress' affections[129] but rejecting the repercussions when things go sideways. Judge Laron cannot lay the blame on Melissa, especially when he himself was a kept man of a married woman.

In any case, it is Judge Laron's private acts that are under scrutiny, not Melissa's. Judge Laron states that his extramarital affair "[was] a personal matter and d[id] not affect [his] professional responsibilities as a judge and as a lawyer."[130] This is a tall tale.

In *Perez v. Catindig*,[131] we disbarred a lawyer who had an extramarital affair with another woman. Although his second marriage with the other woman was void, we have stated that the lawyer "definitely manifest[ed] a deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws. . . . He exhibited a deplorable lack of that degree of morality required of him as a member of the bar[.]"[132]

In *Leynes v. Judge Veloso*,[133] this Court ruled that "[i]f good moral character is required of a lawyer, with more reason that requirement should be exacted of a member of the judiciary who at all times is expected to observe irreproachable behavior and is bound not to outrage public decency."[134]

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[128] *Id.* at 21.

[129] *Id.*

[130] *Id.* at 22.

[131] A.C. No. 5816, March 10, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/5816.pdf> [*Per Curiam, En Banc*].

[132] *Id.* at 10.

[133] 172 Phil. 312 (1978) [Per *J.* Aquino, *En Banc*].

[134] *Id.* at 315.

In *Castillo v. Judge Calanog Jr.*:[135]

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, *a judge's official life can not simply be detached or separated from his personal existence*.[136] (Emphasis supplied)

Anyone applying for the judiciary is expected to have a thorough understanding of community standards and values. No one forced Judge Laron to become a judge. When he became a judge, he agreed to abide by the Code of Conduct for members of the Philippine Judiciary.

Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary[137] provides:

> CANON 2
> Integrity
>
> Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.
>
> SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
>
> SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary[.]

Judges decide not only on matters of law, but also of equity. They determine what is right and wrong in the cases before them. A judge should, therefore, be able to walk the talk. He

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[135] 276 Phil. 70 (1991) [*Per Curiam, En Banc*].

[136] *Id.* at 81.

[137] A.M. No. 03-05-01-SC (2004).

or she should be and appear to be a person with integrity and credibility. In *Dia-Añonuevo v. Judge Bercacio*:[138]

> Although every office in the government service is a public trust[,] no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary. A magistrate of the law must comport himself at all times in such a manner that his conduct[,] official or otherwise[,] can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[139]

Judge Laron's words and actions reflect on the judiciary as a whole. He is expected to avoid conflicts of interest and instances where the morality and legality of his actions are cast in a bad light. Judge Laron cannot simply accept the perks of his position but shy away from the discomfort and responsibilities involved. He should embrace both the boons and banes of the job, which he willingly entered into. In *Castillo v. Judge Calanog, Jr.*:[140]

> Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
>
> A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.[141]

In that case, this Court dismissed a judge who had a mistress, with whom he bore a child, for immorality. This Court held the dismissal to be "with prejudice to his reinstatement or appointment to any public office including a government-owned or controlled corporation, and forfeiture of retirement benefits, if any."[142] Thus:

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[138] 160-A Phil. 731 (1975) [Per *J.* Muñoz-Palma, *En Banc*].

[139] *Id.* at 739.

[140] 276 Phil. 70 (1991) [*Per Curiam, En Banc*].

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

[142] *Id.* at 83.

Judge Calanog has behaved in a manner not becoming of his robes and as a model of rectitude, betrayed the people's high expectations, and diminished the esteem in which they hold the judiciary in general.

It is of no import that the evidence on record is not sufficient to prove beyond reasonable doubt the facts of concubinage having indeed existed and been committed. This is not a criminal case for concubinage but an administrative matter that invokes the power of supervision of this Court over the members of the judiciary.

The circumstances show a lack of circumspection and *delicadeza* on the part of the respondent judge by failing to avoid situations that make him suspect to committing immorality and worse, having that suspicion confirmed.[143]

Under Section 1 of Canon 4, judges have the duty to "avoid impropriety and the appearance of impropriety in all of their activities."

According to Judge Laron, he and Melissa "tried [their] best to be discreet and sensitive to the sensibilities of those around [them]."[144] This is not true. Judge Laron and Melissa were together for three (3) years.[145] He did not even attempt to hide it from Melissa's minor children[146] and her family's caretaker.[147]

The response of the court employees is even more telling. On April 16, 2008, when Melissa came to Judge Laron's chamber, none of them intervened when she began shouting at the judge[148] and demanding that he return all the money and things he received from her.[149] The eight (8)[150] court employees who witnessed

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[143] *Id.* at 80.

[144] *Rollo* (A.M. No. MTJ-10-1755), p. 21.

[145] *Rollo* (A.M. No. MTJ-10-1756), p. 11.

[146] *Rollo* (A.M. No. MTJ-10-1755), p. 34.

[147] *Id.* at 36.

[148] *Rollo* (A.M. No. MTJ-10-1756), p. 72.

[149] *Id.* at 37.

[150] *Id.* at 72-73.

the scene only stood by to watch[151] as the former lovers quarreled.[152] Melissa shouted that she would file a case against Judge Laron, who retorted, "my wife will also sue you."[153] Only Atty. Laguilles, who came with Melissa to mediate between her and Judge Laron,[154] stepped in and helped her out of the door.[155]

Judge Laron willingly consented to their extramarital relationship. He did not keep it between only the two of them. Divina[156] and the Tuvillo children[157] certainly knew. There are good reasons to suppose that Atty. Laguilles[158] and his wife[159] were likewise aware of the relationship. The court employees,[160] who simply looked on as Melissa and Judge Laron argued about returning her money and his underwear, could also have suspected about them, to say the least.

While Wilfredo was busy providing for his family, Judge Laron usurped Wilfredo's role as husband and father, sleeping in their house, driving for Melissa, and picking up her children from school.[161] Judge Laron is well-known to the Tuvillo children. They even fondly called him "Tito Henry."[162]

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[151] *Id.* at 60.

[152] *Id.* at 61.

[153] *Id.* at 73.

[154] *Id.* at 37.

[155] *Id.* at 72-73.

[156] *Rollo* (A.M. No. MTJ-10-1755), p. 36.

[157] *Id.* at 34.

[158] *Rollo* (A.M. No. MTJ-10-1756), p. 37.

[159] *Id.*

[160] *Id.* at 72.

[161] *Rollo* (A.M. No. MTJ-10-1755), p. 34.

[162] *Id.*

Thus, one cannot imagine the shock of Wilfredo, who, for more than 20 years,[163] worked away on board a ship—battling against homesickness, the perils of sea, and the emotional strain caused by his physical separation from his family—only to come home and find out that another man was enjoying his wife and the money he sent. Wilfredo's children themselves broke the news to him.[164] They found out about Judge Laron's trysts with their mother, as Judge Laron did not mind flaunting their relationship in front of Wilfredo's children.[165]

In *Re: Complaint of Mrs. Marcos and children against Judge Marcos*,[166] this Court dismissed from service a judge who flaunted his other woman as though she were his wife. It did not matter that the judge had been physically separated from his wife for three (3) years, or that he had no children with his mistress. His public display of the illicit relationship constituted a conduct "unbecoming of a judge[,] whose conduct must at all times be beyond reproach."[167]

Judge Laron entered into an extramarital affair with Melissa, a hapless litigant who faced a series of cases. His seduction led to a three-year relationship where Judge Laron exchanged his help for her money, and their relationship injured persons other than the two of them.

Judge Laron's indiscretion hurt not only his family[168] but also Melissa's husband who, after discovering their affair, sued his wife and the judge for adultery.[169] The judge, a powerful figure in the legal circle, also publicly threatened Melissa that

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[163] *Id*.

[164] *Id.*

[165] *Id.*

[166] 413 Phil. 65 (2001) [*Per Curiam, En Banc*].

[167] *Id*. at 92.

[168] *Rollo* (A.M. No. MTJ-10-1756), p. 21.

[169] *Id*. at 95-98.

Imelda, his wife, would sue her.[170] The scandal in his chamber, in front of a private lawyer as well as court staff and employees, dragged down the dignity of his office.

Under Section 2 of Canon 4, "judges shall conduct themselves in a way that is consistent with the dignity of the judicial office."

Judge Laron's extramarital affair, his public display of his also-married "other" woman, and the damage his indiscretion caused not just to other people but also to the dignity of the office he serves, certainly reek of immorality. His actions exhibit indecency, lack of integrity, depravity, and moral indifference to community standards and values.[171]

For transgressing public morals and defiling the image of the judiciary, he must be stripped of his judicial robe and dismissed from service.

II

Section 8(3), in relation to Section 11(A)(1)[172] of Rule 140 of the Rules of Court, further supports Judge's Laron's dismissal from service. [G]ross misconduct constituting violations of the Code of Judicial Conduct"[173]

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[170] *Id.* at 72.

[171] *Regir v. Regir*, 612 Phil. 771, 779 (2009) [Per J. Leonardo-De Castro, First Division].

[172] RULES OF COURT, Rule 140, Sec.11 (A)(1) provides:

> SECTION 11. Sanctions.
>
> A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits[.]

[173] RULES OF COURT, Rule 140, Sec. 8(3) provides:

> SECTION 8. Serious charges.—Serious charges include:

is a serious charge allowing for a judge's removal from service.[174]

In *Sison-Barias v. Judge Rubia*,[175] we dismissed a judge who privately met with a litigant at a restaurant and advised her to speak with the other party's counsel. We have ruled that this act violated Canons 1 (Independence), 2 (Integrity), 3 (Impartiality), and 4 (Propriety).[176]

Similarly, Judge Laron violated the same provisions of the New Code of Judicial Conduct for the Philippine Judiciary:

CANON 1
INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

SECTION 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

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3. Grosss misconduct constituting violations of the Code of Judicial Conduct[.]

[174] RULES OF COURT, Rule 140, Sec. 11(A)(1) provides:

SECTION 11. Sanctions.

A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits[.]

[175] A.M. No. RTJ-14-2388, June 10, 2014, 726 SCRA 94 [*Per Curiam, En Banc*].

[176] *Id.* at 139.

. . . . . .

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

SECTION 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

. . . . . .

SECTION 6. Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

CANON 2
Integrity

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary.

CANON 3
Impartiality

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is to be made.

SECTION 1. Judges shall perform their duties without favor, bias or prejudice.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary.

SECTION 3. Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

. . . . . .

CANON 4
Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

SECTION 3. Judges shall, in their personal relations with individual members of the legal profession who practice regularly in their court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.

In *Gacayan v. Judge Pamintuan*,[177] this Court ruled that it is improper for a judge to have a private meeting with the accused, especially "in the seclusion of his [or her] chambers," without the presence of the complainant.[178]

Judge Laron first met Melissa, who was criminally charged with violation of Batas Pambansa Blg. 22, inside his chamber, without the presence of the offended parties. They became lovers, and their meetings extended to more private spaces.

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[177] 373 Phil. 460 (1999) [Per *J.* Ynares-Santiago, First Division].

[178] *Id.* at 477.

For a judge, having a close friendship with the litigant is to be avoided at all costs. With more reasons should a romantic relationship with one be shunned as this destroys the litigants' confidence in the "judge's impartiality and[,] eventually, undermine the people's faith in the administration of justice."[179]

Judge Laron, as the judge in a case against Melissa, dismissed that case with prejudice upon motion by the parties.[180] Another judge in the Makati City Metropolitan Trial Court likewise provisionally dismissed Melissa's two other cases.[181] It is not farfetched to conclude that Judge Laron provided assistance to his former lover in the cases pending before him and another judge. These incidents cannot be said to be above suspicion, or otherwise entirely free from the appearance of impropriety.

In *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*,[182] we found a Sandiganbayan Justice and Chairperson of the Fourth Division liable for impropriety for visiting and socializing with a litigant, Janet Lim-Napoles (Napoles), whom his Division acquitted. Sandiganbayan Justice Gregory S. Ong was relieved from service.[183]

Fraternizing with litigants taints a judge's appearance of impartiality.[184] Canon 1, Section 3 states that "[j]udges shall refrain from influencing in any manner the outcome of litigation

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[179] *Santos v. Lacurom*, 531 Phil. 239, 252 (2006) [Per *J*. Carpio, Third Division].

[180] *Rollo*, (A.M. No. MTJ-10-1756), p. 50A.

[181] *Id.* at 51.

[182] A. M. No. SB-14-21-J, September 23, 2014, 736 SCRA 12 [*Per Curiam, En Banc*].

[183] *Id*. at 100-101.

[184] *Gacaya v. Judge Pamintuan*, 373 Phil. 460, 477 (1999)[Per *J*. Ynares-Santiago, First Division]

or dispute pending before another court or administrative agency." In *Rallos v. Judge Gako Jr.*:[185]

> Well-known is the judicial norm that judges should not only be impartial but should also appear impartial. Jurisprudence repeatedly teaches that litigants are entitled to nothing less than the cold neutrality of an impartial judge. . . . Judges must not only render just, correct and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity.
>
> *This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties.* They are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. Thus, their official conduct should be beyond reproach.[186] (Emphasis supplied)

In *Garcia v. Judge Burgos*:[187]

> We deem it important to point out that a judge must preserve the trust and faith reposed in him by the parties as an impartial and objective administrator of justice. When he exhibits actions that give rise fairly or unfairly, to perceptions of bias, such faith and confidence are eroded[.][188]

Likewise, Judge Laron's asking for money from a litigant constitutes gross misconduct. In *Sison Jr. v. Camacho*,[189] we disbarred a lawyer for failing to account for the funds he solicited as payment for additional docket fees. We have ruled that "[t]hose in the legal profession must always conduct themselves with honesty and integrity in all their dealings."[190]

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[185] 85 Phil. 4 (2000) [Per *J.* Panganiban, Third Division].

[186] *Id*. at 20.

[187] 353 Phil. 740 (1998) [First Division, Per *J.* Panganiban].

[188] *Id*. at 771.

[189] A.C. No. 10910, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/10910.pdf> [*Per Curiam, En Banc*].

[190] *Id*. at 5.

According to Melissa, Judge Laron would solicit money from her to pay for his medicines, executive check-up, regular visits to the doctor, cell phone load, gasoline expenses, and monthly groceries, among other things.[191] A US$200.00 deposit to the account of "Henry E. Laron"[192] supports the claim of solicitation. There is no indication that the money was ever returned or refused.

In *Galang v. Judge Santos*,[193] a judge's personal actions, whether in the bench or in his daily life, should be beyond reproach and free from the manifestations of impropriety.[194]

In *In Re: Solicitation of Judge Virrey*,[195] this Court dismissed from service a judge who solicited "donations" for the repair of his office and for his personal travel expenses. This Court has held that such irresponsible and improper conduct erodes the public's faith in the judiciary.[196] These acts clearly violate the judge's duties of integrity, independence, and propriety.[197]

In *Quiz v. Judge Castaño*,[198] this Court dismissed from service a judge who attempted to extort money from a litigant. The judge visited the litigant in the place he stayed in, met with him at an eatery, and pocketed a sum of money from him. This Court acknowledged that, under the prevailing circumstances, it could not simply give the errant judge a slap on the wrist.[199]

We ruled similarly in *Re: Allegations Against Justice Ong* and dismissed the Sandiganbayan Justice for gross misconduct.

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[191] *Rollo* (A.M. No. MTJ-10-1756), p. 3.

[192] *Id.* at 50.

[193] 367 Phil. 81 (1999) [*Per Curiam, En Banc*].

[194] *Id.* at 89.

[195] 279 Phil. 688 (1991) [*Per Curiam, En Banc*].

[196] *Id.* at 694.

[197] *Id.*

[198] 194 Phil. 187 (1981) [Per *J.* Teehankee, *En Banc*].

[199] *Id.* at 196.

We held that the Sandiganbayan Justice's acts of consenting to be Napoles' contact at the Sandiganbayan, "fixing" the criminal case in her favor, and accepting money and favors from her "constitute gross misconduct, a violation of the New Code of Judicial Conduct for the Philippine Judiciary."[200]

ACCORDINGLY, I vote to find respondent Judge Henry E. Laron **GUILTY** of immorality and gross misconduct. Respondent Judge Henry E. Laron should be **DISMISSED** from the service with forfeiture of all retirement benefits except accrued leave credits, with perpetual disqualification from re-employment in any government agency, including government-owned and controlled corporations.

I likewise concur with Associate Justice Arturo D. Brion's opinion to **DISBAR** respondent Judge Henry E. Laron.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I CONCUR with the *ponencia* finding respondent judge Henry Laron[1] guilty of **immorality** and **serious misconduct.** I **DISSENT**, however, from its imposition of only a three-year suspension for his grave offenses. I submit that the respondent should be **dismissed from judicial service** and be **disbarred from the practice of law**.

Background Facts

The case arose from two letter-complaints filed against Judge Laron by Wilfredo Tuvillo (*Wilfredo*) and Melissa Tuvillo (*Melissa*). Wilfredo charged Judge Laron with immorality and unacceptable wrongdoing. Melissa accused Judge Laron of unexplained wealth and immorality and of violation of anti-

[200] *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, A.M. No. SB-14-21-J, September 23, 2014, 736 SCRA 12, 80 [*Per Curiam, En Banc*].

[1] Judge, Metropolitan Trial Court, Branch 65, Makati City.

graft laws and disgraceful immoral conduct, in her complaint and supplemental complaint, respectively.

A. Wilfredo's letter-complaint and supplemental complaint

In his May 2, 2008 complaint, Wilfredo, a seaman, declared that he treated Judge Laron as a close family member and would "entrust" his wife to him whenever he was abroad. He heard rumors about the relationship of Melissa and Judge Laron while he was overseas; his children had confirmed to him that Judge Laron was always in their house and had physically hurt Melissa. He stated that *Melissa admitted to having an affair with Judge Laron when he confronted her about it*.

In his comment to Wilfredo's complaint, Judge Laron claimed that Melissa approached him sometime in December 2005, to inform him about the 'bouncing checks cases' filed against her; that Melissa told him that her husband had died of illness in China. He said that Melissa knew of his marital status yet they still "developed an intimate personal relation with each other."[2] He claimed to have distanced himself from Melissa in September 2007, and that *he had already confessed his affair with Melissa to his wife*.

Judge Laron further explained that his affair with Melissa "is a purely personal matter"[3] which has no bearing on his professional responsibilities as a judge and as a lawyer.

In his supplemental complaint-affidavit dated June 3, 2008, Wilfredo further alleged that Melissa had sought Judge Laron's help for the expeditious resolution of the cases filed against her; that *Judge Laron had demanded money from Melissa whenever he needed it;* that he and Melissa had lost all their savings and their property because of Judge Laron's constant demands for money; that Judge Laron had physically hurt Melissa when she could not produce the money he needed; and that Judge Laron had "transgressed, intruded, and besmirched the

[2] *Rollo*, pp. 20-21.

[3] *Id.* at 22.

tranquillity and sacredness of [their] marital union and family unity."[4]

In his comment to the supplemental complaint, Judge Laron maintained that he did not extort money from Melissa, and that the loss of the complainant's houses and lots could not be attributed to him. He denied inflicting physical harm on Melissa, pointing out the lack of any medical certificate to support this allegation. He also denied violating the marital union and family unity of the spouses Tuvillo, adding that *Melissa had led her to believe that Wilfredo had died of illness in China.* Further, he described Wilfredo's complaint as a "harassment suit supported by dubious documents."[5]

B. Melissa's charges against Judge Laron

In her May 14, 2008 letter to the Office of the Court Administrator (OCA), Melissa asked that Judge Laron be investigated for unexplained wealth and immorality alleging that he could not have acquired the following properties on his salary as a judge: a ₱9-million house not including appliances and decor — four (4) Lamarroza paintings; four (4) plasma television sets and expensive furniture; a 2005 model Nissan Patrol vehicle; and various high-caliber guns. Melissa also questioned how Judge Laron could have afforded to send his three children to private schools.

Melissa disclosed that she had been Judge Laron's mistress for three (3) years. She claimed that Judge Laron had constantly asked money from her for various expenses such as medicine and medical check-ups, cellular phone loads, gasoline, monthly groceries, and study grant allowance. Melissa also accused Judge Laron of physically hurting her.

In his comment to Melissa's letter, Judge Laron explained that he and his wife bought their present house by selling their old town house for ₱1.8 million and by obtaining a ₱3.2-million bank loan to cover construction costs. He said that he borrowed

[4] *Id.* at 25.

[5] *Id.* at 59.

his father's retirement proceeds to buy a 2001 Nissan Patrol vehicle, and that he purchased the Lamarroza paintings at a low price because the artist was his wife's friend. He added that the two plasma television sets were gifts by his wife's uncle while the other two were purchased in 2000 and 2002. Judge Laron also said that his children's tuition fees were covered by educational plans and that their furniture were part of his wife's commission as a dealer in his relative's furniture shop. He explained that he had acquired his guns before joining the judiciary.

Judge Laron likewise denied asking money from Melissa for his personal expenses and maintained that he did not inflict any physical harm on her.

In her supplemental complaint-affidavit dated July 31, 2008, Melissa stated that she was introduced to Judge Laron by a fiscal *to assist in her cases pending before the Makati City courts. She claimed that Judge Laron promised to help her in these cases.* When she followed up her cases on the second week of November 2005, Judge Laron kissed her on the cheeks. On November 28, 2005, they had *their first sexual encounter*; subsequent trysts took place *inside his office* and at the *Silver Place Hotel* in Makati City.

Melissa added that Judge Laron often *slept in her house in Antipolo*, and came to *her condominium almost daily* from August 2007 to January 2008. She added that she was receiving a $2,000.00 monthly allowance from her husband, and that Judge Laron had asked money from her every month. She reiterated that he had physically hurt her and had threatened to reveal their relationship to her husband whenever she refused to give him money. Melissa also disclosed that she sold her house and lot in Taguig City and two vehicles to meet Judge Laron's demands for money.

In his comment to the supplemental complaint, Judge Laron explained that he was introduced to Melissa sometime in November 2005, and that the latter informed him about her *B.P. 22 cases pending before the Makati courts*. Judge Laron

denied that he had sexual liaisons with Melissa inside his chambers; he also denied having asked money from Melissa. He countered that the threats and harassments against him began when he started avoiding Melissa.

Wilfredo filed an adultery case against Melissa and Judge Laron before the City Prosecutor's Office of Makati, which was later dismissed for lack of probable cause. Wilfredo's petition for review was also dismissed by the Department of Justice for lack of reversible error and failure to comply with DOJ Circular No. 70.

The OCA's Report and Recommendation

The OCA recommended the consolidation of the two (2) complaints against Judge Laron. After evaluating the evidence presented, the OCA recommended that Judge Laron be found guilty of conduct unbecoming of a judge, and be fined ₱10,000.00. However, the OCA recommended the dismissal of the charge of unexplained wealth for being unsubstantiated.

The *Ponencia*'s Ruling

The *ponencia* found Judge Laron **guilty of immorality and serious misconduct**, and suspended him for three (3) years. It dismissed the charge of unexplained wealth due to insufficiency of evidence.

The *ponencia* stressed that immorality is a serious charge under Section 8, Rule 140 of the Rules of Court, and carries with it any of the following sanctions: *dismissal from the service*; suspension from office without salary and other benefits for more than three but not exceeding six months; or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Noting that *both Judge Laron and Melissa admitted their affair*, the *ponencia* thus concluded that Judge Laron "violated the trust reposed in his office and utterly failed to live up to the noble ideals and strict standards of morality required of the members of the judiciary"[6] when he carried on an affair with a married woman.

[6] *Ponencia*, p. 7.

The *ponencia* also found Judge Laron *guilty of gross misconduct for aiding Melissa "in a case pending before him and before another Judge."*[7] It found that Judge Laron entertained Melissa's request for assistance regarding her B.P. 22 cases *pending in his (Judge Laron's) and in another judge's sala.*

Citing Canon 2 of the Code of Judicial Conduct, the *ponencia* stressed that a judge shall refrain from influencing in any other manner the outcome of litigation or dispute pending before another court or administrative agency.

The *ponencia* also considered as gross misconduct Judge Laron's act of asking money from Melissa who was *a litigant in a case pending before his court.* It found that *Judge Laron continuously demanded money from Melissa that led to the sale of the houses and vehicles she and her husband owned.* The *ponencia* also believed Melissa's allegation that Judge Laron would physically hurt her whenever she would not give in to his request for money, as corroborated by Melissa's sons.

The *ponencia* imposed on Judge Laron the penalty of suspension for three (3) years since he "admitted his immorality and even prayed that he be forgiven x x x."[8] According to the *ponencia*, Judge Laron's admission of his weakness and lapses during the times he felt lonely and forlorn due to the prolonged absence of his wife can be considered as a mitigating circumstance. It added that Judge Laron appeared contrite and apologetic.

On the charge of unexplained wealth, the *ponencia* explained that Melissa failed to substantiate her claim that Judge Laron could not afford to buy the properties she mentioned in her complaint and to send his children to private schools. Judge Laron, on the other hand, clarified the sources of the money he used for the construction of his house and the purchase of his vehicle, television sets, and furniture. He also presented copies of his children's educational plans.

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[7] *Id.* at 10.

[8] *Id.* at 11.

The Dissent

I take the position that Judge Laron should be **dismissed from the service** since his transgressions make him unworthy to wear the judicial robe. He should likewise be **disbarred** as he does not deserve to remain in the legal profession any minute longer.

The Code of Judicial Conduct mandates that a judge should be the embodiment of competence, integrity, and independence. He should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety in all activities. His personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for he is, as he so aptly is perceived to be, the visible personification of law and justice.[9]

I. The Immorality Charge

Section 8, Rule 140 of the Rules of Court enumerates transgressions classified as serious, as follows:

SEC. 8. *Serious charges*. – Serious charges include:

1. Bribery, direct or indirect;
2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
3. Gross misconduct constituting violations of the Code of Judicial Conduct;
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;
6. Willful failure to pay a just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;

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[9] *Resngit-Marquez v. Judge Llamas, Jr.*, 434 Phil. 184, 203 (2002).

8. Immorality;

9. Gross ignorance of the law or procedure;

10. Partisan political activities; and

11. Alcoholism and/or vicious habits. (emphasis supplied)

Immoral conduct is behavior that is willful, flagrant, or shameless, and that shows a moral indifference to the opinion of good and respectable members of the community.[10] It refers not only to sexual matters but also to "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.[11]

In the present case, Judge Laron **did not deny that he, a married man, had an affair with Melissa – a married woman**; he even asked that he be forgiven by the Court Administrator and that no disciplinary action be taken against him.

In his comment to the May 2, 2008 complaint of Wilfredo, Judge Laron averred that:

x x x x x x` x x x

1. x x x At that time, I have been married for more than 17 years, and my wife was in the United States attending to her ailing father. Melissa was likewise then without a husband as Mr. Tuvillo was out at sea. She was aware of my marital status and that I have three sons. **We were both mature lonely people whose marriages had lessened sheen. She brought me a sense of soul connection, understanding, and great company**.

2. x x x After that, she frequently asked me to help her guide her four children, and **we developed an intimate personal attachment**

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[10] See *Elape v. Elape*, 574 Phil. 550, 553-554 (2008).

[11] *Judge Adlawan v. Capilitan*, 693 Phil. 351, 354 (2012).

to each other. She showered me with the affection I felt I needed, and I reciprocated. We however tried our best to be discreet and sensitive to the sensibilities of those around us.

3. x x x x x x x x x

4. Around the first week of January 2008, Imelda would later **hear of the affair**; she confronted me and I soon had to choose between the mother of my three children or Melissa, the woman who made me feel needed and cared for. x x x I **confessed to the affair**, and vowed that I would immediately mend my ways. x x x

5. Ironically, my troubles seem[ed] to start after I decided to mend my ways. x x x **I started paying dearly for my indiscretion** after I distanced myself from Melissa.

x x x x x x x x x

8. The **affair is a purely personal matter** and does not affect my professional responsibilities as a judge and as a lawyer.

WHEREFORE, in view of the foregoing, and trusting myself to your mercy, I have the courage to respectfully pray to the Honorable Court Administrator**, that I be forgiven**, and that the present administrative complaint be dismissed and that no disciplinary action be taken against me.[12] [emphasis supplied]

In his comment to Wilfredo's supplemental complaint affidavit, Judge Laron stated that:

x x x x x x x x x

23. Respondent did not wilfully violate the marital union as what was present then as **intimate personal attachment was emotional attachment and not sexual liaison**.[13]

Significantly, Melissa **admitted** in her May 14, 2008 letter to then Court Administrator Zenaida Elepaño that she was Judge Laron's mistress, thus:

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[12] *Rollo*, pp. 20-22.

[13] *Id.* at 69.

It's hard to admit, but I am the **mistress of Judge Henry Laron** for three years. I am one of whom he cheated and maltreated in different ways. x x x[14]

Melissa reiterated this admission in her affidavit submitted to support her letter-complaint to Court Administrator Elepaño, *viz*:

x x x x x x x x x

2. I have been maintaining an **illicit relations** with the said Judge above-named since November 2005 until March 2008. Our said relation is known among the personnel in the court's premises in Makati City;

3. To support my complaint are the various text messages and videos, ATM cards, bank checks which I am willing to present in the proper forum; x x x[15]

Melissa also revealed in her supplemental complaint affidavit that:

x x x x x x x x x

9. That after such unforgivable moments of **our indecent affair,** it was followed with several times, inside his office last December 3, 2005 (Sat.), December 15, 2005, and then continued December 2005 to October 2007, we **check[ed]-in** at Silver Place Hotel at the side of the new City Hall building at Makati City. Not only that sometimes he **slept** in our house in Antipolo, and almost daily in our condo at Pasong Tamo, Makati City, since August 2007 up to January 2008.

10. That due to our indecent affair, he capitalized and abused my innocence, by asking money monthly x x x.

x x x x x x x x x

12. Not only that, when [he] attended seminar at Baguio City last November 13-16, 2007, he asked me money again, I gave 700 US $ for his pocket money, all these caprices of Judge Henry Laron was uncontrollable because every time I refused to give him money, he

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[14] *Id*. at 6A-6B.

[15] *Id*. at 6D.

will hurt me, followed by threatening me to divulge **our relation to my husband**, afraid of losing my husband and my family, I was forced to follow all the caprices with closed eyes, co'z I was already there at the middle of darkness of agony;

x x x x x x x x x

14. That it was too late for me to realize the **disgraceful and immoral conduct of our unforgiven happiness, damage has been done, my relation to my husband and family were ruined by Judge Laron, thru his seduction move[d] and promises that make us both disgraceful and immoral one[s]** x x x.

No less than Melissa's children also acted as witnesses, stating in their joint affidavit that Judge Laron fetched them from school and Melissa starting in 2007, and *slept in their house twice or thrice a week*. Socorro Divina, the caretaker of the Tuvillo's house, likewise declared in her affidavit that Judge Laron fetched Melissa and her children and *slept at the house of the spouses Tuvillo during weekends*.

Clearly, Judge Laron showed his moral indifference to the sensitivities of Melissa's minor children and to the opinions of respectable members of the community by having a relationship with a married woman, *by violating the complainants' own marital abode*, and by attempting to rationalize this forbidden affair. The souring of his relationship with his wife, coupled with his feeling of loneliness, could never justify Judge Laron's marital indiscretion.

That Melissa allegedly told Judge Laron that her husband died of illness in China is of no moment. Even if true, Judge Laron is a married person: he had no business entering into an affair with a woman even if the latter was a widow.

Also, the claim that Melissa has been "widowed" is preposterous and cannot be reconciled with Judge Laron's having a share of Melissa's monthly bonanza from overseas. At any rate, it had been proven that Melissa's husband, Wilfredo, was alive. In fact, even after Judge Laron saw Wilfredo in the Philippines after the latter was hospitalized in China, Judge Laron did not put an end to this illicit relationship.

I find it unnecessary to dwell on the specific issue of whether Judge Laron and Melissa had engaged in a sexual relationship from all the evidence presented, including Judge Laron's; the only direct evidence missing would be the actual copulation between them.

Overwhelmingly and by direct admission of both Judge Laron and Melissa, they had slept together in Melissa's Antipolo house and in her Makati condo. It would certainly be very naive to believe that their relationship was platonic. Precisely, by his own admission, his relationship with Melissa started because his wife was away and he was lonely.

In appreciating all these, the Court should not forget that the mere act of having an affair with a married woman and, worse, acting as her husband (*i.e.,* sleeping in her house and condominium, fetching her and the children, etc.) already shows the depravity of Judge Laron's morals.

It is also immaterial that Melissa was the one who "sought" Judge Laron, or that she gave way to the forbidden relationship. It was incumbent upon Judge Laron – as a married person and a member of the Judiciary – to have distanced himself from any woman with whom he felt he could have an emotional attachment. Being the visual representation of justice, Judge Laron should have exercised restraint, and not have given in to whatever feelings he might have had for Melissa.

I cannot agree, too, with Judge Laron's pronouncement that his affair with Melissa was a purely personal matter that does not affect his professional responsibilities as a judge and as a lawyer. The faith and confidence of the people in the administration of justice cannot be maintained if a judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity and, more so, who obtusely continues to commit an affront to public decency.[16]

Under the norms of legal and judicial ethics that a judge adopts when he becomes a lawyer and a judge, the line between

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[16] See *Exec. Judge Naval v. Judge Panday*, 341 Phil. 657, 690 (1997).

his official and personal conduct blurs when it comes to morality. This is the price a judge has to pay for occupying an exalted position in the judiciary; he cannot freely venture outside this circumscribed circle of morality and expect to retain his exalted position. No position is more demanding on an individual's moral righteousness and uprightness than a seat on the Bench. Thus, a judge ought to live up to the strictest standards of honesty, integrity, and uprightness. To be sure, having and maintaining a mistress are not acts one would expect of a judge who is expected to possess the highest standard of morality and decency.[17]

Our ruling in *De Villa v. Judge Reyes*[18] on this point is instructive:

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of [even] a whiff of impropriety not only with respect to his performance of his official duties, but also to his behaviour outside his sala and as a private individual. x x x [t] here is no dichotomy of morality: a public official, particularly a member of the judiciary is also judged by his private morals.

Simply put, a judge's official life cannot be detached or separated from his individual persona. As the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by an ordinary citizen. Stricter still, the personal behavior of a judge, both in the performance of official duties and in private life, should be above suspicion.[19]

II. Gross Misconduct

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection

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[17] *Supra* note 9, at 204, citing *Re: Complaint of Mrs. Rotilla A. Marcos and her children against Judge Ferdinand J. Marcos, RTC, Br. 20, Cebu City*, A.M. No. 97-2-53-RTC, July 6, 2001, p. 23.

[18] A.M. No. RTJ-05-1925, June 26, 2006, 525 SCRA 485, 511.

[19] See *Tormis v. Judge Paredes*, A.M. No. RTJ-13-2366, February 4, 2015.

with one's performance of official functions and duties. For grave or gross misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law or by a persistent disregard of well-known rules. The misconduct must imply wrongful intention and not a mere error of judgment.[20]

In the present case, *Melissa informed Judge Laron that she had several pending B.P. 22 cases in different courts in Makati City, including the sala where Judge Laron was a pairing judge.* Instead of distancing himself from Melissa, Judge Laron entertained her request for assistance, meeting her frequently from 2005 to 2007.

Judge Laron's frequent fraternizing with a litigant who has a pending case in a court where he is a pairing judge is **highly condemnable**. We note in this regard that Judge Laron (as pairing judge of Branch 66) issued an order on April 10, 2006, dismissing one of the cases filed against Melissa (Civil Case No. 86602) on joint motion of the parties. Whether the dismissal was proper or not is beside the point; Judge Laron's acquaintance with Melissa put the order of dismissal in a suspicious light and totally against his ethics as a judge.

Judge Laron's act, too, of promising to aid Melissa in her other cases pending before other judges – even if he did not actually broker for the favorable decision in these cases – is reprehensible and cannot but have a corrosive effect on people's respect for the law and the courts. The promise gave the impression that judges could be used for influence peddling or intercession.

Canon 2 of the Code of Judicial Conduct mandates that "a judge should avoid impropriety and the appearance of impropriety in all activities." Rule 2.01 and Rule 2.04 of the Code provide as follows:

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[20] See *Myla C. Castro, joined by her husband, Tagumpay Castro, and Luciana Vda. De Rojales, complainant, v. Judge Wilfredo De Joya Mayor, respondent*, A.M. No. RTJ-11-2268, *en banc* unsigned resolution dated November 25, 2014.

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

x x x x x x x x x

Rule 2.04 - A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency."

The New Code of Judicial Conduct[21] essentially reiterated these rules, as follows:

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SEC.1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

x x x x x x x x x

SEC. 8. Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

CANON 1
INDEPENDENCE

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

x x x x x x x x x

SEC. 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

The Canons of Judicial Ethics further provide that [a] judge's official conduct should be free from the appearance of

[21] Took effect on June 1, 2004.

impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties but also his everyday life, should be beyond reproach.

These canons require judges to avoid **not only impropriety, but even the appearance of impropriety in all their conduct, whether in their public or private life**. The proscription includes a judge's meddling with judicial processes in courts other than his own and acting in a manner that would arouse suspicion that he is meddling with such court processes.[22]

Clearly, Judge Laron violated Canon 2 of the Code of Judicial Conduct. The *ponencia* itself affirmed this when it held that *"Judge Laron apparently entertained" Melissa's request for assistance, and "aided her in a case pending before him and before another judge."* We cannot tolerate this appalling conduct as it erodes public confidence in the judiciary.

It has also been claimed that Judge Laron had been constantly requesting money from Melissa. As a result, the latter was forced to sell some of her houses and lots. I cannot support this claim for lack of supporting evidence.

Nonetheless, it has been shown that Melissa submitted a Bank of the Philippine Islands (BPI) deposit slip for $200 deposited to the account of "*Henry E. Laron*." Whether this money was voluntarily given by Melissa on account of their illicit relationship or requested by Judge Laron himself, under the threat of blackmail if Melissa would refuse to give in to Judge Laron's request, is of no moment: Judge Laron cannot accept any money from a party-litigant.

Under Section 8 of A.M. No. 01-8-10-SC amending Rule 140 of the Rules of Court on the Discipline of Justices and Judges, which took effect on October 1, 2001, gross misconduct and immorality are classified as serious charges, each of which carry with it a penalty of either (a) **dismissal from the service**, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any

[22] See *Punzalan v. Judge Plata*, 423 Phil. 819, 831 (2001).

public office, including government-owned or -controlled corporations; provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[23]

Judge Laron's behavior demonstrates his unfitness to remain in office and to continue to discharge the functions of a judge. He has tainted the image of the judiciary whose reputation and integrity he must keep unsullied at all times.[24] Taking into account the Court's policy to purge the judicial ranks of those unworthy to don the judicial robe, I find no reason for the Court to withhold the imposition of the severest form of disciplinary action for Judge Laron's irresponsible and shameless conduct. This penalty, after all, is what the rules and jurisprudence command.

No position demands greater moral righteousness and uprightness from its occupant than does the judicial office. Judges in particular must be individuals of competence, honesty, and probity, charged as they are with safeguarding the integrity of the court and its proceedings. He should behave at all times so as to promote public confidence in the integrity and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety in all his activities. His personal behaviour outside the court, and not only while in the performance of his official duties, must be beyond reproach, for he is perceived to be the personification of law and justice. Thus, any demeaning act of a judge degrades the institution he represents.[25]

I disagree in particular with the *ponencia*'s ruling that Judge Laron's "admission of his weakness and lapses during the times

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[23] *Rivera v. Blancaflor*, A.M. No. RTJ-11-2290, November 18, 2014, 740 SCRA 528, 554.

[24] See *Calilung v. Judge Suriaga*, 393 Phil. 739, 765 (2000).

[25] See *Anonymous v. Achas*, A.M. No. MTJ-11-1801, February 27, 2013, 692 SCRA 18, 25.

he felt lonely and forlorn during the prolonged absence of his wife can be considered as a mitigating circumstance." This is the kind of lax ruling that cannot be allowed to stand in the case book as it can, down the road, only lead to the weakening of the moral fiber of the judiciary.

I also find misplaced the *ponencia*'s reliance on the case of *Judge Caguioa v. Flora*[26] to justify the three-year suspension it imposed on Judge Laron.

First, the respondent in *Flora* was not a judge, but a sheriff. *Second*, the acts committed by the respondent sheriff in *Flora* were different from those committed by Judge Laron. The respondent sheriff in *Flora* was intoxicated when he shouted *"kalbo"* at Judge Caguioa during trial; Judge Laron, in the present case, was a married man who had an affair with a married woman with a pending case before his court, and who accommodated the woman's request for help in cases pending before his sala and the sala of other judges.

Thus, the difference in the factual situations between *Judge Caguioa v. Flora* and Judge Laron's case renders inapplicable the use of the *Caguioa* ruling. To be sure, Judge Laron's remorsefulness should not be enough to steer the Court's decision towards leniency. With transgressions as severe as Judge Laron's, the Court itself would be brought to disrepute if it simply imposes a slap on the wrist of Judge Laron. As we explained in *Concerned Employees of RTC of Dagupan City v. Judge Fallora-Aliposa*:[27]

> [A] member of the Judiciary is commanded by law to exhibit the highest degree of moral certitude and is bound by the highest standards of honesty and integrity. Life, liberty, and property are defined and molded as judges perform their sworn tasks to uphold the law and to administer justice. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. This court has been watchful of dishonest judges and will not withhold penalty when called for to uphold the people's faith in the Judiciary.

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[26] 412 Phil. 426 (2001).

[27] 383 Phil. 168, 191 (2000).

III. Charge of unexplained wealth

As the OCA did, I find that Melissa failed to substantiate her allegations that Judge Laron was living beyond his means. Other than her bare claims on this matter, Melissa failed to present any other evidence to corroborate her charge of unexplained wealth.

Judge Laron, on the other hand, submitted the following pieces of evidence to refute Melissa's allegations: deed of sale of motor vehicle showing that what had been sold to him was a 2001 and not a 2005 Nissan Patrol model; certificate of registration showing that the vehicle's ownership was transferred under his name, and not under the name of his father; two Prudential Life Education Plans dated May and July 1996, respectively; a certification from Mrs. Ano Tan that three paintings were sold to the spouses Laron at special discounted prices; and a notarized bill of materials and cost estimates showing the estimated construction costs of their house.

Disbarment

A.M. No. 02-9-02-SC (which took effect on October 1, 2002) provides that an administrative case against a judge of a regular court based on grounds which are also grounds for disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. It also states that **judgment in both respects may be incorporated in one decision or resolution**.

Section 27, Rule 138 of the Rules of Court, on the other hand, provides that a lawyer may be removed or suspended from the practice of law, *among others*, for gross misconduct and grossly immoral conduct:

> Sec. 27. Attorneys removed or suspended by Supreme Court on what grounds. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other **gross misconduct** in such office, **grossly immoral conduct**, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience

of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In *Office of the Court Administrator v. Judge Indar*,[28] the Court automatically disbarred the respondent judge pursuant to the provisions of A.M. No. 02-9-02-SC, adopting the reasoning held in *Samson v. Caballero* that:

> Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as member of the Bar." The rule does not make it mandatory, before respondent may be held liable as a member of the bar, that respondent be required to comment on and show cause why he should not be disciplinarily sanctioned as a lawyer separately from the order for him to comment on why he should not be held administratively liable as a member of the bench. In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of "automatic conversion" of administrative cases against justices and judges to disciplinary proceedings against them as lawyers. This will also serve the purpose of A.M. No. 02-9-02-SC to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench also as a disciplinary proceeding against him as a lawyer by mere operation of the rule. Thus, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals or a judge of a first- or second-level court.
>
> It cannot be denied that respondent's dishonesty did not only affect the image of the judiciary, it also put his moral character in serious doubt and rendered him unfit to continue in the practice of law. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law. If the practice

[28] 685 Phil. 272, 292-293(2012), citing *Samson v. Caballero*, A.M. No. RTJ-08-2138, August 5, 2009, 595 SCRA 423, 435-436.

of law is to remain an honorable profession and attain its basic ideals, those counted within its ranks should not only master its tenets and principles but should also accord continuing fidelity to them. **The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning**. [emphasis in the original]

The Court had a similar ruling in the fairly recent case of *Office of the Court Administrator v. Presiding Judge Joseph Cedrick O. Ruiz*[29] where we dismissed the erring judge from the service and at the same time disbarred him.

Judge Laron is a disgrace to both the bar and the bench. Considering that Judge Laron is guilty of immorality and gross misconduct, I maintain that – aside from being **dismissed from the service** – he should likewise be **disbarred** and his name stricken out from the roll of attorneys.

A Heinous Administrative Offense

A point that I have reserved for the last in order not to be missed, is the heinous character of the administrative offenses committed considering the parties' respective situations. This characterization entitles this case to a category of its own – a heinous administrative offense.

This case involves a member of the Judiciary found liable for charges related to the discharge of the functions of his office. He used and abused the functions and prerogatives of his office to the prejudice of the offended parties and of the institution he serves, the Judiciary. He breached the trust that the Constitution, the laws, and the Judiciary have conferred on him as a public official, a lawyer, and a judge.

On the complainant's end, one of the offended parties is a female litigant with a case pending before the respondent Judge, which gave the Judge the excuse and occasion to commit the offenses charged. The other offended party is the litigant's cuckolded spouse, an Overseas Filipino Worker (*OFW*) whose

[29] A.M. No. RTJ-13-2316, February 2, 2016.

rights to the sanctity of his marriage, the unity of his home, and his and her children's peace of mind were violated by the respondent judge.

The members of the Court may not be fully aware of the nature of the offenses committed *from the OFW perspective*: one of the worst news that an OFW could receive while overseas would be the infidelity of his or her spouse. This has driven many an OFW to desperation and to commit wrongful or shameful acts they would not otherwise have done in their sane moments. This was the news that the complaining husband rudely received, together with the bitter confirmation that the salary he assiduously remitted from overseas had dissipated and partly spent on the offending judge.

These painful and unpleasant circumstances and the heinous characterization of the offenses would be equivalent to rubbing salt and chili on a raw wound or burn injury should the Judiciary, in taking care of its own, give the respondent judge in this case a mere slap on the wrist by penalizing him with less than the capital penalties required for the offenses committed. I pray this kind of judicial action will not take place. Such action, if taken by this Court, will immeasurably damage this Court's integrity and reputation, and would negate everything positive this Court has recently achieved in the field of legal and judicial ethics.

With the termination of the Court's action on this administrative case, there should no longer be any stumbling block to the referral of the Court's ruling to the Honorable Ombudsman for its appropriate action.

D I S S E N T

BERSAMIN, *J.*:

The Majority today vote to reject the charge of unexplained wealth brought against respondent Judge Henry E. Laron, Presiding Judge of Branch 65, Metropolitan Trial Court, in Makati City, but recommends his immediate dismissal from the Judiciary for immorality and gross misconduct.

I respectfully **DISSENT** as to the penalty of dismissal, which I consider to be too harsh, and as to the finding of gross misconduct.

The Case

Before us are the consolidated administrative cases filed against the respondent initiated by Wilfredo Tuvillo, charging immoral conduct, and by Melissa Tuvillo, charging unexplained wealth and immorality.

Salient Facts of the Case

In his *Complaint Affidavit* filed on June 3, 2008,[1] complainant Wilfredo Tuvillo stated that he had been a seafarer for more than 20 years; that in 2005, a case was filed against his wife, Melissa Tuvillo, in the Makati MeTC; that he came to know respondent only because his wife had sought the latter's help for the expeditious resolution of her cases; that the respondent abused his wife's innocence and trust by extorting money from her to the point that their savings and properties were dissipated; that in spite of all the money that the respondent received, the cases of his wife were not settled; and that the respondent also transgressed the sanctity of their marriage and their family.

In her *Complaint Affidavits* dated May 14, 2008[2] and July 31, 2008,[3] complainant Melissa Tuvillo alleged that the respondent amassed unexplained wealth in the form of a fully-furnished house and lot worth at an estimated cost of ₱9,000,000.00 in Filinvest II, Batasan Hills, Quezon City,[4] and a Nissan Patrol vehicle; that the respondent sent his children to exclusive private schools;[5] that he owned several expensive pieces of furniture and paintings;[6] that he solicited and got money

[1] *Rollo,* pp. 24-27.

[2] *Id.* at 11-14.

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

[4] *Id.* at 11.

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

[6] *Id.* at 11.

from her for his cellular phone loads, gasoline expenses and monthly groceries;[7] that her husband was a seafarer, by reason of which she regularly received a monthly remittance of US$2,000.00 in addition to her own income;[8] that in the third week of October 2005, a certain Prosecutor Giorsioso introduced her to the respondent in relation to her criminal cases pending in the Makati MeTC;[9] that such first meeting was succeeded by other meetings, one of which was in the second week of November 2005, when he kissed her on the cheek;[10] that such kissing later on became a regular habit every time she visited him;[11] that on November 28, 2005, their first sexual congress occurred in his office; that several more sexual congresses occurred between them either in his office or at the Silver Place Hotel near the Makati City Hall;[12] that he also sometimes slept in her Antipolo house and in her condominium unit in Makati City;[13] that he asked money from her every month and whenever he needed it; that she gave him US$1,000.00 of the US$2,000 monthly remittances from her husband;[14] that the respondent also borrowed money from her, including $800.00 to pay his executive check-up at St. Luke's Hospital, ₱20,000.00 to defray his birthday treat for his office staff, ₱25,000.00 for his birthday celebration at Firewood, Mandaluyong City, $2,000.00 as pocket money when he went on a study grant to Canada, and $700.00 when he went on a study grant to Baguio City;[15] that he hurt her physically and threatened to divulge their relationship to her husband if she refused to give in to his demands for money;

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[7] *Id*. at 18.

[8] *Id*. at 36.

[9] *Id*.

[10] *Id*.

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

[12] *Id*. at 37.

[13] *Id*.

[14] *Id*.

[15] *Id*.

that only two of her four cases were ultimately settled; and that she lost her husband as well as the respect of her family and friends because of their illicit affair.

In his *Comment*, the respondent admitted having developed an "intimate personal attachment to each other" with Melissa,[16] but denied her other allegations. Anent the charge of unexplained wealth, he asserted that he had purchased the new house in Quezon City partly from the proceeds of the sale of his own townhouse and from the proceeds of his loan from the Land Bank;[17] that the pieces of furniture in his residence were earned by his wife who was a dealer of wooden furniture; that he had acquired the Nissan Patrol second-hand with money borrowed from his father;[18] and that he sent his children to school with the use of the educational plans he had bought for them.[19]

On the charge of immorality and gross misconduct, the respondent averred that he did not promise to help her with her cases; that he did not have sexual congress with her in his office; that he did not demand or receive money from her,[20] having paid his executive check-up at the St. Luke's Hospital with his own funds;[21] and that he did not oblige her to pay for the office dinner on the occasion of his birthday.

The respondent denied that the Tuvillos' real properties had been sold because of him. He insisted that she had told him that her husband had died in China.[22] He contended that Wilfredo could not have written the letter dated August 8, 2008 to the Judicial and Bar Council because he was not in the country at that time;[23]

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[16] *Id*.

[17] *Id*. at 20.

[18] *Id*. at 22.

[19] *Id*. at 23.

[20] *Id*.

[21] *Id*. at 24.

[22] *Id*.

[23] *Id*. at 62.

that it was not Wilfredo who had signed the complaint; that she was conducting a demolition job against him;[24] that he had reason to believe that she was responsible for the same because he had received text messages from anonymous senders warning him of such demolition job against him; that the threats and harassment against him started after he had decided to keep distance between him and Melissa; that even their telephone line at home was tapped;[25] and that she had gotten hold of his contacts list and had then sent damaging text messages to persons found in the list.

Recommendation of the Court Administrator

After his own investigation, Court Administrator Jose P. Perez, now an illustrious Member of the Court, recommended that the respondent be held guilty only of conduct unbecoming of a judge and fined in the amount of ₱10,000.00; and that the consolidated charges of immorality and unexplained wealth be dismissed for being unsubstantiated.

Recommendations

I agree that the charge of unexplained wealth was successfully disputed by the respondent; hence, the charge is being properly dismissed.

I agree, too, that there was adequate basis for concluding that the respondent and Melissa had a romantic affair that constituted immorality that is sanctionable under our canons of judicial conduct, but I am constrained to differ from the Majority on the appropriate penalty to be meted on the respondent. He should not be dismissed from the service, but should only be condignly punished with suspension from the service without pay, or fined.

I respectfully differ on the finding of gross misconduct against him. I humbly submit that this charge was unfounded, and,

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[24] *Id*.

[25] *Id*. at 64.

therefore, I urge that the Court dismiss the charge for insufficiency of evidence.

***Re*: Judge Laron's Alleged Gross Misconduct**

The charge of gross misconduct against the respondent was not competently established.

First of all, Melissa claimed that she had come to meet the respondent for the first time in November 2005 with the help of the public prosecutor because she was looking for someone who could help her with her pending cases in the Makati Metropolitan Trial Court. The respondent strongly denied her claim, however, averring that he did not know of the various cases pending against her when she was first introduced to him, and insisting that he came to know of such cases only after a month following the first meeting. I feel that we should be more circumspect in accepting her claim. To start with, she did not even present the public prosecutor who had arranged that first meeting between her and the respondent to corroborate her version. Moreover, none of her cases was assigned to his court, and he acted in two of such cases only as a pairing judge. Also, the dismissals of most of her pending cases had been upon the joint instance of the parties (*i.e.*, Melissa and the Prosecution), debunking her statement that he had intervened with his co-judges in her behalf.

Secondly, Melissa charged that the respondent had physically maltreated her whenever she could not give him the money he demanded; and that she had lost her family's possessions just to satisfy the respondent's immodest demands, to the point of claiming that she had given to him half of her monthly remittance (*i.e.*, $1,000.00) out of fear that he would disclose their illicit affair to her husband. But her charges – which were not even supported by evidence other than her self-serving allegations – were highly improbable for being inconsistent with human nature and daily experience. For one, it was highly unnatural for her *to be intimidated* into giving to him so much if she had her young children and a household to take care of on a daily basis. There was certainly something amiss with her if she had

given him half of her $2,000.00 monthly remittance with such regularity just to indulge the respondent. As to his supposed threats of exposing their romantic relationship to her husband, this seems illogical and highly unlikely in the face of the reality that he had much more to lose from making good such threats. Verily, while she would lose her husband and the affection of her family and relatives, he would lose not only the affection of his own wife and their family but also his professional life and his budding career in the Judiciary.

And, thirdly, Melissa's unilateral portrayal of the respondent as a poor leech-like opportunist and a violent person should not be accepted without question. We should look for her motivations in suddenly denouncing him before the Court for supposedly committing so many grave sins. In my view, she was either a spurned woman who could not accept his rejection of her, or someone looking for a plausible scapegoat on whom to lay the blame for her unexplainable loss of the family possessions and wealth by her own profligacy and recklessness. Either of these scenarios seems to make more sense than her unproved charges of gross misconduct considering that the two administrative complaints subject of these consolidated cases were simultaneously filed in the middle of 2008 right at the time that her husband had returned to the country and could have discovered their depleted resources and rightly demanded that she should account for them.

Judge Laron's Explanations Should Be Carefully Studied And Considered

The appreciation of facts in these cases should not be solely based on the complainants' affidavits and complaints. The charges of gross misconduct should be appreciated in the context of the *probable* ill motives of Wilfredo and Melissa for bringing their charges. We should be cautious before condemning the respondent to suffer any penalty.

The complainants' convoluted and improbable tale of woe begs us to listen to the respondent's side of the story. *Audi*

alteram partem.[26] This is what we should now do in this adjudication.

For the direct appreciation of every Member of the Court, therefore, I am quoting the succinct explanations tendered by the respondent in his *Comment*,[27] and let us reflect on his explanations to determine whether he uttered the truth, or prevaricated; and whether or not it was Melissa who was duplicitous in her attempt to cover the truth with her concocted tale against him, to wit:

1. The charges against me by Ms. Tuvillo are full of allegations which are distortions of the truth. This is not the first charge against me by this person. It speaks of her propensity to present lies in order to put me to shame, public ridicule or contempt, and as part of the demolition job against me.

2. She was introduced to me in November 2005. In December 2005, she informed me about her problems about a vehicular accident and the cases against her for bouncing checks. I never told nor promised her that I can help regarding her bouncing checks cases.

3. The allegations in no. 7 of the complaint affidavit are not correct. She could have mentioned again the cases against her but I never promised any help. We merely shook hands after the conversation.

4. There is absolutely no truth to the allegations in no. 8 of the complaint affidavit. November 28, 2005 is a Monday. For that Monday, I conducted hearings in civil cases in the morning in my court and criminal cases in the afternoon in the pairing court, Branch 66. From July 2005 to May 2006, I presided over my pairing court, holding hearings on Monday afternoon and Wednesday morning, aside from resolving incidents/matters, in addition to my duties in my Branch. **In the court at the old building (Chateau), at all times, the door of the chambers is always open, not only because the lock of the same was destroyed, but also it is my habit not to close such door when I am around. Also, there are only two aircon units in our office, one in the courtroom and one in the chambers. The door**

[26] Translated: *The other side should be heard*.

[27] *Rollo,* pp. 58-65.

in the chambers to the staff room is always open so that staff could also have cool air in their room. The refrigerator and the coffee maker of the branch are inside the chambers that the staff go in and out freely when they need something. Further, on top of the table in the chambers is a thin glass. The affidavits of Lylanie Cayetano, Nelia Nanat, and joint affidavit of Amabelle Feraren and Nelly Montealegre, are attached hereto as Annexes "A", "B" and "C", respectively.

5. Same with the allegations in No. 8, what were stated in no. 9 are pure lies. **In the Chateau, what divides the chamber and the staff room is a mere plywood and an open door. As earlier stated, the door between the chambers and the staff room is always open. Thus, the allegation about December 15, 2005, a Thursday, and her account of "several times" is impossible. To her allegation about December 3, 2005, I never went to the office on that day; as I only report on Saturdays if the branch is on duty. Even when we transferred to the new City Hall building, the door of the chambers is always open when I am around, even if I have visitors.** Her allegation about Silver Place Hotel is another lie. There is also no truth that sometimes I sleep in her Antipolo house and almost daily in the Pasong Tamo condo; I always sleep with my wife in our house (see affidavit of Imelda B. Laron attached hereto as Annex "D"). Ms. Tuvillo's narrations are but a product of her imagination, her propensity to concoct lies.

6. The allegations in no. 10 of the complaint affidavit are absolutely lies. I never asked nor obliged her to give me money, $1,000 monthly from November 2005 to February 2008 as she stated. I never received such amount from her. She claimed to have a monthly allotment of $2,000.00, it is out of logic to throw away half of it and take only half for her family.

To reiterate my comment in OCA IPI No. 08-2017-MTJ, **I was the one who paid for my executive check-up at St. Lukes Hospital, I did not borrow from her. The dinner for my birthday in July 3, 2006 was just for my staff in Branch 65 and the pairing court (Branch 66) and around ten guests; she showed up but I did not ask her for money for my birthday and I did not obliged** (sic) **her to pay for the bills.**

7. Another lie is her allegations in no. 11 of the affidavit complaint that I asked for $2,000.00 and $700.00 for the Canada trip and Baguio

seminar, respectively. As I have stated in my Comment in OCA IPI No. 08-1017-MTJ, I did not ask for, and she did not give me, money in such occasions. As also stated in the same Comment, there is no truth to her claim that I hurt her and threatened to blackmail her when she refused to give money.

8. **I never interceded in the cases against her. The case she mentioned which I resolved was the one in my pairing court, Branch 66, which was dismissed upon motion filed by the parties.**

9. Her description about the incident in the presence of Atty. Laguilles is inaccurate. **I requested Atty. Laguilles not to go out of the room so he could hear what she might say, as she and/or her cohorts had previously scattered information which maligned me. I did not shout at her, she was the one who boasted that she will file cases against me. I did not call her tarantado, she was the one who shouted such word to me. She was the one who acted to put up a scandalous scene in my office in the presence of my staff.** The affidavit of Ma. Anicia Razon and the joint affidavit of Nelly Montealegre, Amabelle Feraren, Liezl Mandin, Arlen Quirante, Lylanie Cayetano, Nelia Nanat and Michelle Grace Malonzo are attached hereto as Annexes "E" and "F", respectively.

10. To the allegation that she lost her husband, here is a text message passed to me on August 13, 2008 from her number (+639174794034):

> Sweet na cut line tatawag ka pa ba? Tawag ka lng para malibang ang pananakit ng sikmura ko..Ingat at wag mambababae.kung d mapigilan INGAT lng mabuti. Alam mo kung anong ibig kung sabihn. Nakausap kuna may ari ng SCANMAR.2loy ang movilization by Nov.My 15% ncrease sa boung sahod mo at 50% bstat pa absorb or maiwan ka dyan. Madami bnefit.na inilatag sakin..Wag kana muna Umuwi.Pagbigyan natn Scanmar kaht another 3 mnths.Xtension lang. Then lipat kana ky captain Paulin.Mas matsas pa dn offer sau dun! Biro mo 7,500$ sa scanmar pwede na dn kc madami bnefit at malapit pa ofic d2 sa scol mga bata.Andyan na pala tao na nag join.Kunin u agad ung pnadala ko,ma22wa ka sa.San Mateo yan. Tmbrland retirement lot mo.dream mo d ba mgkaron farm lot, yan na un! D ba nakwn2

> ko sau 2mama ng lottery c james.Eh ang bakla ask nya ako ano gus2 ko ko balato, e ngbro lng naman ako Yun! Tino2o nga.. Sana kuna ikwn2 lahat. Wag kana muna Umuwi ako na lang ulit pupunta sau..lagi ko cnasabi sau para sa mga anak mo at sau gnagawa ko kaya ayaw na naman kita pauwiin..Ung 2ngkol sa pagka kapitan mo wag kana dn mag alala my order na na dina kylangan mag take ng Exam mga chfmate. Sa Nov. Din ang effctvty and kylangan lang Training 80,Th lng ang bbyaran sa lahat. Pero inilalaban dn na Ma eliminate ung MLC nay an!. Cge na Mag ingat ka at Wag mang agrabyado ng BABAE at wak ka mag bago, at asahan mo lagi ako and2 maggng ka2wang at mag aalaga sau.Bastat Magpaka bait ka.D ba motto ko yun.D baling ako ang Salbahe was lng ikaw,at d baling ako ang Mag Sinungaling was lng din ikaw.Kc lahat ng gnagawa my Dahilan.Hay Buhay nga naman!@

("sweet" refers to her husband.) Is this the message to a husband she claimed she lost? Definitely not.

If ever she still has unsettled cases, it was her sole decision and style not to settle the same. I never promised her anything about her cases. It appears that the cases against her for violation of BP 22 in MeTC Makati City are: Crim. Case Nos. 341616-17 (two counts for ₱20,000.00 each filed on June 27, 2005), Crim. Case Nos. 344609-10 (two counts for ₱19,377.00 each, filed on October 2005), and Crim. Case No. 354008-09 (two counts of ₱24,620.00, filed on October 2007). Is it not logical to just settle the cases rather than to always give money to someone so this person will settle the cases? Is it not ludicrous for her to go through all the trouble and risk of giving money always to me when she could have directly dealt with her cases by settling the sad amounts?

Much has to be known why she wants the cases for BP 22 to remain pending, even if she can and is able to settle the cases.

If ever she sold her house and lot in Taguig City and the two vehicles she mentioned, it was her own decision to do so, but not because I extorted from her. As I have stated in par. 7 of my comment in OCA-IPI No. 08-2017-MTJ dated 21 July 2008, assuming that she sold her property located at Taguig City, she did that for reasons only known to her, but not because I was asking for her money.

11. As I have stated before, at about the time of the elections in May 2007, she told me that her husband Wilfredo died while he and

she was in China. (sic) I was surprised upon receipt of the complaint in OCA IPI No. 08-2011-MTJ "signed" by Wilfredo Tuvillo.

In a text message to me on March 19, 2008 from her number (+639174794034), it was stated:

> **"Namatay nanay W.Kanina 1am.'Nagulat lahat. Biglaan ulit wala pa 1year cya naman."**

(She was referring to the death of the mother of Wilfredo Tuvillo [W] which happened less than a year from the "death of Wilfredo").

A check with the Bureau of Immigration record of Wilfredo shows that he arrived in the Philippines on May 17, 2007 (immediately after the elections) and left the country on June 9 of the same year.

For the year 2008, the record of Wilfredo shows that he arrived on March 24, 2008 and left the country on May 17, 2008. She coincided the presence of Wilfredo in the Philippines with the filing of the complaint verified by "Wilfredo" on May 15, 2008. The truth is it was not Wilfredo Tuvillo who signed such complaint.

In a letter allegedly written and sent by "Wilfredo Tuvillo" to the Judicial and Bar Council, dated '8th day of August 2008", a time when he was not in the Philippines, "he" made allegations against my application with the Regional Trial Court of Mandaluyong City. Such letter was submitted to the JBC after my name was read by her and/or her cohorts as included in the publication for applicants. **The immigration record taken on August 28, 2008 shows that he was in the country on March 24, to May 17, 2008 only.**

A text message from +639174916604 passed to me on August 10, 2008 states:

> **"Bunso is the Jack of all trades of our GROUP.Gaya ng gnagawa sau ngaun.Iisa lng ang kumikilos si bunso lng.wala ng iba. Tip ko yan sau Panyero.Walang WILFREDO"**

("Bunso" refers to Melissa Tuvillo, that is her name in what she calls her group.)

The immigration records of Wilfredo Tuvillo for the years 2007 and 2008 and the letter allegedly signed by "Mr. Tuvillo" on August 8, 2008 are attached hereto as Annexes "G", "H" and "I", respectively.

12. In her desire to distort the truth, she stated that I took advantage of her so that I could gain profit. I did not do any damage to her as she always claimed. In presenting her "facts", she has always casted aspersions on my person, these could be seen upon a closer look at her statements submitted to this Office. In an attempt to discredit me, she resorted to fabrications and prevarication. Here is a text message to me from her number (+639065594387) on July 18, 2008:

> "Kylangan lng mapaniwala ko cla na wala ako pera.walang wala..Yan palagi sabhn nyo.Yun and cnasbi nya daw palagi MADRAMA ako.Pwes ggawin ko nga.Palibhasa gawain ny"

A text message to me from her number (+639174794034) on August 17, 2008 reads:

> "Bntayan mo lang ang mga icnasagot at cnasabi.Wag lng malaman na iisa ang kumikilos.Kylangan lagi ipaalam so lahat magtatanong na agrbyado ung"

On October 17, 2008, (days after I received the Complaint Affidavit dated 31 July 2008 and filed a motion for extension to file comment), I received a text message from +639158228039 stating:

"Wag muna sagutin yan! Para d na lumala ng lumala."

These messages show that a demolition job has been set up against me. Her allegations were presented to portray that she is grieving and down, as can be seen in the first two text messages, so as to merit sympathy. Then in the third text message, she and/or her cohorts do not want me to put a defense and coupled it with a threat.

13. In the year 2007, she even told me about at least three incidents in that year wherein she was a victim of hold-up. She stated that these happened in the corner of J.P. Rizal and F. Zobel Streets in Makati City, inside the ladies comfort room at the ground floor of the Makati City Hall Building, and in Quezon City. I consider such incidents involving a single person and which "happened" in a year to be strange; it is also odd that one incident happened inside the City Hall of Makati.

Worth to note is an e-mail message about the names she has been using, to wit: *Mishelle Jimenez, Catherin Lopez, Socorro Rodrigo, Rowena Divina, Mishelle Mijares, Liza Geneta, Mary Borchers, etc.*

14. **Threats and harassment against me started when I distanced myself from her, these continue up to the present, in text messages. I received text messages insisting that I must talk to her I realized that she wants me to be associated with her, there is no reason for me to submit to what she wants.**

Even the telephone line in my residence was tapped; I received text messages from her cellphone number the contents/ subject of which pertain to conversations I previously had with certain persons.

The acts of tapping our telephone line, getting into our Contacts list and sending messages to persons listed therein, distributing mails/e-mail to certain persons, and alleging fabrications to put me to shame, public ridicule and content, and the lies from her, will show that there is ill-motive on the part of Melissa Tuvillo and/or her cohorts and predeterminate plan to put me in jeopardy. (Emphasis supplied)

As the above-quoted portions of his *Comment* shows, the respondent thoroughly and credibly bebunked the many attributions to him of misdemeanor and misconduct, like committing physical abuse and extortion against Melissa, and aiding her or intervening in her behalf with his co-judges in the Makati MeTC. His detailed explanations reflected candor and sincerity, indicating the absence of prevarication and duplicity.

I do not wonder, therefore, that then Court Administrator Perez submitted the following well-studied evaluation and rational conclusions on the charge of gross misconduct in his report and recommendation dated December 22, 2009,[28] to wit:

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[28] *Id.* at 108-118.

EVALUATION: x x x

x x x x x x x x x

Well-settled is the rule that evidence to be believed must not only proceed from the mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. *(People vs. Ricamora, G.R. No. 168628 [December 6, 2006]); (People vs. Garin, G.R. No. 139069 [June 17, 2004])*.

We have no test of truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.

x x x x x x x x x

As to complainant Melissa's claim that respondent took advantage of his position, frequently demanding and receiving pecuniary gain from complaint, we also find these claims unworthy of belief. Under Section 3 (d) of Rule 131 of the Revised Rules on Evidence, it is presumed that every person takes ordinary care of his concerns. It is hard to believe that a businesswoman and a general manager of a local employment agency can be so "abused of her innocence" that she would unhesitantly give away half of her monthly allotment of US$2,000 from the hard labors of her husband overseas just to satisfy the caprices of the respondent. Such allegations of the complainant totally run counter to common human experience and observation. It was likewise unbelievable that on top of giving away half of her monthly allotment from her husband, complainant even went to the extent of selling their conjugal house and two motor vehicles just only to give in to respondent's demands.

More importantly, not a scintilla of competent and credible evidence was adduced to support the claims of the complainant. It is a basic rule in evidence that a party must prove his affirmative allegations. Certainly, he who asserts not he who denies must prove *(Martin vs. Court of Appeals, et al., G.R. No. 82248 [January 30, 1992])*

Although complainant attached an alleged deposit slip to the dollar account of the respondent, that can hardly prove the alleged demands for money of the respondent as there is no showing that it was complainant who made the deposit as demanded by respondent.

The claim of complainant Melissa that she was maltreated by respondent if she could not produce the amount demanded cannot be given credence for being bare, self serving and uncorroborated. There is no evidence at all to prove that respondent inflicted physical harm upon complainant. No medical certificate was adduced by the complainant in support of her claim of maltreatment. The fact also that complainant Melissa did not file any criminal complaint for physical injuries against the respondent betrays her allegation of physical harm inflicted by the respondent.

The statements of the children of the complainants cannot also help establish the alleged physical punishment being inflicted upon complainant Melissa as the same is admittedly hearsay. Moreover, it is likewise relevant to note that in the joint affidavit of the children of the complainants, they refer to a "certain Tito Henry Laron, which gives the impression that they do not know personally the person referred to as "certain" Tito Henry Laron. The same is true with the affidavit of the caretaker of the complainants in their house in Antipolo City. She could not have positively identified the respondent as the one who frequently slept at the complainant's house in Antipolo City as there is no showing that she personally knows the respondent.

As to the alleged unexplained wealth of the respondent, suffice it to say that just like any other allegations of the complainant Melissa, the same is completely bare, self serving and uncorroborated. No evidence was presented by complainant to prove that respondent was living beyond his means. Moreover, the material allegations of the complainant were convincingly refuted by the respondent with independent and competent evidence thereby clearly showing that the complaint for unexplained wealth is merely concocted.

As to complainant Wilfredo Tuvillo, the same cannot be considered for being purely hearsay as it was completely anchored on the complaint of his wife, complainant Melissa Tuvillo, of which he has no personal knowledge of and which nonetheless has been fully passed upon above.

Be that as it may, we are not suggesting in any way that the allegations against respondent judge are untruthful or fictitious,

but rather we are inclined to dismiss the case for failure of the complainants to prove satisfactorily the charges of immorality and unexplained wealth against respondent judge. However, respondent judge cannot be completely exonerated because at the very least, complainants were able to prove and as admitted too by respondent judge, that there existed between the complainant Melissa Tuvillo and respondent judge "an intimate personal attachment to each other". The act of respondent judge who is a married man of having "an intimate personal attachment" with complainant Melissa Tuvillo, who herself is married, does not necessarily constitute immorality but certainly suggests an appearance of impropriety and unbecoming conduct and thus, exposes respondent judge to administrative culpability.

Such behavior constitutes a light offense punishable by a fine not less than ₱1,000.00 but not more than ₱10,000.00. *(Rule 140, Secs. 10 and 11, RULES OF COURT,)* In light of the circumstances affecting not only the reputation of Judge Laron himself but the image and reputation of the whole judiciary as well, we find it reasonable to impose upon him the maximum fine of ₱10,000.00.

"A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man." *(Tan v. Pacuribot, A.M. No. RTJ-06-1982 [December 14, 2007])*

RECOMMENDATION: Respectfully submitted for the consideration of the Court are our recommendations:

1) that these cases be **RE-DOCKETED** as regular administrative matters;

2) Hon. Henry E. Laron, Presiding Judge, Metropolitan Trial Court, Branch 65, Makati City be found guilty of Unbecoming Conduct and be fined the amount of ₱10,000.00;

3) that these consolidated cases for Immorality and Unexplained wealth be dismissed for being unsubstantiated.[29]

The Majority should give due regard to the well-considered appreciation and conclusions by the Court Administrator. I

[29] *Id*. at 114-118.

do not see any good reason why we should not. Accordingly, we should *not* punish the respondent for gross misconduct for lack of evidence.

Proper Penalty for the Charge of Immorality

The respondent cannot anymore undo or erase his past with Melissa. Had he resisted the temptation and fought his very human needs and urges, he would not now be having these cases against him. What was done is done.

No offense by the respondent should go unsanctioned because the law will be less in the eyes of the people otherwise. It is punishment that is one of the major moving factors for the people do what is legal and proper, and for individuals to keep within the bounds of what is right and just. But the punishment should not exceed what is condign and commensurate to the act or omission, and should be meted in consideration of all the circumstances that have affected the offense as well as the offender. This is the reason why the Court has calibrated the sanctions to be prescribed on members of the Bench and the Bar who have erred with a view to serving the essence of justice and equity in administrative proceedings.

Accordingly, we have consistently mitigated or aggravated the sanctions after duly taking into good account all the known circumstances surrounding the offenses and the offenders, including those personal to the respondents or relevant to the charges notwithstanding that some of the circumstances may not have been expressly recognized in the relevant administrative rules. Indeed, we have looked at the peculiar factual milieu of every case, the acts or omissions of the respondents, their previous transgressions, their notable contributions to the legal profession as well as to the Judiciary, their judicial and non-judicial backgrounds, and many others like length of service, remorse, family circumstances, ages and even humanitarian and equitable matters. The objective for doing so has always been to make the sanctions not only

correct and commensurate but just and fair as well. As such, any tailor-fitting of the sanctions imposed on the respondent will not be unprecedented.

The respondent should be favored with the mitigating circumstances of voluntary admission of the immorality that reflected his genuine remorse, his commission of the offense for the first time, and his long years of service in the Judiciary (*i.e.*, nearly 12 years, having been appointed on December 1, 2004 as MeTC Judge in Makati City, Branch 65). In addition, we should weigh the fact that he has no record of other administrative charges.

The respondent was not an automaton, but was of flesh and blood, a descendant of Adam who fell prey to temptation and engaged in consensual romantic relationship with an adult. We should also consider this circumstance, and be more understanding of his weakness. Doing so would not be the first time for the Court. The heavy hand of the Court should be stayed, and instead we should desist from imposing the extreme penalty of dismissal from the service. Although we should not be too tolerant, we should not also be too harsh. In *Viojan v. Duran*,[30] an administrative case against a sitting Justice of the Peace who had consensual sexual intercourse with a married woman, the investigating district judge submitted a report and recommendation for the suspension of the respondent judge for a period of three months through the Secretary of Justice for the consideration of the President who would be acting on the recommendation. The erudite report and recommendation of the investigating district judge justly recognized the human weakness that had intervened on the occasion of the commission of the sin by the respondent through the following passages, which we should bear in mind in meting the penalty to be justly imposed on the respondent herein, to wit:

"The respondent has committed an act of immorality. The flesh is weak. But man should possess that consciousness to do the

[30] Adm. Case No. 248, February 26, 1962, 4 SCRA 390.

right and avoid the wrong. And one who has taken the oath of public service to dispense with justice, should be more possessed of the courage and the will to overcome the weakness of the flesh. Since the dispensation of justice has to originate from sound moral consciousness, one who lacks it, or has shown to be wanting of it, cannot offer the guaranty required for the performance of a just dispensation. A magistrate has to live by the example of his precepts. He cannot judge the conduct of others when his own needs judgment. It should not be 'do as I say and not what I do.' For then the court over which he is called to preside will be a mockery, one devoid of respect. Hence, the necessity for the magistrate to possess enough fortitude to subdue his passion for wrong.

"There is, therefore, no question that for the immorality he committed within the territory of his jurisdiction as a Justice of the Peace, the respondent should be punished. **But, considering the tempting circumstances which surrounded him for that length of time, which circumstances, were indirect invitations, his falling to sin should not be dealt with severity. Few men, and very few indeed, could have resisted that temptation; could have the moral strength, the spiritual energy to impose on his weaker self the will to ignore such enticement. Although we want to count the respondent among these few, yet it would be too much wishing to expect him to be among them before he learns the hard lesson brought about by repentance. This misstep, the first that he committed, should not be taken as the measure of his whole conduct. He should be given the chance after now to benefit himself out of his stumble. For after all, it was rightly said that 'without an element of the obscene, there can be no true and deep aesthetic or moral conception to life**.'[31]

Given all the foregoing, the ultimate penalty of dismissal from the service is too harsh a penalty. I am inclined to impose the penalty of **suspension from office for three years**. The Court has to exercise compassion in favor of the respondent. Let us not forget that the petitioner did not exactly come to the court with clean hands herself.

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[31] *Id.* at 392.

***Re*: Application of A.M. No. 02-9-02-SC**

A.M. No. 02-9-02-SC, which took effect on October 1, 2002, relevantly states:

> Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent Justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

Given that immorality is also a ground for disciplinary action against lawyers, the respondent may also be considered as subject to disciplinary action as a member of the Bar.

However, this rule only goes as far as treating the complaint as both a disciplinary action against him as a judge and as a lawyer, and does not in any way dispense with or set aside the respondent's right to due process. As such, his disbarment as an offshoot of A.M. No. 02-9-02-SC without requiring him to comment on the disbarment is violative of his right to due process.

I vote to **DISMISS** the charge of gross misconduct, and to impose on the respondent the penalty of suspension from office for three years.

EN BANC

[G.R. No. 203072. October 18, 2016]

DEVELOPMENT ACADEMY OF THE PHILIPPINES, *petitioner, vs.* **CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER JUANITO G. ESPINO, JR., COMMISSIONER HEIDI L. MENDOZA, and COMMISSION ON AUDIT,** *respondents*.

SYLLABUS

1. POLITICAL LAW; COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (RA 6758); STANDARDIZATION OF SALARY RATES; GUIDE IN PREPARING THE INDEX OF OCCUPATIONAL SERVICES.— Republic Act No. 6758 "was passed to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." As a guide in the standardization of salary rates Republic Act No. 6758 [Section 9] lists down the factors that should guide the Department of Budget and Management in preparing the index of occupational services, to wit: 1. the education and excellence required to perform the duties and responsibilities of the position; 2. the nature and complexity of the work to be performed; 3. the kind of supervision received; 4. mental and/or physical strain required in the completion of the work; 5. nature and extent of internal and external relationships; 6. kind of supervision exercised; 7. decision-making responsibility; 8. responsibility for accuracy of records and reports; 9. accountability for funds, properties, and equipment; and 10. hardship, hazard, and personal risk Involved in the job.

2. ID.; ID.; ID.; THE GENERAL RULE IS THAT ALL ALLOWANCES ARE DEEMED INCLUDED IN THE STANDARDIZED SALARY; SECTION 12 ON CERTAIN ALLOWANCES PERMITTED TO BE GIVEN ON TOP OF STANDARDIZED SALARIES; THE KEY CONSIDERATION IS A SHOWING THAT THEY ARE GIVEN TO GOVERNMENT EMPLOYEES OF CERTAIN

OFFICES DUE TO THE UNIQUE NATURE OF THE OFFICE AND OF THE WORK PERFORMED BY THE EMPLOYEE.— Precisely for the purpose of standardization, "the general rule is that all allowances are deemed included in the standardized salary." However, Republic Act No. 6758's standardized salary rates and guidelines in Section 9 "do not take into consideration the peculiar characteristics of each government office where performance of the same work may entail different necessary expenses for the employee." By way of examples, marine officers and crew stationed in government vessels, as well as foreign service officers stationed abroad incur certain expenses by the mere fact of their stations. Avoiding these expenses would be tantamount to preventing the performance of their functions. Considering the value of these expenses as already included in the concerned personnel's salary would mean that they would then have to exhaust their personal funds, just so they could perform their official functions. It is in recognition of these peculiarities that, through Section 12 of Republic Act No. 6758, certain specified allowances are permitted to be given, on top of or in addition to standardized salaries. x x x The key consideration for allowances and other incentive packages to be deemed exceptional and permissible under Section 12 is a showing that they "are given to government employees of certain offices due to the unique nature of the office and of the work performed by the employee."

3. ID.; CIVIL SERVICE DECREE OF THE PHILIPPINES (PD 807); SECTION 33 ON EMPLOYEE SUGGESTIONS AND INCENTIVE AWARD SYSTEM (ESIAS); THE ENTIRE POINT IS THE RECOGNITION OF EXEMPLARY PERSONAL EFFORT.— Section 33 of the Civil Service Decree put in place the Employee Suggestions and Incentive Award System. x x x The entire point of the Employee Suggestions and Incentive Award System is the recognition of exemplary *personal* effort. Contributions beyond the ordinary are its essence. Even as Section 2 of Rule X of the Omnibus Rules implementing Book 5 of the Administrative Code refers to "rewarding officials and employees . . . *in groups,"* the pivotal consideration remains to be innovations or accomplishments of an exceptional nature, that is, those that may be set apart from what the remainder of work force has attained. To use the Employee Suggestions and Incentive Award System to grant

incentive packages to all employees (excepting only those with disciplinary liabilities) is to run afoul of its very nature.

4. ID.; GOVERNMENT AUDITING CODE OF THE PHILIPPINES (PD 1445); GENERAL LIABILITY FOR UNLAWFUL EXPENDITURES; PERSONAL LIABILITY OF THE OFFICIAL FOUND TO BE DIRECTLY RESPONSIBLE THEREFOR; LIBERAL APPLICATION ON DISALLOWED EXPENDITURES IN CASE OF GOOD FAITH.— Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines [provides:] Section 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations *shall be a personal liability of the official or employee found to be directly responsible therefor.* Section 19 of Commission on Audit Circular No: 94-001, the Manual of Certificate of Settlement and Balances, spells out the bases for determining the extent of personal liability: x x x A public officer's good faith does not dispense with personal liability for unauthorized disbursements. x x x Nevertheless, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that recipients or payees in good faith need not refund these disallowed amounts. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them. On the part of the approving officers, they shall only be required to refund if they are found to have acted in bad faith or were grossly negligent amounting to bad faith.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Under Republic Act No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, "all allowances are deemed included in the standardized salary."[1] However, certain specified allowances are permitted to be given in addition to standardized salaries "due to the unique nature of the office and of the work performed by the employee."[2] Without a showing of any such uniqueness, additional financial awards cannot be sanctioned and the Commission on Audit would be right to have them disallowed. Still, even in the event of a disallowance, the approving officers and recipients incur no liability to refund for as long as they acted in good faith.

This resolves a Petition for Certiorari[3] praying that the assailed Decision No. 2012-119[4] dated July 17, 2012 filed by respondent Commission on Audit be set aside and that an order be issued lifting Notice of Disallowance No. DAP-06-001-(04)[5] dated June 27, 2006.

Notice of Disallowance No. DAP-06-001-(04) disallowed the amount of ₱4,862,845.71 representing petitioner Development Academy of the Philippines' payment of Financial

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[1] *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/185812.pdf> 13 [Per *J.* Leonen, *En Banc*], *citing* Rep. Act No. 6758 (1989), Sec. 12.

[2] *Id.* at 18.

[3] *Rollo*, pp. 3-21. The Petition was filed under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure.

[4] *Id.* at 22-29. The Decision was signed by (now respondents) Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr., and Commissioner Heidi L. Mendoza.

[5] *Id.* at 31-39. The Order was signed by Director Janet D. Nacion.

Performance Award to its employees "for want of legal basis"[6] and for several deficiencies.

The Decision No. 2012-119 of the Commission on Audit affirmed Notice of Disallowance No. DAP-06-001-(04).[7]

In calendar year 2002, the Development Academy of the Philippines obligated ₱3,613,998.72 for the grant of Financial Performance Award to its officers and employees.[8]

Though the award was obligated in 2002, it was only in 2004 that implementing rules for its grant was issued: DAP Memorandum Circular No. MC-2004-003,[9] dated April 1, 2004; and its addendum, DAP Memorandum Circular No. MC-2004-003A[10] dated December 21, 2004. With these implementing rules in place, the release and grant of the Financial Performance Award, inclusive of the so-called "MANCOM Fee" and "Star Award," followed.

DAP Memorandum Circular No. MC-2004-003 stipulated that the following were entitled to the award, which was to be released in two (2) tranches:

- All regular employees (on board and/or separated as of release of the 1st tranche) who have rendered full-time service for at least six months in 2002; and,
- [Letter of Invitation]-based staff who have rendered service of at least a total of six months in 2002, and who are currently engaged as of date of release.[11]

Only "[e]mployees who are administratively charged and meted a penalty of suspension in CY 2002"[12] were expressly

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[6] *Id*. at 31.
[7] *Id*. at 29.
[8] *Id*. at 132.
[9] *Id*. at 128-129.
[10] *Id*. at 130.
[11] *Id*. at 129.
[12] *Id*. at 130.

excluded by DAP Memorandum Circular No. MC-2004-003A from the award. *In effect, the Financial Performance Award was made available to the Development Academy of the Philippines' employees en masse.*

On post-audit, Corporate Auditor Ignacio I. Alfonso issued Audit Observation Memorandum No. 05-003[13] dated March 8, 2005 and noted the following:

(1) That an excess of ₱1,277,976.65 was paid, relative to the amount obligated in calendar year 2002 (i.e., ₱3,613,998.72), "which is eight (8%) percent of the annual basic salaries of employees;"[14] and that this excess amount was sourced from the 10% service charges paid by the Development Academy of the Philippines' clients, which service charges must – in accordance with the DAP Service Charge Scheme – be distributed only to employees in the DAP Conference Center, Tagaytay, as well as to some employees based in Pasig City;[15]

(2) That the payment made in 2004 included some employees not included in the payroll, which was attached to the obligation made in calendar year 2002, and that there was no document supporting these additional employees' entitlement to the award;[16]

(3) That there was no computation sheet for the award to each employee, which should have been "attached to the vouchers to facilitate validation of the correctness of the amount paid";[17]

(4) That there was no legal basis for the payment and release of the MANCOM Fee and Star Award, and that there

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[13] *Id*. at 132-134.

[14] *Id*. at 132.

[15] *Id*.

[16] *Id*. at 133.

[17] *Id*.

were also no computation sheets attached to the vouchers prepared for these;[18]

(5) That the award was made without the approval and/or confirmation of the Development Academy of the Philippines' Board of Trustees and Executive Committee, considering that its Charter "specifically provides that . . . the President of the Academy is tasked to submit for consideration of the Board of Trustees and the Executive Committee the policies and measures which he believes to be necessary to carry out the purpose of the Academy";[19]

(6) That Letter of Invitation-based staff were not entitled to the Financial Performance Award;[20] and

(7) That in calendar year 2004, another obligation for the award was made in the amount of ₱2,335,664.00.[21]

Acting on this Audit Observation Memorandum, the Commission on Audit's Legal and Adjudication Office–Corporate issued Notice of Disallowance No. DAP-06-001-(04)[22] disallowing the payment of ₱4,862,845.71, representing the Development Academy of the Philippines' payment of the Financial Performance Award to its employees "for want of legal basis"[23] and for the following deficiencies:

(1) Lack of approval of the Development Academy of the Philippines' Board of Trustees and Executive Committee;

(2) Lack of a Request for Obligation Allotments for the initial amount obligated (i.e., ₱3,613.998.72);

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[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*. at 31-39.

[23] *Id*. at 31.

(3) Lack of a clear-cut policy on the award computations made for each employee;

(4) The amount paid exceeded the amount obligated in calendar year 2002 by ₱1,248,846.99;

(5) That this excess amount was taken from the service charges paid by clients of the Development Academy of the Philippines, intended to be distributed to DAP Conference Center Tagaytay employees and DAP Pasig staff;

(6) That consultants serving under letters of invitation were given the award despite not being entitled to it;

(7) That no approval from the Civil Service Commission was obtained for the Development Academy of the Philippines' Program on Awards and Incentives for Service Excellence (PRAISE); and

(8) That there were no documents to support or validate the entitlement of additional employees who were not listed on the payroll attached to the obligation made in calendar year 2002.[24]

Notice of Disallowance No. DAP-06-001-(04) identified the following liable persons:

(a) Eduardo T. Gonzales, DAP President;
(b) Segundo E. Romero, Jr., DAP Executive Vice President;
(c) Lilian L. De Guzman, DAP Finance Department Officer-in-Charge;
(d) Jocelyn Y. Ybañez, DAP Finance Department Supervisor;
(e) Judilyn L. Aguinaldo, Payroll Officer;
(f) Jocelyn Y. Denaco, DAP Treasury Office Supervisor;

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

(g) Carolyn L. Rivera, DAP Human Resource Management and Development Office Officer-in-Charge;
(h) Ramonesa R. Ricardo, DAP Human Resource Management and Development Office Director;
(i) Angela R. Manikan, DAP Finance Department Director
(j) Leonida D. Apolinario, Cash Disbursing Officer;
(k) Danilo Filarca;
(l) Paraluman S. Landicho, Cashier; and
(m) All officers and employees who received the Financial Performance Award.

Thereafter, the Development Academy of the Philippines filed its Response to Notice of Disallowance ND No. DAP-06-001-(04)[25] addressed to Director Janet D. Nacion of the Commission on Audit's Legal and Adjudication Office–Corporate. This was forwarded to the Commission on Audit proper and treated as an appeal.[26]

In this Response, the Development Academy of the Philippines asserted that there was ample legal basis for the Financial Performance Award. Specifically, it cited:

First, Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines (the Civil Service Decree), Section 33[27] of which provides for the Employee Suggestions and Incentive Award System (ESIAS);

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[25] *Id*. at 40-48.

[26] *Id*. at 247.

[27] Pres. Decree No. 807, Sec. 33 provides:
SECTION 33. Employee Suggestions and Incentive Award System. — There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.
In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishments, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

Second, Rule X, Section 5[28] of the Omnibus Rules Implementing Book V of the Adminstrative Code of 1987; and

Third, Rule V, Sections 2[29] and 3[30] of the Implementing Rules and Regulations of Republic Act No. 6713.[31]

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[28] Ominibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (1995), RULE X, Sec. 5 provides:

SECTION 5. Awards under the System shall consist of honor awards and incentive awards. The head of department or agency may, however, upon recommendation of the Department or Agency Suggestions and Incentive Award Committee created in accordance with Section 11 hereof, consider an employee for both incentive and honor awards.

[29] Implementing Rules and Regulations of Rep. Act No. 6713, RULE V, Sec. 2 provides:

SECTION 2. The following criteria shall be considetred in the conferment of awards:

(a) Years of service;
(b) Quality and consistency of performance;
(c) Obscurity of the position;
(d) Level of salary;
(e) Unique and exemplary quality of achievement;
(f) Risk or temptation inherent in the work; and
(g) Any similar circumstances or considerations in favor of the particular awardee.

[30] Implementing Rules and Regulations of Rep. Act No. 6713, RULE V, Sec. 3 provides:

SECTION 3. Incentives and rewards to government officials and employees of the year may take the form of any of the following, as may be determined by the Committee on Awards established under the Code:

(a) Bonuses; or
(b) Citations; or
(c) Directorships in government-owned or controlled corporations; or
(d) Local and foreign scholarships grants; or
(e) Paid vacations; and
(f) Automatic promotion to the next higher position suitable to his qualifications and with commensurate salary; provided, that

It addressed the specific deficiencies noted by Notice of Disallowance No. DAP-06-001-(04), as follows:

(1) The Board of Trustees noted/confirmed the payment of the Financial Performance Award as indicated by the minutes of its May 12, 2005 meeting.[32]

(2) There was no Request for Obligation Allotments because the Development Academy of the Philippines is a government-owned and controlled corporation with its own funds and system of obligating expenditures.[33]

(3) It had a clear-cut policy on the Financial Performance Award computations as embodied in DAP Memorandum Circular No. MC-2004-003 dated April 1, 2004, and its addendum, DAP Memorandum Circular No. MC-2004-003A dated December 21, 2004.[34]

(4) Additional employees were included after validation from the total list of personnel actually working in it; hence, the increase relative to the amount obligated in calendar year 2002.[35]

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if there is no next higher position or it is not vacant, said position shall be included in the next budget of the office; except when the creation of a new position will result in distortion in the organizational structure of the department, office or agency. Where there is no next higher position immediately available, a salary increase equivalent to the next higher position shall be given and incorporated in the base pay. When a new position is created, that which is vacated shall be deemed abolished.

The grants of awards shall be governed by the merit and fitness principle.

[31] The Code of Conduct and Ethical Standards for Public Officers and Employees.

[32] *Rollo*, p. 44.

[33] *Id.* at 45.

[34] *Id.*

[35] *Id.*

(5) Its management had the prerogative to utilize amounts collected from service charges. This position was borne by Opinion No. 215, series of 2003, of the Office of the Government Corporate Counsel,[36] which explained that restrictions imposed by the Labor Code on the distribution of proceeds of service charges to employees applies only to the private sector, and not to a government corporation such as the Development Academy of the Philippines.[37]

(6) Social justice and equity dictated that consultants whose services were engaged through letters of invitation be also given the Financial Performance Award.[38]

(7) As evidenced in Civil Service Commission Director Velda C. Cornelio's June 6, 2006 letter,[39] the Civil Service Commission approved the Development Academy of the Philippines' Employee Suggestions and Incentive Award System, which encompasses the Financial Performance Award.[40]

(8) The payroll attached to the original obligation made in calendar year 2002 was based on personnel estimates at the start of the year. This was revised to reflect the personnel who actually served in 2002, as could be validated in the "Employees Master List."[41] It added that this master list indicated the corresponding criteria for the award.[42]

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[36] *Id*. at 93-95.

[37] *Id*.

[38] *Id*. at 46.

[39] *Id*. at 97.

[40] *Id*. at 46-47.

[41] *Id*. at 99-114.

[42] *Id*. at 47.

In its assailed Decision No. 2012-119,[43] the Commission on Audit affirmed Notice of Disallowance No. DAP-06-001-(04). It noted that, the Development Academy of the Philippines' specific responses to each of the eight (8) deficiencies notwithstanding, it remained that there was no legal authority for the Financial Performance Award: "the grant of [Financial Performance Award] from its inception was not valid, and therefore, created no legal obligation and right."[44]

On September 5, 2012, the Development Academy of the Philippines filed the present Petition for Certiorari[45] ascribing grave abuse of discretion on the part of respondent Commission on Audit.

For resolution is the issue of whether respondent Commission on Audit acted with grave abuse of discretion amounting to lack or excess of jurisdiction in sustaining Notice of Disallowance No. DAP-06-001-(04), proceeding from the premise that there was no legal authority for petitioner's payment of the Financial Performance Award to its employees.

I

Petitioner asserts that its Employee Suggestions and Incentive Award System was drafted in 1993, pursuant to Section 33 of the Civil Service Decree of the Philippines[46] and consistent with Rule X, Section 5 of the Omnibus Rules Implementing Book V of the Administrative Code of 1987.

It notes that this Employee Suggestions and Incentive Award System "contained a specific provision on the grant of [the Financial Performance Award] recognizing not only individual but [even] collective effort for the furtherance of [the Development Academy of the Philippines'] mandate."[47] It adds

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[43] *Id*. at 22-29.

[44] *Id*. at 28.

[45] *Id*. at 3-9.

[46] *Id*. at 247.

[47] *Id*. at 254.

that on October 2, 1993, the Civil Service Commission issued a Letter of Approval, which never indicated any instruction to modify or remove the grant of the Financial Performance Award.[48]

Petitioner further recalls that following the issuance of Corporate Auditor Ignacio I. Alfonso's Audit Observation Memorandum No. 05-003, Ramonesa R. Ricardo, Director in petitioner's Human Resource Management and Development Office, wrote the Civil Service Commission inquiring on whether petitioner's Employee Suggestions and Incentive Award System could still be enforced pending the finalization of the Civil Service Commission's Program on Awards and Incentives for Service Excellence. In a letter[49] dated June 6, 2006, Civil Service Commission Director Vida C. Cornelio supposedly indicated that petitioner's Employee Suggestions and Incentive Award System could still be implemented as it bore no inconsistency with any of the Civil Service Commission's rules and regulations.[50]

Petitioner insists that the "[Civil Service Commission] is the competent government authority on the matter."[51] It implies that, by the Civil Service Commission's acquiescence to its Financial Performance Award, as contained in its Employee Suggestions and Incentive Award System, the same Financial Performance Award must be considered valid.

Respondents counter that proceeds from the Financial Performance Award are not among the items permitted by Section 12[52] of Republic Act No. 6758 to

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[48] *Id.*

[49] *Id.* at 97.

[50] *Id.* at 249.

[51] *Id.* at 255.

[52] Rep. Act No. 6758 (1989), Sec. 12 provides:

SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers

be given to public employees on top of their standardized salary rates.[53]

They add that neither is the Financial Performance Award sustained by the Employee Suggestions and Incentive Award System sanctioned by Section 33 of the Civil Service Decree. Citing *Bureau of Fisheries and Aquatic Resources Employees Union v. Commission on Audit*,[54] respondents emphasize that this Court has settled that the Employee Suggestions and Incentive Award System pertains only to "*personal efforts* contributed by an employee to the efficiency, economy, or other improvement of government operations."[55] This precludes the indiscriminate grant of benefits to all employees, or the en masse payment of the award, which petitioner did.[56]

We sustain respondents' position.

II

Republic Act No. 6758 "was passed to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them."[57]

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and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

[53] *Id*. at 240-241.

[54] 584 Phil. 132 (2008) [Per *C.J.* Puno, *En Banc*].

[55] *Id*. at 143.

[56] *Rollo*, p. 241, Respondents' Memorandum.

[57] *Bureau of Fisheries and Aquatic Resources Employees Union v. Commission on Audit*, 584 Phil. 132, 138 (2008) [Per *C.J.* Puno, *En Banc*], citing *Ambros v. Commission on Audit*, 501 Phil. 255, 279 (2005) [Per *J.* Callejo, Sr., *En Banc*].

As a guide in the standardization of salary rates Republic Act No. 6758

> [Section 9] lists down the factors that should guide the Department of Budget and Management in preparing the index of occupational services, to wit:
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> 1. the education and excellence required to perform the duties and responsibilities of the position;
> 2. the nature and complexity of the work to be performed;
> 3. the kind of supervision received;
> 4. mental and/or physical strain required in the completion of the work;
> 5. nature and extent of internal and external relationships;
> 6. kind of supervision exercised;
> 7. decision-making responsibility;
> 8. responsibility for accuracy of records and reports;
> 9. accountability for funds, properties, and equipment; and
> 10. hardship, hazard, and personal risk involved in the job.[58]

Precisely for the purpose of standardization, "the general rule is that all allowances are deemed included in the standardized salary."[59] However, Republic Act No. 6758's standardized salary rates and guidelines in Section 9 "do not take into consideration the peculiar characteristics of each government office where performance of the same work may entail different necessary expenses for the employee."[60] By way of examples, marine officers and crew stationed in government vessels, as well as foreign service officers stationed abroad incur certain expenses by the mere fact of their stations. Avoiding these expenses would be tantamount to preventing the performance of their functions. Considering the value of these expenses as already included in the concerned personnel's salary would mean that

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[58] *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/185812.pdf> 18 [Per J. Leonen, *En Banc*], *citing* Rep. Act No. 6758 (1989), Sec. 9.

[59] *Id*. at 13.

[60] *Id*. at 18.

they would then have to exhaust their personal funds, just so they could perform their official functions.[61]

It is in recognition of these peculiarities that, through Section 12 of Republic Act No. 6758, certain specified allowances are permitted to be given, on top of or in addition to standardized salaries. Section 12 of Republic Act No. 6758 provides:

> Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the [Department of Budget and Management], shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Bureau of Fisheries and Aquatic Resources Employees Union expounds on the nature of the exceptional allowances permitted by Section 12, as well as on the significance of the phrase "and such other additional compensation not otherwise specified herein as may be determined by the [Department of Budget and Management]":

> The Court has had the occasion to interpret Sec. 12 of R.A. No. 6758. In *National Tobacco Administration v. Commission on Audit*, we held that under the first sentence of Section 12, the benefits excluded from the standardized salary rates are the "allowances" or those which are usually granted to officials and employees of the government to

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[61] See *Philippine Ports Authority v. Commission on Audit*, G.R. No. 100773, October 16, 1992, 214 SCRA 653, 659 [Per J. Gutierrez, Jr., *En Banc*].

defray or reimburse the expenses incurred in the performance of their official functions. These are the RATA, clothing and laundry allowance, subsistence allowance of marine officers and crew on board government vessels and hospital personnel, hazard pay, and others, as enumerated in the first sentence of Section 12. We further ruled that the phrase "and such other additional compensation not otherwise specified herein as may be determined by the DBM" is a catch-all proviso for benefits in the nature of allowances similar to those enumerated. In *Philippine Ports Authority v. Commission on Audit*, we explained that if these allowances were consolidated with the standardized salary rates, then government officials or employees would be compelled to spend their personal funds in attending to their duties.[62] (Citations omitted)

Thus, the key consideration for allowances and other incentive packages to be deemed exceptional and permissible under Section 12 is a showing that they "are given to government employees of certain offices due to the unique nature of the office and of the work performed by the employee."[63]

Petitioner has not shown that its Financial Performance Award, as obligated and paid for calendar year 2002, is an exceptional incentive package sanctioned by Section 12 of Republic Act No. 6758. Petitioner has neither alleged nor established that it (as an office) or the work done by each of its employee-recipients is of such a "unique nature" that a deviation from Republic Act No. 6758's standardization must be resorted to. On the contrary, it justifies the award by claiming its employee's "*collective effort* for the furtherance of [its] mandate."[64]

III

This same justification of its employees' purported "collective effort" repudiates petitioner's claim that the disallowed amount

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[62] *Bureau of Fisheries and Aquatic Resources Employees Union v. Commission on Audit*, 584 Phil.132, 139-140 (2008) [Per *C.J.* Puno, *En Banc*].

[63] *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, January 13, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/185812.pdf> 18 [Per *J.* Leonen, *En Banc*].

[64] *Rollo*, p. 254, Petitioner's Memorandum.

of ₱4,862,845.71 under Notice of Disallowance No. DAP-06-001-(04) is justified under the Employee Suggestions and Incentive Award System.

Section 33 of the Civil Service Decree put in place the Employee Suggestions and Incentive Award System:

SECTION 33. Employee Suggestions and Incentive Award System. — There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.

In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishments, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

Section 33 of the Civil Service Decree is restated verbatim in Book V, Section 35 of the Administrative Code of 1987.[65] The rules for implementing Section 35 of the Administrative

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[65] Exec. Order No. 292, Book V, Sec. 35 provides:

SECTION 35. Employee Suggestions and Incentive Award System. — There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.

In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishments, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

Code are, in turn, articulated in Rule X of the Omnibus Rules Implementing Book V of the Administrative Code.

Rule X, Section 1[66] of these Omnibus Rules enables government-owned and controlled corporations with original charters—such as petitioner— to establish their respective Employee Suggestions and Incentive Award System, subject to the approval of the Civil Service Commission. Conformably, petitioner drafted its own Employee Suggestions and Incentive Award System, to which the Civil Service Commission subsequently issued a letter of approval. It is this letter that petitioner capitalizes on, noting that it never indicated any instruction to modify or remove the grant of Financial Performance Award[67] despite a specific provision in its submitted draft to the effect that a "[Financial Performance Award] recognizing not only individual but [even] collective effort for the furtherance of [its] mandate" shall be extended to its employees.[68]

Petitioner's claims are antithetical to the very nature of the Employee Suggestions and Incentive Award System.

The matter of an en masse grant of incentives under the Employee Suggestions and Incentives Award System is not a novel question in jurisprudence. In *Bureau of Fisheries and Aquatic Resources Employees Union*, this Court sustained the disallowance of the indiscriminate "[g]rant [of a] Food Basket Allowance at the rate of ₱10,000.00 each to the 130 employees

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[66] Omnibus Rules Implementing Book V of Executive Order No. 292, Rule X, Sec. 1 provides:

SECTION 1. Each department or agency of government, whether national or local, including bureaus and agencies, state colleges and universities; and government-owned and controlled corporations with original charters, shall establish its own Department or Agency Employee Suggestions and Incentives Award System in accordance with these Rules and shall submit the same to the Commission for approval.

[67] *Rollo*, p. 254, Petitioner's Memorandum.

[68] *Id.*

of [Bureau of Fisheries and Aquatic Resources] Region VII, or in the total amount of ₱1,322,682.00":[69]

> Sec. 33 of P.D. No. 807 or the Civil Service Decree of the Philippines does not exempt the Food Basket Allowance from the general rule. Sec. 33 states:
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> . . . . . .
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> We are not convinced that the Food Basket Allowance falls under the incentive award system contemplated above. *The decree speaks of suggestions, inventions, superior accomplishments, and other personal efforts* contributed by an employee to the efficiency, economy, or other improvement of government operations, or other extraordinary acts or services performed by an employee in the public interest in connection with, or in relation to, his official employment. *In the instant case, the Food Basket Allowance was granted to all BFAR employees, without distinction. It was not granted due to any extraordinary contribution or exceptional accomplishment by an employee*. The Food Basket Allowance was primarily an economic monetary assistance to the employees.[70] (Emphasis supplied)

The quoted statements from *Bureau of Fisheries and Aquatic Resources Employees Union*'s are a superfluity and a mere reiteration of what is self-evident and plainly stated in the texts of Section 33 of the Civil Service Decree, Section 35 of Book 5 of the Administrative Code, and Section 2 of Rule X of the Omnibus Rules implementing Book 5 of the Administrative Code.

Section 33 of the Civil Service Decree and Section 35 of Book 5 of the Administrative Code, which are identical to each other, refer to:

> the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishments, and other *personal efforts* contribute to the efficiency, economy, or other improvement of government operations,

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[69] *Bureau of Fisheries and Aquatic Resources Employees Union v. Commission on Audit*, 584 Phil. 132, 134-135 (2008) [Per *C.J.* Puno, *En Banc*].

[70] *Id.* at 142-143.

or who perform such other *extraordinary acts or services* in the public interest in connection with, or in relation to, their official employment. (Emphasis supplied)

For its part, Section 2 of Rule X of the Omnibus Rules, implementing Book 5 of the Administrative Code, provides:

SECTION 2. The System is designed to encourage creativity, innovativeness, efficiency, integrity and productivity in the public service by recognizing and rewarding officials and employees, individually or in groups, for their suggestions, inventions, superior accomplishments, and other *personal efforts* which contribute to the efficiency, economy, or other improvement in government operations, or for other *extraordinary acts or services* in the public interest. (Emphasis supplied)

Respondents are, therefore, correct. There is no room for the Employee Suggestions and Incentive Award System for the indiscriminate grant of an incentive package to all employees, or the en masse payment of the Financial Performance Award, as petitioner did.

The entire point of the Employee Suggestions and Incentive Award System is the recognition of exemplary *personal* effort. Contributions beyond the ordinary are its essence. Even as Section 2 of Rule X of the Omnibus Rules implementing Book 5 of the Administrative Code refers to "rewarding officials and employees . . . *in groups*," the pivotal consideration remains to be innovations or accomplishments of an exceptional nature, that is, those that may be set apart from what the remainder of work force has attained. To use the Employee Suggestions and Incentive Award System to grant incentive packages to all employees (excepting only those with disciplinary liabilities) is to run afoul of its very nature.

IV

Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, spells out the rule on general liability for unlawful expenditures:

Section 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations *shall be a personal liability of the official or employee found to be directly responsible therefor*.[71] (Emphasis supplied)

Section 19 of Commission on Audit Circular No. 94-001, the Manual of Certificate of Settlement and Balances, spells out the bases for determining the extent of personal liability:

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

. . . . . .

19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

A public officer's good faith does not dispense with personal liability for unauthorized disbursements. In *Vicencio v. Villar*:[72]

Section 103 of P.D. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, petitioner's act of entering into a contract on behalf of the local government unit without the requisite authority therefor was in violation of the Local Government Code. While petitioner may have relied on the opinion of the City Legal Officer,

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[71] A similar provision is also found in 1987 ADM. CODE, Book V, Chap. 9, Sec. 52.

[72] 690 Phil. 59 (2012) [Per *J*. Sereno, *En Banc*].

such reliance only serves to buttress his good faith. It does not, however, exculpate him from his personal liability under P.D. 1445.[73]

Nevertheless, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence[74] has settled that recipients or payees in good faith need not refund these disallowed amounts.[75] For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them.[76]

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[73] *Id*. at 71.

[74] See *Mendoza v. Commission on Audit,* 717 Phil. 491 (2013) [Per ..... Leonen, *En Banc*]; *Magno v. Commission on Audit,* 558 Phil. 76 (2007) [Per J. Chico-Nazario, *En Banc*]; *Singson v. Commission on Audit,* 641 Phil. 154 (2010) [Per J. Peralta, *En Banc*]; *Lumayna v. Commission on Audit,* 616 Phil. 928 (2009) [Per J. del Castillo, *En Banc*]; *Barbo v. Commission on Audit,* 589 Phil. 289 (2008) [Per J. Leonardo-De Castro, *En Banc*]; *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. Commission on Audit, et al.,* 480 Phil. 861 (2004) [Per J. Tinga, *En Banc*]; *Veloso v. Commission on Audit,* 672 Phil. 419 (2011) [Per J. Peralta, *En* Banc]; *Abanilla v. Commission on Audit,* 505 Phil. 202 (2005) [Per J. Sandoval-Gutierrez, *En Banc*]; *Home Development Mutual Fund v. Commission on Audit,* 483 Phil. 666 (2004) [Per J. Carpio, *En Banc*]; *Public Estates Authority v. Commission on Audit,* 541 Phil. 412 (2007) [Per J. Sandoval-Gutierrez, *En Banc*]; *Bases Conversion and Development Authority v. Commission on Audit,* 599 Phil. 455 (2009) [Per J. Carpio, *En Banc*]; *Benguet State University v. Commission on Audit,* 551 Phil. 878 (2007) [Per J. Nachura, *En Banc*]; *Agra v. Commission on Audit,* 661 Phil. 563 (2011) [Per J. Leonardo-De Castro, *En Banc*]; and *Blaquera v. Commission on Audit,* 356 Phil. 678 (1998) [Per J. Purisima, *En Banc*].

[75] *Manila International Airport Authority v. Commission on Audit,* 681 Phil. 644, 668-670 (2012) [Per J. Reyes, *En Banc*]; *Benguet State University v. Commission on Audit,* 551 Phil. 878, 888 (2007) [Per J. Nachura, *En Banc*].

[76] J. Brion, Concurring and Dissenting Opinion in *Technical Education and Skills Development Authority v. Commission on Audit,* G.R. No. 204869, March 11, 2014, 718 SCRA 402, 449 [Per J. Carpio, *En Banc*].

On the part of the approving officers, they shall only be required to refund if they are found to have acted in bad faith or were grossly negligent amounting to bad faith.[77]

Philippine Economic Zone Authority v. Commission on Audit[78] has expounded on good faith in the context of a controversy on the refund of disallowed benefits or allowances:

> In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[79]

Thus, in *De Jesus v. Commission on Audit*:[80]

> Nevertheless, our pronouncement in *Blaquera v. Alcala* supports petitioners' position on the refund of the benefits they received. In Blaquera, the officials and employees of several government departments and agencies were paid incentive benefits which the COA disallowed on the ground that Administrative Order No. 29 dated 19 January 1993 prohibited payment of these benefits. While the Court sustained the COA on the disallowance, it nevertheless declared that:
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> > Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

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[77] *Id.* See *Velasco v. Commission on Audit*, 695 Phil. 226 (2012) [Per *J.* Perlas-Bernabe, *En Banc*].

[78] 690 Phil. 104 (2012) [Per *J.* Villarama, Jr., *En Banc*].

[79] *Id.* at 115.

[80] 451 Phil. 812 (2003) [Per *J.* Carpio, *En Banc*].

This ruling in Blaquera applies to the instant case. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District*. Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.[81]

Petitioner's Financial Performance Award was written into its Employees Suggestions and Incentive Award System.[82] This System was formally approved by the Civil Service Commission in a letter dated October 2, 1993.[83] As underscored by petitioner, this letter of approval never indicated any instruction to modify or remove the grant of Financial Performance Award.[84] Moreover, in a letter dated June 6, 2006,[85] it appeared that Civil Service Commission Director Velda C. Cornelio indicated that petitioner's Employees Suggestions and Incentive Award System may still be implemented, pending its finalization of its Program on Awards and Incentives for Service Excellence (PRAISE).[86]

It was but reasonable for petitioner and its officers to put their faith on the Civil Service Commission's approval of its Employees Suggestions and Incentive Award System. From this, it was reasonable for them to conclude that the Financial Performance Award—as one of the approved System's features—may be enforced and disbursed.

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[81] *Id*. at 823-824, *citing Blaquera v. Alcala*, 356 Phil. 678 (1998) [Per *J*. Purisima, *En Banc*] and *Baybay Water District v. Commission on Audit*, 425 Phil. 326 (2002) [Per *J*. Mendoza, *En Banc*].

[82] *Rollo*, p. 116.

[83] *Id*. at 125.

[84] *Id*. at 254.

[85] *Id*. at 97.

[86] *Id*. at 131.

This is indicative of the requisite good faith that jurisprudence requires for dispensing with the need to reimburse or refund. Although we consider the payment of the Financial Performance Award to be invalid, we also consider it to be in the better interest of prudence that the individuals named in Notice of Disallowance No. DAP-06-001-(04) be relieved of any personal liability to refund the disallowed amount.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The Decision No. 2012-119 dated July 17, 2012, of respondent Commission on Audit is **MODIFIED** in that the persons identified in Notice of Disallowance No. DAP-06-001-(04) are relieved of personal liability to refund the disallowed amount. The assailed Decision is **AFFIRMED** in all other respects.

SO ORDERED.

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

Jardeleza, J., no part.

EN BANC

[G.R. No. 221773. October 18, 2016]

RG CABRERA CORPORATION, INC., *petitioner, vs.* **DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, and COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1445; CERTIFICATE SHOWING APPROPRIATION TO MEET CONTRACT; THE

ABSENCE THEREOF DOES NOT PRECLUDE THE CONTRACTOR FROM RECEIVING PAYMENT FOR THE SERVICES RENDERED AS STIPULATED IN THE CONTRACT.— [T]he COA denied the money claims filed by petitioner RG Cabrera for the lack of a prior certification as to the availability of the necessary funds. The denial was based on Sections 86 and 87 of P.D. No. 1445 x x x. It is true that the existence of appropriation and the attachment to the contract of the certification showing availability of funds are conditions *sine qua non* for the execution of government contracts. The absence thereof, however, does not necessarily mean that the contractor is precluded from receiving payment for the services rendered. In *DPWH v. Quiwa (Quiwa),* the Court held that the lack of certification of availability of funds does not bar a contractor from recovering the fees stipulated in the contract x x x. [T]he subject lease contracts are not intrinsically illegal but were merely declared to be so under P.D. No. 1445 for lack of the necessary certification. Nevertheless, it would be an injustice to deny RG Cabrera the payment for the use of its heavy equipment, which benefited the public, solely on the ground of the procedural flaws in the contracts. In *EPG Construction Co. v. Vigilar,* the Court upheld the right of the contractor to recover fees due them for services that it rendered notwithstanding the defects in the contracts therein x x x. In the case at bench, the OSG never "denied that the equipment of RG Cabrera were used by DPWH. In fact, the evidence on record would show that the bulldozers, payloaders and dump trucks were utilized by the DPWH in the maintenance of the Porac-Gumain Diversion Channel System. To deny RG Cabrera of compensation for the lease of its equipment to the government would be tantamount to injustice, which cannot be countenanced by this Court. This is especially true as the use of the equipment was for the rehabilitation of the areas severely affected by the Mt. Pinatubo eruption. The government and the people of Pampanga clearly benefited from the lease subject contracts. It is but just that RG Cabrera receive compensation for the use of its equipment.

APPEARANCES OF COUNSEL

Eduardo V. De Mesa for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This Petition for *Certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the March 17, 2015 Decision[1] and the August 18, 2015 Resolution[2] of the Commission on Audit *(COA)* in COA CP Case Nos. 2011-200 and 2011-228, denying the consolidated claims of petitioner RG Cabrera Corporation, Inc. *(RG Cabrera)* against the Department of Public Works and Highways *(DPWH)*, Pampanga 2nd Engineering District, Guagua, Pampanga *(DPWH Pampanga)*.

In June 1991, Mt. Pinatubo erupted producing thick volcanic ash and sand deposits affecting the surrounding mountains and hills of Pampanga, Tarlac and Zambales. These volcanic deposits were washed down by monsoon rains causing lahar, which destroyed existing dike systems and spilled into neighboring villages. To address the problems arising from the aftermath of the Mt. Pinatubo eruption, Task Force Mount Pinatubo Rehabilitation Projects was created. It was headed by DPWH Regional Director Vicente B. Lopez *(Chairman Lopez)*.[3]

From February to July 1992, the DPWH Pampanga entered into several contracts for lease of equipment with RG Cabrera for the maintenance and restoration of portions of the Porac-Gumain Diversion Channel System. Later, on September 1, 1992, the DPWH Pampanga leased another four (4) bulldozers from RG Cabrera covered by another contract of lease of equipment. At the end of the lease period, RG Cabrera tried to collect the agreed rentals from the DPWH Pampanga but failed to receive any payment.[4]

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[1] *Rollo*, pp. 32-37.

[2] *Id.* at 38.

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

[4] *Id.* at 6-8.

This prompted RG Cabrera to file five (5) separate complaints for collection of sum of money against the DPWH before the Regional Trial Court, Branch 52, Guagua, Pampanga *(RTC)*. In all the cases, the Office of the Solicitor General *(OSG)* objected on the ground that the said contracts were defective because of their failure to follow the requirements of the law. In 2002 and 2003, the RTC granted the separate complaints of RG Cabrera involving the contracts of lease of equipment entered into from February to September 1992. The trial court held that the contracts of lease were binding upon the parties and, therefore, the DPWH was bound to comply with the said contracts and to pay the agreed fees. It noted that RG Cabrera was able to prove that it had performed its obligation under the said contracts warranting it to receive payment therefor.

When the cases were appealed by the OSG before the Court of Appeals *(CA)*, the RTC decisions were *reversed*. The appellate court explained that the state was immune from suit and that the money claims should have been filed before the COA.[5]

RG Cabrera elevated the cases to this Court, which denied the petitions for failure to show that the CA committed any reversible error. Thus, the Court sustained the CA ruling that RG Cabrera should have filed its claims with the COA.[6]

Thereafter, in 2011, RG Cabrera filed the said money claims before the COA which were docketed as COA CP Case No. 2011-200 and COA CP Case No. 2011-228.[7]

COA CP Case Nos. 2011-200 and 2011-228

The COA, in its March 17, 2015 Decision, identified the claims as follows:

a. Lease contract for one payloader covering the period February 3, 1992 to March 3, 1992, for which the rental fees amounted to ₱174,515.00;

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[5] *Id.* at 33.

[6] *Id.* at 8.

[7] *Id.* at 8.

b. Lease contract for four (4) bulldozers for the period June 1, 1992 to July 15, 1992 which was extended for the period July 16, 1992 until August 28, 1992, with the rental fees totaling ₱2,392,077.50; and

c. Lease contract for the use of one payloader and two (2) dump trucks for the period July 1, 1992 up to September 28, 1992, for which rental fees amounted to ₱1,790,676.00.

The total claim for the contracts amounted to ₱4,357,268.50, an amount allegedly left unpaid by the respondent.

In COA CP Case No. 2011-228, the claim involves the contract entered into on September 1, 1992 for the lease of four (4) bulldozers, the rental fees of which amounted to ₱587,211.50, which amount is sought to be recovered by the claimant.[8]

Respondent DPWH argued that the contracts were null and void, as these were unauthorized and not compliant with the requirements under the law and, thus, not legally binding upon the government. The DPWH also invoked its immunity from suit as the contract called for governmental functions.

The COA Ruling

On March 17, 2015, in its consolidated decision, the COA upheld the decision of the COA Regional Office denying RG Cabrera's money claims in COA CP No. 2011-200 and COA CP No. 2011-228. It found that the lease contracts between RG Cabrera and the DPWH were void for non-compliance with the provisions of Presidential Decree *(P.D.)* No. 1445. The COA noted that the contracts of lease were unsupported by prior certification as to the availability of the necessary funds. On *quantum meruit*, it stated that RG Cabrera's claims could not be granted because the DPWH had consistently denied any liability or acceptance of benefits from the subject lease contracts.

Aggrieved, RG Cabrera moved for reconsideration of the decision, but its motion was denied by the COA in its August 18, 2015 Resolution.

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[8] *Id.* at 32-33.

Hence, this present petition raising this

SOLE ISSUE

WHETHER RG CABRERA IS ENTITLED TO RECOVER RENTALS FROM THE EQUIPMENT LEASED PURSUANT TO THE SUBJECT LEASE CONTRACTS.

RG Cabrera argues that the failure to comply with the technical requirements, such as the certification of availability of funds, does not bar it from recovering the rentals for the use of heavy equipment. It insists that it entered the subject lease contracts in good faith and was unaware of their infirmities and defects. It surmises that payment was being withheld by DPWH probably because there were allegations during a senate investigation that ghost projects had been paid by it.

Nevertheless, RG Cabrera prays that it be paid on the basis of *quantum meruit* considering that the government derived benefits at its expense in leasing the equipment used in the maintenance of the Porac-Gumain Diversion Channel. It notes that the DPWH never denied acceptance of the benefits of the subject lease contracts, but merely refused liability claiming nullity of the subject lease contracts.

In its Comment,[9] dated March 21, 2016, the OSG counters that contracts which do not comply with the requirements of the law are void and, for said reason, no payment should be made. In addition, it asserts that payment cannot be made on the basis of *quantum meruit* because the COA did not make any determination on the extent of the services actually rendered.

In its Reply,[10] dated July 5, 2016, RG Cabrera argues that the lack of certificate of availability of funds did not nullify the subject lease contracts. It insists that it can still recover payment notwithstanding its non-compliance with the technical requirements because the contracts are not illegal *per se*. It reiterates that it is entitled to receive payment on the basis of *quantum meruit*.

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[9] *Id.* at 255-262.

[10] *Id*. at 266-271.

The Court's Ruling

The Court finds merit in the petition.

Primarily, the COA denied the money claims filed by petitioner RG Cabrera for the lack of a prior certification as to the availability of the necessary funds. The denial was based on Sections 86 and 87 of P.D. No. 1445, which read:

> **Section 86** – *Certificate showing appropriation to meet contract*. Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.
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> **Section 87** – *Void contract and liability of officer*. Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

It is true that the existence of appropriation and the attachment to the contract of the certification showing availability of funds are conditions *sine qua non* for the execution of government contracts.[11] The absence thereof,

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[11] *Philippine National Railways v. Kanlaon Construction Enterprises Co., Inc.*, 662 Phil. 771, 779-780 (2011).

however, does not necessarily mean that the contractor is precluded from receiving payment for the services rendered.

In *DPWH v. Quiwa (Quiwa)*,[12] the Court held that the lack of certification of availability of funds does not bar a contractor from recovering the fees stipulated in the contract, to wit:

> It was, however, undisputed that there was **no certification** from the chief accountant of DPWH regarding the said expenditure. In addition, the project manager has a limited authority to approve contracts in an amount not exceeding ₱1 million. Notwithstanding these irregularities, it should be pointed out that there is no novelty regarding the question of satisfying a claim for construction contracts entered into by the government, where there was no appropriation and where the contracts were considered void due to technical reasons. **It has been settled in several cases that payment for services done on account of the government, but based on a void contract, cannot be avoided**. The Court first resolved such question in *Royal Trust Construction v. Commission on Audit*. xxx
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> The above case became the authority in granting claims of a contractor against the government based on a void contract. This exercise of equity to compensate contracts with the government was repeated in *Eslao vs. COA*. **In the said case, the respondent therein, Commission on Audit (COA), was ordered to pay the company of petitioner for the services rendered by the latter in constructing a building for a state university, notwithstanding the contract's violations of the mandatory requirements of law, including the prior appropriation of funds therefor.** The Court, in resolving the case, cited the unpublished Resolution in *Royal Construction*, wherein the Court allowed the payment of the company's services sans the legal requirements of prior appropriation.
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> *Royal Trust Construction* was again mentioned in *Melchor v. COA*, which was decided a few months after *Eslao*. **In *Melchor*, it was found that the contract was approved by an unauthorized person and, similar to the case at bar, the required certification of the chief accountant was absent.** The Court did not deny or justify the

[12] 675 Phil. 9 (2011).

invalidity of the contract. **The Court, however, found that the government unjustifiably denied what the latter owed to the contractors, leaving them uncompensated after the government had benefit[t]ed from the already completed work.**[13] [Emphases supplied]

The circumstances in the case at bench are similar to those in *Quiwa*. *First*, the contracts in both cases involved the rehabilitation of the areas devastated by the aftermath of the Mt. Pinatubo eruption. The contractor in *Quiwa* performed construction services, while RG Cabrera provided the equipment to be used in the rehabilitation projects. *Second*, the services rendered by the contracts had redounded to the benefit of the government. *Third*, the DPWH, in both cases, refused to pay on the ground that no certificates as to the availability of funds were attached to the assailed contracts.

Indeed, the subject lease contracts are not intrinsically illegal but were merely declared to be so under P.D. No. 1445 for lack of the necessary certification. Nevertheless, it would be an injustice to deny RG Cabrera the payment for the use of its heavy equipment, which benefited the public, solely on the ground of the procedural flaws in the contracts. In *EPG Construction Co. v. Vigilar*,[14] the Court upheld the right of the contractor to recover fees due them for services that it rendered notwithstanding the defects in the contracts therein, *viz*:

> Notably, the peculiar circumstances present in the instant case buttress petitioners' claim for compensation for the additional constructions, despite the illegality and void nature of the "implied contracts" forged between the DPWH and petitioners-contractors. On this matter, it bears stressing that the illegality of the subject contracts proceeds from an express declaration or prohibition by law, and not from any intrinsic illegality. Stated differently, the subject contracts are not illegal *per se*.
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> To our mind, it would be the apex of injustice and highly inequitable for us to defeat petitioners-contractors' right to be duly compensated

[13] *Id*. at 21-25.

[14] 407 Phil. 53 (2001).

for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from said housing project and reaped the fruits of petitioners-contractors' honest toil and labor.[15]

In the case at bench, the OSG never denied that the equipment of RG Cabrera were used by DPWH. In fact, the evidence on record would show that the bulldozers, payloaders and dump trucks were utilized by the DPWH in the maintenance of the Porac-Gumain Diversion Channel System.

To deny RG Cabrera of compensation for the lease of its equipment to the government would be tantamount to injustice, which cannot be countenanced by this Court. This is especially true as the use of the equipment was for the rehabilitation of the areas severely affected by the Mt. Pinatubo eruption. The government and the people of Pampanga clearly benefited from the lease subject contracts. It is but just that RG Cabrera receive compensation for the use of its equipment.

WHEREFORE, the petition is **GRANTED.** The March 17, 2015 Decision and the August 18, 2015 Resolution of the Commission on Audit in COA CP Case Nos. 2011-200 and 2011-228 are **REVERSED** and **SET ASIDE**. The Department of Public Works and Highways is hereby **ORDERED** to pay RG Cabrera Corporation, Inc. the agreed rentals in the subject lease contracts in the aggregate amount of ₱4,944,480.00, plus interests at the legal rate.

This disposition is without prejudice to any criminal or administrative action against erring DPWH officials for violation of the law, if any.

SO ORDERED.

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

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[15] *Id.* at 63-64.

FIRST DIVISION

[A.C. No. 7388. October 19, 2016]

ATTY. RUTILLO B. PASOK, *complainant, vs.* **ATTY. FELIPE G. ZAPATOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; PROVIDES THAT A FORMER MEMBER OF THE BENCH IS PROHIBITED FROM HANDLING ANY CASE UPON WHICH HE HAD PREVIOUSLY ACTED IN A JUDICIAL CAPACITY.— To come within the ambit of Rule 6.03 of the *Code of Professional Responsibility,* the respondent must be shown to have accepted the engagement or employment in relation to a matter that, by virtue of his judicial office, he had previously exercised power to influence the outcome of the proceedings. That showing was sufficiently made herein. The respondent, in his capacity as the judge of the MTCC of Tangub City, presided over the case before eventually inhibiting himself from further proceedings. His act of presiding constituted intervention within the meaning of the rule whose text does not mention the degree or length of the intervention in the particular case or matter. It is also plain and unquestionable that Canon 36, x x x from which the canon was derived, prohibited him as a former member of the Bench from handling any case upon which he had previously acted in a judicial capacity. In this context, he not only exercised the power to influence the outcome of the proceedings but also had a direct hand in bringing about the result of the case by virtue of his having the power to rule on it.

2. ID.; ID.; ID.; ID.; THE RESTRICTION EXTENDS BEYOND HIS TENURE IN RELATION TO MATTERS IN WHICH HE HAD INTERVENED AS JUDGE.— The restriction extended to *engagement or employment*. The respondent could not accept work or employment from anyone that would involve or relate to any matter in which he had intervened as a judge except on behalf of the body or authority that he served during

his public employment. The restriction as applied to him lasted beyond his tenure in relation to the matters in which he had intervened as judge. Accordingly, the fact that he was already retired from the Bench, or that he was already in the private practice of law when he was engaged for the case was inconsequential.

D E C I S I O N

BERSAMIN, *J.*:

This administrative case concerns the respondent, a retired judge who took on the case that he had intervened in during his incumbency on the Bench. The complainant was the counsel of record of the plaintiff in the case. The charge specified that the respondent was guilty of "representing adverse interest, illegal practice of law, conduct and (sic) becoming as a former member of the bench and conduct unbecoming in violation of the canons of legal ethics with prayer for disbarment."[1]

Antecedent

The antecedents summarized in the Report and Recommendation submitted by the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP–CBD)[2] are as follows:

Complainant alleged that respondent was the former Presiding Judge of the Regional Trial Court of Branch 35, Ozamis City and retired as such. But before his appointment as RTC Judge, he was the Presiding Judge of the Municipal Trial Court in Cities 10th Judicial Division, Tangub City where he presided [over] a Forcible Entry case docketed as Civil Case No. 330 entitled "Ronald Rupinta vs. Sps. Pacifico Conol and Malinda Conol." Complainant was the counsel of Rupinta and the decision was rendered against him by respondent.

Sometime on 24 November 1994 and while respondent was still the Presiding Judge of MTCC, Tangub City, another civil complaint

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[1] *Rollo*, p. 4.

[2] *Id*. at 482-487.

was filed by Ronald Rupinta with his mother, Anastacia Rupinta, as co-plaintiff, against Carmen Alfire and Pacifico Conol, docketed as Civil Case No. 357, for Declaration of Nullity of Deed of Absolute Sale, Reconveyance of Ownership, Accounting of Rents and Fruits and Attorney's Fees and Damages with Petition for the Appointment of a Receiver. Complainant represented the plaintiffs and the complaint was heard by respondent as Presiding Judge of MTCC, 10th Judicial Region, Tangub City. When the case was already scheduled for trial on the merits, respondent suspended the scheduled hearing "*motu proprio*" for reason that there was still affirmative defenses raised by the defendants, like the issue of lack of jurisdiction which prompted the plaintiff to file a Manifestation and Memorandum which made respondent to (sic) inhibit himself from trying the case.

Since 17 January 1996, the aforesaid case hibernated and respondent was appointed Presiding Judge of RTC Branch 35, Ozamis City. Sometime on 23 March 2006, the newly appointed Presiding Judge of MTCC 10th Judicial Region, Tangub City, Judge Rodolfo L. Vapor, issued an Order informing the parties on the aforesaid case whether they were amenable for him to render judgment on the case of which complainant's client agreed and filed their Memorandum. However, complainant was surprised when he received a Manifestation from the defendants that they are now represented by respondent, the former judge who once presided over the aforesaid case.

Plaintiffs, through complainant, filed their Memorandum within 30 days. However, Judge Vapor, instead of rendering judgment based on the merits and evidences (sic) already presented, issued an Order dated 26 May 2006, dismissing the complaint on the ground that the complaint being denominated as an annulment of a Deed of Sale, is by nature a claim beyond pecuniary estimation, hence the court has no jurisdiction.
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The Decision dismissing the complaint was appealed to the RTC, Branch 16, Tangub City presided by Judge Sylvia Singidas-Machacon who directed the appellant to submit their Memorandum. Despite the warning of the complainant that the appearance of respondent is highly illegal, immoral, unethical and adverse to the interest of the public, respondent, being the previous presiding judge, continued on with his appearance for the appellees by filing a Motion for Extension of Time to Submit Memorandum. On appeal, Judge Machacon, reversed the Decision of Judge Vapor sustaining the stand of the client of respondent that the original jurisdiction of the case is vested with the MTCC, Tangub City.

While the aforesaid appealed case was pending before Judge Machacon, complainant filed a Motion to Expunge from the Court Records the Memorandum filed by the Defendants-Appellees through their counsel Ex-MTC and RTC Judge Felipe G. Zapatos, on the ground that as the former presiding judge of the MTCC, Tangub City, he is disqualified to appear as counsel for the defendants. For allegedly failing to attend the hearing of the above-mentioned Motion, the same was denied by Judge Machacon despite the fact that respondent admitted in his Comment to the said Motion the allegations of complainant. Respondent raised as his defense that he cannot be charged nor penalized of any violation as the counsel of the defendants because when he rendered the first judgment in the Forcible Entry case, he believes he was completely in absolute neutrality. Respondent, likewise, justified his appearance as counsel for the defendants on the ground that he is encountering extreme poverty due to the absence of adequate income and as a source of livelihood he was constrained to handle the aforesaid case.

Respondent admits that complainant filed Civil Case No. 330 entitled "Rupinta vs. Conol" before the MTCC, Tangub City where respondent was the presiding judge. As a result of that case, respondent rendered a decision dismissing the same on 23 September 1993. After the aforesaid case was dismissed, complainant, as counsel of Anastacia Rupinta Largo and Ronald Rupinta, filed Civil Case No. 357 for Declaration of Nullity of Deed of Absolute Sale, Reconveyance of Ownership, Accounting of Rents and Fruits and Attorney's Fees and Damages with [Petition for the] Appointment of a Receiver and Civil Case No. 356 entitled "In the Matter of the Intestate Estate of the Deceased Perfecto Rupinta, Petition for Letters of Administration, Mrs. Anastacia Rupinta Largo, Petitioner". Respondent as Presiding Judge inhibited himself from conducting the trial of the two (2) cases as provided for in his Order dated 17 January 1996 on the ground that complainant as counsel for the plaintiffs and petitioner in the aforesaid cases have doubted the absolute neutrality or impartiality of respondent.

After inhibiting himself from these cases, respondent was promoted as Regional Trial Court Judge of Branch 35, Ozamis City on 28 October 1997 until he retired from the Judiciary on 14 November 2001. Thereafter, on account of the fact that respondent needs income in order to survive or he would die of starvation, he engaged in the private practice of law. Four (4) years after he retired from the judiciary and more than ten (10) years after he inhibited himself from conducting

trial on Civil Case No. 357, respondent filed a Manifestation for the defendants in Civil Case 357.[3]

Ignoring the warnings of the complainant, the respondent persisted in his representation of the defendants in Civil Case No. 357. Hence, the complainant commenced this administrative case.

After being required by the Court, the respondent submitted his comment, to which the complainant filed a rejoinder. Thereafter, the Court referred the case to the IBP for investigation, report and recommendation.

Report and Recommendation of the IBP-CB

After the parties submitted their position papers, the IBP-CBD issued its Report and Recommendation dated July 9, 2008,[4] whereby it found and held the respondent guilty of violating Rule 6.03 of the *Code of Professional Responsibility*, and recommended that he be suspended from the practice of law and as a member of the Bar for one (1) month. It observed that under Rule 6.03, "a lawyer shall not, after leaving the government service, accept engagement or employment in connection with any matter in which he had intervened while in said service;" and that the words or phrases *any matter* and *he had intervened* qualifying the prohibition were very broad terms, and included any conceivable subject in which the respondent acted on in his official capacity.[5]

In Resolution No. XVIII-2008-403 adopted on August 14, 2008,[6] the IBP Board of Governors approved the Report and Recommendation of the IBP-CBD.

On June 26, 2011, the IBP Board of Governors passed Resolution No. XIX-2011-434[7] denying the respondent's motion

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[3] *Id.* at 483-485.

[4] *Id.* at 482-487.

[5] *Id.* at 486.

[6] *Id.* at 481.

[7] *Id.* at 536.

for reconsideration, and affirming Resolution No. XVIII-2008-403.

The IBP Board of Governors forwarded the records to the Court in accordance with Section 12(b), Rule 139-B of the *Rules of Court*, to wit:

> If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

Ruling of the Court

We adopt and affirm the findings and recommendation of the IBP Board of Governors.

Rule 6.03 of the *Code of Professional Responsibility* provides:

> Rule 6.03 – **A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service**.

This rule, according to *Presidential Commission on Good Government v. Sandiganbayan*,[8] traces its lineage to Canon 36 of the *Canons of Professional Ethics*, *viz.*:

> 36. Retirement from judicial position or public employment
>
> **A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity**.
>
> **A lawyer, having once held public office or having been in the public employ should not, after his retirement, accept employment in connection with any matter he has investigated or passed upon while in such office or employ**.

To come within the ambit of Rule 6.03 of the *Code of Professional Responsibility*, the respondent must be shown to

[8] G.R. Nos. 151809-12, April 12, 2005, 455 SCRA 526, 569-570.

have accepted the engagement or employment in relation to a matter that, by virtue of his judicial office, he had previously exercised power to influence the outcome of the proceedings.[9] That showing was sufficiently made herein. The respondent, in his capacity as the judge of the MTCC of Tangub City, presided over the case before eventually inhibiting himself from further proceedings. His act of presiding constituted intervention within the meaning of the rule whose text does not mention the degree or length of the intervention in the particular case or matter. It is also plain and unquestionable that Canon 36, supra, from which the canon was derived, prohibited him as a former member of the Bench from handling any case upon which he had previously acted in a judicial capacity. In this context, he not only exercised the power to influence the outcome of the proceedings but also had a direct hand in bringing about the result of the case by virtue of his having the power to rule on it.

The restriction extended to *engagement or employment*. The respondent could not accept work or employment from anyone that would involve or relate to any matter in which he had intervened as a judge except on behalf of the body or authority that he served during his public employment.[10] The restriction as applied to him lasted beyond his tenure in relation to the matters in which he had intervened as judge.[11] Accordingly, the fact that he was already retired from the Bench, or that he was already in the private practice of law when he was engaged for the case was inconsequential.

Although the respondent removed himself from the cases once his neutrality and impartiality were challenged, he ultimately did not stay away from the cases following his retirement from the Bench, and acted thereon as a lawyer for and in behalf of the defendants.

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[9] *Olazo v. Tiñga*, A.M. No. 10-5-7-SC, December 7, 2010, 637 SCRA 1, 15.

[10] *Rollo*, p. 486.

[11] *Id*.

The respondent has pleaded for the sympathy of the Court towards his plight of "poverty." Although we can understand his current situation and symphatize with him, his actuations cannot be overlooked because they contravened the express letter and spirit of Rule 6.03 of the *Code of Professional Responsibility*. In any case, his representing the defendants in the civil cases was not the only way by which he could improve his dire financial situation. It would not be difficult for him, being a lawyer and a former member of the Bench, to accept clients whom he could ethically represent in a professional capacity. If the alternatives open to him were not adequate to his liking, he had other recourses, like serving as a notary public under a valid commission. His taking on of the defendants' civil cases despite his previous direct intervention thereon while still a member of the Bench was impermissible. He should have maintained his ethical integrity by avoiding the engagement by the defendants.

WHEREFORE, the Court **FINDS** and **PRONOUNCES ATTY. FELIPE G. ZAPATOS** guilty of violating Rule 6.03 of Canon 6 of the *Code of Professional Responsibility*, and **SUSPENDS** him from the practice of law for a period of **ONE (1) MONTH** effective immediately upon receipt of this decision, with warning that a similar offense by him will be dealt with more severely.

Let copies of this decision be included in the personal record of the respondent and be entered in his file in the Office of the Bar Confidant; and be furnished to the Office of the Court Administrator for dissemination to all lower courts in the country, as well as to the Integrated Bar of the Philippines for its information and guidance.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 7927. October 19, 2016]

SANDY V. DOMINGO, *complainant, vs.* **ATTY. PALMARIN E. RUBIO and ATTY. NICASIO T. RUBIO,** *respondents.*

SYLLABUS

1. **LEGAL ETHICS; DISBARMENT; THE POWER TO DISBAR IS ALWAYS EXERCISED WITH GREAT CAUTION ONLY FOR THE MOST IMPERATIVE REASONS AND IN CASES OF CLEAR MISCONDUCT AFFECTING THE STANDING AND MORAL CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND MEMBER OF THE BAR.—** This proceeding for disbarment cannot be the occasion to impeach the respondent's filing of the motion for reconsideration. The issues that the complainant raised against such filing and any other matters incidental to such filing should have been raised only in the trial court, or in the proper office. We cannot allow the trivialization of the sanction of disbarment by the complainant. He should be reminded that disbarment is the most severe form of disciplinary sanction against a misbehaving member of the Integrated Bar; as such, the power to disbar is always exercised with great caution only for the most imperative reasons and in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. x x x We deem it timely and appropriate to remind that administrative proceedings brought against lawyers, including those in the public service, to make them be accountable for their acts or omissions in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices or agencies.

2. **ID.; ID.; THE COURT WILL EXERCISE ITS DISCIPLINARY POWER ONLY BY OBSERVING DUE PROCESS AND IF THE LAWYER'S ADMINISTRATIVE GUILT IS PROVED BY CLEAR, CONVINCING AND SATISFACTORY EVIDENCE; CASE AT BAR.—** Based on all the established attendant circumstances, the complainant

had no legal or factual basis for his disbarment complaint against the respondents. The case involved their official acts as public prosecutors, focusing on how they had proceeded in a pending matter that was entirely within their official competence and responsibility. How they could be held answerable or accountable as lawyers for their official acts escapes us, but at least the Court now gives them some consolation by dismissing the disbarment proceedings as unworthy and devoid of substance. x x x The Court will exercise its disciplinary power only by observing due process and if the lawyer's administrative guilt is proved by clear, convincing, and satisfactory evidence. This norm is aimed at preserving the integrity and reputation of the Law Profession, and at shielding lawyers, in general, due to their being officers themselves of the Court. Any complaint for disbarment or other disciplinary sanction brought against lawyers that is based on frivolous matters or proof, like this case, should be immediately dismissed because its plain objective is to harass or get even with the respondent. The public must be reminded that lawyers are professionals bound to observe and follow the strictest ethical canons, and to subject them to frivolous, unfounded and vexatious charges of misconduct and misbehavior is to do a disservice to the ideals of justice, and to disregard the Constitution and the laws to which all lawyers vow their enduring fealty.

D E C I S I O N

BERSAMIN, *J.*:

Administrative charges against members of the Bar must not rest on frivolous matters. Otherwise, they shall be outrightly dismissed because their aim is only to harass the respondents.

The Case

Under consideration is the complaint for disbarment brought on April 11, 2008 against respondent Atty. Palmarin E. Rubio, in his capacity as the City Prosecutor of Legazpi City, for allegedly refusing to act on the order of the Secretary of Justice and for allegedly fraudulently and deceitfully withholding the prepared motion for reconsideration from being filed in the

Department of Justice (DOJ), thereby causing damage and prejudice to the complainant – an accused in parricide - thereby violating the Lawyer's Oath and the *Code of Professional Responsibility*.

The complainant later on charged respondent Atty. Nicasio T. Rubio in his capacity as Assistant City Prosecutor for his direct participation in the alleged irregularities imputed to his co-respondent.

For convenience, respondents Atty. Palmarin E. Rubio and Atty. Nicasio T. Rubio are hereafter be referred to, respectively, as CP Rubio and ACP Rubio.

Antecedents

The Philippine National Police (PNP) of Legazpi City filed a case for murder in the Office of the City Prosecutor of Legazpi City arising from the killing of one Juan Edgardo Yap Bongalon on August 22, 2005. After due proceedings, the Office of the City Prosecutor filed an information in the Regional Trial Court (RTC) in Legazpi City charging Ariel Dayap and four other persons who were then not identified with particularity as having acted in conspiracy with Dayap to commit the murder.

Subsequently, Dayap executed an extrajudicial confession to the effect that he had conspired with four other persons, namely: the complainant, Mike Arena, Noli Marquez and Lorna Bongalon (the widow of the victim), with the last as the mastermind.

Thus, the Office of the City Prosecutor sought leave of court to conduct a preliminary investigation preparatory to amending the information to include the other four in the charge. However, the assigned investigating prosecutor requested her inhibition from conducting further preliminary investigation because Lorna Bongalon had branded her as biased.

The request for inhibition was granted, and the case was re-assigned to ACP Rubio, who ultimately rendered a resolution recommending the dismissal of the charge as to the four alleged

co-conspirators upon finding that the extrajudicial confession of Dayap had been uncounselled.

Approving the resolution, CP Rubio moved for the withdrawal of the information, but the RTC denied the motion to withdraw because the confession of Dayap already established probable cause. The respondents moved to reconsider the denial, but the RTC persisted on its resolution.

On February 6, 2006, the Legazpi PNP presented additional evidence. Thus, a new complaint was filed and was assigned for preliminary investigation to ACP Rubio, who, after conducting the preliminary investigation, issued his resolution on February 27, 2006 finding probable cause for parricide against the complainant, Arena, Marquez and Lorna Bongalon, acting in conspiracy with Dayap, and for robbery only against Dayap, Arena and Marquez.

The amended information for parricide was allowed by the RTC on March 6, 2006, and the RTC issued the warrants for the arrest of the newly-charged accused.

Lorna Bongalon sought a reinvestigation, but the RTC did not give due course to her motion. Accordingly, she moved for the deferment of her arraignment to enable her to appeal to the DOJ by petition for review.

In the meantime, the complainant was arrested. On March 16, 2006, he executed an extrajudicial confession with the assistance of counsel.

Acting favorably on Lorna Bongalon's petition for review, the Secretary of Justice directed CP Rubio on August 11, 2006 to cause with leave of court the withdrawal of the information for parricide against her, the complainant and their three co-accused, and to file in lieu thereof another information for murder only against Dayap.

On August 24, 2006, the respondents filed a motion for reconsideration vis-a-vis the resolution of the Secretary of Justice arguing that the extrajudicial confession executed by the

complainant had not been made part of the petition for review filed by Lorna Bongalon's counsel.

It appears that the respondents failed to actually send a copy of their motion for reconsideration to the Secretary of Justice despite furnishing all the parties copies of the motion; and that the motion for reconsideration was received by the DOJ only on April 12, 2007.[1]

According to the complainant, CP Rubio and ACP Rubio, by intentionally not sending to him a copy of their motion for reconsideration to the DOJ despite furnishing their motion for reconsideration to the other parties, and by belatedly submitting their motion for reconsideration to the DOJ, which eventually got a copy of it, acted fraudulently.

CP Rubio and ACP Rubio countered that their failure to send a copy to the complainant and to the DOJ was due to sheer oversight, explaining that the releasing clerk of the Office of the City Prosecutor of Legazpi City had not sent the motion for reconsideration despite furnishing copies thereof to all the other parties.

Based on the foregoing, the complainant initiated the complaint for disbarment against CP Rubio and ACP Rubio directly in this Court,[2] stating that the refusal of the respondents to comply with the order of the Secretary of Justice had caused him to remain behind bars for a crime that he had already been exonerated of, thereby causing him and his family tremendous sufferings; that the respondents had also withheld the filing at the DOJ of their already-prepared motion for reconsideration, and caused the filing of the motion only many months later; that upon resuming its proceedings in the criminal case involving the complainant in early 2007, the RTC, unaware of the appeal by petition for review of Lorna Bongalon in the DOJ, proceeded with the case and issued on March 1, 2007 the order for the arrest against all the accused, including him, but it could have

[1] *Rollo*, p. 398.

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

suspended such proceedings to give way to the exercise of review by the Secretary of Justice; that the actuations of the respondents were unjust and absolutely prejudicial to him because he was thereby forced to languish in jail; and that the respondents deserved to be disbarred or otherwise sanctioned for their ignorance of the law and misconduct.

After the parties submitted their respective position papers, the Investigating Commissioner of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) deemed the case submitted for resolution upon the sole issue of whether or not the act of the respondents in respect of the filing of the motion for reconsideration constituted a ground for disbarment.

The IBP- CBD's Report and Recommendation

In its Report and Recommendation dated January 31, 2011,[3] the IBP-CBD recommended that the complaint for disbarment be dismissed for lack of merit.

The Investigating Commissioner noted that although the complainant relied on Section 27,[4] of Rule 138 of the *Rules of Court*, the complaint for disbarment was nonetheless frivolous because the rule - which referred to the "wilful disobedience of any lawful order of a superior court" as a ground for suspension or disbarment – had no application because the Secretary of Justice was not a superior court; that the filing of the motion for reconsideration was done in good faith inasmuch as the

[3] *Id.* at 397-407.

[4] Section 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, **or for a willful disobedience of any lawful order of a superior court,** or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (As amended by Resolution of the Supreme Court, Feb. 13, 1992).

respondents believed that the motion was the best course of action to take in light of the new evidence in the form of the complainant's own extrajudicial confession; and that the respondents no longer needed to comply with the directive of the Secretary of Justice to cause the withdrawal of the information considering that the RTC had meanwhile issued its order directing the pre-trial to proceed and the trial to be held continuously thereafter until the case was terminated.[5]

In Resolution No. XX-2012-202 passed on June 13, 2012,[6] the IBP Board of Governors unanimously adopted and approved the Report and Recommendation of the Investigating Commissioner, and upheld the dismissal of the complaint for lack of merit.

On April 15, 2013, the IBP Board of Governors passed Resolution No. XX-2013-418[7] unanimously denying the complainant's motion for reconsideration and affirming Resolution No. XX-2012-202.

The IBP Board of Governors then forwarded the case to the Court as required by Section 12(b), Rule 139-B[8] of the *Rules of Court.*

Ruling of the Court

We affirm the findings of the IBP Board of Governors.

The complainant argues that the resolution issued by the Secretary of Justice directing the withdrawal of the information against him exonerated him from all charges, thereby warranting his immediate release from detention, was a proper basis for

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[5] *Rollo,* p. 91.

[6] *Id.* at 396.

[7] *Id.* at 461.

[8] Section 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

bringing the complaint for disbarment against the respondents upon learning that they had filed the motion for reconsideration. In support of his complaint, he cites Section 27, Rule 138 of the *Rules of Court,* which provides:

> Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, **or for a willful disobedience of any lawful order of a superior court,** or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (As amended by Resolution of the Supreme Court, Feb. 13, 1992).

The complainant's reliance on Section 27 was obviously misplaced. The observation of the Investigating Commissioner that the Secretary of Justice was not the same as the superior court referred to by the rule was correct. As such, the filing by the respondents of the motion for reconsideration was not a defiance or wilful disobedience to the lawful order of the superior court.

A further consideration in favor of the respondents is that they were expected as public prosecutors whose sworn duty was to prosecute crimes to the best of their abilities in order to protect the interest of the people to do everything within the bounds of the law to discharge such duty. Their filing of the motion for reconsideration was a valid recourse for them to prevent the withdrawal of the information against the complainant considering that the new evidence consisting of the complainant's own extrajudicial confession had not been brought to the attention of the Secretary of Justice. It is worthy of mention in this connection that the respondents even enjoyed the presumption of regularity in the performance of their official duties as far as the filing of the motion for reconsideration was concerned.

Accordingly, there was no justification on the complainant's part to impute to them any fraudulent intent.

At any rate, it was not the Secretary of Justice who would ultimately determine whether the information against the complainant, among others, would be withdrawn or not. This was because the RTC as the trial court already acquired jurisdiction over the criminal case. As such, the decision whether or not to allow the withdrawal of the information upon motion of the public prosecutor in compliance with the directive of the Secretary of Justice then pertained to the RTC. Such jurisdiction of the RTC was exclusive,. for, as held in *Crespo v. Mogul*:[9]

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. **Although the [public prosecutor] retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.**

Verily, the RTC could grant or deny the motion to withdraw the information not out of subservience to the Secretary of Justice but in faithful exercise of its judicial prerogative.[10] In that regard, we note that the RTC ultimately denied the motion to withdraw the information and directed the pre-trial to proceed.

This proceeding for disbarment cannot be the occasion to impeach the respondents' filing of the motion for reconsideration. The issues that the complainant raised against such filing and any other matters incidental to such filing should have been raised only in the trial court, or in the proper office. We cannot allow the trivialization of the sanction of disbarment by the

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[9] *Crespo v. Mogul,* No. 53373, June 30, 1987, 151 SCRA 462, 471.

[10] *Roberts, Jr. v. Court of Appeals,* G.R. No. 113930, March 5, 1996, 254 SCRA 307, 334.

complainant. He should be reminded that disbarment is the most severe form of disciplinary sanction against a misbehaving member of the Integrated Bar; as such, the power to disbar is always exercised with great caution only for the most imperative reasons and in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[11]

Based on all the established attendant circumstances, the complainant had no legal or factual basis for his disbarment complaint against the respondents. The case involved their official acts as public prosecutors, focusing on how they had proceeded in a pending matter that was entirely within their official competence and responsibility. How they could be held answerable or accountable as lawyers for their official acts escapes us, but at least the Court now gives them some consolation by dismissing the disbarment proceedings as unworthy and devoid of substance.

We deem it timely and appropriate to remind that administrative proceedings brought against lawyers, including those in the public service, to make them be accountable for their acts or omissions in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices or agencies. The Court will exercise its disciplinary power only by observing due process and if the lawyer's administrative guilt is proved by clear, convincing, and satisfactory evidence. This norm is aimed at preserving the integrity and reputation of the Law Profession, and at shielding lawyers, in general, due to their being officers themselves of the Court. Any complaint for disbarment or other disciplinary sanction brought against lawyers that is based on frivolous matters or proof, like this case, should be immediately dismissed because its plain objective is to harass or get even with the respondent. The public must be reminded that lawyers

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[11] *Heck v. Gamotin, Jr.,* A.C. No. 5329, March 18, 2014, 719 SCRA 339, 345-346; citing *Kara-an v. Pineda,* A.C. No. 4306, March 28, 2007, 519 SCRA 143, 146.

are professionals bound to observe and follow the strictest ethical canons, and to subject them to frivolous, unfounded and vexatious charges of misconduct and misbehavior is to do a disservice to the ideals of justice, and to disregard the Constitution and the laws to which all lawyers vow their enduring fealty.

WHEREFORE, the Court **ABSOLVES** respondents Atty. Palmarin Rubio and Atty. Nicasio T. Rubio of the charges of gross misconduct; and **DISMISSES** the complaint for disbarment for utter lack of merit and substance.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 167952. October 19, 2016]

GONZALO PUYAT & SONS, INC., *petitioner, vs.* **RUBEN ALCAIDE (deceased), substituted by GLORIA ALCAIDE, representative of the Farmer-Beneficiaries,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WHEN A DECISION BECOMES FINAL AND EXECUTORY, THE SAME CAN NO LONGER BE DISTURBED.— [T]he June 8, 2001 Order of the DAR has already attained finality for several reasons. *First,* x x x petitioner's motion for reconsideration of the June 8, 2001 Order of the DAR was filed only on September 14, 2001, after an order of finality has already been issued by the DAR. x x x *Second,* x x x said order was already deemed to have been served upon petitioner when it failed to notify DAR of its counsel's change of address. x x x Failure of petitioner's counsel to

officially notify the DAR of its change of address is an **inexcusable neglect** which binds his client. x x x Considering that petitioner's counsel moved out of its previous address without leaving any forwarding address, the DAR was correct in issuing the Order dated August 3, 2001 where it was ruled that "the Order of June 8, 2001 is deemed to have been served" upon petitioner and which correspondingly led to the issuance of the order of finality. To be sure, such omission or neglect on the part of petitioner's counsel is inexcusable and binding upon petitioner. And *third*, this Court is not unaware of the time-honored principle that "actual knowledge" is equivalent to "notice." Thus, when petitioner, through its counsel, filed its Motion to Lift Order of Finality dated August 20, 2001 with the DAR, this indubitably indicates that petitioner and its counsel already had prior "actual knowledge" of the June 8, 2001 Order, which "actual knowledge" is equivalent to "notice" of said order. x x x Consequently, the filing of the motion for reconsideration only on September 14, 2001 was certainly way beyond the reglementary period within which to file the same. Significantly, when a decision becomes final and executory, the same can, and should, no longer be disturbed.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM PROGRAM; THE SUBJECT LANDHOLDING IN CASE AT BAR HAS NOT BEEN VALIDLY RECLASSIFIED FROM AGRICULTURAL TO INDUSTRIAL; CASE AT BAR.— Whether the subject landholding is presently being cultivated or not or whether the same is sugarland, cornland, unirrigated or irrigated riceland is of no moment. The primordial consideration is whether the subject landholding is an agricultural land which falls within the coverage of CARP. Moreover, any doubt as to the conduct of an ocular inspection and as to the nature and character of the subject landholding should be obviated with the issuance of the Memorandum dated March 3, 2005 addressed to Luis B. Bueno, Jr., Assistant Regional Director for Operations of DAR Regional Office Region IV-A, and prepared by Catalina D. Causaren, Provincial Agrarian Reform Officer (PARO) of Laguna, where it was stated that an ocular inspection has been conducted and that the subject landholding is indeed an agricultural land. x x x [P]etitioner has miserably failed to present any evidence that would support

its contention that the subject landholding has already been validly reclassified from "agricultural" to "industrial" land. x x x Indeed, the subject landholding had been reclassified under Kapasiyahan Blg. 03-(89) dated January 7, 1989 of the Municipality of Biñan, Laguna. It is worth noting, however, that said reclassification has not been approved by the Housing and Land Use Regulatory Board based on its Certification dated October 16, 1997. x x x Neither was there any showing that said reclassification has been authorized by the DAR as required under Section 65 of Republic Act No. 6657 of the *Comprehensive Agrarian Reform Law*. x x x [P]etitioner also relies on the tax declaration purportedly reclassifying the subject landholding as industrial. However, x x x what was indicated in said tax declaration was merely "proposed industrial." Evidently a "proposal" is quite different from "reclassification." Thus, petitioner cannot also rely on said tax declaration to bolster its contention that the subject landholding has already been reclassified from "agricultural" to "industrial."

PERALTA, *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WHERE AN ORDER HAS NOT ATTAINED FINALITY, AN APPEAL MAY BE VALIDLY ENTERTAINED.— [A]n examination of the pertinent pleadings and documents reveal that, indeed, petitioner was not properly served with a copy of the Order dated June 8, 2001. The DAR Secretary confirmed this fact in his Order denying petitioner's motion for reconsideration, dated November 5, 2001, when he categorically stated that petitioner was not furnished a copy of the June 8, 2001 Order x x x. [I]t was clearly admitted that petitioner was not properly served a copy of the disputed Order and this oversight by the DAR was rectified by subsequently serving a copy of the Order upon petitioner's counsel at his new address. This belated service to petitioner's counsel was coursed through a Letter dated September 4, 2001, from Director Delfin B. Samson of the DAR informing him that the case has already been decided and an order of finality issued. Worthy of note is the statement, "[a]ttached, for reference, are copies thereof being transmitted at your new given address," which, taken together with the statements made by the DAR Secretary in his November 5, 2001 Order, was a manifest indication that petitioner was being served a copy of the June 8, 2001 Order for the first time. Thus,

x x x the June 8, 2001 Order of the DAR Secretary has not attained finality. The Office of the President, therefore, validly entertained petitioner's appeal when the DAR Secretary denied its motion for reconsideration.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); BEFORE A PIECE OF LAND COULD BE PLACED UNDER CARP COVERAGE, THERE MUST FIRST BE A SHOWING THAT IT IS AN AGRICULTURAL LAND OR ONE DEVOTED OR SUITABLE FOR AGRICULTURAL PURPOSES.— [B]efore the DAR could place a piece of land under CARP coverage, there must first be a showing that it is agricultural land, *i.e.*, devoted or suitable for agricultural purposes. An essential part in determining its classification is the procedure outlined in DAR Administrative Order No. 01, Series of 2003, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657. In the case at bar, it should be stressed that no proper preliminary ocular inspection was conducted as required by the Administrative Order. The importance of which cannot be understated, since it is one of the steps designed to comply with the requirements of administrative due process. x x x [B]efore a piece of land could be placed under the coverage of the CARP, there must first be a showing that the land is an agricultural land or one devoted or suitable for agricultural purposes. In the instant case, there is no final determination yet whether the subject property may be placed under the coverage of the CARP. Verily, the procedural requirements that would validate the taking of land for the purposes of the CARP were not complied with. To be sure, such steps and procedures are part of due process. No less than the Bill of Rights provides that "[n]o person shall be deprived of life, liberty or property without due process of law."

3. POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; THE EXERCISE THEREOF REQUIRES THAT DUE PROCESS BE OBSERVED IN THE TAKING OF PRIVATE PROPERTY.— As an exercise of police power, the expropriation of private property under Republic Act No. 6657 puts the landowner, not the government, in a situation where the odds are practically against him. Nevertheless, the Comprehensive Agrarian Reform Law was not intended to take

away property without due process of law. The exercise of the power of eminent domain requires that due process be observed in the taking of private property. Thus, the directive of the Office of the President for the Department of Agrarian Reform to ascertain whether or not petitioner's landholdings may be placed under the CARP was just and proper. In fine, the taking of properties for agrarian reform purposes should not be at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.

APPEARANCES OF COUNSEL

Defensor Villamor Tolentino & *Zamora* and *Esguerra & Blanco* for petitioner.

Arnel D. Naidas for respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

This resolves the *Motion for Reconsideration* and the *Supplement to Respondent's Motion for Reconsideration* filed by respondents praying that the Decision of the Court dated February 17, 2012 be set aside and reconsidered and that the Decision dated February 1, 2005 and Resolution dated April 25, 2005 of the Court of Appeals in CA-G.R. SP No. 86069 be reinstated.

To recall, the Court, by its Decision dated February 1, 2012, reversed and set aside the Decision[1] dated February 17, 2005 and the Resolution[2] dated April 25, 2005 of the Court of Appeals (CA), and reinstated the Decision[3] dated August 8, 2003 and the Order[4] dated July 2, 2004 of the Office of the President

[1] *Rollo*, pp. 30-42. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa.

[2] *Id.* at 44-45.

[3] *Id.* at 117-121.

[4] *Id.* at 136-137.

(OP). In turn, the said Orders of the OP set aside the Orders[5] dated June 8, 2001 and November 5, 2001 of the Department of Agrarian Reform (DAR) Secretary and lifted the Notice of Coverage dated April 14, 1998 and Notice of Land Valuation and Acquisition dated November 15, 1998 over the 37.7353-hectare portion of petitioner Gonzalo Puyat & Sons, Inc.'s property (subject landholding).

The facts of the case, as stated in this Court's Decision dated February 1, 2012, are as follows:

> On April 14, 1998, the Municipal Agrarian Reform Officer (MARO) issued a Notice of Coverage over the subject landholding informing petitioner that the subject properties were being considered for distribution under the government's agrarian reform program. Thereafter on November 15, 1998, the corresponding Notice of Valuation and Acquisition was issued informing petitioner that a 37.7353-hectare portion of its property is subject to immediate acquisition and distribution to qualified agrarian reform beneficiaries and that the government is offering ₱7,071,988.80 as compensation for the said property.
>
> Petitioner then filed a Petition before the Department of Agrarian Reform (DAR), wherein it argues that the properties were bought from their previous owners in good faith; that the same remains (sic) uncultivated, unoccupied, and untenanted up to the present; and, that the subject landholdings were classified as industrial, thus, exempt from the coverage of the Comprehensive Agrarian Reform Program (CARP). Petitioner prayed, among other things, that the Notice of Coverage and Notice of Acquisition be lifted and that the properties be declared exempt from the coverage of CARP.
>
> Respondents on their part countered, among other things, that the classification of the land as industrial did not exempt it from the coverage of the CARP considering that it was made only in 1997; the HLURB certification that the Municipality of Biñan, Laguna does not have any approved plan/zoning ordinance to date; that they are not among those farmer-beneficiaries who executed the waivers or voluntary surrender; and, that the subject landholdings were planted with palay.

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[5] *Id.* at 70-72.

On June 8, 2001, then DAR Secretary Hernani A. Braganza, issued an Order in favor of the respondent declaring that the subject properties are agricultural land; thus, falling within the coverage of the CARP, the decretal portion of which reads:

> **WHEREFORE**, premises considered, Order is hereby issued dismissing the petition. The MARO/PARO concerned is directed to immediately proceed with the acquisition of subject landholdings under CARP, identify the farmer-beneficiaries and generate/issue the corresponding Certificates of Land Ownership Awards pursuant to Section 16 of RA 6657.
>
> **SO ORDERED.**

On July 24, 2001, respondents filed a Motion for the Issuance of an Order of Finality of Judgment praying that an Order of Finality be issued for petitioner's failure to interpose a motion for reconsideration or an appeal from the order of the DAR Secretary.

On August 3, 2001, the DAR issued an Order granting the motion and directing that an Order of Finality be issued. Consequently, on August 6, 2001, an Order of Finality quoting the dispositive portion of the June 8, 2001 Order of the DAR Secretary was issued.

On August 17, 2001, petitioner received a copy of the Orders dated August 3 and 6, 2001. Thereafter, on August 20, 2001, petitioner filed a Motion to Lift Order of Finality.

On August 28, 2001, petitioner's counsel filed a Manifestation with Urgent *Ex Parte* Motion for Early Resolution informing the DAR of his new office address and praying that the petition be resolved at the earliest convenient time and that he be furnished copies of dispositions and notices at his new and present address.

In a Letter sent to the new address of petitioner's counsel, dated September 4, 2001, Director Delfin B. Samson of the DAR informed petitioner's counsel that the case has been decided and an order of finality has already been issued, copies of which were forwarded to his last known address. Nevertheless, Director Samson attached copies of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 for his reference.

On September 14, 2001, petitioner filed a Motion for Reconsideration with Manifestation, questioning the orders dated June 8, 2001 and August 6, 2001 and praying that the said orders be set aside and a new one issued granting the petition.

On September 21, 2001, the DAR issued an order directing the parties to submit their respective memoranda.

On November 5, 2001, the DAR issued an order denying the motion for reconsideration, which was received by petitioner's counsel on November 15, 2001.

Aggrieved, petitioner filed an appeal before the Office of the President which was received by the latter on November 21, 2001. The case was docketed as O.P. Case No. 01-K-184.

On August 8, 2003, the Office of the President rendered a Decision in favor of petitioner, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Orders dated 08 June 2001 and 05 November 2001 of the DAR Secretary are hereby **SET ASIDE** and the Notice of Coverage dated April 14, 1998 and Notice of Acquisition dated November 15, 1998 issued over the subject land **LIFTED**, without prejudice to the conduct of an ocular inspection to determine the classification of the land.
>
> Parties are to **INFORM** this Office, within five (5) days from notice, of the dates of their receipt of this Decision.
>
> **SO ORDERED**.

On March 24, 2004, there being no appeal or motion for reconsideration interposed despite clear showing that both parties had received their copies of the August 8, 2003 Decision, the Office of the President issued an Order declaring that the decision has become final and executory.

Subsequently, respondents filed a Petition for Relief seeking that the above Decision and Order of the Office of the President be set aside and the Orders of the DAR Secretary reinstated.

On July 2, 2004, the Office of the President, treating the Petition for Relief as a motion for reconsideration, issued an Order dismissing the same, to wit:

> **WHEREFORE**, premises considered, the "Petition for Relief" dated 3 May 2004, which is treated herein as a motion for reconsideration, filed by Ruben Alcaide is hereby **DISMISSED.** No further motions or reconsideration or other pleadings of similar import shall be entertained.

SO ORDERED.

Respondents then sought recourse before the CA assailing the Decision dated August 8, 2003 and Order dated July 2, 2004 of the Office of the President. In support of the petition, respondents raised the following errors:

I. THE HONORABLE OFFICE OF THE PRESIDENT COMMITTED A REVERSIBLE ERROR WHEN IT REVERSED AND/OR SET ASIDE THE ORDERS DATED JUNE 8, AND NOVEMBER 5, 2001 OF THE DAR SECRETARY DESPITE THE FINALITY OF THE SAID ORDERS;

II. THE HONORABLE OFFICE OF THE PRESIDENT ERRED WHEN IT RULED THAT THE SUBECT PROPERTY IS NOT AGRICULTURAL.

On February 1, 2005, the CA rendered a Decision granting the petition in favor of the respondents, the decretal portion of which reads:

> **WHEREFORE**, in view of the foregoing, the petition for review is hereby **GRANTED**. The decision dated August 8, 2003 and the order dated July 2, 2004 of the Office of the President in O.P. CASE No. 01-K-184 are **SET ASIDE** for being null and void. The orders dated June 8, 2001 and August 6, 2001 of the DAR Secretary are hereby **REINSTATED.**
>
> **SO ORDERED**.

Ruling in favor of the respondents, the CA opined that the Order of the DAR Secretary dated June 8, 2001 has become final and executory by petitioner's failure to timely interpose his motion for reconsideration.Consequently, when petitioner filed his motion for reconsideration on September 14, 2001, the order sought to be reconsidered has attained finality. Thus, the Office of the President had no jurisdiction to re-evaluate, more so, reverse the findings of the DAR Secretary in its Order dated June 8, 2001. (emphasis in the original; citations omitted.)

Inevitably, petitioner filed a Petition for Review on Certiorari before this Court seeking to reverse the February 1, 2005 Decision of the CA and its April 25, 2005 Resolution denying petitioner's motion for reconsideration.

As mentioned above, the Court, in its Decision dated February 1, 2012 (assailed Decision), ruled in favor of petitioner and reinstated the August 8, 2003 Decision and the July 2, 2004 order of the OP, the decretal portion of which reads as follows:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 86069 are **REVERSED** and **SET ASIDE.** The Decision dated August 8, 2003 and the Order dated July 2, 2004 of the Office of the President are **REINSTATED.** (emphasis in the original)

In this recourse, respondents urge the Court to reconsider its assailed Decision, interposing the following grounds:

I

THIS HONORABLE COURT ERRED IN MAKING (sic) RULING THAT THE ORDER OF THE DAR DATED JUNE 8, 2001 HAS NOT BECOME FINAL AND EXECUTORY

II

THIS HONORABLE COURT ERRED WHEN IT MADE A RULING THAT THE MARO [MUNICIPAL AGRARIAN REFORM OFFICER] FAILED TO COMPLY WITH THE PRE-OCULAR INSPECTION REQUIREMENTS OF DAR ADMINISTRATIVE ORDER NO. 01 SERIES OF 1998 JUST BECAUSE THE MARO FAILED TO CHECK THE BOX/ES AS TO WHETHER OR NOT THE LAND IS "PRESENTLY BEING CULTIVATED/SUITABLE TO AGRICULTURE."[6]

In other words, respondents raised the following issues for Our consideration: (1) whether the June 8, 2001 Order of the DAR has become final and executory; and (2) whether the MARO had indeed failed to comply with the pre-ocular inspection requirements under DAR Administrative Order No. 01, Series of 1998, which call for the lifting of the notice of coverage and the notice of land valuation and acquisition issued by the DAR.

Finality of the June 8, 2001 Order

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[6] *Id.* at 488-489.

In order to have a better understanding of the instant case, let us recall, in clear chronological order, the relevant events that took place prior to the promulgation of the assailed Decision by this Court:

December 20, 2000: Petitioner filed its Petition[7] dated December 15, 2000 before the DAR praying, *interalia*, that the notice of coverage and notice of land valuation and acquisition be lifted and that the subject landholding be declared exempt from the coverage of the comprehensive agrarian reform program (CARP).

February 5, 2001: Respondents filed its Reply (To Petition dated 15 December 2000).[8]

June 8, 2001: Then DAR Secretary Hernani A. Braganza (DAR Sec. Braganza) issued the Order[9] dismissing the petition and declaring that the subject landholding is an agricultural land, thus, falling within the CARP coverage.

July 24, 2001: Respondents filed their Motion for the Issuance of an Order of Finality of Judgment[10] of even date praying that an order of finality be issued for petitioner's failure to interpose an appeal or motion for reconsideration from the June 8, 2001 Order of the DAR Secretary.

August 3, 2001: DAR issued its Order[11] granting the motion for the issuance of an order of finality of judgment and directing that an order of finality be issued.

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

[8] *Id*. at 68-69.

[9] *Id*. at 70-72.

[10] *Id*. at 73-65.

[11] *Id*. at 76-77.

August 6, 2001: DAR, through Director Delfin B, Samson (Dir. Samson), issued the Order of Finality.[12]

August 17, 2001: Petitioner received a copy of the Orders dated August 3 and 6, 2001.

August 20, 2001: Petitioner filed a Motion to Lift Order of Finality[13] of even date.

August 28, 2001: Petitioner's counsel filed a Manifestation with Urgent *Ex Parte* Motion for Early Resolution[14] of even date manifesting that said counsel changed his office address and praying that its motion to lift order of finality be resolved at the earliest opportunity as the delay in its resolution will likely delay petitioner's plan to develop the subject area for low cost social housing.

September 4, 2001: DAR, through a letter[15] issued by Dir. Samson, informed petitioner's counsel that the case has been decided and that an order of finality has already been issued.

September 14, 2001: Petitioner filed its motion for reconsideration[16] questioning the June 8, 2001 and August 6, 2001 Orders of the DAR and praying that said orders be set aside.

September 21, 2001: DAR issued its Order directing the parties to submit their respective memoranda.

November 5, 2001: DAR issued its order denying petitioner's motion for reconsideration.

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[12] *Id*. at 87-88.

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

[14] *Id*. at 85.

[15] *Id*. at 86.

[16] *Id*. at 92-93.

November 21, 2001: Petitioner filed its Notice of Appeal[17] dated November 19, 2001 before the OP.

As can be derived from the foregoing, the June 8, 2001 Order of the DAR has already attained finality for several reasons. *First*, as aptly observed by the CA, petitioner's motion for reconsideration of the June 8, 2001 Order of the DAR was filed only on September 14, 2001, after an order of finality has already been issued by the DAR.[18]

In its Motion to Lift Order of Finality dated August 20, 2001, petitioner's counsel expressly admitted that he received said order only on August 17, 2001.[19] Granting that petitioner's counsel was forthright in making such an admission, then petitioner had only until September 1, 2001 within which to file its motion for reconsideration. Having filed its motion for reconsideration only on September 14, 2001, way beyond the 15-day reglementary period, the order sought to be reconsidered by petitioner has already attained finality.

Second, even if this Court overlooks the admission of petitioner's counsel that he already received the June 8, 2001 Order on August 17, 2001, still, said order was already deemed to have been served upon petitioner when it failed to notify DAR of its counsel's change of address. On this point, the DAR issued an Order dated August 3, 2001,[20] stating, *inter alia*:

> Per certification of the Records Management Division, **the counsel of petitioner has moved out without leaving any forwarding address** and, the petitioner's address is insufficient that it could not be located despite diligent efforts.
>
> WHEREFORE, premises considered, **the Order of June 8, 2001 is deemed to have been served** and let Order of Finality be issued.

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[17] *Id.* at 103.

[18] *Id.* at 38.

[19] *Id.* at 81.

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

SO ORDERED.[21] (emphasis supplied)

Failure of petitioner's counsel to officially notify the DAR of its change of address is an **inexcusable neglect** which binds his client. In *Karen and Kristy Fishing Industry v. CA*,[22] this rule has been clearly elucidated by the Court, to wit:

The records show that the failure of Atty. Dela Cruz, petitioners' counsel of record, to receive a copy of the Court of Appeals decision was caused by his failure to inform the appellate court of the change of his address of record. Thus, the Clerk of Court had to resend a copy of the decision, this time to the address on record of spouses Tuvilla.

If counsel moves to another address without informing the take of that change, such omission or neglect is inexcusable and will stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office.

Jurisprudence is replete with pronouncements that clients are bound by the actions of their counsel in the conduct of their case. If it were otherwise, and a lawyer's mistake or negligence were admitted as a reason for the opening of a case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned.

In *Macondray & Co., Inc. v. Provident Insurance Corporation*, petitioner's previous counsel moved to a new address without informing the appellate court, eventually causing the appellate court's decision to become final and executory. The Court ruled that the counsel's omission was an inexcusable neglect binding upon petitioner therein for the following reasons:

> In the present case, there is no compelling reason to overturn well-settled jurisprudence or to interpret the rules liberally in favor of petitioner, who is not entirely blameless. It should have taken the initiative of periodically keeping in touch with its counsel, checking with the court, and inquiring about the

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[21] *Id.* at 79.

[22] G.R. Nos. 172760-61, October 15, 2007, 536 SCRA 243, 248-250.

> status of its case. In so doing, it could have taken timely steps to neutralize the negligence of its chosen counsel and to protect its interests. Litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.

As pointed out by respondent, after the death of petitioner Tuvilla's husband, more than a year had elapsed before the promulgation of the Court of Appeals decision, but she failed to coordinate with the counsel of record and check the status of the case in the interim.

Moreover, the general rule is that when a party is represented by counsel of record, service of orders and notices must be made upon said attorney and notice to the client and to any other lawyer than the counsel of record is not notice in law. The Court of Appeals did not strictly apply this rule and was even liberal when it did not consider the service on the counsel of record as notice to petitioner. It even counted the 15-day reglementary period for filing a motion of reconsideration from the later receipt by petitioner Aquilina Tuvilla of a copy of the decision instead of from the earlier service on petitioner's counsel of record. Unfortunately, she squandered the new period as she failed to file the motion for reconsideration within the said period.

Thus, the Court of Appeals did not commit grave abuse of discretion when it denied petitioners' motion for additional time to file the motion for reconsideration in accordance with the well-settled principle that on extension for filing said motion may be granted. **As a rule, periods prescribed to do certain acts must be followed with fealty as they are designed primarily to speed up the final disposition of the case. Such reglementary periods are indispensable interdictions against needless delays and for an orderly discharge of judicial business. Deviations from the rules cannot be tolerated. More importantly, their observance cannot be left to the whims and caprices of the parties**. What is worrisome is that parties who fail to file their pleading within the periods provided for by the Rules of Court, **through their counsel's inexcusable neglect**, resort to beseeching the Court to bend the rules in the guise of a plea for a liberal interpretation thereof, thus, sacrificing efficiency and order. (citation omitted; emphasis supplied)

Considering that petitioner's counsel moved out of its previous address without leaving any forwarding address, the DAR was

correct in issuing the Order dated August 3, 2001 where it was ruled that "the Order of June 8, 2001 is deemed to have been served" upon petitioner and which correspondingly led to the issuance of the order of finality. To be sure, such omission or neglect on the part of petitioner's counsel is inexcusable and binding upon petitioner.

And *third*, this Court is not unaware of the time-honored principle that "actual knowledge" is equivalent to "notice." Thus, when petitioner, through its counsel, filed its Motion to Lift Order of Finality dated August 20, 2001 with the DAR, this indubitably indicates that petitioner and its counsel already had prior "actual knowledge" of the June 8, 2001 Order, which "actual knowledge" is equivalent to "notice" of said order.[23] As a matter of fact, in the said motion, petitioner even quoted the dispositive portion of the June 8, 2001 Order of the DAR. Inevitably, this leads to no other conclusion than that petitioner already had actual knowledge of the denial of its petition at the time said motion had been drafted and/or filed. Since the motion to lift order of finality was drafted and/or filed on August 20, 2001, it can be said that at the latest, petitioner had until September 4, 2001 within which to file its motion for reconsideration. Consequently, the filing of the motion for reconsideration only on September 14, 2001 was certainly way beyond the reglementary period within which to file the same.

Significantly, when a decision becomes final and executory, the same can, and should, no longer be disturbed. As this Court held in *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co.*:[24]

> Granted by the CA an extension of fifteen (15) days from 25 October, 2003 or until 9 November, 2003 within which to file its petition for

[23] See *Osmena v. Commission on Audit*, G.R. No. 188818, May 31, 2011, 649 SCRA 654, 661; *Quelnan v. VHF Phil.*; G.R. No. 138500, September 16, 2005, 470 SCRA 73, 81-82; and *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 673-674.

[24] G.R. No. 173342, October 13, 2010, 633 SCRA 82, 92-93.

review, it does not likewise help ZFMC's cause any that it was only able to do so on 24 November 2003. Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. **Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court – not even the Supreme Court – has the power to revise, review, change or alter the same.** The basic rule of finality of judgment is **grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.** (citations omitted; emphasis supplied)

Considering the foregoing, it was clearly erroneous on the part of the OP to have taken cognizance of the appeal filed by petitioner given that the June 8, 2001 Order of the DAR has already attained finality and, thus, should no longer be disturbed.

Determination by the DAR

Even if this Court sets aside petitioner's procedural lapse, the case should still be dismissed based on substantial grounds.

In upholding the August 8, 2003 Decision of the OP, the majority harped on the fact that the MARO failed to mark any of the check boxes for "Land Use" to indicate whether the subject properties were sugarland, cornland, un-irrigated riceland, irrigated riceland, or any other classification of agricultural land, and consequently arrived at the conclusion that no preliminary ocular inspection was conducted and, hence, the lifting of the notice of coverage over the subject landholding was proper, without prejudice to the conduct of an ocular inspection to determine the classification of the land.

The conclusion arrived at by the majority is flawed for two reasons. *First*, the fact that the MARO issued CARP Form No. 3.a, entitled "Preliminary Ocular Inspection Report," belies the majority's conclusion that no preliminary ocular inspection was

conducted by the DAR.[25] Strikingly, almost all the other details under said report were filled up or marked. Said report was also signed by the persons who conducted the inspection and attested by Flordeliza DP Del Rosario, the MARO in-charge. In this regard, it should be noted that with the issuance of the Preliminary Ocular Inspection Report, the MARO is presumed to have regularly performed his or her duty of conducting a preliminary ocular inspection, in the absence of any evidence to overcome such presumption.[26]

To my mind, the failure to mark the checkboxes pertaining to "Land Condition/Suitability to Agriculture" and "Land Use" does not constitute as evidence that may overcome the presumption of regularity in the performance of official duty. If at all, such failure merely constitutes inadvertence that should not prejudice the farmers in the instant case.

Interestingly, a perusal of the Preliminary Ocular Inspection Report would reveal that the checkboxes pertaining to the sub-categories under "Land Condition/Suitability to Agriculture" and "Land Use" do not negate the finding that the subject landholding is an agricultural land, which led to the issuance of the notice of coverage over said property. Particularly, the following are the sub-categories and the checkboxes which the MARO failed to mark:

> 2. Land Condition/Suitability to Agriculture (Check Appropriate Parenthesis)
>
> ( ) Subject property is presently being cultivated/suitable to agriculture
> ( ) Subject property is presently idle/vacant
>
> x x x x x x x x x

[25] *Rollo*, p. 230.

[26] See *Lercana v. Jalandoni*, G.R. No. 132286, February 1, 2002, 375 SCRA 604, 611 and *Small Homeowners Association of Hermosa, Bataan v. Litton*, G.R. No. 146061, August 31, 2006, 500 SCRA 385, 392.

4. Land Use (Check Appropriate Parenthesis)

( ) Sugar land ( ) Unirrigated Riceland
( ) Cornland. ( ) Irrigated Riceland
( ) Others (Specify) _____[27]

Evidently, none of the abovementioned description of land would negate the determination of the DAR that the subject landholding is indeed an agricultural land. Whether the subject landholding is presently being cultivated or not or whether the same is sugarland, cornland, unirrigated or irrigated riceland is of no moment. The primordial consideration is whether the subject landholding is an agricultural land which falls within the coverage of CARP.

Moreover, any doubt as to the conduct of an ocular inspection and as to the nature and character of the subject landholding should be obviated with the issuance of the Memorandum[28] dated March 3, 2005 addressed to Luis B. Bueno, Jr., Assistant Regional Director for Operations of DAR Regional Office Region IV-A, and prepared by Catalina D. Causaren, Provincial Agrarian Reform Officer (PARO) of Laguna, where it was stated that an ocular inspection has been conducted and that the subject landholding is indeed an agricultural land. As stated:

> We are called to tilt the balance in favor of these poor farmers, so the undersigned [PARO Catalina D. Causaren] and Ms. Rosalinda M. Rivera, Legal Officer II, **investigated and inspected the properties**. Hereunder are the following informations (sic) gathered, to wit:
>
> - The properties are bounded on the South by residential houses and large portion was planted to palay; on the North planted also to palay; on the West and East small portion with mixture of Horse Raising and Industrial establishment.
>
> - The area surrounding the subject properties are mostly planted to palay;

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[27] *Rollo*, p. 230.

[28] *Id*. at 272.

- The CLOA Holders were prevented from entering the subject landholdings to perform their farming activities thereon, thus, the same remains unoccupied;
- A big DAM is the main source of Irrigation Service throughout the municipality of Biñan/Samahang Nagdadamayang Buklod ng Magpapatubig ng Biñan;
- No water supply in the irrigation facilities due to absence of agricultural activities and not planted to any crops;
- **There was no doubt that the landholdings are agricultural in nature** in view of the fact that large portion surrounding the area are planted to palay, the purpose of which is agricultural production since palay is agricultural products (sic).[29] (emphasis supplied)

Clearly, MARO's failure to mark any of the check boxes for "Land Condition/Suitability to Agriculture" and "Land Use" to indicate whether the subject properties were sugarland, cornland, un-irrigated riceland, irrigated riceland, or any other classification of agricultural land leading to the lifting of the notice of coverage over the subject landholding, without prejudice to the conduct of an ocular inspection to determine the classification of the land, is totally uncalled for.

And *second*, petitioner has miserably failed to present any evidence that would support its contention that the subject landholding has already been validly reclassified from "agricultural" to "industrial" land. According to petitioner, the subject landholding has already been reclassified as industrial land by the Sangguniang Bayan of the Municipality of Biñan, and that pursuant to such reclassification, petitioner has been assessed, and is paying, realty taxes based on this new classification.[30]

Indeed, the subject landholding had been reclassified under Kapasiyahan Blg. 03-(89)[31] dated January 7, 1989 of the

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[29] *Id*. at 272-273.

[30] *Id*. at 6.

[31] *Id*. at 57.

Municipality of Biñan, Laguna. It is worth noting, however, that said reclassification has not been approved by the Housing and Land Use Regulatory Board based on its Certification[32] dated October 16, 1997. As found by DAR Sec. Braganza in the June 8, 2001 Order:

> The principal issue to be resolved is whether or not subject landholdings are subject to CARP coverage.
>
> We find no merit in the instant petition. Subject landholdings are still agricultural land and, accordingly, fall within the CARP coverage. Department of Justice Opinion No. 44, series of 1990, is not applicable. As certified to by Ms. Carolina Casaje of HLURB on October 16, 1997, there is no HLURB-approved Town Plan/Zoning Ordinance of the municipality of Binan, Laguna, reclassifying subject landholdings as industrial. The tax declaration presented by petitioner indicating that subject landholdings is a proposed industrial area is not sufficient in law to effect the reclassification insisted upon by petitioner. As exhaustively discussed in the above-mentioned DOJ Opinion, there should be a zoning ordinance and that the same must be approved before the effectivity of RA 6657, i.e., July 15, 1988. Neither requirement obtains herein.
>
> **WHEREFORE**, premises considered, Order is hereby issued dismissing the petition. The MARO/PARO concerned is directed to immediately proceed with the acquisition of subject landholdings under CARP, identify the farmer-beneficiaries and generate/issue the corresponding Certificates of Land Ownership Awards pursuant to Section 16 of RA 6657.
>
> **SO ORDERED**.[33] (emphasis in the original.)

Neither was there any showing that said reclassification has been authorized by the DAR as required under Section 65[34] of

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[32] *Id*. at 62.

[33] *Id*. at 71-72.

[34] Sec. 65. *Conversion of Land.* – After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided*, That the beneficiary shall have fully paid his obligation.

Republic Act No. 6657 of the *Comprehensive Agrarian Reform Law*.[35]

Aside from the reclassification by the Sangguniang Bayan of the Municipality of Biñan, petitioner also relies on the tax declaration purportedly reclassifying the subject landholding as industrial. However, as petitioner itself admitted, what was indicated in said tax declaration was merely "proposed industrial."[36] Evidently a "proposal" is quite different from "reclassification." Thus, petitioner cannot also rely on said tax declaration to bolster its contention that the subject landholding has already been reclassified from "agricultural" to "industrial."

WHEREFORE, respondent's *Motion for Reconsideration* and the *Supplement to Respondent's Motion for Reconsideration* are **GRANTED** and the February 1, 2012 Decision of this Court is **RECONSIDERED** and **SET ASIDE**.

The instant petition is hereby **DENIED**. The Decision dated February 17, 2005 and the Resolution dated April 25, 2005 of the Court of Appeals in CA-G.R. SP No. 86069 are **REINSTATED** and **AFFIRMED** and, consequently, the Orders dated June 8, 2001 and November 5, 2001 of the Department of Agrarian Reform Secretary are **REINSTATED**.

SO ORDERED.

Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Peralta, J., see dissenting opinion.

DISSENTING OPINION

PERALTA, *J.*:

Before this Court is a Motion for Reconsideration[1] and Supplement to Respondent's Motion for Reconsideration[2] filed

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[35] See *Junio v. Garilao*, G.R. No. 147146, July 29, 2005, 465 SCRA 173, 186.

[36] *Rollo*, p. 64.

[1] *Rollo*, pp. 487-507.

[2] *Id.* at 509-545.

by respondents of the Decision dated February 1, 2012, which reversed and set aside the Decision dated February 17, 2005 of the Court of Appeals (*CA*) in CA-G.R. SP No. 86069, and reinstated the Order dated August 8, 2003 of the Office of the President in O.P. Case No. 01-K-184.

Respondent seeks reconsideration of the Decision buttressed on the grounds that: (1) the Court erred in ruling that the Order of the Department of Agrarian Reform (*DAR*), dated June 8, 2001, has not become final and executory; and (2) the Court erred when it ruled that the Municipal Agrarian Reform Officer (*MARO*) failed to comply with the Pre-ocular inspection requirements of DAR Administrative Order No. 01, Series of 1998.[3]

With due respect to my colleagues, the Motion for Reconsideration and the Supplement to Respondent's Motion for Reconsideration have no merit and should be denied.

At the outset, it must be stressed that the assailed Decision did not determine whether or not the subject property could be placed under the coverage of the Comprehensive Agrarian Reform Program (*CARP*). It does not resolve the parties' respective contentions that the subject landholdings are either industrial or agricultural. Rather, the Court found that the administrative process in the acquisition proceedings has not yet run its regular course and that due process was not accorded to petitioner.

As clearly discussed in the assailed Decision of the Court, an examination of the pertinent pleadings and documents reveal that, indeed, petitioner was not properly served with a copy of the Order dated June 8, 2001.

The DAR Secretary confirmed this fact in his Order denying petitioner's motion for reconsideration, dated November 5, 2001, when he categorically stated that petitioner was not furnished a copy of the June 8, 2001 Order, the pertinent part of which reads:

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[3] *Id.* at 488.

This Office notes of the Certification of B. De Paz, Officer-in-Charge of this Department's Records Management Division stating that petitioner-movant's counsel **was not served a copy of the disputed 8 June 2001 Order** due to change in address. In any case, this matter has been addressed with the service of said Order upon petitioner-movant's counsel at his new address.[4]

From the foregoing, it was clearly admitted that petitioner was not properly served a copy of the disputed Order and this oversight by the DAR was rectified by subsequently serving a copy of the Order upon petitioner's counsel at his new address. This belated service to petitioner's counsel was coursed through a Letter[5] dated September 4, 2001, from Director Delfin B. Samson of the DAR informing him that the case has already been decided and an order of finality issued. Worthy of note is the statement, "[a]ttached, for reference, are copies thereof being transmitted at your new given address," which, taken together with the statements made by the DAR Secretary in his November 5, 2001 Order, was a manifest indication that petitioner was being served a copy of the June 8, 2001 Order for the first time.

Thus, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. The Office of the President, therefore, validly entertained petitioner's appeal when the DAR Secretary denied its motion for reconsideration.

Consequently, the determination of whether or not petitioner's landholdings are agricultural land is still pending resolution. As correctly found by the Office of the President in its August 8, 2003 Decision, before the DAR could place a piece of land under CARP coverage, there must first be a showing that it is agricultural land, *i.e.*, devoted or suitable for agricultural purposes. An essential part in determining its classification is the procedure outlined in DAR

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[4] CA *rollo*, pp. 54-55. (Emphasis ours)

[5] *Rollo*, p. 86.

Administrative Order No. 01, Series of 2003, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657.[6] In the case at bar, it should be stressed that no proper preliminary ocular inspection was conducted as required by the Administrative Order. The importance of which cannot be understated, since it is one of the steps designed to comply with the requirements of administrative due process. As correctly discussed by the Office of the President in its Decision, *viz.*:

> In other words, before the MARO sends a Notice of Coverage to the landowner concerned, he must first conduct a preliminary ocular inspection to determine whether or not the property may be covered under CARP. The foregoing undertaking is reiterated in the latest DAR AO No. 01, s. of 2003, entitled "2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657." Section 1 [1.1] thereof provides that:
>
> > "*1.1 Commencement by the Municipal Agrarian Reform Officer (MARO)* – After determining that a landholding is coverable under the CARP, and upon accomplishment of the Pre-Ocular Inspection Report, the MARO shall prepare the NOC (CARP Form No. 5-1)." (NOC stands for Notice of Coverage)

Found on the records of this case is a ready-made form Preliminary Ocular Inspection Report (undated) signed by the concerned MARO. Interestingly, however, the check box allotted for the all-important items "Land Condition/Suitability to Agriculture" and "Land Use' was not filled up. There is no separate report on the record detailing the result of the ocular inspection conducted. These circumstances cast serious doubts on whether the MARO actually conducted an on-site ocular inspection of the subject land. Without an ocular inspection, there is no factual basis for the MARO to declare that the subject land is devoted to or suitable for agricultural purposes, more so, issue Notice of Coverage and Notice of Acquisition.

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[6] Comprehensive Agrarian Reform Law of 1988.

The importance of conducting an ocular inspection cannot be understated. In the event that a piece of land sought to be placed from CARP coverage is later found unsuitable for agricultural purposes, the landowner concerned is entitled to, and the DAR is duty bound to issue, a certificate of exemption pursuant to DAR Memorandum Circular No. 34, s. of 1997, entitled "Issuance of Certificate of Exemption for Lands Subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) Found Unsuitable for Agricultural Purposes."

More importantly, the need to conduct ocular inspection to determine initially whether or not the property may be covered under the CARP is one of the steps designed to comply with the requirements of administrative due process. The CARP was not intended to take away property without due process of law (Development Bank of the Philippines vs. Court of Appeals, 262 SCRA 245. [1996]). The exercise of the power of eminent domain requires that due process be observed in the taking of private property. In Roxas & Co., Inc. v. Court of Appeals, 321 SCRA 106 [1999], the Supreme Court nullified the CARP acquisition proceedings because of the DAR's failure to comply with administrative due process of sending Notice of Coverage and Notice of Acquisition of the landowner concerned.

Considering the claim of appellant that the subject land is not agricultural because it is unoccupied and uncultivated, and no agricultural activity is being undertaken thereon, there is a need for the DAR to ascertain whether or not the same may be placed under CARP coverage.[7]

To recapitulate, before a piece of land could be placed under the coverage of the CARP, there must first be a showing that the land is an agricultural land or one devoted or suitable for agricultural purposes. In the instant case, there is no final determination yet whether the subject property may be placed under the coverage of the CARP. Verily, the procedural requirements that would validate the taking of land for the purposes of the CARP were not complied with. To be sure, such steps and procedures are part of due process. No less

[7] *Rollo*, pp. 120-121.

than the Bill of Rights provides that "[n]o person shall be deprived of life, liberty or property without due process of law."

As an exercise of police power, the expropriation of private property under Republic Act No. 6657 puts the landowner, not the government, in a situation where the odds are practically against him.[8] Nevertheless, the Comprehensive Agrarian Reform Law was not intended to take away property without due process of law.[9] The exercise of the power of eminent domain requires that due process be observed in the taking of private property.[10] Thus, the directive of the Office of the President for the Department of Agrarian Reform to ascertain whether or not petitioner's landholdings may be placed under the CARP was just and proper. In fine, the taking of properties for agrarian reform purposes should not be at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.[11]

Ultimately, the arguments raised by the respondent in the Motion for Reconsideration and Supplement to Respondent's Motion for Reconsideration were substantially answered and passed upon in the assailed Decision and should, therefore, be **DENIED**.

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[8] *Land Bank of the Philippines v. Orilla*, 578 Phil. 663, 673 (2008).

[9] *Development Bank of the Philippines v. Court of Appeals*, 330 Phil. 801, 809 (1996).

[10] *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727, 763 (1999).

[11] *Land Bank of the Philippines v. Spouses Chico*, 600 Phil. 272, 291 (2009).

THIRD DIVISION

[G.R. No. 179566. October 19, 2016]

SPOUSES LORETO G. NICOLAS and LOLITA SARIGUMBA, *petitioners, vs.* **AGRARIAN REFORM BENEFICIARIES ASSOCIATION (ARBA), and FARMERS ASSOCIATION OF DAVAO CITY-KMPI, FELIPE RAMOS, HILARIO PASIOL, ROGELIO ASURO, ARTURO ATABLANCO, RODRIGO ATABLANCO, BONIFACIO ATIMANA, PATRICIO AVILA, CRISANTO BACUS, ERNESTO DONAHAN, SR., NESTOR LOCABERTE, MANILO REYES, ANDRES SAROL, SHERLITO TAD-I, ANTONIO TANGARO, OLIGARIO TANAGARO,* CRISITUTO TANGARO,** FELICIANO TANGARO, GODOFREDO NABASCA, WENNIE ALIGARME, PEDRO TATOY, JR., FELIPE UMAMALIN, PEDRO TATOY, SR., ANTONIO YANGYANG, ROMEO GANTUANGCO, VICTOR ALIDON, JAIME TATOY and JESUS TATOY, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; COURTS HAVE THE PREROGATIVE TO RELAX PROCEDURAL RULES OF EVEN THE MOST MANDATORY CHARACTER, MINDFUL OF THE DUTY TO RECONCILE BOTH THE NEED TO SPEEDILY PUT AN END TO LITIGATION AND THE PARTIES' RIGHT TO DUE PROCESS.— While we agree that Rule 43 is the correct mode of appeal for decisions, orders, or resolutions of the DAR Secretary, we find that the CA should not have easily dismissed the petition after petitioners had adequately explained and rectified their procedural lapses, which were neither gross nor inexcusable. Captioning the petition as a Rule 45 instead of a

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* Also referred to as Oligario Tanagaro in same parts of the records.

** Also referred to as Cristituto Tanagaro in some parts of the records.

Rule 43 was a clear inadvertence. Apart from this error and the one on the attached decisions being mere photocopies, petitioners have complied with all the other requirements of a Rule 43 petition. More importantly, the property rights at stake in this case, which will be discussed here shortly, should have merited reconsideration from the CA to entertain the petition. 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. x x x Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process.

2. ID.; ACTIONS; MOOT AND ACADEMIC CASE, DEFINED; AN ISSUE IS NOT RENDERED MOOT AND ACADEMIC WHEN THERE IS A JUSTICIABLE, LIVE CONTROVERSY BETWEEN THE PARTIES.— Preliminarily, it may seem at first blush that our ruling in G.R. No. 168394 on the Nicolas, *et al*. Petition is a supervening event that has rendered this petition moot and academic. An issue is said to have become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled and which would be negated by the dismissal of the complaint. Based on this definition, we hold that the petition has not been mooted. For one, there is still a justiciable, live controversy between the parties despite our ruling in G.R. No. 168394. x x x We emphasize that the Nicolas, *et al*. Petition and the ARBA, *et al*. Complaint are two different initiatory pleadings that raise two completely different issues but which are, at the same time, intimately related. The issue in the Nicolas, *et al*. Petition is whether the parcels of land are under the compulsory coverage of the Comprehensive Agrarian Reform Law (CARL). The heart of the ARBA, *et al*. Complaint, on the other hand, is whether the acts of Nicolas and Cruz pending appeal are valid and legal. x x x Further, there is another lingering issue that demands judicial review. Our ruling in G.R. No. 168394 effectively upholds the rights of petitioners over the land and

consequently, also upholds their legitimate exercise of such rights. But again, the conflicting decisions pose a· problem, since the DARAB in the ARBA, *et al.* Complaint also invalidated the x x x acts of Nicolas and Cruz on the ground of bad faith x x x. A question now arises as to the status of these acts. Will the invalidation by the DARAB stand or must it be overturned? We note that at the same time, however, the validity of the foregoing acts is hinged on the validity of the execution pending appeal. There is, therefore, a need to settle the actual controversy surrounding these acts.

3. ID.; ID.; JUDGMENTS; THE DOCTRINES OF *RES JUDICATA* AND *STARE DECISIS NON QUIETA ET MOVERE* ARE GENERAL PROCEDURAL LAW PRINCIPLES WHICH BOTH DEAL WITH THE EFFECTS OF PREVIOUS BUT FACTUALLY SIMILAR DISPOSITIONS TO SUBSEQUENT CASES AND BOTH BAR THE RELITIGATION OF THE SAME OR SIMILAR ISSUES RAISED IN THE FIRST SUIT.— The doctrines of *res judicata* (which means a "matter adjudged") and *stare decisis non quieta et movere* (or simply, *stare decisis* which means "follow past precedents and do not disturb what has been settled") are general procedural law principles which both deal with the effects of previous but factually similar dispositions to subsequent cases. Both doctrines speak of a first suit that has been previously decided by a court with finality. Both doctrines bar the relitigation of the same or similar issues raised in said first suit. In other words, the doctrines are applied prospectively. Here, the first suit referred to is G.R. No. 168394, the Nicolas, *et al.* Petition, which decided with finality the issue of whether the subject parcels of land are under the compulsory coverage of CARL. The ARBA, *et al*. Complaint is not relitigating this issue and there is no subsequent suit that is attempting to do so.

4. ID.; CIVIL PROCEDURE; FORUM SHOPPING; A PARTY MAY VALIDLY QUESTION THE DECISION IN A REGULAR APPEAL AND AT THE SAME TIME ASSAIL THE EXECUTION PENDING APPEAL VIA *CERTIORARI* WITHOUT VIOLATING THE NON-FORUM SHOPPING RULE.— [I]n this case, there is no identity of causes of action. To repeat, the issue in the Nicolas, *et al*. Petition is whether the property is exempt from the coverage of CARL, while the issue in the ARBA, *et al.* Complaint is whether the acts of

petitioners pending appeal of the Nicolas, *et al*. Petition are valid and legal. Clearly, they are distinct issues. x x x [O]ur *ratio decidendi* in a number of cases where we allowed the simultaneous filing of an appeal on the merits of the case and a petition for *certiorari* on the grant of an execution pending appeal may be applied here. In these cases, we have held that one party may validly question the decision in a regular appeal and at the same time assail the execution pending appeal via *certiorari* without violating the non-forum shopping rule because the merits of the case would not be addressed in the petition dealing with the execution and vice versa. We stressed that although there is identity of parties, the causes of action and the reliefs sought are different. The issue in these cases may have been whether there was forum shopping, but the logic behind our pronouncements applies here, considering that the test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, **or whether the final judgment in one case will amount to *res judicata* in another.**

5. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; 1994 DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD RULES OF PROCEDURE; EXECUTION; AN EXECUTION PENDING APPEAL WHICH WAS DONE UNILATERALLY AND EXTRAJUDICIALLY IS VIOLATIVE OF THE RULE ON EXECUTION.— [Rule XII of the 1994 DARAB] Rules [of Procedure on Execution] provides that execution shall issue as a matter of course upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. Here, the Decision of the Provincial Adjudicator in the Nicolas, *et al*. Petition was not yet final and executory when Nicolas and Cruz executed the decision in their favor. ARBA, *et al*. and the DAR were able to perfect their appeals. More importantly, the execution pending appeal was done in blatant violation of Section 2 of the Rules. Nicolas and Cruz did not file any motion for execution of the decision of the Adjudicator pending appeal before the Board. There is also no order from the Board allowing the execution pending appeal upon showing of good reasons. Simply put, the execution pending appeal was done unilaterally and extrajudicially.

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENT PENDING APPEAL; TO JUSTIFY EXECUTION PENDING APPEAL, THE EXISTENCE OF GOOD REASONS IS ESSENTIAL.— Execution of a judgment pending appeal is only an exception to the general rule. Being an exception, the existence of "good reasons" is essential. "Good reasons" has been held to consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. The rules do not specify the "good reasons" to justify execution pending appeal; thus, it is the discretion of the court to determine what may be considered as such. x x x The justifications cited by Nicolas and Cruz do not meet the definition of "good reasons" for they are not compelling enough. x x x The execution pending appeal having been done in violation of the Rules, the acts taken pursuant to it are, therefore, void and of no effect.

7. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; NOMINAL DAMAGES; AWARDED IN ORDER THAT THE PLAINTIFF'S RIGHT WHICH HAS BEEN VIOLATED OR INVADED BY THE DEFENDANT MAY BE VINDICATED OR RECOGNIZED.— Article 2221 of the Civil Code provides that nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying the plaintiff for any loss suffered. x x x [I]n this case, petitioners acted in bad faith when they caused the execution of the ruling of the Provincial Adjudicator pending appeal before the DARAB without any recourse to the legal rules and procedure. With this blatant violation of the Rules on execution pending appeal, petitioners trampled on the due process rights of ARBA, *et al*., to say the least. Worse, the execution enabled them to prematurely subdivide the properties and sell them to third persons. This fraudulent sale equally trampled on the potential property rights of ARBA, *et al*., which, at that time, were the subject of a pending litigation. Thus, considering the bad faith petitioners exhibited in this case, we find them liable for nominal damages in the amount of ₱75,000.00.

APPEARANCES OF COUNSEL

Pacifico J. Abraham for petitioners.
Edgardo T. Mata for Farmer's Assoc. of Davao.
Glocelito C. Jayma for respondents R. Asuro, *et al*.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 01312-MIN dated November 16, 2006[2] and August 3, 2007.[3] These resolutions dismissed the appeal filed by Spouses Loreto G. Nicolas and Lolita Sarigumba (Spouses Nicolas) from the Decision[4] of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 10860 due to procedural infirmities.

The Facts

Respondent Agrarian Reform Beneficiaries Association (ARBA) is the registered owner of a parcel of land, with an area of 429,314 square meters and located at Barangay Sto. Niño, Tugbok District, Davao City.[5] The land is covered by Transfer Certificate of Title (TCT) No. CL-143 and Certificate of Land Ownership Award (CLOA) No. 00044912.[6] The

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

[2] *Id.* at 26-28. *Ponencia* by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring.

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

[4] CA *rollo,* pp. 20-26.

[5] *Id.* at 21.

[6] *Id.*

individual respondents[7] are among the named and registered ARBA beneficiaries of the land.[8]

On August 31, 1998, petitioner Loreto G. Nicolas (Nicolas) and Olimpio R. Cruz (Cruz) filed a Petition for the "Cancellation of the Certificate of Land Ownership Award and Reinstatement of Title"[9] (Nicolas, *et al*. Petition) with the Office of the Provincial Adjudicator of the DARAB in Davao.[10] It was docketed as DARAB Case No. XI-1482-DC-98 and filed against the Department of Agrarian Reform (DAR) Secretary, DAR-Region XI Regional Director, DAR-Davao City Provincial Agrarian Reform Officer, ARBA, and the Farmers Association of Davao City-KMPI (FADC-KMPI), *et al.* Nicolas and Cruz claimed that they are the lawful owners of two (2) parcels of land covered by TCT Nos. T-162077 and T-162078, which were cancelled and included in TCT No. CL-143. Nicolas and Cruz claimed they acquired the lands in 1994 through a deed of assignment executed in their favor by Philippine Banking Corporation (PhilBanking). The lands were erroneously included in the Comprehensive Agrarian Reform Program (CARP) though they were already classified as within an urban zone and were, therefore, non-agricultural.[11] Thus, Nicolas and Cruz prayed that: (1) the compulsory acquisition proceedings relative to the lands covered by TCT Nos. T-162077 and T-162078 be declared null and void; (2) the CLOA issued to ARBA and FADC-KMPI, *et al*. be cancelled; and (3) TCT Nos. T-162077 and T-162078

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[7] Felipe Ramos, Hilario Pasiol, Rogelio Asuro, Arturo Atablanco, Rodrigo Atablanco, Bonifacio Atimana, Patricio Avila, Crisanto Bacus, Ernesto Donahan, Sr., Nestor Locaberte, Manilo Reyes, Andres Sarol, Sherlito Tad-I, Antonio Tangaro, Oligario Tangaro, Cristituto Tangaro, Feliciano Tangaro, Godofredo Nabasca, Wennie Alegarme, Pedro Tatoy, Jr., Felipe Umamalin, Pedro Tatoy, Sr., Antonio Yangyang, Romeo Gantuangco, Victor Alidon, Jaime Tatoy, and Jesus Tatoy, Jr.

[8] CA *rollo*, p. 21.

[9] DARAB records, pp. 115-122.

[10] CA *rollo*, p. 21.

[11] DARAB records, pp. 4-5.

be transferred in their names.[12] The Provincial Adjudicator granted the petition on May 14, 1999.[13]

ARBA and the public respondents filed their separate appeals on June 30, 1999.[14] However, pending these appeals, Nicolas and Cruz were able to execute the decision of the Provincial Adjudicator.[15] They were able to cause the cancellation of ARBA's TCT No. CL-143 and the reinstatement of TCT Nos. T-162077 and T-162078 in the name of PhilBanking.[16] They thereafter managed to cause the cancellation of TCT Nos. T-162077 and T-162078 and have them transferred in their names and of their spouses under TCT Nos. T-320807 and T-320808.[17] Subsequently, these two (2) titles were subdivided into six (6) titles: TCT Nos. T-328623, T-328624, T-328625, T-328626, T-328627, and T-328628.[18] Nicolas and Cruz later sold the land covered by TCT No. T-328626 to Spouses Marciano and Judith Tapiador (Spouses Tapiador), in whose names a new title, TCT No. 332246, was issued.[19]

The foregoing acts of Nicolas and Cruz prompted ARBA, FADC-KMPI, and the individual respondents (ARBA, *et al.*) to file a complaint for "Nullity of the Cancellation of TCT No. CL-143; Nullity of the Reinstatement of TCT Nos. T-162077 and T-162078; Nullity of TCT Nos. T-320807 and T-320808; Nullity of TCT Nos. T-328623, T-328624, T-328625, T-328626, T-328627 and T-328628; Reinstatement of TCT No. CL-143; Damages and Attorney's Fee"[20] (ARBA, *et al.* Complaint). It

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[12] CA *rollo*, p. 21; DARAB records, pp. 4-5.

[13] CA *rollo*, p. 21; DARAB records, pp. 30-36.

[14] CA *rollo*, p. 22; DARAB records, p. 6.

[15] CA *rollo*, p. 22.

[16] CA *rollo*, p. 22; DARAB records, p. 6.

[17] CA *rollo*, p. 22; DARAB records, p. 7.

[18] DARAB records, p. 7.

[19] CA *rollo*, p. 22.

[20] DARAB records, pp. 1-10.

was docketed as DARAB Case No. XI-1661-DC-2001 and filed against Spouses Nicolas, Spouses Olimpio R. Cruz and Juliana Esteban (Spouses Cruz), and the Registry of Deeds of Davao City. ARBA, *et al.* argued that the acts of Nicolas and Cruz pending the appeal of the Nicolas, *et al.* Petition are void *ab initio* or without effect.[21] They cited that there was a violation of Rule 12, Section 1 of the New Rules of Procedure of the DARAB because there was neither a certification by the proper officer that a resolution has become final and executory nor has any been served on them or on their counsel of record.[22] They also cited that there was no writ of execution issued by the Board of Adjudicator.[23] ARBA, *et al.* also argued that under Rule 36, Section 2 of the 1977 Rules of Civil Procedure, a decision will only become final and executory if it is entered in the Book of Entries and a Certificate of Finality is issued by the Clerk of Court.[24]

On July 9, 2001, the Regional Adjudicator dismissed the complaint on the grounds of *litis pendentia* and lack of jurisdiction.[25] The Regional Adjudicator ruled that complainants should have ventilated their case before the DARAB in the Nicolas, *et al.* Petition, which was still pending at that time. He also ruled that the case being one for annulment of judgment, jurisdiction lies before the regional trial courts.[26]

Meanwhile, on September 24, 2001, the DARAB in the Nicolas, *et al.* Petition reversed the Provincial Adjudicator and upheld the validity of the CLOA issued in the name of ARBA and their subsequent registration with the Register of Deeds.[27] Nicolas and Cruz appealed before the CA (CA-G.R. SP No.

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[21] *Id.* at 7.

[22] *Id.*

[23] *Id.* at 8.

[24] *Id.* at 8.

[25] *Id.* at 331-332.

[26] *Id.* at 332.

[27] CA *rollo*, pp. 22-23.

70357), which reversed and set aside the decision of the DARAB in a decision dated October 12, 2004.[28] The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the questioned Decision dated 24 September 2001 rendered by the public respondent **DARAB** is hereby **REVERSED** and **SET ASIDE** and a new one entered:
>
> 1. Ordering the Register of Deeds of Davao City to Cancel TCT No. CL-143 (CLOA No. 00044912);
>
> 2. Ordering the Register of Deeds of Davao City to reinstate Transfer Certificate of Title Nos. T-162077 and T-162078 in the name of PhilBanking;
>
> 3. Maintaining the private respondents members of the ARBA and Farmers Association of Davao-KMPI in their peaceful possession and cultivation over their respective landholdings in this case if they and/or predecessors[-]in-interest were already tenants over the same period to June 15, 1988[;] and
> 4. Declaring the parcels of land in question as exempted from the coverage of CARL.[29]

From this decision, the DAR, ARBA, and Felipe Ramos (Ramos), representing a faction of ARBA, filed separate petitions for review on *certiorari* before us, docketed as G.R. No. 168206, G.R. No. 168394, and G.R. No. 168684, respectively.[30] We denied the DAR and Ramos Petitions via minute resolutions and both denials eventually attained finality.[31] Meanwhile, the petition filed by ARBA in G.R. No. 168394 was still pending at that time.[32]

On the other hand, the DARAB in the ARBA, *et al.* Complaint reversed the Regional Adjudicator and rendered a new judgment[33]

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[28] *Id.* at 7-8.
[29] *Id.* at 9-10.
[30] *Rollo*, p. 10.
[31] *Id.* at 11.
[32] *Id.*
[33] *Supra* note 4.

on June 14, 2005 (DARAB Case No. 10860), the dispositive part of which reads:

WHEREFORE, premises considered, the appealed decision is hereby **SET ASIDE** and a **NEW JUDGMENT** is rendered as follows:

1. Declaring the cancellation of complainant-appellant ARBA's TCT No. CL-143, as null and void;
2. Declaring the reinstatement on September 28, 1999 of the previously cancelled TCT No. T-162077 and TCT No. T-162078, under the name of Philippine Banking Corporation, as null and void;
3. Declaring the transfer of TCT No. T-162077 and TCT No. 162078 under the names of respondents-appellees Loreto G. Nicolas and Olimpio R. Cruz, and their respective spouses, in TCT No. T-320807 and TCT No. T-320808, respectively, on September 1, 2000, as null and void;
4. Declaring the transfer of TCT No. T-320807 and TCT No. T-320808 under the names of respondents-appellees Loreto G. Nicolas and Olimpio R. Cruz, and their respective spouses, into six (6) titles, to wit, TCT Nos. T-328623, T-328624, T-328625, T-328626, T-328627, T-328628, on September 21, 2000, as null and void;
5. Declaring the sale or purchase of TCT No. T-328626 executed by respondents-appellees Loreto G. Nicolas and Olimpio R. Cruz, and their respective spouses, in favor of spouses Marciano and Judith Tapiador, as null and void;
6. Declaring TCT Nos. T-162077, T-162078, T-320807, T-320808, T-328623, T-328624, T-328625, T-328626, T-328627, T-328628 and T-332246, as null and void; and
7. Ordering the Registry of Deeds of Davao City to reinstate complainant-appellant ARBA's TCT No. CL-143.

SO ORDERED.[34]

The DARAB stressed that in view of the Board's ruling dated September 24, 2001 in the Nicolas, *et al.* Petition in favor of

[34] CA *rollo*, pp. 24-25.

ARBA, *et al*., all of the acts committed and/or caused to be committed by Nicolas and Cruz pending appeal were contrary and should, therefore, be nullified.[35]

Citing its 2003 Rules of Procedure, the DARAB held that it was erroneous to execute the judgment in the Nicolas, *et al.* Petition pending appeal. The DARAB found no good and urgent reason to justify the execution pending appeal, which meant that Nicolas and Cruz were in bad faith when they committed and/or caused to be committed the execution of the judgment to the prejudice of individual respondents.[36] Thus, Nicolas and Cruz have to suffer the adverse consequences of the reversal of the decision previously rendered in their favor.[37]

The DARAB denied the Motion for Reconsideration filed by Spouses Nicolas, *et al*.[38] Spouses Nicolas filed a petition before the CA (CA-G.R. SP No. 01312-MIN), which was dismissed because of procedural infirmities.[39]

The Petition

Spouses Nicolas now appeal the resolutions and argue that the CA erred in:

1) refusing due course to their petition when it was clearly apparent that the DARAB decision has already been overtaken and superseded by subsequent decisions of the Supreme Court; and

2) not recognizing that the issues addressed by the DARAB had already been settled by the Supreme Court and subject to the doctrines of *stare decisis* and *res judicata*.[40]

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

[36] *Id.* at 23-24.

[37] *Id.* at 24.

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

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

[40] *Rollo*, p. 12.

Spouses Nicolas argue that the DARAB decision itself states that the only issue involved therein was the appropriateness of the execution of judgment in favor of Spouses Nicolas pending appeal.[41] However, the DARAB treated its decision as final and executory, irrespective of the subsequent outcome of further proceedings in the main action, the Nicolas, *et al.* Petition, which was brought before the CA and us.[42]

Spouses Nicolas point out the subsequent decision of the CA in their favor in the Nicolas, *et al.* Petition.[43] They argue that with our resolutions in G.R. No. 168206 and G.R. No. 168684 (the DAR and Ramos Petitions), we have already affirmed with finality the findings of the CA that the authority of the DAR is limited only to all public and private agricultural lands.[44] Likewise, the DARAB decision in the ARBA, *et al.* Complaint conflicts with the decisions in the Nicolas, *et al.* Petition. Spouses Nicolas insist that the DARAB in the ARBA, *et al.* Complaint should have confined the issue as to whether the execution of judgment pending appeal was appropriate. The decretal portion of its decision, however, dwelled upon the very issues raised on appeal in the Nicolas, *et al.* Petition.[45]

Issues

1) Whether the CA correctly dismissed the appeal of petitioners in the ARBA, *et al.* Complaint on procedural grounds.

2) Whether the issues addressed by the DARAB in the ARBA, *et al.* Complaint have already been superseded and settled by our ruling in G.R. No. 168394,[46] the Nicolas, *et al.* Petition.

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[41] *Id.* at 9.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 12-13.

[45] *Id.* at 14.

[46] *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas*, October 6, 2008, 567 SCRA 540.

The Court's Ruling

We grant the petition.

The CA erred in dismissing the appeal of petitioners on pure technicalities.

The CA dismissed the appeal of Spouses Nicolas on the following procedural grounds:

1) The petition was filed via Rule 45 of the Rules of Civil Procedure, which is cognizable only by the Supreme Court, rather than Rule 43;[47]

2) Only photocopies, instead of duplicate original or certified true copies, of the assailed decision and resolution of DARAB were attached to the petition;[48] and

3) The Integrated Bar of the Philippines (IBP) Official Receipt number of their counsel indicated in the petition is not current.[49]

Spouses Nicolas filed a Motion for Reconsideration and Leave of Court to File Amended Petition. They insisted that their Petition for Review was erroneously captioned "Petition for Review on *Certiorari*" and that the allegations in their pleading and the context in which it was filed show that they intended to file a Petition for Review under Rule 43.[50]

Spouses Nicolas also explained that they inadvertently attached the original copies of the assailed decision and resolution to one of the duplicate copies of the petition.[51] Spouses Nicolas likewise attached a certified true copy of the assailed decision of DARAB in their Amended Petition and furnished the CA a

[47] *Rollo,* p. 27.

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

[49] *Id.* at 28.

[50] *Id.* at 30.

[51] CA *rollo,* p. 49.

photocopy of their counsel's current IBP Official Receipt number.[52] Spouses Nicolas implored the CA to resolve the petition on the merits and not on the formal deficiencies so as not to render nugatory our final decision in G.R. No. 168394.[53]

Despite the explanation and compliance of Spouses Nicolas, the CA still denied their motion in its Resolution[54] dated August 3, 2007. The CA held that the Rules of Procedure of DARAB mandates that judicial review of DARAB orders or decisions are governed by the Rules of Court, specifically Rule 43. Since Spouses Nicolas availed of the wrong mode of appeal via a petition for review on *certiorari* under Rule 45, it cannot be remedied by the mere filing of an Amended Petition for Review under Rule 43. Hence, the wrong mode of appeal taken did not vest jurisdiction on the CA over the petition. Accordingly, the period within which to file the petition was not tolled.[55]

Finally, the CA ruled that pursuant to Section 4 of Supreme Court Circular No. 2-90,[56] an appeal taken to the CA by the wrong or inappropriate mode shall be dismissed.[57]

While we agree that Rule 43 is the correct mode of appeal for decisions, orders, or resolutions of the DAR Secretary, we find that the CA should not have easily dismissed the petition after petitioners had adequately explained and rectified their procedural lapses, which were neither gross nor inexcusable. Captioning the petition as a Rule 45 instead of a Rule 43 was a clear inadvertence. Apart from this error and the one on the attached decisions being mere photocopies, petitioners have complied with all the other requirements of a Rule 43 petition.

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[52] *Id.* at 112.

[53] *Id.* at 51.

[54] *Supra* note 3.

[55] *Rollo*, p. 31.

[56] Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court (1990).

[57] *Rollo*, p. 31.

More importantly, the property rights at stake in this case, which will be discussed here shortly, should have merited reconsideration from the CA to entertain the petition. 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.[58]

Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process.[59] We further explained in *City of Dumaguete v. Philippine Ports Authority*:[60]

> Procedural rules were conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.
> x x x
>
> x x x
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> Likewise, in *Samoso v. CA*, the Court ruled:
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> > But time and again, the Court has stressed that the rules of procedure are not to be applied in a very strict and technical sense. The rules of procedure are used only to help secure not

[58] *Aguam v. Court of Appeals,* G.R. No. 137672, May 31, 2000, 332 SCRA 784, 790.

[59] *Barangay Sangalang v. Barangay Maguihan*, G.R. No. 159792, December 23, 2009, 609 SCRA 57, 68, citing *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*, G.R. No. 168115, June 8, 2007, 524 SCRA 333, 343.

[60] G.R. No. 168973, August 24, 2011, 656 SCRA 102.

> override substantial justice (*National Waterworks & Sewerage System vs. Municipality of Libmanan*, 97 SCRA 138 [1980]; *Gregorio v. Court of Appeals*, 72 SCRA 120 [1976]). The right to appeal should not be lightly disregarded by a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interests of substantial justice would be served by permitting the appeal (*Siguenza v. Court of Appeals*, 137 SCRA 570 [1985]; *Pacific Asia Overseas Shipping Corporation v. National Labor Relations Commission, et al.*, G.R. No. 76595, May 6, 1998) x x x[61] (Emphasis supplied.)

The issue in the ARBA, et al. Complaint has not been rendered moot and academic.

Preliminarily, it may seem at first blush that our ruling in G.R. No. 168394 on the Nicolas, *et al.* Petition is a supervening event that has rendered this petition moot and academic. An issue is said to have become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled and which would be negated by the dismissal of the complaint.[62] Based on this definition, we hold that the petition has not been mooted.

For one, there is still a justiciable, live controversy between the parties despite our ruling in G.R. No. 168394. In *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority*[63] we did not find that the petition was rendered moot or illusory by the fact that execution was effected and possession of the subject matter of the case was restored to private respondents. We held that the resolution of the petition requires a determination of whether the CA gravely abused its discretionary power to order execution pending appeal as prescribed in Section 2, Rule 39 of the 1997

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[61] *Id.* at 117-118.

[62] *Ilusorio v. Baguio Country Club Corporation*, G.R. No. 179571, July 2, 2014, 728 SCRA 592, 598.

[63] G.R. No. 135630, September 26, 2000, 341 SCRA 90.

Revised Rules of Court, and where such grave abuse of discretion is established, the execution pending appeal pursuant to the resolutions of the CA may be voided. Thus, we concluded that the petition presented a live and justiciable controversy.[64]

We emphasize that the Nicolas, *et al.* Petition and the ARBA, *et al.* Complaint are two different initiatory pleadings that raise two completely different issues but which are, at the same time, intimately related. The issue in the Nicolas, *et al.* Petition is whether the parcels of land are under the compulsory coverage of the Comprehensive Agrarian Reform Law[65] (CARL). The heart of the ARBA, *et al.* Complaint, on the other hand, is whether the acts of Nicolas and Cruz pending appeal are valid and legal. We have ruled in favor of petitioners in G.R. No. 168394 and declared that the parcels of land are outside the coverage of CARL. Accordingly, we also ordered the cancellation of the CLOAs in favor of respondents and ordered the Register of Deeds to reinstate the TCTs in the name of petitioners' predecessor-in-interest, PhilBanking.[66] The DARAB in the ARBA, *et al.* Complaint, meanwhile, ruled that the execution pending appeal was invalid and so declared as void the cancellation of the CLOAs of respondents and the reinstatement of the TCTs in the name of PhilBanking. It also ordered the Register of Deeds to reinstate respondents' TCT (CLOAs). Given these conflicting declarations, what petitioners are attempting to achieve in this petition, therefore, is an annulment of the DARAB and CA decisions in the ARBA, *et al.* Complaint in order to conform to our ruling in G.R. No. 168394. The non-application of the second part of the definition of a moot and academic issue on the practical use or value of a declaration on the dispute now comes into play. A declaration from us sustaining petitioners' position and granting them their prayer for relief would still be of practical value to them. As we shall also discuss and show shortly, our ruling here will also be of practical value to respondents.

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[64] *Id.* at 103.

[65] Republic Act No. 6657 (1998).

[66] *ARBA v. Nicolas*, *supra* note 46 at 547; 557.

In *Pasig Printing Corporation v. Rockland Construction Company, Inc.*,[67] we decided the case on the merits despite the finality of the main case because of peculiar circumstances. If we chose not to, erroneous resolutions of the CA would have remained in force and would have prejudiced the possessory rights of one of the parties.[68] We also face the same dilemma here. If we were to simply deny the petition on the ground of mootness, the conflicting decisions of Nicolas, *et al.* Petition and the ARBA, *et al.* Complaint would subsist.

Further, there is another lingering issue that demands judicial review. Our ruling in G.R. No. 168394 effectively upholds the rights of petitioners over the land and consequently, also upholds their legitimate exercise of such rights. But again, the conflicting decisions pose a problem, since the DARAB in the ARBA, *et al*. Complaint also invalidated the following acts of Nicolas and Cruz on the ground of bad faith:

1. The transfer of TCTs in the name of PhilBanking to petitioner Nicolas and Cruz and their respective spouses;
2. The transfer and subdivision of the TCTs in the names of petitioner Nicolas and Cruz and their respective spouses; and
3. The sale of a parcel of land from the subdivided property (covered by TCT No. T-328626) executed by petitioner Nicolas and Cruz and their respective spouses in favor of Spouses Tapiador.

A question now arises as to the status of these acts. Will the invalidation by the DARAB stand or must it be overturned? We note that at the same time, however, the validity of the foregoing acts is hinged on the validity of the execution pending appeal. There is, therefore, a need to settle the actual controversy surrounding these acts.

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[67] G.R. No. 193592, February 5, 2014, 715 SCRA 466.

[68] *Id.* at 476.

The doctrines of res judicata and stare decisis do not apply in this case.

Petitioners posit that G.R. No. 168394 has finally settled the issues addressed by the DARAB in the ARBA, *et al.* Complaint and the decision must no longer be disturbed owing to the doctrines of *stare decisis* and *res judicata*. We do not agree.

To begin with, not all elements of *stare decisis* and *res judicata* are present in this case. *Stare decisis* means that for the sake of certainty, **a conclusion reached** in one case should be applied to those that follow **if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. **Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.**[69]

According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction **on the points and matters in issue in the first suit**.[70]

The doctrines of *res judicata* (which means a "matter adjudged") and *stare decisis non quieta et movere* (or simply, *stare decisis* which means "follow past precedents and do not disturb what has been settled") are general procedural law principles which both deal with the effects of previous but factually similar dispositions

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[69] *Commissioner of Internal Revenue v. The Insular Life Assurance Co., Ltd.*, G.R. No. 197192, June 4, 2014, 725 SCRA 94, 96-97. (Emphasis and underscoring supplied)

[70] *Lee v. Lui Man Chong*, G.R. No. 209535, June 15, 2015, 757 SCRA 577, 583. (Emphasis supplied.)

to subsequent cases.[71] Both doctrines speak of a first suit that has been previously decided by a court with finality. Both doctrines bar the relitigation of the same or similar issues raised in said first suit. In other words, the doctrines are applied prospectively.

Here, the first suit referred to is G.R. No. 168394, the Nicolas, *et al.* Petition, which decided with finality the issue of whether the subject parcels of land are under the compulsory coverage of CARL. The ARBA, *et al.* Complaint is not relitigating this issue and there is no subsequent suit that is attempting to do so.

The case of *Vda. De Salanga v. Alagar*[72] is on point. In that case, a controversy also arose as a consequence of the execution pending appeal of a judgment in an ejectment case. While the ejectment case was pending appeal before the CA, the Regional Trial Court ordered the execution of the judgment of the Municipal Trial Court pending appeal. The auction sale of the properties pushed through, prompting the private respondent to file a petition for its annulment. When the ejectment case attained finality, plaintiff moved for the dismissal of the petition for annulment of the public auction sale on the ground that it has been rendered moot and academic and barred by the final and executory judgment in the ejectment case. Citing what we have laid down in *Cagayan de Oro Coliseum, Inc. v. Court of Appeals*,[73] we disagreed with plaintiff that there was *res judicata* between the petition for annulment of the public auction sale and the final judgment rendered in the ejectment case. We ruled that the elements of identity of subject matter and causes of action were absent. The petition for annulment of the public auction sale did not directly involve the property subject matter of the ejectment case. It was concerned with the validity of the execution proceedings, specifically the validity of the auction sale of private respondent's properties to satisfy the money

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[71] *Belgica v. Ochoa, Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 100-101.

[72] G.R. No. 134089, July 14, 2000, 335 SCRA 728.

[73] G.R. No. 129713, December 15, 1999, 320 SCRA 731.

judgment in the ejectment case. As such, said cases fail the test of identity of causes of action, *i.e.*, whether the same facts or evidence would support and establish the causes of action in each case.[74]

Similarly in this case, there is no identity of causes of action. To repeat, the issue in the Nicolas, *et al.* Petition is whether the property is exempt from the coverage of CARL, while the issue in the ARBA, *et al.* Complaint is whether the acts of petitioners pending appeal of the Nicolas, *et al.* Petition are valid and legal. Clearly, they are distinct issues.

Further, our *ratio decidendi* in a number of cases[75] where we allowed the simultaneous filing of an appeal on the merits of the case and a petition for *certiorari* on the grant of an execution pending appeal may be applied here. In these cases, we have held that one party may validly question the decision in a regular appeal and at the same time assail the execution pending appeal via *certiorari* without violating the non-forum shopping rule because the merits of the case would not be addressed in the petition dealing with the execution and vice versa. We stressed that although there is identity of parties, the causes of action and the reliefs sought are different. The issue in these cases may have been whether there was forum shopping, but the logic behind our pronouncements applies here, considering that the test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, **or whether the final judgment in one case will amount to *res judicata* in another.**[76]

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[74] *Id.* at 735-738.

[75] See *Paradero v. Abragan*, G.R. No. 158917, March 1, 2004, 424 SCRA 155, 161, citing *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*, G.R. No. 143933, February 14, 2003, 397 SCRA 431 and *International School, Inc. (Manila) v. Court of Appeals*, G.R. No. 131109, June 29, 1999, 309 SCRA 474.

[76] *Id.* at 161-162. (Emphasis supplied.)

The acts of Nicolas and Cruz pending appeal were done in violation of the 1994 DARAB Rules of Procedure.

Rule XII of the 1994 DARAB Rules of Procedure (the Rules) on Execution provides:

RULE XII
Execution

Sec. 1. *Execution Upon Final Order or Decision*. Execution shall issue upon an order, resolution or decision that finally disposes of the action or proceeding. Such execution shall issue as a matter of course and upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

The Board or Adjudicator concerned may, upon certification by the proper officer that a resolution, order or decision has been served to the counsel or representative on record and to the party himself, and has become final and executory, and, upon motion or *motu propio*, issue a writ of execution ordering the DAR Sheriff or any DAR officer to enforce the same. In appropriate cases, the Board or any of its Members or its Adjudicator shall deputize and direct the Philippine National Police, Armed Forces of the Philippines or any of their component units or other law enforcement agencies in the enforcement of any final order, resolution or decision.

Sec. 2. *Execution Pending Appeal*. Any motion for execution of the decision of the Adjudicator pending appeal shall be filed before the Board, and the same may be granted upon showing good reasons and under conditions which the Board may require.

Sec. 3. *Applicability of the Uniform Rules of Procedure of the Court of Agrarian Relations (CAR)*. Rule XIX of the Uniform Rules of Procedure of the CAR, with respect to execution, shall apply insofar as they are not inconsistent with these Rules.

The Rules provides that execution shall issue as a matter of course upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. Here, the Decision of the Provincial Adjudicator in the Nicolas, *et al.* Petition was not yet final and executory when Nicolas and Cruz executed the decision in their

favor. ARBA, *et al*. and the DAR were able to perfect their appeals.

More importantly, the execution pending appeal was done in blatant violation of Section 2 of the Rules. Nicolas and Cruz did not file any motion for execution of the decision of the Adjudicator pending appeal before the Board. There is also no order from the Board allowing the execution pending appeal upon showing of good reasons. Simply put, the execution pending appeal was done unilaterally and extrajudicially.

To justify their acts, Nicolas and Cruz asserted in their Answer before the Regional Adjudicator that the cancellation of TCT No. CL-143 and the reinstatement and transfer of the titles were initiated by the Register of Deeds of Davao City in compliance with the decision of the Provincial Adjudicator in the Nicolas, *et al.* Petition.[77] They also faulted the DAR and ARBA for failing to provide a copy of the Notice of Appeal to the Register of Deeds of Davao City.[78]

Nicolas and Cruz further argued that they acted in accordance with law in safeguarding their interest on the parcels of land after finally acquiring full ownership of the properties. They claimed that they had to act expeditiously, but legally, to have the titles to the subject parcels of land transferred in their name to frustrate the sinister moves of ARBA, *et al.* to dissipate the asset and deny the lawful owners of taking actual possession of the property. According to Nicolas and Cruz, the issuance of new titles in their name was the only viable option that will provide them adequate protection against the bad intentions of ARBA, *et al*. They alleged that ARBA, *et al.* have already demonstrated their capacity for committing illegal acts as evidenced by the rampant selling of rights over the areas of cultivation awarded to them by their respective organizations, which started in 1992 or not even a year after they were erroneously awarded the lands under CARP and have been going

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[77] DARAB records, p. 221.

[78] *Id.* at 222.

on over the years. Nicolas and Cruz feared that if they will not have the titles registered in their names, it is not far-fetched that the illegal selling of rights by ARBA, *et al.* will continue, and that the buyers will flock the area and occupy the lands to the detriment of the legitimate owners.[79]

We find the justifications of Nicolas and Cruz unacceptable. Execution of a judgment pending appeal is only an exception to the general rule. Being an exception, the existence of "good reasons" is essential. "Good reasons" has been held to consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. The rules do not specify the "good reasons" to justify execution pending appeal; thus, it is the discretion of the court to determine what may be considered as such.[80]

We have allowed execution pending appeal in the following cases:

> The execution of a judgment before becoming final by reason of appeal is recognized. However, this highly exceptional case must find itself firmly founded upon good reasons warranting immediate execution. For instance, execution pending appeal was granted by this Court where the prevailing party is of advanced age and in a precarious state of health and the obligation in the judgment is non-transmissible, being for support, or where the judgment debtor is insolvent. Execution pending appeal was also allowed by this Court where defendants were exhausting their income and have no other property aside from the proceeds of the subdivision lots subject of the action.[81]

The justifications cited by Nicolas and Cruz do not meet the definition of "good reasons" for they are not compelling enough. First, they cannot fault the DAR and ARBA for failing to provide a copy of the Notice of Appeal to the Register of Deeds of Davao

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[79] *Id.* at 226.

[80] *Flexo Manufacturing Corporation v. Columbus Foods, Incorporated*, G.R. No. 164857, April 11, 2005, 455 SCRA 272, 279-280.

[81] *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, January 20, 2009, 576 SCRA 680, 694.

City. The Rules provides that to perfect an appeal, the Notice of Appeal must be served on the adverse party.[82] It is not required to serve a copy on the Register of Deeds. Moreover, the Register of Deeds cannot, on his own initiative, cancel TCT No. CL-143, reinstate the titles in the name of PhilBanking, and finally transfer the titles in the names of Spouses Nicolas, Spouses Cruz and third persons. The DARAB or Adjudicator concerned must issue a writ of execution ordering the DAR Sheriff or any DAR officer to execute the decision.[83]

Additionally, the fear of Nicolas and Cruz—that if they will not have the titles registered in their names, ARBA, *et al.* shall sell their rights over the property and the buyers shall occupy the lots to the detriment of the lawful owners—is not a "superior circumstance demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment."[84] In this case, both parties stand to lose the ownership of the subject parcels of land. If Nicolas and Cruz wanted to protect their interest over the property, they could have recorded a notice of *lis pendens* in the Registry of Deeds. What they did, on the

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[82] Sec. 5, Rule XIII, 1994 DARAB Rules of Procedure. Section 5 reads:

Sec. 5. *Requisites and Perfection of the Appeal*.

a) The Notice of Appeal shall be filed within the reglementary period as provided for in Section 1 of this Rule. It shall state the date when the appellant received the order or judgment appealed from and the proof of service of the notice of the adverse party x x x. (Underscoring supplied.)

[83] Sec. 1, Rule XII, 1994 DARAB Rules of Procedure. Section 1 reads:

Sec. 1. *Execution Upon Final Order or Decision*. x x x

The Board or Adjudicator concerned may, upon certification by the proper officer that a resolution, order or decision has been served to the counsel or representative on record and to the party himself, and has become final and executory, and, upon motion or *motu proprio*, issue a writ of execution ordering the DAR Sheriff or any DAR officer to enforce the same. In appropriate cases, the Board or any of its Members or its Adjudicator shall deputize and direct the Philippine National Police, Armed Forces of the Philippines or any of their component units or other law enforcement agencies in the enforcement of any final order, resolution or decision.

[84] *Flexo Manufacturing Corporation v. Columbus Foods, Incorporated, supra* note 80.

contrary, were the very acts they feared ARBA, *et al.* would do: Nicolas and Cruz themselves hastily subdivided the properties and sold a parcel to third parties.

The execution pending appeal having been done in violation of the Rules, the acts taken pursuant to it are, therefore, void and of no effect. We have ruled in *Carpio v. Court of Appeals*:[85]

> In any case, we proceed to rule that because the writ of execution was void, all actions and proceedings conducted pursuant to it were also void and of no legal effect. To recall, this Court affirmed the Decision of the CA in CA-G.R. SP No. 84632, annulling the RTC's Omnibus Order granting the Motion for Immediate Execution pending appeal. We affirmed the CA Decision because of the RTC's failure to state any reason, much less good reason, for the issuance thereof as required under Section 2, Rule 39. In the exercise by the trial court of its discretionary power to issue a writ of execution pending appeal, we emphasize the need for strict compliance with the requirement for the statement of a good reason, because execution pending appeal is the exception rather than the rule.
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> Since the writ of execution was manifestly void for having been issued without compliance with the rules, it is without any legal effect. In other words, it is as if no writ was issued at all. Consequently, all actions taken pursuant to the void writ of execution must be deemed to have not been taken and to have had no effect. Otherwise, the Court would be sanctioning a violation of the right to due process of the judgment debtors-respondent-spouses herein.[86]

The foregoing, notwithstanding, we are aware of our decisions concerning the Nicolas, *et al.* Petition in G.R. No. 168206, G.R. No. 168684, and G.R. No. 168394. Specifically, in G.R. No. 168394, we recognized Nicolas and Cruz as the lawful assignees and successors-in-interest of PhilBanking, the original owner of the lands included in TCT No. CL-143. We agreed with the CA that these lands are outside the coverage of CARL. Thus, we affirmed the decision of the CA, which had the following disposition:

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[85] G.R. No. 183102, February 27, 2013, 692 SCRA 162.

[86] *Id.* at 172.

1. Ordering the Register of Deeds of Davao City to cancel TCT No. CL-143 (CLOA No. 00044912);
2. Ordering the Register of Deeds of Davao City to reinstate Transfer Certificate of Title Nos. T-162077 and T-162078 in the name of PhilBanking;
3. Maintaining the private respondents members of the ARBA and Farmers Association of Davao-KMPI in their peaceful possession and cultivation over their respective landholdings in this case if they and/or predecessors-in-interest were already tenants over the same prior to June 15, 1988; and
4. Declaring the parcels of land in question as exempted from the coverage of CARL.[87]

Being final and executory, G.R. No. 168394 must now be respected. While the execution pending appeal by Nicolas and Cruz was correctly declared invalid by the DARAB, to sustain its disposition in the ARBA, *et al.* Complaint would run counter to G.R. No. 168394 and ultimately prejudice the rights of Spouses Tapiador, who may be innocent purchasers for value. Thus, we are constrained to reverse and set aside the decision of the DARAB in the ARBA, *et al.* Complaint.

ARBA, et al. are entitled to nominal damages.

Article 2221 of the Civil Code provides that nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying the plaintiff for any loss suffered. We have laid down the concept of nominal damages in the following wise:

> Nominal damages are 'recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.'[88]

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[87] *ARBA v. Nicolas*, *supra* note 46 at 547.

[88] *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, G.R. No. 193914, November 26, 2014, 743 SCRA 33, 43.

In *Locsin v. Hizon*,[89] we awarded the petitioner nominal damages in the amount of Seventy-five Thousand Pesos (₱75,000.00) after recognizing that she was unduly deprived of her ownership rights over the disputed property, and was compelled to litigate for almost ten (10) years. We considered the amount of ₱75,000.00 as sufficient nominal damages, after taking into account the length of time petitioner was deprived of her property and the bad faith attending respondents' actuations in the case.[90] Similarly in this case, petitioners acted in bad faith when they caused the execution of the ruling of the Provincial Adjudicator pending appeal before the DARAB without any recourse to the legal rules and procedure. With this blatant violation of the Rules on execution pending appeal, petitioners trampled on the due process rights of ARBA, *et al.*, to say the least. Worse, the execution enabled them to prematurely subdivide the properties and sell them to third persons. This fraudulent sale equally trampled on the potential property rights of ARBA, *et al.*, which, at that time, were the subject of a pending litigation.

Thus, considering the bad faith petitioners exhibited in this case, we find them liable for nominal damages in the amount of ₱75,000.00, which is in line with *Locsin*. Moreover, they are liable for attorney's fees in the amount of ₱75,000.00 and the costs of suit.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Resolutions of the Court of Appeals in CA-G.R. SP No. 01312-MIN dated November 16, 2006 and August 3, 2007 are **REVERSED** and **SET ASIDE.** Accordingly, the Decision of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 10860 is hereby **ANNULLED** and **SET ASIDE.** Spouses Loreto G. Nicolas and Lolita Sarigumba are further **ORDERED** to pay respondents Seventy-five Thousand Pesos (₱75,000.00) as nominal damages, ₱75,000.00 as attorney's fees, and the costs of suit.

SO ORDERED.

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

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[89] G.R. No. 204369, September 17, 2014, 735 SCRA 547.
[90] *Id.* at 567.

FIRST DIVISION

[G.R. No. 193321. October 19, 2016]

TAKENAKA CORPORATION-PHILIPPINE BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; ZERO-RATED SALES; CLAIM FOR REFUND OF EXCESS INPUT VALUE-ADDED TAX (VAT) ARISING FROM ZERO-RATED SALES; TIMELINESS DISCUSSED IN THE CASE OF *MINDANAO II GEOTHERMAL PARTNERSHIP V. COMMISSIONER OF INTERNAL REVENUE*.— The Court deems it appropriated to determine the timeliness of the petitioner's judicial claim for refund in order to ascertain whether or not the CTA properly acquired jurisdiction thereof. Well-settled is the rule that the issue of jurisdiction over the subject matter may at any time either be raised by the parties or considered by the Court *motu proprio*. As such, the jurisdiction of the CTA over the appeal could still be determined by this Court despite its not being raised as an issue by the parties. In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, the Court has underscored that: (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction. (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR. (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in

Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

2. ID.; ID.; ID.; EVIDENCE REQUIRED ARE OFFICIAL RECEIPTS AS DISTINGUISHED FROM SALES INVOICE.— As evidence of an administrative claim for tax refund or tax credit, there is a certain distinction between a *receipt* and an *invoice*. x x x **A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. A "receipt" on the other hand is a written acknowledgement of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or persons rendering services and client or customer.** x x x The petitioner submitted sales invoices, not official receipts, to support its claim for refund. In light of the aforestated distinction between a receipt and an invoice, the submissions were inadequate for the purpose thereby intended. x x x Under VAT Ruling No. 011-03, the sales of goods and services rendered by the petitioner to PIATCO were subject to zero-percent (0%) VAT, and required no prior approval for zero rating based on Revenue Memorandum Circular 74-99. This notwithstanding, the petitioner's claim for refund must still be denied for its failure as the taxpayer to comply with the substantiation requirements for administrative claims for tax refund or tax credit.

APPEARANCES OF COUNSEL

Araneta & Faustino Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The petitioner as taxpayer appeals before the Court the adverse decision entered on March 29, 2010[1] and the resolution issued on August 12, 2010[2] in C.T.A. EB No. 514, whereby the Court of Tax Appeals (CTA) *En Banc* respectively denied its claim for refund of excess input value-added tax (VAT) arising from its zero-rated sales of services for taxable year 2002, and denied its ensuing motion for reconsideration.

The factual and procedural antecedents, as narrated by the CTA *En Banc*, are quoted below:

> Respondent Takenaka, as a subcontractor, entered into an On-Shore Construction Contract with Philippine Air Terminal Co., Inc. (PIATCO) for the purpose of constructing the Ninoy Aquino Terminal III (NAIA-IPT3).
>
> PIATCO is a corporation duly organized and existing under the laws of the Philippines and was duly registered with the Philippine Economic Zone Authority (PEZA), as an Ecozone Developer/Operator under RA 7916.
>
> Respondent Takenaka filed its Quarterly VAT Returns for the four quarters of taxable year 2002 on April 24, 2002, July 22, 2002, October 22, 2002 and January 22, 2003, respectively. Subsequently, respondent Takenaka amended its quarterly VAT returns several times. In its final amended Quarterly VAT Returns, the following were indicated thereon:

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[1] *Rollo*, pp. 49-67; penned by Associate Justice Olga Palanca-Enriquez (retired), with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy and Associate Justice Caesar A. Casanova concurring; Presiding Justice Ernesto D. Acosta was on leave.

[2] *Id.* at 69-74; presiding Associate Justice Acosta dissented, and was joined by Associate Justice Casanova (see *rollo*, pp. 75-77).

Exh.	Year	Zero-rate	Taxable	Output VAT	Input VAT	
	2002	Sales/Receipts	Sales		This Quarter	Excess
Q	1st	₱854,160,170.42	₱5292,140.00	₱529,234,.00	₱52,044,766.05	₱51,516,532.05
II	2nd	599,459,723.90			60,588,638.09	60,588,638.09
DDD	3rd	480,168,744.90			55,234,736.15	55,234,736.15
VVV	4th	304,283,710.15			30,494,993.51	30,494.993.51
TOTAL		₱2,238,071,899.37	₱5,292,340.00	₱529,234.00	₱198,363,133.80	₱197,833,899.80

On January 13, 2003, the BIR issued VAT Ruling No. 011-03 which states that the sales of goods and services rendered by respondent Takenaka to PIATCO are subject to zero-percent (0%) VAT and requires no prior approval for zero rating based on Revenue Memorandum Circular 74-99.

On April 11, 2003, respondent Takenaka filed its claim for tax refund covering the aforesaid period before the BIR Revenue District Office No. 51, Pasay City Branch.

For failure of the BIR to act on its claim, respondent Takenaka filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6886.

After trial on the merits, on November 4, 2008, the Former First Division rendered a Decision partly granting the Petition for Review and ordering herein petitioner CIR to refund to respondent Takenaka the reduced amount of ₱53,374,366.52, with a Concurring and Dissenting Opinion from Presiding Justice Ernesto D. Acosta.

Not satisfied, on November 26, 2008, respondent Takenaka filed a "Motion for Reconsideration".

During the deliberation of respondent Takenaka's "Motion for Reconsideration", Associate Justice Caesar A. Casanova changed his stand and concurred with Presiding Justice Ernesto D. Acosta, while the original *Ponente*, Associate Justice Lovell R. Bautista, maintained his stand. Thus, respondent Takenaka's "Motion for Reconsideration" was granted by the Former First Division in its Amended Decision dated March 16, 2009, with a Dissenting Opinion from Associate Justice Lovell R. Bautista.

On April 7, 2009, petitioner CIR filed a "Motion for Reconsideration" of the Amended Decision, which the Former First

Division denied in a Resolution dated June 29, 2009, with Associate Justice Lovell R. Bautista reiterating his Dissenting Opinion.[3]

Consequently, the respondent filed a petition for review in the CTA *En Banc* to seek the reversal of the March 16, 2009 decision and the June 29, 2009 resolution of the CTA Former First Division.[4]

On March 29, 2010, the CTA En Banc promulgated its decision disposing thusly:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, the Amended Decision dated March 16, 2009 and Resolution dated June 29, 2009 rendered by the Former First Division are hereby **REVERSED** and **SET ASIDE,** and another one is hereby entered **DENYING** respondent Takenaka's claimed input tax attributable to its zero rated sales of services for taxable year 2002 in the amount of ₱143,997,333.40.
>
> **SO ORDERED**.[5]

Later on, through the resolution dated August 12, 2010,[6] the CTA *En Banc* denied the petitioner's motion for reconsideration.

Hence, this petition for review on *certiorari*.

Issue

The lone issue is whether or not the sales invoices presented by the petitioner were sufficient as evidence to prove its zero-rated sale of services to Philippine Air Terminal Co., Inc. (PIATCO), thereby entitling it to claim the refund of its excess input VAT for taxable year 2002.

Ruling of the Court

We deny the appeal.

First of all, the Court deems it appropriate to determine the timeliness of the petitioner's judicial claim for refund in order

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

[4] *Id.* at 50.

[5] *Id.* at 66-67.

[6] Supra note 2.

to ascertain whether or not the CTA properly acquired jurisdiction thereof. Well-settled is the rule that the issue of jurisdcition over the subject matter may at any time either be raised by the parties or considered by the Court *motu proprio*. As such, the jurisdiction of the CTA over the appeal could still be determined by this Court despite its not being raised as an issue by the parties.[7]

In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*,[8] the Court has underscored the:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim wihtin which to decide whether to grant a refund or issues a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrarive claim may be considered to be denied by in action.

(3) A judicial claim must be filed with the CTA within 30 day s from the receipt of the CIR's decision denying the administrativc claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA 489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, anexception to the mandatory and juridictional 120+30 day period.

In this case, the following dated are relevant to determine the timelineess of the petitioner's claim for refund, to wit:

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[7] *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*, G. R. No. 185115, February 18, 2015, 750 SCRA 733, 737-738.

[8] G.R. Nos. 193301 and 194637, March 11, 2013, 693 SCRA 49, 89.

Amount Claimed and Taxable Period covered	**Close of quarter when sales were made**	**Last day for filing administrative claim for refund (2 years)**	**Actual date of filing of administrative claim for refund**	**Last day for filing judicial claim with CTA 120+30)**	**Actual filing of judicial claim with CTA**
₱51,515,532.05, 1st quarter of 2002	March 31, 2002	March 31, 2004	April 11, 2003	September 8, 2003	**March 10, 2004**
₱60,588,638.09,2nd quarter of 2002	June 30, 2002	June 30, 2004			
₱55,234,736.15, 3rd quarter of 2002	September 30, 2002	September 30, 2004			
₱30,494,993.51, 4th quarter of 2002	December 31, 2002	December 31, 2004			

Based on the foregoing, the petitioner's situation is actually a case of late filing and is similar with the case of Philex Mining Corporation in *Commissioner of Internal Revenue v. San Roque Power Corporation*.[9]

The petitioner timely filed its administrative claim on April 11, 2003, within the two-year prescriptive period after the close of the taxable quarter when the zero-rated sales were made. The respondent had 120 days, or until August 9, 2003, to decide the petitioner's claim. Considering that the respondent did not act on the petitioner's claim on or before August 9, 2003, the latter had until September 8, 2003, the last day of the 30-day period, within which to file its judicial claim. However, it brought its petition for review in the CTA only on March 10, 2004, or 184 days after the last day for the filing. Clearly, the petitioner belatedly brought its judicial claim for refund, and the CTA did not acquire jurisdiction over the petitioner's appeal.

We note, however, that the petitioner's judicial claim was brought well within the two-year prescriptive period. Be that as it may, it must be stressed that the two-year prescriptive period refers to the period within which the taxpayer can file an administrative claim,

[9] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 388-390.

not the judicial claim with the CTA.[10] Accordingly, the CTA should have denied petitioner's claim for tax refund or credit for lack of jurisdiction.

Nonetheless, the CTA did not err in denying the claim for refund on the ground that the petitioner had not established its zero-rated sales of services to PIATCO through the presentation of official receipts. In this regard, as evidence of an administrative claim for tax refund or tax credit, there is a certain distinction between a *receipt* and an *invoice*. The Court has reiterated the distinction in *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*[11] in this wise:

> Section 113 of the NIRC of 1997 provides that a VAT invoice is necessary for every sale, barter or exchange of goods or properties, while a VAT official receipt properly pertains to every lease of goods or properties; as well as to every sale, barter or exchange of services.
>
> The Court has in fact distinguished an invoice from a receipt in *Commissioner of Internal Revenue v. Manila Mining Corporation*:
>
> **A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.**
>
> **A "receipt" oh the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.**
>
> A VAT invoice is the seller's best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively. (Bold underscoring supplied for emphasis)

The petitioner submitted sales invoices, not official receipts, to support its claim for refund. In light of the aforestated distinction

[10] *Id.* at 391.

[11] *Supra* note 7, at 743-744.

between a receipt and an invoice, the submissions were inadequate for the purpose thereby intended. The Court concurs with the conclusion of the CTA *En Banc*, therefore, that "[w]ithout proper VAT official receipts issued to its clients, the payments received by respondent Takenaka for providing services to PEZA-registered entities cannot qualify for VAT zero-rating. Hence, it cannot claim such sales as zero-rated VAT not subject to output tax."[12]

Under VAT Ruling No. 011-03, the sales of goods and services rendered by the petitioner to PIATCO were subject to zero-percent (0%) VAT, and required no prior approval for zero rating based on Revenue Memorandum Circular 74-99.[13] This notwithstanding, the petitioner's claim for refund must still be denied for its failure as the taxpayer to comply with the substantiation requirements for administrative claims for tax refund or tax credit. The Court explains why in *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*:[14]

> In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. **Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.** (Bold underscoring supplied for emphasis)

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on March 29, 2010 in C.T.A. EB No. 514; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*), *Perlas-Bernabe, Jardeleza*,* and *Caguioa, JJ.*, concur.

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[12] *Rollo,* p. 64.

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

[14] G.R. No. 181136, June 13, 2012, 672 SCRA 350, 362.

* In lieu of Chief Justice Maria Lourdes P. A. Sereno, who inhibited for being a former counsel in a related case, per the raffle of October 12, 2016.

THIRD DIVISION

[G.R. No. 198782. October 19, 2016]

ALLAN BAZAR, *petitioner, vs.* **CARLOS A. RUIZOL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE GENERALLY REVIEWED BY THE COURT; EXCEPTIONS; FINDINGS OF THE LABOR ARBITER ON CONFLICT WITH THE NLRC AND THE COURT OF APPEALS.—**The existence of an employer-employee relationship is ultimately a question of fact. Only errors of law are generally reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the Court of Appeals, must be accorded high respect, if not finality. We here see an exception to the rule on the binding effect on us of the factual conclusiveness of the quasi-judicial agency. The findings of the Labor Arbiter are in conflict with that of the NLRC and Court of Appeals. We can thus look into the factual issues involved in this case.

2. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; EMPLOYER AND EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; THE CONTROL TEST IS THE MOST DETERMINATIVE INDICATOR OF EMPLOYER-EMPLOYEE RELATIONSHIP.—**The four-fold test used in determining the existence of employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished. x x x The control test is the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.

3. ID.; ID.; ID.; IT IS THE LAW THAT DEFINES AND GOVERNS AN EMPLOYMENT RELATIONSHIP WHOSE TERMS ARE NOT RESTRICTED BY THOSE FIXED IN THE WRITTEN CONTRACT; MONTHLY RETAINER'S FEE COVERED BY THE TERM "WAGES".— Assuming that respondent signed the retainership agreement, it is not indicative of his employment status. It is the law that defines and governs an employment relationship, whose terms are not restricted by those fixed in the written contract, for other factors, like the nature of the work the employee has been called upon to perform, are also considered. The law affords protection to an employee, and does not countenance any attempt to subvert its spirit and intent. Any stipulation in writing can be ignored when the employer utilizes the stipulation to deprive the employee of his security of tenure. The inequality that characterizes employer-employee relations generally tips the scales in favor of the employer, such that the employee is often scarcely provided real and better options. Petitioner claims that respondent was receiving ₱2,050.00 as his monthly retainer's fee as of his termination in March 2002. This fee is covered by the term "wages" and defined as 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 service rendered or to be rendered.

4. ID.; ID.; ILLEGAL DISMISSAL; RELIEFS PROPER ARE BACKWAGES AND REINSTATEMENT/SEPARATION PAY.—An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

5. ID.; ID.; ID.; WHEN A DIRECTOR OR OFFICER SHALL BE PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE CORPORATION.— There is solidary liability when the obligation expressly so states, when the law so provides, or

when the nature of the obligation so requires. Settled is the rule that a director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.

APPEARANCES OF COUNSEL

R.R. Go Law Office for petitioner.
Poculan and Associates Law Office for respondent.

D E C I S I O N

PEREZ, *J.*:

This is a petition for review of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 00937-MIN dated 11 November 2010 and 8 September 2011, respectively.

The antecedent facts follow.

Respondent Carlos A. Ruizol (also identified as Carlos Ruisol in the Complaint, Labor Arbiter's Decision and in other pleadings) was a mechanic at Norkis Distributors and assigned at the Surigao City branch. He was terminated effective 27 March 2002. At the time of his termination, respondent was receiving a monthly salary of ₱2,050.00 and was working from 8:00 a.m. to 5:00 p.m. with a one-hour meal break for six (6) days in a week. Respondent claimed that petitioner Allan Bazar came from Tandag branch before he was assigned as a new manager in the Surigao City branch. Respondent added that he was dismissed by petitioner because the latter wanted to appoint

[1] *Rollo*, pp. 45-54; Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

[2] *Id.* at 55-57.

his protégé as a mechanic. Because of his predicament, respondent filed a complaint before Regional Arbitration Branch No. XIII of the National Labor Relations Commission (NLRC) in Butuan City for illegal dismissal and other monetary claims. An Amended Complaint was filed on 12 August 2002 changing the name of the petitioner therein from Norkis Display Center to Norkis Distributors, Inc. (NDI).

Petitioner, on the other hand, alleged that NDI is a corporation engaged in the sale, wholesale and retail of Yamaha motorcycle units. Petitioner countered that respondent is not an employee but a franchised mechanic of NDI pursuant to a retainership agreement. Petitioner averred that respondent, being the owner of a motor repair shop, performed repair warranty service, back repair of Yamaha units, and ordinary repair at his own shop. Petitioner maintained that NDI terminated the retainership contract with respondent because they were no longer satisfied with the latter's services.

On 8 October 2003,[3] Executive Labor Arbiter Noel Augusto S. Magbanua ruled in favor of respondent declaring him a regular employee of NDI and that he was illegally dismissed, to wit:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring [respondent] a regular employee of [NDI and petitioner];
> 2. Declaring [respondent's] dismissal illegal;
> 3. Ordering [NDI] to pay [respondent] Carlos A. Ruisol the total amount of TWO HUNDRED THREE THOUSAND FIVE HUNDRED FIFTY ONE PESOS & 33/100 (₱203,551.33) representing his monetary award computed above.
> 4. Other claims of [respondent] are dismissed for lack of merit.[4]

The Labor Arbiter stressed that an employer-employee relationship existed in this case. He did not give any weight

[3] *Id*. at 142-156.

[4] *Id*. at 156.

to the unsworn contract of retainership based on the reason that it is a clear circumvention of respondent's security of tenure.

On appeal, petitioner reiterated that there is no employer-employee relationship between NDI and respondent because the latter is only a retainer mechanic of NDI. Finding merit in the appeal, the NLRC reversed the ruling of the Labor Arbiter and dismissed the case for lack of cause of action. The NLRC held that respondent failed to refute petitioner's allegation that he personally owns a motor shop offering repair and check-up services to other customers and that he worked on the units referred by NDI either at his own motor shop or at NDI's service shop. The NLRC also ruled that NDI had no power of control and supervision over the means and method by which respondent performed job as mechanic. The NLRC concluded that respondent is bound to adhere to and respect the retainership contract wherein he declared and acknowledged that he is not an employee of NDI.

Respondent filed a petition for *certiorari* before the Court of Appeals, submitting that the Labor Arbiter's ruling had become final with respect to NDI because the latter failed to appeal the same. Respondent asserted that the NLRC erred in ruling that there is no employer-employee relationship between the parties. Respondent also prayed for reinstatement.

On 11 November 2010, the Court of Appeals granted the petition. The Court of Appeals ruled that petitioner had no legal personality to make the appeal for NDI. The Court of Appeals held that the labor arbiter's decision with respect to NDI is final. The Court of Appeals found that there was employer-employee relationship between respondent and NDI and that respondent was unlawfully dismissed. Finally, the Court of Appeals awarded respondent separation pay in lieu of reinstatement.

Petitioner sought reconsideration of the decision but its motion for reconsideration was denied. Hence, this petition.

Before this Court, petitioner assigns the following alleged errors committed by the Court of Appeals:

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE PETITION FOR CERTIORARI, AND REVERSING THE "*DECISION*" AND "*RESOLUTION*" (ANNEXES "A" AND "B") OF THE NATIONAL LABOR RELATIONS COMMISSION – FIFTH DIVISION, CAGAYAN DE ORO CITY, AS THE SAME ARE NOT IN ACCORDANCE WITH EXISTING LAWS AND/OR DECISIONS [PROMULGATED] BY THE HONORABLE SUPREME COURT.

    a. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE DECISION OF THE HONORABLE SUPREME COURT THAT "JURISDICTION CANNOT BE ACQUIRED OVER THE DEFENDANT WITHOUT SERVICE OF SUMMONS, EVEN IF HE KNOWS OF THE CASE AGAINST HIM, UNLESS HE VOLUNTARILY SUBMITS TO THE JURISDICTION OF THE COURT BY APPEARING THEREIN AS THROUGH HIS COUNSEL FILING THE CORRESPONDING PLEADING IN THE CASE", PURSUANT TO THE RULING OF THIS HONORABLE SUPREME COURT IN THE CASE OF "HABANA VS. VAMENTA, ET AL., L-27091, JUNE 30, 1970."

    b. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE LEGAL PRINCIPLE THAT "IT IS BASIC THAT A CORPORATION IS INVESTED BY LAW WITH A [PERSONALITY] SEPARATE AND DISTINCT FROM THOSE OF THE PERSONS COMPOSING IT AS WELL AS FROM THAT OF ANY OTHER LEGAL ENTITY TO WHICH IT MAY BE RELATED.", PURSUANT TO THE RULING OF THE HONORABLE SUPREME COURT IN THE CASE OF "ELCEE FARMS, INC. VS. NATIONAL LABOR RELATIONS COMMISSION, 512 SCRA 602."

    c. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE RULE REGARDING "DECLARATION AGAINST

INTEREST", PURSUANT TO SECTION 38, RULE 130 ON THE REVISED RULES ON EVIDENCE.

d. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE DECISION OF THE HONORABLE SUPREME COURT THAT "I.D. CARDS WHERE THE WORDS "EMPLOYEE'S NAME" APPEAR PRINTED THEREIN DO NOT PROVE EMPLOYER-EMPLOYEE RELATIONSHIP WHERE SAID I.D. CARDS ARE ISSUED FOR THE PURPOSE OF ENABLING CERTAIN "CONTRACTORS" SUCH AS SINGERS AND BAND PERFORMERS, TO ENTER THE PREMISES OF AN ESTABLISHMENT", PURSUANT TO THE RULING OF THIS HONORABLE SUPREME COURT IN THE CASE OF "TSPIC CORPORATION VS. TSPIC EMPLOYEES UNION (FFE), 545 SCRA 215."

2. THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT AND UNDISPUTED FACTS THAT, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.

   a. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT "NORKIS DISTRIBUTORS, INC. IS NOT A PARTY IN THE INSTANT CASE."

   b. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT "THE DECISION OF THE LABOR ARBITER IS NOT BINDING UPON NORKIS DISTRIBUTORS, INC.".

   c. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT, "WITH RESPECT TO NORKIS DISTRIBUTORS, INC., THE DECISION OF THE LABOR ARBITER HAD ALREADY BECOME FINAL", FOR THE REASON THAT NO JURISDICTION HAD BEEN ACQUIRED OVER NORKIS DISTRIBUTORS, INC. SINCE THERE WAS NO PROPER SERVICE OF SUMMONS UPON THE CORPORATION.

d. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE "DECISION" OF THE NATIONAL LABOR RELATIONS COMMISSION – FIFTH DIVISION, CAGAYAN DE ORO CITY, AND REINSTATING THE "DECISION" OF THE LABOR ARBITER, AS RESPONDENT IS NOT AN EMPLOYEE OF NORKIS DISTRIBUTORS, INC., BUT ONLY A "RETAINER MECHANIC", JUST LIKE A RETAINER LAWYER WHO IS NOT AN EMPLOYEE OF THE LAWYER'S CLIENT.

e. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP, SINCE THERE IS AN ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN NORKIS DISTRIBUTORS, INC. AND RESPONDENT RUIZOL.

f. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE "MASTERLIST OF ALL EMPLOYEES" OF NORKIS DISTRIBUTORS, INC. AS PROOF THAT RESPONDENT RUIZOL IS NOT ITS EMPLOYEE.

g. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE "DECISION" OF THE LABOR ARBITER REGARDING THE AWARD OF 10% ATTORNEY'S FEES, FOR THE REASON THAT RESPONDENT WAS, AT THAT TIME, REPRESENTED BY A PUBLIC LAWYER FROM THE PUBLIC ATTORNEY'S OFFICE OF BUTUAN CITY.

h. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REINSTATING THE "DECISION" OF THE LABOR ARBITER, WHICH AWARDS BACKWAGES, SALARY DIFFERENTIAL, 13TH MONTH PAY, SEPARATION PAY, SERVICE INCENTIVE LEAVE AND ATTORNEY'S FEES, AS THERE IS NO EMPLOYER-

EMPLOYEE RELATIONSHIP BETWEEN NDI AND RESPONDENT RUIZOL.[5]

Petitioner first raises a question of procedure. Petitioner asserts that no summons was served on NDI. Thus, NDI had no reason to appeal the adverse decision of the Labor Arbiter because jurisdiction over its person was not acquired by the labor tribunal. Considering the foregoing, petitioner maintains that he cannot be made personally liable for the monetary awards because he has a personality separate and distinct from NDI.

We partly grant the petition.

The NLRC, despite ruling against an employer-employee relationship had nevertheless upheld the jurisdiction of the Labor Arbiter over NDI. The NLRC ruled and we agree, thus:

> Indeed, NDI was impleaded as respondent in this case as clearly indicated in the amended complaint filed by [respondent] on August 12, 2002, contrary to the belief of [NDI and petitioner]. And considering that the summons and other legal processes issued by the Regional Arbitration Branch a quo were duly served to [petitioner] in his capacity as branch manager of NDI, the Labor Arbiter had validly acquired jurisdiction over the juridical person of NDI.[6]

The Court of Appeals correctly added that the Labor Arbiter's ruling with respect to NDI has become final and executory for the latter's failure to appeal within the reglementary period; and that petitioner had no legal personality to appeal for and/or behalf of the corporation.

Interestingly, despite vehemently arguing that NDI was not bound by the ruling because it was not impleaded as respondent to the complaint, petitioner in the same breath admits even if impliedly NDI is covered by the ruling, arguing that there cannot be any illegal dismissal because there is no employer-employee relationship between NDI and respondent. We are not convinced.

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[5] *Id.* at 16-20.

[6] *Id.* at 212.

We emphasize at the outset that the existence of an employer-employee relationship is ultimately a question of fact. Only errors of law are generally reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the Court of Appeals, must be accorded high respect, if not finality.[7] We here see an exception to the rule on the binding effect on us of the factual conclusiveness of the quasi-judicial agency. The findings of the Labor Arbiter are in conflict with that of the NLRC and Court of Appeals. We can thus look into the factual issues involved in this case.

The four-fold test used in determining the existence of employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished.[8]

In finding that respondent was an employee of NDI, the Court of Appeals applied the four-fold test in this wise:

> x x x *First*, the services of [respondent] was indisputably engaged by the [NDI] without the aid of a third party. *Secondly*, the fact that the [respondent] was paid a retainer fee and on a *per diem* basis does not altogether negate the existence of an [employer]-employee relationship. The retainer agreement only provided the breakdown of the [respondent's] monthly income. On a more important note, the [NDI] did not present its payroll, which it could conveniently do, to disprove the [respondent's] claim that he was their employee. x x x
>
> Third, the [NDI's] power of dismissal can be [gleaned] from the termination of the [respondent] although couched under the guise of the non-renewal of his contract with the company. Also, the contract alone showed that the [respondent] provided service to Yamaha

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[7] *Basay v. Hacienda Consolacion and/or Bouffard*, 632 Phil. 430, 444 (2010).

[8] *Royale Homes Marketing Corporation v. Alcantara*, G.R. No. 195190, 28 July 2014, 731 SCRA 147, 162.

motorbikes brought to the NDI service shop in accordance with the manual of the unit and subject to the minimum standards set by the company. Also, tool kits were furnished to the mechanics which they use in repairs and checking of the units conducted inside or in front of the Norkis Display Center.[9]

Petitioner argues that respondent was not engaged as an employee but the parties voluntarily executed a retainership contract where respondent became NDI's retainer mechanic; that respondent was paid a retainer's fee similar to that of the services of lawyers; that the termination of the retainership contract does not constitute illegal dismissal of the retained mechanic; and that NDI is only interested in the outcome of respondent's work. Petitioner further explained that respondent is free to use his own means and methods by which his work is to be accomplished and the manual of the Yamaha motorbike unit is necessary in order to guide respondent in the repairs of the motorbikes.

At the outset, respondent denied the existence of a retainership contract. Indeed, the contract presented by NDI was executed by the latter and a certain Eusequio Adorable. The name "Carlos Ruizol" was merely added as a retainer/franchised mechanic and the same was unsigned. Assuming, however, that such a contract did exist, its provisions should not bind respondent. We agree with the Labor Arbiter on the following points:

> Paragraph 5 and 6 of the unsworned contract of Retainership between [respondent] and [NDI and petitioner] dated March 1, 1989 states as follows:
>
> > "5. That the franchised mechanic, though not an employee of the NDI agrees to observe and abide by the rules and regulations by the NDI aims to maintain a good quality and efficient service to customer.
> >
> > 6.) Franchised mechanic hereby acknowledge that he is not an employee of NDI, hence, not entitled to Labor Standard benefits.

[9] *Rollo*, pp. 50-51.

It bears stressing that the contents of the unsworn Contract of Retainership is a clear circumvention of the security of tenure pursuant to Articles 279 and 280 of the Labor Code. The agreement embodied in the said contract is contrary to law, thus [respondent] is not bound to comply with the same.[10]

NDI admitted to have engaged the services of respondent, although under the guise of a retainership agreement. The fact of engagement does not exclude the power of NDI to hire respondent as its employee.

Assuming that respondent signed the retainership agreement, it is not indicative of his employment status. It is the law that defines and governs an employment relationship, whose terms are not restricted by those fixed in the written contract, for other factors, like the nature of the work the employee has been called upon to perform, are also considered. The law affords protection to an employee, and does not countenance any attempt to subvert its spirit and intent. Any stipulation in writing can be ignored when the employer utilizes the stipulation to deprive the employee of his security of tenure. The inequality that characterizes employer-employee relations generally tips the scales in favor of the employer, such that the employee is often scarcely provided real and better options.[11]

Petitioner claims that respondent was receiving ₱2,050.00 as his monthly retainer's fee as of his termination in March 2002. This fee is covered by the term "wages" and defined as 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 service rendered or to be rendered.[12] For services rendered to NDI, respondent received

[10] *Id.* at 153.

[11] *Legend Hotel v. Realuyo*, 691 Phil. 226, 238 (2012).

[12] *Tan v. Lagrama*, 436 Phil. 190, 203 (2002).

compensation. NDI could have easily disproved that respondent was its employee by presenting the manner by which such compensation was paid to respondent. NDI did not do so.

That NDI had the power to dismiss respondent was clearly evidenced by the fact that respondent's services were terminated.

The control test is the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[13]

Petitioner asserts that NDI did not exercise the power of control over respondent because he is free to use his own means and methods by which his work is to be accomplished. The records show the contrary. It was shown that respondent had to abide by the standards sets by NDI in conducting repair work on Yamaha motorbikes done in NDI's service shop. As a matter of fact, on allegations that respondent failed to live up to the demands of the work, he was sent several memoranda[14] by NDI. We agree with the Labor Arbiter that the presence of control is evident thus:

> This Branch agree with the complainants' contention that there is no contract and that he is a regular employee as shown in Annexes "2" & "3" respectively of the respondents position paper, as follows:
>
> > "Furthermore, you are directed and advice to religiously follow orders from your immediate superior x x x
>
> Failure on your part to submit a written explanation will be construed as a waiver of your right and your case will be decided based on available information"
>
> The above memo is so worded in a way that it unmistakably show that it is addressed to the [respondent] who is an employee of [NDI].

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[13] *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 627 (2011).

[14] See Respondent's Position Paper, *rollo*, pp. 122-134.

It shows clearly the presence of the element of "control" by [NDI] and petitioner] over [respondent's]manner of work.[15]

Petitioner points out that respondent actually owns a motor repair shop where he performs repair warranty service and back job repairs of Yamaha motorcycles for NDI and other clients. This allegation was unsubstantiated. We cannot give credit to such claim.

Petitioner argues that the appellate court erred in holding that respondent is an employee of NDI based on the identification card issued to him. While it is true that identification cards do not prove employer-employee relationship, the application of the four-fold test in this case proves that an employer-employee relationship did exist between respondent and NDI.

Since it was sufficiently established that petitioner is an employee of NDI, he is entitled to security of tenure. He can only be dismissed for a just or authorized cause. Petitioner was dismissed through a letter informing him of termination of contract of retainership which we construe as a termination notice. For lack of a just or authorized cause coupled with failure to observe the twin-notice rule in termination cases, respondent's dismissal is clearly illegal.

An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.[16]

Based on the foregoing, we affirm that NDI is not only liable for respondent's illegal dismissal, but that the Labor Arbiter's decision against it had already become final and executory.

We now go to the liability of petitioner for payment of the monetary award. There is solidary liability when the obligation

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[15] *Rollo*, pp. 153-154.

[16] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 101 (2003) citing Article 279 of the Labor Code.

expressly so states, when the law so provides, or when the nature of the obligation so requires.[17] Settled is the rule that a director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.[18]

In the instant case, there is an allegation that petitioner dismissed respondent because he wanted to hire his own mechanic. However, this remained to be an allegation absent sufficient proof of motive behind respondent's termination. Petitioner may have directly issued the order to dismiss respondent but respondent must prove with certainty bad faith on the part of petitioner. No bad faith can be presumed from the lone fact that immediately after respondent's termination, a new mechanic was hired. That the new mechanic was actually petitioner's protégé is a mere allegation with no proof. Therefore, petitioner, as branch manager, cannot be held solidarily liable with NDI.

WHEREFORE, the instant Petition is **PARTLY GRANTED**. The Decision dated 11 November 2010 and Resolution dated 8 September 2011 of the Court of Appeals in CA-G.R. SP No. 00937-MIN reinstating the Decision of the Labor Arbiter declaring respondent Carlos Ruizol's dismissal as illegal are **AFFIRMED**. Petitioner Allan Bazar is however **ABSOLVED** from the liability adjudged against Norkis Distributors, Inc.

SO ORDERED.

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

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[17] *Grandteq Industrial Steel Products, Inc. v. Estrella,* 661 Phil. 735, 747-748 (2011).

[18] *FVR Skills and Services Exponents, Inc. v. Seva,* G.R. No. 200857, 22 October 2014, 739 SCRA 271, 289-290.

FIRST DIVISION

[G.R. No. 199271. October 19, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEHAR REYES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS LAW (RA No. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to charge a person with and convict him for the illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the State must allege and establish the concurrence of the following essential elements, namely: (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 its payment. The delivery of the illicit drugs to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal sale of dangerous drugs during the buy-bust transaction.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ACCUSED CHARGED OF ILLEGAL SALE OF DANGEROUS DRUGS CANNOT BE HELD GUILTY OF ILLEGAL POSSESSION OF DANGEROUS DRUGS ALTHOUGH POSSESSION IS NECESSARILY INCURRED IN THE OFFENSE CHARGED.— The elements of this offense of illegal possession of *shabu*, a dangerous drug, are that: (1) the accused was in possession of the dangerous drug; (2) his possession was not authorized by law; and (3) he freely and consciously possessed the drug. Even if illegal sale of dangerous drugs punished under Section 5 of R.A. No. 9165 – the offense charged – might necessarily include the illegal possession of dangerous drugs under Section 11 of R.A. No. 9165, the accused could only be found guilty of the first offense vis-à-vis the *shabu* contained in the pack marked *JR-B.* He could not be held guilty of the illegal possession of dangerous drugs in violation of Section 11 of R.A. No. 9165 because no information had been filed to charge such offense. It is fundamental that a person is to be tried and found guilty only

of the offense charged in the information, or of the offense proved that is necessarily included in the offense charged, conformably with Section 4, Rule 120 of the *Rules of Court*, which states: Section 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

3. ID.; ID.; THE CHAIN OF CUSTODY OF THE DANGEROUS DRUGS MUST BE CLEARLY AND COMPETENTLY SHOWN; NON-COMPLIANCE WITH THE PROCEDURE MUST BE JUSTIFIED.— To convict the accused for the illegal sale or the illegal possession of dangerous drugs, the chain of custody of the dangerous drugs must be clearly and competently shown because such degree of proof is what was necessary to establish the *corpus delicti*. In *People v. Alcuizar*, the Court has underscored the importance of ensuring the chain of custody in drug-related prosecutions, x x x The requirement for establishing the chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed. The Prosecution does not comply with the requirement of proving the *corpus delicti* not only when the dangerous drugs involved are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence presented in court. x x x Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*. With the chain of custody having been compromised, the accused deserves acquittal.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF INNOCENCE SUPERIOR TO PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTY.— The CA observed that the presumption of regularity in the performance of duty in favor of the arresting officers was not overturned by the proof adduced by the Defense clearly and convincingly showing improper motive on their part to falsely incriminate the accused. The accused charged with a violation of the *Comprehensive Drugs Act of 2002* is always presumed innocent of the crime charged against him. This presumption of his innocence, which has been enshrined in Section 14, Article III (*The Bill of Rights*) of the Constitution, ensures that: "*In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved*." It underlies our system of criminal justice, and far outweighs any other presumption, particularly one that is essentially a rule of evidence. In *People v. Mendoza*, we have fittingly explained the superiority of the presumption of innocence over the lesser presumption of regularity of performance of official duty.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

Compliance with the guidelines on the preservation of the chain of custody of the dangerous drugs subject of a prosecution for the illegal sale of dangerous drugs must be clearly and convincingly established by the State. Any lapse in the chain of custody must be affirmatively explained by the Prosecution; otherwise, the chain of custody will be held to be broken and insufficient to support a conviction of the accused. The presumption of regularity of the performance of official duty in favor of the arresting officers cannot prevail over the presumption of innocence in favor of the accused.

The Case

This appeal focuses on the decision promulgated on June 13, 2011 in CA-G.R. CEB CR-H.C. No. 00792 entitled *People v. Jehar Reyes*,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on March 9, 2007 by the Regional Trial Court (RTC), Branch 10, in Cebu City finding accused Jehar Reyes guilty as charged of a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).[2]

Antecedents

The accusatory portion of the information charging the violation of Section 5 of R.A. No. 9165 reads:

> That on or about the 27th day of November, 2002 at 2:00 o'clock in the afternoon, more or less, at the Municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without proper authority or permit, did then and there wilfully, unlawfully and feloniously SELL, DELIVER and GIVE away to a poseur buyer for the sum of ONE THOUSAND PESOS (₱1,000.00), Philippine Currency, bill marked money with Serial Nos. HN019541, EX212112, ZW886460, FQ954616, DA723857, QO[0]6140, DE709987, SY315980, FQ950975, BB341926 three (3) silver paper packets of white crystalline substance weighing 1.44 grams, which when subjected to laboratory examination gave positive results for the presence of Methamphetamine Hydrochloride, a regulated drug.
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> CONTRARY TO LAW.[3]

After the accused pleaded *not guilty* to the information, the State presented as witnesses PO2 Jesus Rudson Villahermosa, PO1 Januario Miro, PSINSP Arnel Banzon, PO2 Marlon

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Myra V. Garcia-Fernandez concurring.

[2] CA *rollo*, pp. 15-23; penned by Presiding Judge Soliver C. Peras.

[3] *Id.* at 9.

Lumayag and Jude Daniel Mendoza,[4] while the Defense had the accused and Cesar Cañada as its own witnesses.[5]

The CA summarized the respective versions of the parties in the assailed decision as follows:

> x x x [O]n 27 November 2002, at around 2:00 p.m., a buy-bust operation was conducted at accused-appellant's residence in Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The team was composed of Senior Police Inspector Arnel Banzon (hereafter, "Banzon"), PO2 Jesus Rodson Villahermosa (hereafter, "PO2 Villahermosa") and PO1 Januario Miro (hereafter, "PO1 Miro") (both poseur-buyers). The backup team was composed of Senior Police Inspector Glenn Mayan, SPO2 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Marlon Lumayag (hereafter P[O]3 Lumayag), and P[O]2 Aristocles.
>
> The following items were recovered from accused-appellant: three plastic packs (including the plastic pack bought by the poseur-buyers from accused-appellant), containing a (sic) white crystalline substance; and the buy-bust money of ten ₱100.00 bills with serial numbers HN[0]19541, EX212112, ZW886460, FQ954616, DA723857, QO[0]6140, DE709987, SY315980, [F]Q950975, BB341926. The total weight of the contents of the three plastic packs was 1.44 grams. When subjected to laboratory examination, the contents tested positive for methamphetamine hydrochloride, otherwise known as "shabu". Accused-appellant was thereafter charged with the crime of Illegal Sale of Shabu under Article 2, Section 5, R.A. 9165.
>
> P[O]2 Villahermosa, P[O]1 Miro, Banzon, P[O]3 Lumayag, and Jude Daniel Mendoza, testified for the Prosecution. The evidence of the Prosecution is summarized thus: Several weeks before 27 November 2002, P[O]2 Villahermosa and P[O]1 Miro conducted a 2-week surveillance on accused-appellant, a reported drug pusher, residing at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The surveillance confirmed accused-appellant was engaged in the sale of illegal drugs. A team to conduct a buy-bust operation was formed. P[O]2 Villahermosa and P[O]1 Miro were designated as the poseur-buyers, while Banzon, Senior Police Inspector Glenn

[4] *Rollo,* p. 5.

[5] *Id.* at 7.

Mayan, SP[O]2 Jesus Rojas, SP[O]1 Eduardito Brigoli, PO3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Lumayag, and P[O]2 Aristocles, were designated as back-up. The buy-bust money consisting of ten ₱100.00 bills, was marked with the initials "J.C.R." of SP[O]2 Rojas.

PO2 Villahermosa and PO1 Miro proceeded on foot to the target site, the house of the accused-appellant, while the back-up team members positioned themselves about 5 meters away to observe the transaction.

P[O]2 Villahermosa approached the front of accused-appellant's house and called out the latter's name. Accused-appellant went out of his house. P[O]2 Villahermosa told accused-appellant he wanted to buy ₱1,000.00 worth of shabu. Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed the ten pieces of ₱100.00 bills to accused-appellant. Upon receipt of the ₱1000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. P[O]2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. He frisked accused-appellant, and recovered the following: two more plastic packs that contained a white crystalline substance; and the buy-bust money of ten ₱100.00 bills.

Accused-appellant was brought to the police office, and PO1 Miro marked the items seized, as follows: "JR-B" (for the plastic pack of shabu subject of the buy-bust); "JR-1" and "JR-2" (for the 2 plastic packs of shabu recovered from the frisking). PO1 Miro prepared the letter-request for laboratory examination.

On 27 November 2002, at 5:20 p.m., PO1 Miro delivered the letter-request for laboratory examination, and the plastic packs marked "JR-B", "JR-1" and "JR-2", to PO1 Fiel, the clerk on duty at the PNP Crime Laboratory. P[O]1 Fiel turned over the letter-request, and the three plastic packs, to the Chemistry Branch for examination.

On 28 November 2002, Jude Daniel Mendoza, the forensic analyst, conducted the laboratory examination on the contents of the three plastic packs. Per Chemistry Report No. D-2390-2002, the contents of the three packets tested positive for Methamphetamine Hydrochloride.

Accused-appellant was thereafter charged with violating Article 2, Section 5 of R.A. 9165, or the crime of illegal sale of drugs.

Cesar Cañada (hereafter, "Cañada"), and accused-appellant himself, testified for the Defense. The evidence of the Defense is summarized thus: at around 2:00 p.m. of 27 November 2002, accused-appellant was sleeping at his elder sister's house, when several men suddenly barged in, and searched the premises. The men did not have any search warrant. They did not find contraband, nor did they receive money from accused-appellant.

Cañada is a neighbor of the accused-appellant. At around 2:00 p.m., of 27 November 2002, he was at a chapel about 10 meters from accused-appellant's house. He heard a loud bang on the door of accused-appellant's house, and saw five men enter it. The five men later left the house with the accused-appellant, on board a police vehicle.[6]

Ruling of the RTC

On March 9, 2007, the RTC convicted the accused of the crime charged, disposing:

> WHEREFORE, PREMISES CONSIDERED, this Court finds the accused **JEHAR REYES Y PREMACIO, GUILTY** of violating Section 5, Article II of Republic Act No. 9165. He is sentenced to suffer in prison the penalty of life imprisonment and to pay a fine of ₱500,000.00
>
> The three plastic packs containing methamphetamine hydrochloride are ordered confiscated and shall be destroyed in accordance with law.
>
> **SO ORDERED**.[7]

Judgment of the CA

The accused appealed,[8] contending that the illegal sale of *shabu* had not been established beyond reasonable doubt; that the buy-bust operation had not been carried out in accordance with law; that the presumption of regularity in the performance of official duty did not apply because the law enforcers had

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[6] *Id.* at 5-7.

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

[8] *Id.* at 40-50.

deviated from the standard conduct of official duty as provided for in the law; that the arresting police officers had failed to make an inventory report of the confiscated items; that the markings on the confiscated items were not clearly established; that the procedural lapses of the police officers created doubt as to the identity of the confiscated items; and that, consequently, the Prosecution did not establish the elements of the crime charged.

On June 13, 2011, the CA affirmed the conviction of the accused, holding and ruling thusly:

> In a Prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.
>
> The first element is present. There was evidence that the sale of drugs between accused-appellant, and the poseur-buyers PO2 Villahermosa and PO1 Miro, took place. PO2 Villahermosa testified that several weeks before the actual buy-bust operation on 27 November 2002, he and PO1 Miro conducted a 2-week surveillance on accused-appellant, a reported drug pusher, residing at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The surveillance confirmed accused-appellant was engaged in the sale of illegal drugs. A buy-bust team was formed. P[O]2 Villahermosa and P[O]1 Miro were designated as the poseur-buyers, while Banzon, Senior Police Inspector Glenn Mayan, SPO2 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Lumayag, and P[O]2 Aristocles were designated as back-up. P[O]2 Villahermosa and P[O]1 Miro proceeded on foot to the target site, the house of the accused-appellant, while the backup team members positioned themselves about five meters away to observe the transaction. P[O]2 Villahermosa approached the front of accused-appellant's house and called out his name. Accused-appellant went out of his house. P[O]2 Villahermosa told accused-appellant he wanted to buy ₱1,000.00 worth of shabu. Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed to accused-appellant the ten pieces of ₱100.00 bills. Upon receipt of the ₱1,000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction

had been completed. PO2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. He frisked accused-appellant. PO2 Villahermosa and (sic) recovered from accused appellant the following: two more plastic packs that contained a white crystalline substance; and the buy-bust money of ten ₱100.00 bills.

The second element is present. The *corpus delicti*, or the illicit drug subject of the sale, was presented in Court.

x x x x x x x x x

In the case at bar, the identity of the plastic pack of shabu subject of the buy-bust operation was sufficiently established by the Prosecution. PO1 Miro marked the plastic packs of shabu seized from the accused-appellant at the office. The plastic pack of shabu subject of the buy-bust operation was marked "JR-B", while the two plastic packs of shabu recovered from accused-appellant after he was frisked by P[O]2 Villahermosa were marked "JR-1" and "JR-2". Clearly, the identity of the *corpus delicti* was duly preserved and established by the Prosecution, hence there is no doubt as to whether what was presented in Court, was the same plastic pack of shabu purchased from the accused-appellant at the buy-bust operation.

In addition, the evidence the Prosecution presented, is complete to establish the necessary links in the handling of the shabu subject of the buy-bust operation, from the time of its seizure, until its presentation in Court. In other words, the Prosecution was able to comply with the chain of custody rule.

x x x x x x x x x

It is clear that the integrity and the evidentiary value of the seized drugs were preserved. No convincing proof was shown that the evidence submitted by the Prosecution had been tampered, from the time they were recovered from accused-appellant, until they were turned over for examination. This Court, therefore, finds no reason to overturn the findings of the court *a quo* that the drugs seized from accused-appellant, were the same ones presented during trial. The chain of custody of the drugs seized from accused-appellant was unbroken, contrary to the assertion of accused-appellant.

Accused-appellant argues: since the police officers who arrested him did not make an inventory report of the items they confiscated from him, and that the markings on said items were not clearly

established, the presumption of regularity in the performance of official duty no longer applies; the conduct of the police officers in the case at bar grossly violated Section 21(1), Article 2 of R.A. 9165; these omissions on the part of the police officers indicate that the operation they conducted was a sham, therefore illegal.

We do not agree.

x x x x x x x x x

x x x [I]t has been ruled time and again that non-compliance with Sec. 21 of the IRR does not make the items seized inadmissible. What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt of innocence of the accused." Given the Prosecution's evidence, We rule that the presumption of regularity in the performance of official duties has not been overturned. The presumption remains because the Defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.

x x x x x x x x x

WHEREFORE, the appeal is **DENIED.** The court *a quo's* **DECISION** dated 9 March 2007 is **AFFIRMED in toto.**

SO ORDERED.[9]

Issue

Did the CA err in affirming the conviction of the accused for the violation of Section 5, Article II of R.A. No. 9165?

Ruling of the Court

This appeal opens the entire record to enable the Court to determine whether or not the findings against the accused should be upheld or struck down in his favor.[10]

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[9] *Rollo,* pp. 10-18.

[10] *People v. Oandasan,* G.R. No. 194605, June 14, 2016.

After careful examination and review of the record, we find merit in the appeal, and, accordingly, acquit the accused on the ground that the Prosecution did not establish his guilt beyond reasonable doubt.

1.

The State erred in charging the accused with illegal sale of 1.44 grams of *shabu*

In order to charge a person with and convict him for the illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the State must allege and establish the concurrence of the following essential elements, namely: (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 its payment. The delivery of the illicit drugs to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal sale of dangerous drugs during the buy-bust transaction.[11]

Were the elements of the offense charged competently and clearly established by the Prosecution?

On direct examination, PO2 Villahermosa, who was the poseur buyer during the buy-bust operation, testified as follows:

Q When you arrived at Sitio Cayam, where was your target Jehar Reyes?
A They were in the house sir.

Q Was he inside or outside his house?
A He was sitting inside and came out when he saw us.

x x x x x x x x x

Q You said that Jehar Reyes, when he saw you came out, after that what happened?
A Immediately I asked Jehar Reyes if we can buy shabu in the amount of ₱1,000.00.

[11] *People v. Pascua*, G.R. No. 194580, August 31, 2011, 656 SCRA 629, 636-637.

Q What was the answer of Jehar Reyes?
A He nodded, meaning yes.

Q After Jehar Reyes nodded, indicating that he was amenable, what did he do next?
A He took one pack of shabu from his packet (sic) worth ₱1,000.00

Q How about you, what did you do with the money in your possession?
A I received the pack of shabu and in return I give (sic) to him the ₱1,000.00.

Q You mean to say that the one pack of shabu was first given to you before you give (sic) the ₱1,000.00?
A Yes.

Q What else happened?
A Police Officer Miro who was standing beside me executed the pre-arranged signal.

Q What was that signal about?
A He removed his bull cap after the transaction.

Q After that what happened next?
A Immediately my companions rushed up to the buy bust area.

Q What did your companions do?
A They came to assist me in the arrest of the accused.

x x x x x x x x x

Q When the other members of the team rushed up to your position, what did you do to Jehar Reyes?
A When I held him, I informed him of his violation.

Q What did you inform him?
A I informed him that he has committed, he has violated Section 5, Article II of RA 9165.

Q What was the answer of Jehar Reyes?
A There was no reaction sir.

Q After that since you held Jehar Reyes, what did you do?
A Immediately I frisked him.

Q When you frisked him, what happened?
A I was able to recover One thousand Pesos which was the buy bust money I give (sic) to him and another 2 packets of shabu in his other pocket.[12]

PO1 Villahermosa further testified:

Q Upon handing to the accused this money worth one thousand pesos, what did the accused do after receiving the said amount?
A She (sic) got one pack of shabu from her (sic) pocket.

Q If shown to you this one pack of shabu, will you be able to identify it before this Honorable Court?
A Yes, Sir.

Q I'm showing to you three (3) heat-sealed transparent plastic packets of white crystalline substance, is this the specimen that you were able to recover and buy from the accused?
A (Witness is pointing to a pack marked .28 gram with letters JR-B which was the one given to me by the accused.)

Q What (sic) you mean by being the one given to me by the accused?
A In exchange of one thousand pesos.

Q I have here another two (2) packets marked JR-1 and another JR-2. Will you be able to identify these two packets of shabu?
A Yes.

Q What are these two specimens?
A These were the items confiscated from the accused after his arrest.[13]

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[12] TSN of March 12, 2004, records, pp. 124-125.

[13] TSN of October 28, 2004, records, pp. 129-130.

In this regard, the CA, affirming the findings of the RTC, observed:

> x x x Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed the ten pieces of ₱100.00 bills to accused-appellant. Upon receipt of the ₱1,000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. PO2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. **He frisked accused-appellant, and recovered the following: two more plastic packs that contained a white crystalline substance**; and the buy-bust money of ten ₱100.00 bills.[14] (Bold emphasis supplied.)

The lower courts came up with common findings to the effect that three plastic packs of *shabu* weighing a total of 1.44 grams had been confiscated from the accused by the buy-bust team, the first pack being marked *JR-B*, and the second and third packs being marked *JR-1* and *JR-2*. Based on the aforequoted testimony of the poseur buyer, however, the essential elements of the offense of illegal sale of dangerous drugs charged against him were only with regard to the transaction directly involving the *shabu* contained in the pack marked *JR-B*. This is because there was no delivery of the *shabu* contained in the packs marked *JR-1* and *JR-2* and, necessarily, there was no corresponding payment to speak of. In short, no transaction occurred as to the latter dangerous drugs. He should consequently be separately charged with illegal possession of dangerous drugs as defined and penalized under Section 11 of R.A. No. 9165 in respect of the *shabu* contained in the packs marked *JR-1* and *JR-2* that were seized from him after he had received the buy-bust money for the *shabu* contained in the pack marked *JR-B*. Indeed, the seizure was the actual result of the body frisking by PO2 Villahermosa right after his being informed of his constitutional rights, not of the buy-bust transaction. We stress that the elements of this offense of illegal possession of *shabu*, a dangerous drug,

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[14] *Rollo*, p. 6.

are that: (1) the accused was in possession of the dangerous drug; (2) his possession was not authorized by law; and (3) he freely and consciously possessed the drug.[15]

Even if illegal sale of dangerous drugs punished under Section 5 of R.A. No. 9165 – the offense charged – might necessarily include the illegal possession of dangerous drugs under Section 11 of R.A. No. 9165, the accused could only be found guilty of the first offense vis-à-vis the *shabu* contained in the pack marked *JR-B.* He could not be held guilty of the illegal possession of dangerous drugs in violation of Section 11 of R.A. No. 9165 because no information had been filed to charge such offense. It is fundamental that a person is to be tried and found guilty only of the offense charged in the information, or of the offense proved that is necessarily included in the offense charged, conformably with Section 4, Rule 120 of the *Rules of Court*, which states:

> Section 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

2.

The guilt of the accused was not established beyond reasonable doubt because the State did not satisfactorily explain the substantial lapses committed by the buy-bust team in preserving the chain of custody

The foregoing notwithstanding, the Court resolves to acquit the accused of the crime of violation of Section 5 of R.A. No. 9165 charged.

To convict the accused for the illegal sale or the illegal possession of dangerous drugs, the chain of custody of the

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[15] *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 450.

dangerous drugs must be clearly and competently shown because such degree of proof is what was necessary to establish the *corpus delicti*.[16] In *People v. Alcuizar*,[17] the Court has underscored the importance of ensuring the chain of custody in drug-related prosecutions, to wit:

> The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drugs unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.

The requirement for establishing the chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[18] The Prosecution does not comply with the requirement of proving the *corpus delicti* not only when the dangerous drugs involved are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence presented in court.[19]

To ensure the chain of custody, Section 21 (1), Article II, of RA No. 9165 demands that:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically

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[16] *People v. Climaco*, G.R. No. 199403, June 13, 2012, 672 SCRA 631, 641.

[17] G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.

[18] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[19] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

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.

The Implementing Rules and Regulations (IRR) of RA No. 9165 complement the statutory definition of the chain of custody thusly:

(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;

The importance of the chain of custody cannot be understated. As we have indicated in *People v. Mendoza*:[20]

Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate

[20] G.R. No. 192432, June 23, 2014, 727 SCRA 113, 125.

the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody vis-à-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.

Was the chain of custody preserved in this case?

It appears clear to us as a reviewing court that the chain of custody was not preserved in the manner required by the aforementioned guidelines fixed by law. The arresting officers committed serious lapses that put into grave doubt the integrity of the evidence presented against the accused.

First of all, the confiscated items were not marked immediately after the seizure. In that regard, PO1 Miro recalled that he was the one who had placed the markings *JR-B, JR-1* and *JR-2* on the packs of *shabu* that were brought to the PNP Crime Laboratory,[21] and clarified on cross-examination that he had himself placed the markings at the police station.[22] Yet, his credibility suffered because of the inconsistency of his recollection of this crucial part of the chain of custody with those of poseur buyer PO2 Villahermosa and P/Chief Inspector Banzon, who declared that it was SPO4 Jake Rojas who had placed the markings on the packs.[23] The inconsistency among the witnesses of the State could not be dismissed as trivial or inconsequential in view of the defining role of the initial marking of the confiscated items.

Secondly, the law specifically required that the marking must be witnessed by the accused, but there was no credible showing

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[21] TSN of January 13, 2005, records pp. 143-144.

[22] TSN of February 3, 2005, records p. 149.

[23] TSN of January 6, 2005, records p. 135; TSN of February 10, 2005, p. 153.

by the State that the accused had actually witnessed the process of marking. This meant that the confiscation of the *shabu* was not properly insulated from doubt.

Thirdly, another substantial gap in the chain of custody concerned the absence of any representative of the media or of the Department of Justice (DOJ), and of the elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation. The Prosecution did not attempt to explain why such presence of the media or DOJ representatives, and of the elected public official had not been procured despite the buy-bust operation being mounted in the afternoon of November 27, 2002 following two weeks of surveillance to confirm the veracity of the report on the illegal trading in drugs by the accused.[24] The objective of requiring their presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area of operation was to ensure against planting of evidence and frame up. It was clear that ignoring such objective was not an option for the buy-bust team if its members genuinely desired to protect the integrity of their operation. Their omission attached suspicion to the incrimination of the accused. The trial and appellate courts should not have tolerated the buy-bust team's lack of prudence in not complying

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[24] This was based on the joint affidavit of the members of the buy-bust team found in the records, pp. 5-6, where they pertinently averred:

x x x x x x x x x

That on the **2nd week of November 2002,** we received a report from our confidential agent that illegal drug trade is rampant at Barangay Ward I, Tiber, Minglanilla, Cebu. Upon receiving report, PO1 Januario Miro and PO2 Jesus Rudson Villahermosa accompanied by our confidential agent went to the aforementioned place to confirm the veracity of the report. **After two weeks of surveillance, they confirmed veracity of the said report.**

That on the afternoon of **November 27, 2002, we planned for a buy bust operation against the drug pusher at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu x x x.**

x x x x (Bold emphasis supplied.)

with the procedures outlined in Section 21(1), *supra*, in light of the sufficient time for them to comply.

And, lastly, the arresting officers did not prepare any inventory of the confiscated items, and did not take photographs of the items. Had there been an inventory prepared or photographs taken, the Prosecution would have surely formally offered them as evidence.[25] But no such offer was made. As such, the omissions were another serious gap in the chain of custody.

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them.[26] Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.[27] With the chain of custody having been compromised, the accused deserves acquittal. In other words, his defenses of denial and frame up defenses of the accused, the unexplained procedural lapses committed by the buy-bust team, on its own, created a reasonable doubt about the

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[25] CA *rollo*, p. 8; see Index of Exhibits showing that the State only formally offered as documentary and object evidence: (1) Chemistry Report No. D-2390-2002; (2) the certification issued by the forensic chemist, Jude Daniel Mendoza, (3) the three plastic packs of *shabu;* (4) letter-request for laboratory examination; (5) joint affidavit of the arresting officers; and (6) photocopy of the buy-bust money, respectively marked Exhibits A to F (with sub-marking).

[26] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 270.

[27] *People v. Mendoza, supra*, note 20, at 130-132.

guilt of accused given the uncertainty over the identity and integrity of the seized *shabu* that the State presented as evidence of his guilt.[28]

3.

The presumption of regularity in the performance of duty in favor of the arresting officers did not prevail over the presumption of innocence in favor of the accused

The CA observed that the presumption of regularity in the performance of duty in favor of the arresting officers was not overturned by the proof adduced by the Defense clearly and convincingly showing improper motive on their part to falsely incriminate the accused.

The accused charged with a violation of the *Comprehensive Drugs Act of 2002* is always presumed innocent of the crime charged against him. This presumption of his innocence, which has been enshrined in Section 14, Article III (*The Bill of Rights*) of the Constitution, ensures that: "*In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved*." It underlies our system of criminal justice, and far outweighs any other presumption, particularly one that is essentially a rule of evidence. In *People v. Mendoza*,[29] we have fittingly explained the superiority of the presumption of innocence over the lesser presumption of regularity of performance of official duty, as follows:

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[28] According to *United States v. Youtsey*, 91 Fed. 864, 868:

A reasonable doubt of guilt is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant; or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

[29] *Supra*, note 20.

We have usually presumed the regularity of performance of their official duties in favor of the members of buy-bust teams enforcing our laws against the illegal sale of dangerous drugs. Such presumption is based on three fundamental reasons, namely: *first*, innocence, and not wrong-doing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. But the presumption is rebuttable by affirmative evidence of irregularity or of any failure to perform a duty. Judicial reliance on the presumption despite any hint of irregularity in the procedures undertaken by the agents of the law will thus be fundamentally unsound because such hint is itself affirmative proof of irregularity.

The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts are instructed to apply this differentiation, and to always bear in mind the following reminder issued in *People v. Catalan*:

> x x x We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with *indicia* of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from

> an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[30]

In view of the many notable serious procedural lapses committed by the buy-bust team, the benefit of the presumption of the regularity of the performance of duty by the arresting officers is indubitably unwarranted.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on June 13, 2011 by the Court of Appeals in CA-G.R. CEB CR-H.C. No. 00792 entitled *People v. Jehar Reyes;* **ACQUITS** accused-appellant **JEHAR REYES** of the offense charged on the ground of reasonable doubt; and **ORDERS** his immediate release from detention at the National Penitentiary, unless there are other lawful causes warranting his continued detention.

The Court **DIRECTS** the Director of the Bureau of Corrections to forthwith implement this decision, and to report his action hereon to this Court within ten (10) days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

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

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[30] *Id.* at 134-136.

SECOND DIVISION

[G.R. No. 201074. October 19, 2016]

SPOUSES RAMON SY AND ANITA NG, RICHARD SY, JOSIE ONG, WILLIAM SY and JACKELINE DE LUCIA, *petitioners, vs.* **WESTMONT BANK (now UNITED OVERSEAS BANK PHILIPPINES) and PHILIPPINE DEPOSIT INSURANCE CORPORATION, as assignee of UNITED OVERSEAS BANK PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ACTION OR DEFENSE BASED ON DOCUMENT; HOW TO CONTEST SUCH DOCUMENTS; LIBERAL APPLICATION OF THE RULES ON TECHNICALITIES.— Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. The said instrument or document is called an actionable document and Section 8 of Rule 8 provides the proper method for the adverse party to deny its genuineness and due execution, x x x Accordingly, to deny the genuineness and due execution of an actionable document: (1) there must be a specific denial in the responsive pleading of the adverse party; (2) the said pleading must be under oath; and (3) the adverse party must set forth what he claims to be the facts. Failure to comply with the prescribed procedure results in the admission of the genuineness and due execution of the actionable document. x x x [A]lthough Section 8 of Rule 8 provides for a precise method in denying the genuineness and due execution of an actionable document and the dire consequences of its non-compliance, it must not be applied with absolute rigidity. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense

rather than for him to lose life, liberty, honor, or property on technicalities.

2. ID.; ID.; ID.; ID.; ID.; FAILURE TO SPELL OUT THE WORDS "SPECIFICALLY DENY THE GENUINENESS AND DUE EXECUTION OF THE PROMISSORY NOTES", NOT FATAL; RULE SUBSTANTIALLY COMPLIED WHERE SPECIFIC DENIAL CAN BE DEDUCED IN THE ANSWER.— The answer [in the complaint] readily shows that petitioners did not spell out the words "specifically deny the genuineness and due execution of the promissory notes." Nevertheless, when the answer is read as whole, it can be deduced that petitioners specifically denied the paragraphs of the complaint regarding the promissory notes. More importantly, petitioners were able to set forth what they claim to be the facts, which is a crucial element under Section 8 of Rule 8. x x x Accordingly, petitioners substantially complied with Section 8 of Rule 8 although their answer did not indicate the exact words contained in the said provision, x x x Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.

3. CIVIL LAW; SPECIAL CONTRACTS; LOAN; THE DELIVERY OF THE PROCEEDS OF THE LOAN BY THE LENDER TO THE BORROWER IS INDISPENSABLE TO PERFECT THE CONTRACT OF LOAN.— A simple loan or *mutuum* is a contract where one of the parties delivers to another, either money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. A simple loan is a real contract and it shall not be perfected until the delivery of the object of the contract. Necessarily, the delivery of the proceeds of the loan by the lender to the borrower is indispensable to perfect the contract of loan. Once the proceeds have been delivered, the unilateral characteristic of the contract arises and the borrower is bound to pay the lender an amount equal to that received. x x x In civil cases, the burden of proof rests upon the plaintiff who is required to establish his case by preponderance of evidence.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo & Roque Law Offices for petitioners.

Poblador Bautista & Reyes for respondent United Overseas Bank Philippines.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the August 4, 2011 Decision[1] and the March 19, 2012 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 90425, which affirmed the November 9, 2007 Decision[3] and February 6, 2008 Order[4] of the Regional Trial Court, Branch 12, Manila *(RTC)* in Civil Case No. 99-95945.

The Facts

The present case stemmed from a Complaint for Sum of Money,[5] dated August 30, 1999, filed by respondent Westmont Bank*(Westmont)*, now United Overseas Bank Philippines *(UOBP)*, against petitioners Spouses Ramon Sy and Anita Ng, Richard Sy, Josie Ong, William Sy, and Jackeline de Lucia *(petitioners)* before the RTC.

Westmont alleged that on October 21, 1997, petitioners, doing business under the trade name of Moondrops General Merchandising*(Moondrops)*, obtained a loan in the amount of ₱2,429,500.00, evidenced by Promissory Note No. GP-5280[6]

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[1] Penned by Associate Justice Samuel H. Gaerlan with Associate Justice Ramon R. Garcia and Associate Justice Socorro B. Inting, concurring; *rollo*, pp. 34-43.

[2] *Id.* at 44-45.

[3] Penned by Judge Ruben Reynaldo G. Roxas; *id.* at 157-164.

[4] *Id.* at 198-204.

[5] *Id.* at 57-61.

[6] *Id.* at 62.

(PN 5280), payable on November 20, 1997. Barely a month after, or on November 25, 1997, petitioners obtained another loan from Westmont Bank in the amount of ₱4,000,000.00, evidenced by Promissory Note No. GP-5285[7] *(PN 5285),* payable on December 26, 1997. Disclosure Statements on the Loan/Credit Transactions[8] were signed by the parties. Earlier, a Continuing Suretyship Agreement,[9] dated February 4, 1997, was executed between Westmont and petitioners for the purpose of securing any future indebtedness of Moondrops.

Westmont averred that petitioners defaulted in the payment of their loan obligations. It sent a Demand Letter,[10] dated August 27, 1999, to petitioners, but it was unheeded. Hence, Westmont filed the subject complaint.

In their Answer,[11] petitioners countered that in August 1997, Ramon Sy and Richard Sy applied for a loan with Westmont Bank, through its bank manager William Chu Lao *(Lao)*. According to them, Lao required them to sign blank forms of promissory notes and disclosure statements and promised that he would notify them immediately regarding the status of their loan application.

In September 1997, Lao informed Ramon Sy and Richard Sy that their application was disapproved. He, however, offered to help them secure a loan through Amado Chua *(Chua)*, who would lend them the amounts of ₱2,500,000.00 and ₱4,000,000.00, both payable within three (3) months. Ramon Sy and Richard Sy accepted Lao's offer and received the amounts of ₱2,429,500.00 and ₱3,994,000.00, respectively, as loans from Chua. Petitioners claimed that they paid Chua the total amount of their loans.

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[7] *Id.* at 64.

[8] *Id.* at 63 and 65.

[9] *Id.* at 66-68.

[10] *Id.* at 69-70.

[11] *Id.* at 72-77.

Petitioners insisted that their loan applications from Westmont were denied and it was Chua who lent them the money. Thus, they contended that Westmont could not demand the payment of the said loans.

In the pre-trial conference, the parties agreed on one issue - whether or not the defendants obtained loans from Westmont in the total amount of ₱6,429,500.00.[12] During trial, Westmont presented, among others, its employee Consolacion Esplana, who testified that the proceeds of the loan were credited to the account of Moondrops per its loan manifold.[13] Westmont, however, never offered such loan manifold in evidence.[14]

On the other hand, petitioners presented a Cashier's Check,[15] dated October 21, 1997, in the amount of ₱2,429,500.00, purchased from Chua, to prove that the said loan was obtained from Chua, and not from Westmont. The cashier's check for the subsequent loan of ₱4,000,000.00 could not have been obtained from Westmont.

The RTC Ruling

In its decision, dated November 9, 2007, the RTC ruled in favor of Westmont. It held that Westmont's cause of action was based on PN 5280 and PN 5285, the promissory notes executed by petitioners. The RTC opined that petitioners admitted the genuineness and due execution of the said actionable documents because they failed to make a specific denial in the answer. It added that it should be presumed that the two (2) loan transactions were fair and regular; that the ordinary course of business was followed; and that they were issued for a sufficient consideration.

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[12] *Id.* at 104.

[13] TSN, January 11, 2002, p. 27.

[14] *Rollo,* pp. 105-107.

[15] *Id.* at 152.

The RTC underscored that Ramon Sy never took any steps to have the promissory notes cancelled and annulled, which led to the conclusion that their obligations to Westmont were valid and binding. The *fallo* of the decision reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of plaintiff WESTMONT BANK (now United Overseas Bank) and against defendants Spouses Ramon Sy and Anita Ng, Richard Sy, Josie Ong, William Sy and Jackeline De Lucia, and to pay plaintiff the following amounts, as follows:
>
> 1. ₱20,573,948.66, representing the outstanding amounts due on the aforementioned loan accounts as of February 15, 2001;
> 2. Interests and penalty charges due thereon as stipulated under the respective promissory notes from and after February 15, 2001, until fully paid;
> 3. 20% of the total outstanding sum, as and by way of attorney's fees; and
> 4. Costs of suit.
>
> SO ORDERED.[16]

Petitioners moved for reconsideration, arguing that it had sufficiently denied the genuineness and due execution of the promissory notes in their answer.

In its Order, dated February 6, 2008, the RTC repeated that petitioners were deemed to have admitted the genuineness and due execution of the actionable documents. It, however, modified the dispositive portion of its decision as follow:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of plaintiff WESTMONT BANK (now United Overseas Bank) and against defendants Spouses Ramon Sy and Anita Ng, Richard Sy, Josie Ong, William Sy and Jackeline De Lucia, and to pay plaintiff the following amounts, as follows:

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

1. On Promissory Note No. PN-GP 5280:

   a) The sum of Two Million Four Hundred Twenty Nine Thousand Five Hundred Pesos (₱2,429,500.00), representing the principal amount of the promissory note;

   b) The sum of Seven Hundred Twenty Eight Thousand Eight Hundred Fifty Pesos (₱728,850.00), representing interest due on the promissory note payable on November 20,1997;

   c) The above amounts shall collectively earn interest at the rate of thirty-six (36) percent *per annum* by way of liquidated damages, reckoned from November 20,1997, until fully paid.

2. On Promissory Note No. PN-GP 5285:

   a) The sum of Four Million Pesos (₱4,000,000.00), representing the principal amount of the promissory note;

   b) The sum of One Million One Hundred Sixty Thousand Pesos (₱1,160,000.00), representing interest due on the promissory note payable on December 26,1997;

   c) The above amounts shall collectively earn interest at the rate of thirty-six (36) percent *per annum* by way of liquidated damages, reckoned from December 26,1997, until fully paid.

3. The sum equivalent to twenty (20) percent of the total amount due (referred to in Items 1 and 2 hereof), by way of attorney's fees; and costs of suit.

SO ORDERED.[17]

Aggrieved, petitioners elevated an appeal before the CA.

The CA Ruling

In its assailed August 4, 2011 decision, the CA *affirmed* the ruling of the RTC. It wrote that petitioners failed to specifically deny the genuineness and due execution of the promissory notes in their answer before the trial court. Accordingly, the CA ruled that under Section 8, Rule 8 of the Rules of Court *(Section 8 of Rule 8)*, the genuineness and due execution of the promissory notes were deemed admitted by petitioners. It added that the

[17] *Id.* at 202-203.

admission of the said actionable documents created a *prima facie* case in favor of Westmont which dispensed with the necessity of presenting evidence that petitioners actually received the loan proceeds. The CA disposed the case in this wise:

> WHEREFORE, the instant appeal is DENIED. The assailed Decision dated November 9, 2007 as amended by the assailed Order dated February 6, 2008 of the Regional Trial Court of Manila, Branch 12, is hereby AFFIRMED.
>
> SO ORDERED.[18]

Petitioners filed a motion for reconsideration, but it was denied by the CA in its assailed decision, dated March 19, 2012.

Hence, this petition, raising the following

ISSUES

I.

THE HONORABLE COURT OF APPEALS ERRONEOUSLY RULED, AS A MATTER OF LAW, THAT PETITIONERS SPS. RAMON SY AND ANITA NG, RICHARD SY, JOSIE ONG, WILLIAM SY AND JACKELINE DE LUCIA FAILED TO SPECIFICALLY DENY THE ACTIONABLE DOCUMENTS UNDER OATH AND THUS, PETITIONERS DEEMED TO HAVE ADMITTED THEIR GENUINENESS AND DUE EXECUTION.

II.

THE HONORABLE COURT OF APPEALS FAILED TO RULE THAT THE PIECES OF EVIDENCE PRESENTED AND FORMALLY OFFERED BY WESTMONT BANK ARE INADMISSIBLE AND HENCE, SHOULD NOT HAVE BEEN CONSIDERED.[19]

Petitioners argue that: they specifically denied the allegations of Westmont under oath in their answer filed before the RTC; although they signed blank forms of promissory notes, disclosure statements and continuing suretyship agreements, they were

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[18] *Id.* at 43.

[19] *Id.* at 17.

informed that their loan application were denied; these should be considered as sufficient compliance with Section 8 of Rule 8; Westmont Bank failed to prove the existing loan obligations; and the original copy of the promissory notes were never presented in court.

In a Resolution,[20] dated July 4, 2012, the Court initially denied the petition for failure to show any reversible error in the challenged decision and resolution of the CA. In a Resolution,[21] dated June 15, 2015, however, the Court granted petitioners' motion for reconsideration, reinstated the petition and required the respondents to file their comment.

In its Entry of Appearance with Compliance/Manifestation,[22] dated October 19, 2015, UOBP, formerly Westmont, informed the Court that all their interests in the present litigated case were already transferred to the Philippine Deposit Insurance Corporation *(PDIC)*.

In its Comment,[23] dated September 23, 2015, the PDIC stated that the CA correctly ruled that petitioners failed to specifically deny the actionable documents in their answer and were deemed to have admitted the genuineness and due execution thereof. Citing *Permanent Savings and Loan Bank v. Velarde*,[24] the PDIC underscored that the specific denial meant that the defendant must declare under oath that he did not sign the document or that it was otherwise false or fabricated.

In their Reply,[25] dated November 2, 2015, petitioners insisted that they made a categorical specific denial in their answer and never admitted the genuineness and due execution of the

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[20] *Id.* at 323-324.

[21] *Id.* at 383-384.

[22] *Id.* at 411-413.

[23] *Id.* at 401-408.

[24] 482 Phil. 193 (2004).

[25] *Rollo,* pp. 420-424.

promissory notes, disclosure statements and continuing surety agreements; the promissory notes presented by Westmont were mere photocopies; and Westmont failed to establish that they received the proceeds of any loan.

The Court's Ruling

The Court finds the petition meritorious.

Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.[26] The said instrument or document is called an actionable document and Section 8 of Rule 8 provides the proper method for the adverse party to deny its genuineness and due execution, to wit:

> Sec. 8. *How to contest such documents.* — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless **the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts;** but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. [Emphasis supplied]

Accordingly, to deny the genuineness and due execution of an actionable document: (1) there must be a specific denial in the responsive pleading of the adverse party; (2) the said pleading must be under oath; and (3) the adverse party must set forth what he claims to be the facts. Failure to comply with the prescribed procedure results in the admission of the genuineness and due execution of the actionable document.

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[26] Section 7, Rule 7 of the Rules of Court.

In *Toribio v. Bidin*,[27] the Court expounded that the purpose of specifically denying an actionable document "appears to have been to relieve a party of the trouble and expense of proving in the first instance an alleged fact, the existence or non-existence of which is necessarily within the knowledge of the adverse party, and of the necessity (to his opponent's case) of establishing which such adverse party is notified by his opponent's pleading."[28] In other words, the reason for the rule is to enable the adverse party to know beforehand whether he will have to meet the issue of genuineness or due execution of the document during trial.[29]

In that said case, the petitioners therein failed to file a responsive pleading to specifically deny a deed of sale, the actionable document, attached in the answer of the respondents therein. Despite such failure, the Court held that Section 8, Rule 8, was sufficiently complied with because they had already stated under oath in their complaint that they never sold, transferred, or disposed of their shares in the inheritance to others. Thus, respondents therein were placed on adequate notice that they would be called upon during trial to prove the genuineness or due execution of the disputed deeds of sale. Notably, the Court exercised liberality in applying the rules of procedure so that substantial justice may be served.

Similarly, in *Titan Construction Corporation v. David, Sr.*,[30] the Court relaxed the rules of procedure regarding Section 8 of Rule 8. In that case, the respondent failed to file a responsive pleading under oath to specifically deny the special power of attorney, the actionable document therein, which was attached to the answer of the petitioner therein. Notwithstanding such deficiency, the Court ruled that there was substantial compliance because the respondent therein consistently denied the

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[27] 219 Phil. 139 (1985).

[28] *Id.*

[29] *Id.* at

[30] 629 Phil. 346 (2010).

genuineness and due execution of the actionable document in his complaint and during trial.

In fine, although Section 8 of Rule 8 provides for a precise method in denying the genuineness and due execution of an actionable document and the dire consequences of its non-compliance, it must not be applied with absolute rigidity. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities.

In the present case, the actionable documents attached to the complaint of Westmont were PN 5280 and PN 5285. The CA opined that petitioners failed to specifically deny the genuineness and due execution of the said instruments because nowhere in their answer did they "specifically deny" the genuineness and due execution of the said documents.

After a judicious study of the records, the Court finds that petitioners sufficiently complied with Section 8 of Rule 8 and grants the petition.

Petitioners specifically denied the genuineness and due execution of the promissory notes

The complaint of Westmont alleged, among others, that:

> 3. On or about October 21, 1997, defendants Richard Sy and Ramon Sy, under the trade name and style of "Moondrops General Merchandising," obtained a loan from the plaintiff in the principal amount of Two Million Four Hundred Twenty-Nine Thousand Five Hundred Pesos (₱2,429,500.00), Philippine Currency, in evidence of which said defendants executed in plaintiff's favor Promissory Note No. GP- 5280, xxx.
>
> 4. Again, on or about November 25, 1997, defendants Richard Sy and Ramon Sy, under the trade name and style of "Moondrops General Merchandising," applied for and were granted another loan by the plaintiff in the principal amount of Four Million Pesos (₱4,000, 000.00),

Philippine Currency, in evidence of which said defendants executed in plaintiff's favor Promissory Note No. GP- 5285, xxx.

6. The defendants Anita Ng, Josie Ong, William Sy and Jackeline De Lucia, for purposes of securing the payment of said loans, collectively executed a Continuing Suretyship Agreement, xxx, whereby they jointly and severally bound themselves to plaintiff for the payment of the obligations of defendants Richard Sy and Ramon Sy/Moondrops General Merchandising thereto.

7. The defendants defaulted in the payment of the aforementioned loan obligations when the same fell due and, despite demands, continue to fail and/or refuse to pay the same, to the prejudice of the plaintiff, xx.

8. As of November 9, 1999, the defendants' outstanding obligation to the plaintiff on both loans amounted to Fifteen Million Six Hundred Thirty-Nine Thousand Five Hundred Eighty Nine and 25/100 Pesos, xxx.[31]

On the other hand, petitioners alleged in the answer, under oath:

2. Paragraphs 3, 4, 5, 6, 7 and 8 are specifically denied, the truth of the matter being those alleged in the Special and Affirmative Defenses hereunder.

3. Paragraph 9 is specifically denied for want of knowledge or information sufficient to form a belief as to the truth or falsity thereof. Besides, the plaintiff has no one to blame except itself and its personnel for maliciously filing the instant complaint for collection knowing fully well that the alleged loan obligations were not consummated; and by way of -

SPECIAL AND AFFIRMATIVE DEFENSES

4. The complaint does not state a cause of action.

5. While the limited partnership Moondrops General Merchandising Co., Ltd. (Moondrops for brevity) appears in the alleged loan documents to be the borrower and, therefore, the real party in interest, it is not impleaded as a party, xxx.

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[31] *Rollo,* pp. 57-59.

6. The alleged loan obligations were never consummated for want of consideration.

7. Sometime in August, 1997, Moondrops desperately needed additional working capital, thus it applied for a loan of ₱6,500,000.00 with the plaintiff Westmont Bank through the Manager of Grace Park Branch William Chu Lao.

8. Manager William Chu Lao required herein defendants to sign blank forms of plaintiff's promissory notes, Disclosure Statements and Continuing Suretyship Agreement.

9. Sometime in September, 1997, Manager William Chu Lao informed herein defendants that the application of Moondrops for an additional working capital was disapproved by Westmont Bank but that, however, he offered to lend the defendants, through Mr. Amado Chua, the initial amount of ₱2,500,000.00 payable in three (3) months, and then another ₱4,000,000.00 likewise payable in three (3) months, against customers' checks.

10. Since Moondrops desperately needed the additional working capital, defendants agreed to and accepted the offer of Manager William Chu Lao, thus Mr. Amado Chua loaned to defendants the amounts of ₱2,500,000.00 and ₱4,000,000.00.

11. Pursuant to the agreement between Mr. Amado Chua and the defendants, the latter delivered to the former customers' checks in the total amount of ₱6,500,000.00.

12. Defendants have fully paid Mr. Amado Chua the loan obligations in the amounts of ₱2,500,000.00 and ₱4,000,000.00, including the interests thereon.[32]

The answer above readily shows that petitioners did not spell out the words "specifically deny the genuineness and due execution of the promissory notes." Nevertheless, when the answer is read as whole, it can be deduced that petitioners specifically denied the paragraphs of the complaint regarding the promissory notes. More importantly, petitioners were able to set forth what they claim to be the facts, which is a crucial element under Section 8 of Rule 8. In particular, they alleged that although Ramon Sy and Richard Sy signed blank forms of

[32] *Id.* at 72-74.

promissory notes and disclosure statements, they were later informed that their loans were not approved. Such disapproval led them to seek loans elsewhere, through Lao and Chua, but definitely not with the bank anymore.

Verily, petitioners asserted throughout the entire proceedings that the loans they applied from Westmont were disapproved, and that they never received the loan proceeds from the bank. Stated differently, they insisted that the promissory notes and disclosure statement attached to the complaint were false and different from the documents they had signed. These significant and consistent denials by petitioners sufficiently informed Westmont beforehand that it would have to meet the issue of genuineness or due execution of the actionable documents during trial.

Accordingly, petitioners substantially complied with Section 8 of Rule 8. Although their answer did not indicate the exact words contained in the said provision, the questionable loans and the non-delivery of its proceeds compel the Court to relax the rules of procedure in the present case. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[33]

Westmont failed to prove that it delivered the proceeds of the loan to petitioners

A simple loan or *mutuum* is a contract where one of the parties delivers to another, either money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid.[34] A simple loan is a real contract and it shall not be perfected until the delivery of the object of the contract.[35] Necessarily, the delivery of the proceeds of the loan

[33] *Hadji-Sirad v. Civil Service Commission*, 614 Phil. 119, 134 (2009).
[34] Article 1933 of the New Civil Code.
[35] Article 1934 of the New Civil Code.

by the lender to the borrower is indispensable to perfect the contract of loan. Once the proceeds have been delivered, the unilateral characteristic of the contract arises and the borrower is bound to pay the lender an amount equal to that received.[36]

Here, there were purported contracts of loan entered between Westmont and petitioners for the amounts of ₱2,429,500.00 and ₱4,000,000.00, respectively. The promissory notes evidencing such loans were denied by petitioners, thus, the genuineness and due execution of such documents were not admitted. Petitioners averred that they never received such loans because their applications were disapproved by the bank and they had to acquire loans from other persons. They presented a cashier's check, in the amount of ₱2,429,500.00, obtained from Chua, which showed that the latter personally provided the loan, and not the bank. As the proceeds of the loan were not delivered by the bank, petitioners stressed that there was no perfected contract of loan. In addition, they doubt the reliability of the promissory notes as their original copies were not presented before the RTC.

Due to the doubtful circumstances surrounding the loan transactions, Westmont cannot rely on the disputable presumptions that private transactions have been fair and regular and that the ordinary course of business has been followed. The afore-stated presumptions are disputable, meaning, they are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.[37]

At any rate, granting that they did execute the promissory note and other actionable documents, still it was incumbent on Westmont, as plaintiff, to establish that the proceeds of the loans were delivered to petitioners, resulting into a perfected contract of loan.[38] Notably, these documents also did not state that the loan proceeds had been delivered to petitioners, and that they had acknowledged its receipt.

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[36] See Article 1953 of the New Civil Code.

[37] *Citibank, N.A. v. Sabeniano,* 535 Phil. 384 (2006).

[38] See *Oliver v. Philippine Savings Bank,* G.R. No. 214567, April 4, 2016.

In civil cases, the burden of proof rests upon the plaintiff who is required to establish his case by a preponderance of evidence.[39] As aptly stated by the RTC, the primordial issue that must be resolved is whether petitioners obtained loans from Westmont in the total amount of ₱6,429,500.00.[40]

The Court finds that Westmont miserably failed to establish that it released and delivered the proceeds of the loans in the total amount of ₱6,429,500.00 to petitioners. Westmont could have easily presented a receipt, a ledger, a loan release manifold, or a statement of loan release to indubitably prove that the proceeds were actually released and received by petitioners. During trial, Westmont committed to the RTC that it would submit as evidence a loan manifold indicating the names of petitioners as recipients of the loans,[41] but these purported documents were never presented, identified or offered.[42]

As Westmont failed to prove that it had delivered the loan proceeds to respondents, then there is no perfected contract of loan.

WHEREFORE, the petition is **GRANTED**. The August 4, 2011 Decision and the March 19, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 90425 are hereby **REVERSED** and **SET ASIDE**. The Complaint, dated August 30, 1999, docketed as Civil Case No. 99-95945 filed before the Regional Trial Court, Branch 12, City of Manila, is **DISMISSED.**

SO ORDERED.

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

Leonen, J., on official leave.

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[39] *De Leon v. Bank of the Philippines,* Phil. 839 (2013).

[40] *Rollo,* p. 159.

[41] TSN, pp. 27-29, January 11, 2002; *rollo,* pp. 103 and 175.

[42] *Id.* at 105 and 155-156.

THIRD DIVISION

[G.R. No. 207898. October 19, 2016]

ERROL RAMIREZ, JULITO APAS, RICKY ROSELO and ESTEBAN MISSION, JR., *petitioners, vs.* **POLYSON INDUSTRIES, INC. and WILSON S. YU,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISMISSAL FROM EMPLOYMENT; TWO ASPECTS OF DUE PROCESS ARE SUBSTANTIVE AND PROCEDURAL.— The basic issue in the instant case is whether petitioners' dismissal from their employment was valid. Due process under the Labor Code involves two aspects: first is substantive, which refers to the valid and authorized causes of termination of employment under the Labor Code; and second is procedural, which points to the manner of dismissal. Thus, to justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just or authorized cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.

2. ID.; ID.; ILLEGAL ACTIVITIES; SLOWDOWN; THE ACT OF LABOR OFFICERS INDUCING WORKERS NOT TO RENDER OVERTIME WORK CONSIDERING THE CIRCUMSTANCES WAS A CALCULATED EFFORT AMOUNTING TO OVERTIME BOYCOTT OR WORK SLOWDOWN.— [T]he NLRC ruled that "[t]he evidence on record clearly establishes that herein [petitioners] resorted to an illicit activity. The act of inducing and/or threatening workers not to render overtime work, given the circumstances surrounding the instant case, was undoubtedly a calculated effort amounting to 'overtime boycott' or 'work slowdown'. [Petitioners], in their apparent attempt to make a statement – as a response to [Polyson's] refusal to voluntarily recognize Obrero Pilipino – Polyson Industries Chapter as the sole and exclusive bargaining representative of the rank-and-file employees, unduly caused [Polyson] significant losses in the aggregate amount of Two

Hundred Ninety Thousand Pesos (PhP290,000.00)." The Court finds no cogent reason to depart from the above findings, which were affirmed by the CA. x x x This Court reiterates, as a reminder to labor leaders, the rule that union officers are duty-bound to guide their members to respect the law. Contrarily, if the officers urge the members to violate the law and defy the duly-constituted authorities, their dismissal from the service is a just penalty or sanction for their unlawful acts.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES UPHELD IN THE ABSENCE OF ILL-MOTIVE; AFFIRMATIVE ASSERTIONS PREVAIL AGAINST NEGATIVE ASSERTIONS.— Petitioners question the credibility of Tuting and Visca's claims contending that these are self-serving and that they were merely used by the management to manufacture evidence against them. However, there is nothing on record to indicate any ulterior motive on the part of Visca and Tuting to fabricate their claim that petitioners were the ones who threatened or induced them not to work overtime. Absent convincing evidence showing any cogent reason why a witness should testify falsely, his testimony may be accorded full faith and credit. Moreover, petitioners' defense consists of mere denials and negative assertions. As between the affirmative assertions of unbiased witnesses and a general denial and negative assertions on the part of petitioners, weight must be accorded to the affirmative assertions.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ILLEGAL ACTIVITIES; SLOWDOWN; APPRECIATED EVEN IN THE ABSENCE OF A NO-STRIKE CLAUSE IN A BARGAINING CONTRACT, STATUTE OR RULE.— [P]etitioners are guilty of instigating their co-employees to commit slowdown, an inherently and essentially illegal activity even in the absence of a no-strike clause in a collective bargaining contract, or statute or rule. x x x Nothing in the law requires that a slowdown be carefully planned and that it be participated in by a large number of workers. The essence of this kind of strike is that the workers do not quit their work but simply reduce the rate of work in order to restrict the output or delay the production of the employer. It has been held that while a cessation of work by the concerted action of a large number of employees may more easily accomplish the object of the work

stoppage than if it is by one person, there is, in fact no fundamental difference in the principle involved as far as the number of persons involved is concerned, and thus, if the act is the same, and the purpose to be accomplished is the same, there is a strike, whether one or more than one have ceased to work. Furthermore, it is not necessary that any fixed number of employees should quit their work in order to constitute the stoppage a strike, and the number of persons necessary depends in each case on the peculiar facts in the case and no definite rule can be laid down.

5. ID.; ID.; DISMISSAL FROM EMPLOYMENT; PROCEDURAL DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING.— With respect to procedural due process, it is settled that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.

6. ID.; ID.; ID.; PENALTY FOR UNION OFFICER WHO KNOWINGLY PARTICIPATES IN AN ILLEGAL STRIKE.— As to petitioners' liability, the second paragraph of Article 264(a) of the Labor Code provides: x x x **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: x x x The responsibility of the union officers, as main players in an illegal strike, is greater than that of the members as the union officers have the duty to guide their members to respect the law. The policy of the State is not to tolerate actions directed at the destabilization of the social order, where the relationship between labor and management has been endangered by abuse of one party's bargaining prerogative, to the extent of disregarding not only the direct order of the government to maintain the *status quo*, but the welfare of the entire workforce though they may not be involved in the dispute. The grave penalty of dismissal imposed

on the guilty parties is a natural consequence, considering the interest of public welfare.

APPEARANCES OF COUNSEL

Rodolfo M. Capoquian for petitioners.
Nestor P. Ricolcol for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated January 23, 2013 and June 17, 2013, respectively, in CA-G.R. SP No. 125091. The assailed CA Decision affirmed the March 28, 2012 Resolution of the Fourth Division of the National Labor Relations Commission (*NLRC*), which found that respondent corporation validly dismissed petitioners from their employment, while the CA Resolution denied petitioners' Motion for Reconsideration.

The facts of the case are as follows:

Respondent Polyson Industries, Inc. (*Polyson*) is a duly organized domestic corporation which is primarily engaged in the business of manufacturing plastic bags for supermarkets, department stores and the like. Petitioners, on the other hand, were employees of Polyson and were officers of Obrero Pilipino (*Obrero*), the union of the employees of Polyson.

The instant case arose from a labor dispute, between herein petitioners and respondent corporation, which was certified by

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[1] Penned by Associate Justice Isaias P. Dicdican, with the concurrence of Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela, Annex "A" to Petition: *rollo,* pp. 25-36.

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

the Secretary of the Department of Labor and Employment (*DOLE*) to the NLRC for compulsory arbitration.

In its Position Paper[3] submitted to the NLRC, Polyson alleged that: on April 28, 2011, it received a notice of hearing from the DOLE with respect to the petition for certification election filed by Obrero; on May 31, 2011, Polyson, through counsel and management representative, met with the officers of Obrero, led by the union president, herein petitioner Ramirez; Obrero asked that it be voluntarily recognized by Polyson as the exclusive bargaining agent of the rank-and-file employees of Polyson, but the latter refused and opted for a certification election; furious at such refusal, the Obrero officers threatened the management that the union will show its collective strength in the coming days; on June 7, 2011, Polyson received a rush order from one of its clients for the production of 100,000 pieces of plastic bags; the management of Polyson informed the operators of its Cutting Section that they would be needing workers to work overtime because of the said order; based on the usual practice of the company, those who intend to perform overtime work were expected to sign the "time sheet" indicating their willingness to work after their shift; on June 7, 2011, the supervisors approached the operators but were told that they would be unable to work overtime because they have other commitments after their shift; the supervisors then requested that the operators set aside their time for the following day to work beyond their regular shift; on June 8, 2011, five (5) operators indicated their desire to work overtime;[4] however, after their regular shift, three of the five workers did not work overtime which resulted in the delay in delivery of the client's order and eventually resulted in the cancellation of the said order by reason of such delay;[5] when management asked the workers, who initially manifested their desire to work overtime, to indicate in the time sheet the reason for their failure to do so, two of the three workers, namely, Leuland Visca (*Visca*) and Samuel Tuting

[3] *Id.* at 132-138.

[4] *Id.* at 142.

[5] *Id.* at 147.

(*Tuting*) gave the same reason, to wit: "*Ayaw nila/ng iba na mag-OT [overtime] ako*";[6] the management then conducted an investigation and a hearing where Visca affirmed his previous claim that petitioners were the ones who pressured him to desist from rendering overtime work;[7] on even date, Tuting executed a written statement claiming that herein petitioners induced or threatened them not to work overtime;[8] the management then gave notices to petitioners asking them to explain why no disciplinary action would be taken against them;[9] petitioners submitted their respective explanations to the management denying their liability;[10] after evaluation, the management informed petitioners that it has decided to terminate petitioners' employment on the ground that they instigated an illegal concerted activity resulting in losses to the company.[11]

In their Position Paper,[12] petitioners denied the allegations of Polyson contending that they were terminated from their employment not because they induced or threatened their co-employees not to render overtime work but because they established a union which sought to become the exclusive bargaining agent of the rank-and-file employees of Polyson; that their termination was undertaken without affording them substantive and procedural due process' and that Polyson is guilty of unfair labor practice.

Subsequently, on June 29, 2011, Obrero filed a Notice of Strike with the National Conciliation and Mediation Board (*NCMB*) which was predicated on various grounds, among which was the alleged illegal dismissal of herein petitioners.

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[6] *Id.* at 142.

[7] *Id.* at 144.

[8] *Id.* at 145.

[9] *Id.* at 148-151.

[10] CA *rollo*, pp. 68-70, 72.

[11] *Rollo*, pp. 152-155.

[12] CA *rollo*, pp. 81-92.

Thereafter, on July 21, 2011, the DOLE Secretary certified the labor dispute to the NLRC for immediate compulsory arbitration where the parties were required to maintain the *status quo*, in accordance with Article 263(g) of the Labor Code.[13]

On December 26, 2011, the NLRC rendered its Decision[14] finding petitioners illegally dismissed from their employment and ordering their reinstatement to their former positions without loss of seniority rights and other privileges and benefits as well as to pay petitioners their backwages and attorney's fees. The NLRC ruled that, for failure of Polyson to submit in evidence petitioners' supposed written explanations in answer to the company's Notice to Explain, Polyson failed to discharge its burden of proving that petitioners were indeed terminated for a valid cause and in accordance with due process.

Polyson then filed a Motion for Reconsideration[15] submitting, for the consideration of the NLRC, the subject written explanations of petitioners and reiterating their position that petitioners were, indeed, validly dismissed.

On March 28, 2012, the NLRC issued a Resolution[16] granting Polyson's Motion for Reconsideration, thereby reversing and setting aside its December 26, 2011 Decision and rendering a new judgment which declared petitioners as validly dismissed. In the said Resolution, the NLRC found that Polyson was able to present sufficient evidence to establish that petitioners' termination from employment was for a valid cause, as they were found guilty of inducing or threatening their co-employees not to render overtime work, and that petitioners' dismissal was in conformity with due process requirements.

Aggrieved by the above Resolution, petitioners filed a special civil action for *certiorari* with the CA assailing the said

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[13] *Id.* at 56-58.

[14] *Id.* at 28-35.

[15] *Id.* at 62-67.

[16] *Id.* at 44-55.

Resolution and praying for the reinstatement of the December 26, 2011 Decision of the NLRC.[17]

In its questioned Decision dated January 23, 2013, the CA denied petitioners' petition for *certiorari* and affirmed the March 28, 2012 Resolution of the NLRC. The CA ruled that petitioners' defense, which is anchored primarily on their denial of the allegations of Polyson, cannot overcome the categorical statements of Polyson's witnesses who identified petitioners as the persons who induced or threatened them not to render overtime work.

Petitioners filed a Motion for Reconsideration,[18] but the CA denied it in its Resolution dated June 17, 2013.

Hence, the present petition for review on *certiorari* based on the following grounds:

THE HONORABLE COURT OF APPEALS THIRTEENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE HEREIN ASSAILED DECISIONS.

THE THIRTEENTH DIVISION OF THE COURT OF APPEALS MISAPPRECIATED THE ACTUAL FACTS OF THE INSTANT CASE. THUS, A REVIEW IS NECESSARY AND THE ASSAILED DECISIONS VACATED.[19]

The basic issue in the instant case is whether petitioners' dismissal from their employment was valid.

Due process under the Labor Code involves two aspects: first is substantive, which refers to the valid and authorized causes of termination of employment under the Labor Code; and second is procedural, which points to the manner of dismissal.[20] Thus, to justify fully the dismissal of an employee,

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[17] *Id.* at 3-27.

[18] *Id.* at 172-183.

[19] *Rollo,* p. 13.

[20] *King of Kings Transport, Inc. v. Mamac,* 553 Phil. 108, 114 (2007).

the employer must, as a rule, prove that the dismissal was for a just or authorized cause and that the employee was afforded due process prior to dismissal.[21] As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.[22]

Anent the substantive aspect, the question that should be resolved, in the context of the facts involved in and the charges leveled against petitioners in the present case, is whether petitioners are guilty of an illegal act and, if so, whether such act is a valid ground for their termination from employment.

In its Resolution dated March 28, 2012, the NLRC ruled that "[t]he evidence on record clearly establishes that herein [petitioners] resorted to an illicit activity. The act of inducing and/or threatening workers not to render overtime work, given the circumstances surrounding the instant case, was undoubtedly a calculated effort amounting to 'overtime boycott' or 'work slowdown'. [Petitioners], in their apparent attempt to make a statement – as a response to [Polyson's] refusal to voluntarily recognize Obrero Pilipino – Polyson Industries Chapter as the sole and exclusive bargaining representative of the rank-and-file employees, unduly caused [Polyson] significant losses in the aggregate amount of Two Hundred Ninety Thousand Pesos (PhP290,000.00)."[23]

The Court finds no cogent reason to depart from the above findings, which were affirmed by the CA. The Court is not duty-bound to delve into the accuracy of the factual findings of the NLRC in the absence of clear showing that these were arbitrary and bereft of any rational basis.[24] In the present case, petitioners failed to convince this Court that the NLRC's findings

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[21] *Aliling v. Feliciano, et al.*, 686 Phil. 889, 909 (2012).

[22] *Id.*

[23] CA *rollo*, p. 50.

[24] *Toyota Motors Phil. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission, Second Division*, 562 Phil. 759, 798 (2007).

that they instigated the slowdown on June 8, 2011 are not reinforced by substantial evidence. Verily, said findings have to be maintained and upheld. This Court reiterates, as a reminder to labor leaders, the rule that union officers are duty-bound to guide their members to respect the law.[25] Contrarily, if the officers urge the members to violate the law and defy the duly-constituted authorities, their dismissal from the service is a just penalty or sanction for their unlawful acts.[26]

In any case, a review of the records at hand shows that the evidence presented by Polyson has proven that petitioners are indeed guilty of instigating two employees to abstain from working overtime. In the Cutting Section Overtime Sheet[27] dated June 8, 2011, employees Visca and Tuting indicated that "*ayaw nila/ng iba na mag-OT [overtime] ako*" as the reason why they did not render overtime work despite having earlier manifested their desire to do so. In the Administrative Hearing[28] conducted on June 9, 2011, Visca identified petitioners as the persons who pressured them not to work overtime. In the same manner, Tuting, in his written statement,[29] also pointed to petitioners as the ones who told him not to work overtime.

Petitioners question the credibility of Tuting and Visca's claims contending that these are self-serving and that they were merely used by the management to manufacture evidence against them. However, there is nothing on record to indicate any ulterior motive on the part of Visca and Tuting to fabricate their claim that petitioners were the ones who threatened or induced them not to work overtime. Absent convincing evidence showing any cogent reason why a witness should testify falsely, his testimony may be accorded full faith and credit.[30] Moreover,

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[25] *Id.*

[26] *Id.*

[27] *Rollo,* p. 142.

[28] *Id.* at 144.

[29] *Id.* at 145.

[30] *Arboleda v. National Labor Relations Commission,* 362 Phil. 383, 391 (1999).

petitioners' defense consists of mere denials and negative assertions. As between the affirmative assertions of unbiased witnesses and a general denial and negative assertions on the part of petitioners, weight must be accorded to the affirmative assertions.[31]

In addition, the Court finds no error in the findings of the NLRC in its questioned Resolution that, contrary to petitioners' claims, the slowdown was indeed planned, to wit:

> The abovementioned finding is bolstered by the Incident Report dated 10 June 2011 wherein it is stated that upon inquiry by Respondent Wilson Yu as regards the reason for the non-rendering of overtime work, [petitioner] Errol Ramirez retorted, thus: "[DI BA] SABI NINYO EIGHT (8) HOURS LANG KAMI. EH DI EIGHT (8) NA LANG. KUNG MAG[-]OOVERTIME KAMI DAPAT LAHAT MAY OVERTIME. AYAW KO MAGKAWATAK WATAK ANG MGA TAO KO." It is, therefore, unmistakably clear that [petitioners] were completely aware of and, in fact, were responsible for what transpired during the scheduled overtime. [Petitioners] cannot now feign ignorance and simply deny liability upon the implausible pretext that the "overtime boycott" was undertaken without their knowledge and not upon their prodding. Note that the exchange was witnessed by several other workers and, interestingly, was never disputed by herein [petitioners].[32]

The Court agrees with both the NLRC and the CA that petitioners are guilty of instigating their co-employees to commit slowdown, an inherently and essentially illegal activity even in the absence of a no-strike clause in a collective bargaining contract, or statute or rule.[33] Jurisprudence defines a slowdown as follows:

> x x x a "**strike on the installment plan**;" as a willful reduction in the rate of work by concerted action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute;

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[31] *Id.*

[32] *Rollo,* pp. 82-83. (Citation omitted)

[33] *Ilaw at Buklod ng Manggagawa (IBM) v. National Labor Relations Commission, et al.,* 275 Phil. 635, 649 (1991).

as an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands. The Court also agrees that **such a slowdown is generally condemned as inherently illicit and unjustifiable**, because while the employees "continue to work and remain at their positions and accept the wages paid to them," they at the same time "select what part of their allotted tasks they care to perform of their own volition or refuse openly or secretly, to the employer's damage, to do other work;" in other words, they "work on their own terms.[34]

The Court is not persuaded by petitioners' contention that they are not guilty of "illegal concerted activity" as they claim that this term contemplates a "careful planning of a considerable number of participants to insure that the desired result is attained." Nothing in the law requires that a slowdown be carefully planned and that it be participated in by a large number of workers. The essence of this kind of strike is that the workers do not quit their work but simply reduce the rate of work in order to restrict the output or delay the production of the employer. It has been held that while a cessation of work by the concerted action of a large number of employees may more easily accomplish the object of the work stoppage than if it is by one person, there is, in fact no fundamental difference in the principle involved as far as the number of persons involved is concerned, and thus, if the act is the same, and the purpose to be accomplished is the same, there is a strike, whether one or more than one have ceased to work.[35] Furthermore, it is not necessary that any fixed number of employees should quit their work in order to constitute the stoppage a strike, and the number of persons necessary depends in each case on the peculiar facts in the case and no definite rule can be laid down.[36] As discussed

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[34] *Interphil Laboratories Employees Union-FFW, et al. v. Interphil Laboratories, Inc., et al.,* 423 Phil. 948, 964 (2001), citing *Ilaw at Buklod ng Manggagawa (IBM) v. NLRC, supra,* at 649-650. (Emphases ours)

[35] 83 C.J. S. 543, citing *Sammons v. Hotel & Restaurant Emp. Local Union No. 363,* Com. Pl., 93 N.E. 2D 301, 302.

[36] 83 C.J.S. 544, citing *People on Complaint of Mandel v. Tapel,* 3 N.Y.S. 2D 779, 781 and *Walter W. Oeflein, Inc. v. State,* 188 N.W. 633, 635, 177 Wis. 394.

above, petitioners engaged in slowdown when they induced two of their co-workers to quit their scheduled overtime work and they accomplished their purpose when the slowdown resulted in the delay and restriction in the output of Polyson on June 8, 2011.

With respect to procedural due process, it is settled that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing.[37] The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him.[38] The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[39] In the present case, Polyson was able to establish that these requirements were sufficiently complied with.

As to petitioners' liability, the second paragraph of Article 264(a) of the Labor Code provides:

x x x x x x x x x

x x x **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.[40]

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[37] *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).

[38] *Id.*

[39] *Id.*

[40] Emphasis supplied.

Finally, it cannot be overemphasized that strike, as the most preeminent economic weapon of the workers to force management to agree to an equitable sharing of the joint product of labor and capital, exert some disquieting effects not only on the relationship between labor and management, but also on the general peace and progress of society and economic well-being of the State.[41] This weapon is so critical that the law imposes the supreme penalty of dismissal on union officers who irresponsibly participate in an illegal strike and union members who commit unlawful acts during a strike.[42] The responsibility of the union officers, as main players in an illegal strike, is greater than that of the members as the union officers have the duty to guide their members to respect the law.[43] The policy of the State is not to tolerate actions directed at the destabilization of the social order, where the relationship between labor and management has been endangered by abuse of one party's bargaining prerogative, to the extent of disregarding not only the direct order of the government to maintain the *status quo*, but the welfare of the entire workforce though they may not be involved in the dispute.[44] The grave penalty of dismissal imposed on the guilty parties is a natural consequence, considering the interest of public welfare.[45]

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated January 23, 2013 and June 17, 2013, respectively, in CA-G.R. SP No. 125091 are **AFFIRMED.**

SO ORDERED.

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

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[41] *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA), et al.*, 552 Phil. 432, 452 (2007).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

THIRD DIVISION

[G.R. No. 208410. October 19, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARY JOY CILOT *y* MARIANO and ORLANDO BRIGOLE *y* APON,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING; ELEMENTS.— The elements of kidnapping under Article 267 of the Revised Penal Code are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.

2. ID.; ID.; ID.; ID.; THE PRIMARY ELEMENT OF KIDNAPPING IS DEPRIVATION OF LIBERTY IN ANY MANNER; CASE AT BAR.— The primary element of the crime of kidnapping is the actual confinement or restraint of the victim, or the deprivation of his liberty. It is not necessary for the victim to be locked up or placed in an enclosure; it is sufficient for him to be detained or deprived of his liberty in any manner. AAA was forcibly taken and detained at the house of appellants where she was deprived of her liberty for 12 days or from 28 December 2006 until 9 January 2007. AAA was consistently threatened by the couple. Whenever the couple would leave the house, they would padlock the door to prevent AAA from escaping. AAA is a female and was a minor at the time that she was kidnapped.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; FINDINGS OF TRIAL COURT, RESPECTED.— With respect to the perceived incredulities in the statement of AAA, we defer to the finding of the trial

court which upheld AAA's version as believable. It is well-settled 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.

4. ID.; CRIMINAL PROCEDURE; INFORMATION; SUFFICIENCY; EVERY ELEMENT CONSTITUTING THE OFFENSE MUST BE ALLEGED IN THE INFORMATION.— Section 6, Rule 110 of the Revised Rules on Criminal Procedure provides that a complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. Basic is the rule that every element constituting the offense must be alleged in the information. x x x We stressed in the case of *Dela Chica v. Sandiganbayan* that the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.

5. ID.; ID.; WHERE THERE IS CONFLICT BETWEEN THE DISPOSITIVE PART AND THE BODY OF THE DECISION, THE FORMER PREVAILS; CASE AT BAR.— Instead of convicting appellants of the separate offenses of kidnapping and rape as charged in three separate informations, the trial court found appellants guilty of the special complex crime of kidnapping with rape. x x x [W]e defer to the general rule that where there is a conflict between the *fallo*, or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing. We are aware of an exception to the aforestated rule, *i.e.*, where one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion,

the body of the decision will prevail. The mistake contemplated in the exception refers to a clerical error. x x x The mistake committed by the trial court is far from being clerical or inadvertent. It acquitted appellants based on its flawed reliance to an information which it thought was sufficient to charge and convict appellants of the crime of kidnapping with rape. The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same cannot be appealed nor reopened because of the doctrine that nobody may be put twice in jeopardy for the same offense. Appellants have been erroneously but formally acquitted by the trial court. That judgment of acquittal is a final verdict. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*. Said error unfortunately downgrades the crime to kidnapping and completely takes rape out of the picture albeit proven during trial.

6. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING; PENALTY.— The prescribed penalty for kidnapping under Article 267 of the Revised Penal Code, as amended, is *reclusion perpetua* to death. Absent any mitigating or aggravating circumstances which attended the commission of the crime, we impose the penalty of *reclusion perpetua.* A modification on the award of damages is in order. In line with recent jurisprudence, we decrease the award in civil indemnity and moral damages to ₱75,000.00 each and we increase the exemplary damages to ₱75,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For review is the Decision[1] dated 26 September 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04249 affirming the

[1] *Rollo*, pp. 2-18; Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. concurring.

judgment of conviction of appellants Mary Joy Cilot y Mariano (Mary Joy) and Orlando Brigole y Apon (Orlando) by the Regional Trial Court (RTC) of Pasig City, Branch 69 for the special complex crime of kidnapping with rape.

Appellants were charged under four separate Informations which read:

Criminal Case No. 134484-H

That on or about the 8th day of January 2007, in the City of [PPP], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, with the use of a gun, a deadly weapon and with lewd design, by means of force, threat and intimidation, Orlando Brigole, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one [AAA],[2] seventeen years old (17), a minor, against her will and without her consent.[3]

Criminal Case No. 134485-H

That on or about the 8th day of January 2007, in the City of [PPP], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, with the use of a gun, a deadly weapon and with lewd design, by means of force, threat and intimidation, May Joy M. Cilot, did, then and there wilfully, unlawfully and feloniously insert her finger into the genital or [vagina] of one [AAA], seventeen years old (17), a minor, against her will and without her consent.[4]

Criminal Case No. 134486-H

That on or about the 28th day of December 2006, in the City of (PPP), Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, being then a private individual and without authority of law or justifiable reason, did, then and there wilfully, unlawfully and feloniously kidnap one

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[2] The real name of the victim shall not be disclosed to protect her privacy and a fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703, 705 (2006).

[3] Records, p. 1.

[4] *Id*. at 15.

[AAA], seventeen years old (17), a minor, attended by the qualifying circumstance of extorting ransom from BBB, minor, against their will and prejudice.[5]

Criminal Case No. 134487-H

That on or about the 9th day of January, 2007, in the City of [PPP], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously have in his possession, direct custody and control one (1) grenade ("Granada") which is an explosive, without first securing the necessary license or permit from the proper authorities.[6]

The facts are as follows:

AAA, then seventeen (17) years old, was employed as a sales lady at a drug store in PPP City. She first met Mary Joy when the latter went to the drug store on 7 December 2006 and introduced herself as a relative of AAA. Mary Joy promised AAA an overseas work for a fee. Thus, AAA gave Mary Joy a total of ₱1,500.00. On 28 December 2006 at around 6:00 a.m., AAA went for a jog. When she passed by the house of Mary Joy, the latter suddenly grabbed her and forced her to enter the house. Thereat, Mary Joy took AAA's cellular phone and sent a message to AAA's female employer that she left the store because the former's husband had been abusing her. Mary Joy threatened AAA with a gun and a grenade if AAA would try to escape. AAA was detained from 26 December 2006 until 9 January 2007. On 8 January 2007 at around 11:00 p.m., AAA was awakened by Mary Joy's live-in partner, Orlando. Orlando kicked AAA and dragged her into the bed that he and Mary Joy shared. Orlando forced AAA to lie down. Mary Joy held AAA's breast, removed her bra, and inserted her finger into AAA's vagina. Thereafter, Orlando inserted his penis twice into AAA's vagina. AAA was crying and at the same time trying to resist the couple's advances but to no avail. On the following day, Mary Joy brought AAA to a mall in Bicutan to

[5] *Id*. at 17.

[6] *Id*. at 19.

meet with AAA's relatives regarding AAA's alleged debt to Mary Joy. When they were met by AAA's aunt, uncle and sister, they took AAA from Mary Joy and brought her to a police station to report the incident. Appellants were arrested at their house.[7]

CCC, AAA's sister, testified that while AAA was missing, Mary Joy was collecting payments from her for AAA's alleged debt. It was Mary Joy who informed CCC that she could meet her sister at a mall in Bicutan.[8]

AAA was subjected to a medical examination. According to Medico-Legal Report No. R07-0079 dated 15 January 2007, AAA was found to have suffered a deep healed laceration at 4 and 9 o'clock positions and shallow healed laceration at 7 o'clock position in her hymen; and one (1) contusion on the proximal 3rd of her right thigh, measuring 2x1 cm., 11 cm. to its midlines.[9]

For the part of the defense, Mary Joy testified that Orlando is her live-in partner. She first met AAA when she went to the drug store to buy a pregnancy test kit. They eventually became friends and AAA even confided to Mary Joy that she was being molested by her male employer. On 29 December 2006, AAA went to Mary Joy's house and stayed there until 9 January 2007. On 3 January 2007, Mary Joy scolded AAA for coming home drunk. On 9 January 2007, Mary Joy sent AAA off to her aunt. At around 3:00 p.m., several policemen went to her house to conduct a search. The policemen took several of their things and placed them under arrest. Mary Joy denied that she and Orlando sexually abused AAA.[10]

Orlando related that he was informed by Mary Joy that AAA will be coming to their house because she was abused by her male employer. He advised AAA to report the incident to the

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[7] *Rollo,* pp. 6-8.

[8] Records, p. 230.

[9] *Id*. at 184.

[10] *Rollo,* p. 8.

police but the latter refused to do so. He recalled telling Mary Joy about AAA's coming home drunk. He denied raping AAA and claimed that he even treated her like a sister. He surmised that AAA filed charges against them in retaliation for scolding her.[11]

On 3 September 2009, the trial court rendered a Decision finding appellant guilty of the crime charged, thus:

> WHEREFORE, finding accused Mary Joy Cilot and Orlando Brigole guilty beyond reasonable doubt in Criminal Case No. 134486-H for a special complex crime of Kidnapping with Rape under Art. 267 of the Revised Penal Code, as amended by RA No. 7659, this Court hereby sentences each accused to suffer the penalty of Reclusion Perpetua without eligibility of parole; and to pay in solidum AAA the amount of Php 100,000.00 for moral damages; Php 100,000.00 for civil indemnity and Php 50,000.00 for exemplary damages.
>
> In Criminal Cases Nos. 134484-H and 134485-H, accused Brigole and Cilot are Acquitted while in Criminal Case No. 134487, accused Brigole is also Acquitted.[12]

In convicting appellants for the crime of kidnapping with rape, the trial court relied heavily on the testimony of AAA who was considered by the court as having testified candidly and truthfully that she was kidnapped and raped by appellants. The trial court also found that it was not sufficiently established that the purpose of kidnapping is to extort ransom from AAA or her relatives.

Strangely, despite a finding of rape, the trial court acquitted appellants in Criminal Case Nos. 134484-H and 134485-H.

On 26 September 2012,[13] the Court of Appeals affirmed appellants' conviction for the special complex crime of kidnapping with rape.

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[11] Records, pp. 234-235.

[12] *Id*. at 240.

[13] *Id*. at 238.

In a Resolution[14] dated 23 September 2013, the Court required the parties to simultaneously file their respective supplemental briefs. Both parties however manifested that they are adopting their briefs filed before the Court of Appeals.[15]

In their Brief,[16] appellants argue that AAA's testimony cannot support a judgment of conviction. First, appellants point out that while AAA testified that she was sexually abused on 8 January 2007, the medical examination conducted two (2) days later revealed that AAA had healed lacerations which indicate that the incident would have occurred four (4) to ten (10) days prior to the examination. Second, appellants asserted that it is unbelievable for both appellants to conspire in sexually abusing AAA due to alleged illegal drug use which was not proven during the trial. Third, appellants stressed that Mary Joy was four (4) months pregnant at that time of the incident, hence, incapable of dragging AAA all by herself considering her physical condition. Fourth, appellants find it strange for AAA's sister to report her disappearance only on 2 January 2007. In sum, appellants fault the trial court for misapprehending and misinterpreting the facts and circumstances of the case thus warranting their acquittal.

The issue for resolution is whether appellants have been proven guilty beyond reasonable doubt of the special complex crime of kidnapping with rape.

At the outset, we note that there are errors pertaining not only to the *fallo* of the trial court's decision but on the designation of the offense committed well.

There are a total of four (4) Informations filed against appellants:

1. Criminal Case No. 134484-H for rape against Orlando;

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[14] *Rollo*, pp. 25-26.

[15] *Id*. at 28-29 and 35-36.

[16] CA *rollo*, pp. 61-72.

2. Criminal Case No. 134485-H for rape through sexual assault against Mary Joy;

3. Criminal Case No. 134486-H for kidnapping against appellants; and

4. Criminal Case No. 134487-H for illegal possession of an explosive against Orlando.

Based on the evidence adduced during trial, appellants were indeed guilty of kidnapping and rape.

The evidence of the prosecution, particularly the testimony of AAA and the medical report overwhelmingly establish appellants' guilt beyond reasonable doubt.

AAA clearly pointed to appellants as the perpetrators, who conspired to commit the crime of kidnapping, to wit:

Q: Now do you remember where were you on December 28, 2006 at around 6:30 in the morning?
A: I was in front of the house where I was staying because I will go on jogging, Sir.

Q: Where is your 'tinutuluyan' located?
A: Upper Bicutan, Taguig City, sir.

x x x x x x x x x

Q: While you were having an exercise at that particular time do you remember any unusual incident that happened?
A: While I was jogging, I passed by their house then she grabbed me.

Q: Where is their house located?
A: Also at Upper Bicutan, sir.

x x x x x x x x x

Q: Now whom are you referring to when you said she grabbed you?
A: Ate joy, sir.

Q: How did she grab you?
A: She forced me to go inside her house.

Q: Who were with you during that time?
A: None, sir.

Q: What happened next when she grabbed you and forced you inside her house?
A: She forced me to go inside her house then she locked the door. 'Inagaw po niya sa akin ang cellphone ko, tapos pinagtetext po niya ang amo ko na kaya daw po ako umalis dun kasi binaboy daw po ako ng amo kong lalaki tapos ginamit po niya pangalan ko."

Q: Now after she locked the door what happened next if any.
A: Then she showed me a gun and a grenade and threatened me not to try to go outside or try to escape because they will shoot me, sir.

Q: 'Nila' you are referring to they, who is the companion of Mary Joy Cilot?
A: Kuya Lando, Sir.

Q: Are you referring to Orlando Brigole y Apor, one of the accused in this case.
A: Yes, sir.

Q: Now how long have you been in the house of Mary Joy and Orlando?
A: More or less two (2) weeks, sir.

x x x x x x x x x

ATTY. LACANILAO

Q: What is the house made of?
A: Concrete, it looks like an apartment, ma'am.

Q: Was there a time when you were left alone by the accused during the day?
A: The girl sometimes leave[s] in the morning or in the afternoon but they padlock the house, ma'am.

COURT (TO THE WITNESS) – Did you attempt to leave the place?

WITNESS – I did not because they were always threatening me with the gun, Your Honor.

x x x x x x x x x

Q: Have you attempted to ask for help when you were left alone?
A: No ma'am because I was afraid and even if I shot, it cannot be heard outside. They were always pointing the gun at me.

Q: When you have (sic) the opportunity to go to the CR alone, why did you not shout?
A: Kuya Lando was threatening me and he was always pointing the gun at me, ma'am.[17]

The elements of kidnapping under Article 267 of the Revised Penal Code are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.[18]

The crime of kidnapping was proven by the prosecution. Appellants are private individuals. The primary element of the

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[17] *Rollo,* pp. 11-13.

[18] *People v. Anticamara*, 666 Phil. 484, 510-511 (2011) citing *People v. Nuguid*, 465 Phil. 495, 510 (2004).

crime of kidnapping is the actual confinement or restraint of the victim, or the deprivation of his liberty. It is not necessary for the victim to be locked up or placed in an enclosure; it is sufficient for him to be detained or deprived of his liberty in any manner. AAA was forcibly taken and detained at the house of appellants where she was deprived of her liberty for 12 days or from 28 December 2006 until 9 January 2007. AAA was consistently threatened by the couple. Whenever the couple would leave the house, they would padlock the door to prevent AAA from escaping. AAA is a female and was a minor at the time that she was kidnapped.

The crime of rape was established through AAA's further narration, thus:

Q: Now, on January 8, 2007 at around eleven o'clock in the evening, do you remember where were you on that particular date and time?
A: I was sleeping in my 'higaan' sir.

Q: Where is that 'higaan' located?
A: In their house, sir.

Q: You are referring to the house of Mary Joy and Orlando?
A: Yes sir.

Q: What were you doing at that particular time?
A: 'Natutulog po ako tapos tinadyakan po akong bigla ni Kuya Lando tapos hinila po at dinala niya ako sa higaan nila' sir.

Q: Who pulled you?
A: Kuya Lando, sir.

Q: Now what happen(ed) when you were brought to their room?
A: They forced me to lie down. They (sic) Ate Joy held my breast and removed my bra.

Q: What else happened?
A: Pagkatapos po noon, si Kuya Lando naman po, tapos piningger pa po ako ni Ate Joy.

Q: What do you mean by 'piningger'?
A: Ate Joy inserted her finger inside my private part, sir.

Q: What do you mean by 'piningger'"
A: 'Pinasok po niya ang finger niya sa ari ko.'

Q: Who?
A: Ate Joy.

Q: Now aside from that what happened next if any?
A: 'Pagkatapos po nun pinasok naman po ni Kuya Lando iyung ari niya sa ari ko, two (2) times po' sir.

Q: What was your reaction when Orlando inserted his penis to your private part?
A: Hindi po niya naano gaano kasi tinutulak-tulak ko po sila habang umiiyak po ako kasi pinipilit po nila, kasi pinapakitaan po nila ako ng baril pag hindi daw po ako pumayag, sir.

Q: What was Mary Joy doing when Orlando inserted his pivate organ to your private part?
A: She was just watching us, sir.[19]

The crime of rape was also established through the testimony of AAA that first, Mary Joy committed an act of sexual assault by inserting her finger into AAA's vagina followed by Orlando who had carnal knowledge of AAA by inserting his penis into AAA's vagina. Orlando succeeded in having carnal knowledge of AAA through the use of threat and intimidation.

Appellants question the findings of the medico-legal as inconsistent with the claim that AAA was raped just three days before she underwent a physical examination. We agree with the Court of Appeals that healed lacerations do not negate rape, thus:

The absence of fresh lacerations in AAA's hymen does not negate sexual intercourse and does not prove that she was not raped. A freshly broken hymen is not an essential element of rape. Healed lacerations

[19] *Rollo,* pp. 13-15.

do not negate rape. In fact, rupture of the hymen is not essential. In rape, complete or full penetration of the complainant's private part is not necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entrance, or at least the introduction of the male organ into the labia of the pudendum, is proved, as in the case at bar. Verily, the mere introduction of the male organ into the labia majora at the victim's genitalia, and not the full penetration of the complainant's private part, consummates the crime. Hence, the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia constitutes consummated rape. In other words, the successful penetration by the rapist of the female's genital organ is not indispensable. Penile invasion necessarily entails contact with the labia and even the briefest of contacts without laceration of the hymen is deemed to be rape.[20]

With respect to the perceived incredulities in the statement of AAA, we defer to the finding of the trial court which upheld AAA's version as believable. It is well-settled 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.[21]

Instead of convicting appellants of the separate offenses of kidnapping and rape as charged in three separate Informations, the trial court found appellants guilty of the special complex crime of kidnapping with rape. The trial court clearly relied on the last paragraph of Article 267 of the Revised Penal Code, as amended, which provides that if the victim is killed or dies as a consequence of the detention, or is raped or subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. This provision gives rise to a special complex crime, where the law provides a single penalty for two or more component offenses.[22]

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[20] *Id*. at 16-17.

[21] *People v. Mangune*, 698 Phil. 759, 769 (2012).

[22] *People v. Mirandilla, Jr.*, 670 Phil. 397, 417 (2011) citing *People v. Larrañaga*, 466 Phil. 324 (2004).

The trial court would have been correct had there been an Information specifically filed for the crime of kidnapping with rape.

Section 6, Rule 110 of the Revised Rules on Criminal Procedure provides that a complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

Basic is the rule that every element constituting the offense must be alleged in the information. The rationale of this rule has been explained in the case of *Andaya v. People*,[23] to wit:

> xxx. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[24] (Citations omitted)

We stressed in the case of *Dela Chica v. Sandiganbayan*[25] that the test in determining whether the information validly

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[23] 526 Phil. 480 (2006).

[24] *Id*. at 497.

[25] 462 Phil. 712, 719 (2003) citing *Torres v. Garchitorena*, G.R. No. 153666, 27 December 2002, *Ingco v. Sandiganbayan*, 338 Phil. 1061 (1997) and *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002).

charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.

More pertinently, in charging the commission of a complex offense, the information must allege each element of the component offenses with the same precision that would be necessary if they were made the subject of a separate prosecution.[26]

Criminal Case No. 134484-H charged Orlando only with rape. Criminal Case No. 134485-H charged Mary Joy with rape through sexual assault, while Criminal Case No. 134486-H accused appellants of kidnapping. An information charging a special complex crime of kidnapping with rape, as in this case, should include that which alleges the commission of kidnapping qualified by extortion of ransom and that which alleges rape on the same occasion. Considering that the existing Informations do not contain the essential and material ingredients for the commission of kidnapping with rape, appellants cannot be convicted for that special complex crime. Appellants can only be convicted of the separate offenses of kidnapping and rape, both of which were duly proven.

Confident that the information in Criminal Case No. 134486-H covered the crime of kidnapping with rape, the trial court acquitted appellants in three other Informations.

It was clearly stated in the body of the trial court's decision that the prosecution had proven beyond reasonable doubt that respondents raped AAA, thus:

> During the period AAA was deprived of her liberty, it was proved that [Orlando] and [Mary Joy] had a concerted action in furtherance of the crime of rape.

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[26] *People v. Guneda*, 261 Phil. 41, 52 (1990) citing *US v. Lahoylahoy and Madanlog*, 38 Phil. 330, 334 (1918).

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That AAA lodged a heinous crime against [Orlando] and [Mary Joy] because the latter reprimanded her for coming home late and drunk is simply incredible. Their denial is a negative defense and crumbles in the light of the positive assertion of AAA who testified in a candid and truthful manner. Further, the victim's account of molestation is corroborated by the medical findings of the medico-legal officer.[27]

However, we defer to the general rule that where there is a conflict between the *fallo*, or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing.[28] We are aware of an exception to the aforestated rule, *i.e.*, where one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail.[29] The mistake contemplated in the exception refers to a clerical error. In *Spouses Rebuldea v. Intermediate Appellate Court*,[30] the Court held that the trial court did not gravely abuse its discretion when it corrected the dispositive portion of its decision to make it conform to the body of the decision, and to rectify the clerical errors which interchanged the mortgagors and the mortgagee. In *People v. Lacbayan*,[31] the mistake in the dispositive portion of the decision pertains to the omission of actual damages and a wrong amount attached to moral damages when it was clear from the body of the decision that the trial court did in fact award the heirs of the victim ₱30,069.00 as actual damages and ₱100,000.00 as moral damages.

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[27] Records, pp. 236-238.

[28] *Cobarrubias v. People*, 612 Phil. 984, 996 (2009).

[29] *Metropolitan Cebu Water District v. Mactan Rock Industries*, 690 Phil. 163, 190 (2012).

[30] 239 Phil. 487, 494 (1987).

[31] 393 Phil. 800, 809 (2000).

The mistake committed by the trial court is far from being clerical or inadvertent. It acquitted appellants based on its flawed reliance to an information which it thought was sufficient to charge and convict appellants of the crime of kidnapping with rape. The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same cannot be appealed nor reopened because of the doctrine that nobody may be put twice in jeopardy for the same offense. Appellants have been erroneously but formally acquitted by the trial court. That judgment of acquittal is a final verdict. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*.[32] Said error unfortunately downgrades the crime to kidnapping and completely takes rape out of the picture albeit proven during trial.

The prescribed penalty for kidnapping under Article 267 of the Revised Penal Code, as amended, is *reclusion perpetua* to death. Absent any mitigating or aggravating circumstances which attended the commission of the crime, we impose the penalty of *reclusion perpetua*.

A modification on the award of damages is in order. In line with recent jurisprudence,[33] we decrease the award in civil indemnity and moral damages to ₱75,000.00 each and we increase the exemplary damages to ₱75,000.00.

WHEREFORE, the 26 September 2012 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04249 finding appellants Mary Joy Cilot y Mariano and Orlando Brigole y Apon guilty of the complex crime of kidnapping with rape is **REVERSED and SET ASIDE**. Appellants are instead found guilty of kidnapping. We sentence them to suffer the penalty of *reclusion perpetua* and to pay AAA the following amounts:

1. ₱75,000.00 as civil indemnity;
2. ₱75,000.00 as moral damages; and
3. ₱75,000.00 as exemplary damages.

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[32] *People v. Hon. Hernando, etc., et al.,* 195 Phil. 21, 32 (1981).

[33] *People v. Bandoquillo,* G.R. No. 221466, 20 June 2016.

All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 208535. October 19, 2016]

LEO'S RESTAURANT AND BAR CAFE, MOUNTAIN SUITE BUSINESS APARTELLE, LEO Y. LUA and AMELIA LUA, *petitioners, vs.* **LAARNE**[1] **C. DENSING,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS NOT REVIEWABLE; EXCEPTIONS; CONTRARY FINDINGS WITH THE LABOR TRIBUNALS.— As a rule, the findings of fact of the CA when fully supported by evidence are conclusive and binding on the parties and are not reviewable by the Court. However, this rule admits of exceptions including such instance where the factual findings of the CA are contrary to those of the labor tribunals. In this case, the LA and the NLRC are one in ruling that respondent was validly dismissed from work. The CA ruled otherwise. Considering these divergent positions, the Court deems it necessary to review, re-evaluate, and re-examine the findings of the CA as they are contrary to those of the LA and the NLRC.

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[*] Additional Member per Raffle dated 15 August 2016.

[1] Spelled as Laarni in some parts of the records.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; EMPLOYER; BUSINESS ENTITIES OWNED, CONTROLLED AND CONDUCTED BY THE SAME PARTIES SHALL BE TREATED AS ONE ENTITY TO PROTECT THE RIGHTS OF THIRD PERSONS.— It is settled that where it shows that business entities are owned, controlled, and conducted by the same parties, law and equity will disregard the legal fiction that they are distinct and shall treat them as one entity in order to protect the rights of third persons. Here, it appearing that Kimwa, Leo, and Amelia owned, controlled and managed the Restobar and the Apartelle, they are treated as a single entity accountable for the dismissal of respondent.

3. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL FOR JUST CAUSE; LOSS OF TRUST AND CONFIDENCE; REQUISITES.— An employer has the right to dismiss an employee for just causes, which include willful breach of trust and confidence reposed on him or her by the employer. To temper such right to dismiss, and to reconcile it with the employee's security of tenure, it is the employer who has the burden to show that the dismissal of the employee is for a just cause. Such determination of just cause must also be made with fairness, in good faith, and only after observance of due process of law. Moreover, to dismiss an employee on the ground of loss of trust and confidence, two requisites must concur: (a) the concerned employee must be holding a position of trust; and, (b) the loss of trust must be based on willful breach of trust based on clearly established facts. Loss of trust and confidence as a ground for dismissal is never intended for abuse by reason of its subjective nature. It must be pursuant to a breach done willfully, knowingly and purposely without any valid excuse. It must rest on substantial grounds and not on mere suspicion, whims, or caprices of the employer. In fine, "loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith." x x x Loss of trust and confidence must stem from dishonest, deceitful or fraudulent acts. In the absence of

such malicious intent or fraud on the part of respondent, she committed no willful breach of trust against her employer.

4. ID.; ID.; ILLEGAL DISMISSAL; DAMAGES; MORAL DAMAGES AWARDED AS EMPLOYER ACTED IN BAD FAITH; EXEMPLARY DAMAGES AWARDED AS DISMISSAL CARRIED OUT IN MALICIOUS MANNER; ATTORNEY'S FEES AWARDED AS EMPLOYEE WAS COMPELLED TO FILE A CASE TO PROTECT HER INTEREST.— Moral damages is awarded to an illegally dismissed or suspended employee when the employer acted in bad faith or fraud, or in such manner oppressive to labor or contrary to morals, good customs or public policy, as in this case. x x x For having shown bad faith or such "conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity," petitioners are liable to pay respondent moral damages amounting to ₱50,000.00. They are likewise liable to pay respondent exemplary damages amounting to ₱50,000.00 as it is also shown that her dismissal was carried out in such a malicious and oppressive manner. Such grant of exemplary damages is deemed necessary to deter employers from committing the same or similar acts. The award of attorney's fees is likewise sustained since exemplary damages is awarded here, and considering further that respondent has been compelled to file this case and incurred expenses to protect her interest.

APPEARANCES OF COUNSEL

Mateo G. Delegencia Law Office and Associates for petitioners.
Pailagao Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This is a Petition for Review on *Certiorari* assailing the November 27, 2012 Decision[2] of the Court of Appeals (CA) in

[2] CA *rollo*, pp. 332-346; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Edgardo A. Camello and Renato C. Francisco.

CA-G.R. SP No. 03222-MIN. The CA set aside the June 4, 2009[3] and July 31, 2009[4] Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-02-010081-2008, and reinstated the November 28, 2008 NLRC Resolution[5] finding illegal respondent Laarne C. Densing's (respondent) dismissal from work. Also assailed is the July 12, 2013 CA Resolution[6] denying petitioners' Motion for Reconsideration.

Factual Antecedents

On January 2, 2002, Kimwa Construction & Development Corporation (Kimwa) employed respondent as liaison officer.[7] Allegedly, Kimwa also operated Leo's Restaurant and Bar Café (Restobar), and the Mountain Suite Business Apartelle (Apartelle); on July 4, 2005, it appointed respondent as Administrative Officer/Human Resource (HR) Head of these establishments with a salary of ₱15,000.00 per month; and, said appointment took effect on October 18, 2005 when the establishments became fully operational.[8]

Thereafter, Leo Y. Lua (Leo), the Manager of the Restobar and the Apartelle, issued upon respondent a Memorandum[9] requesting her to temporarily report at Kimwa's Main Office starting December 30, 2005.

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[3] *Id*. at 33-39; penned by Commissioner Dominador B. Medroso, Jr. and concurred in by Presiding Commissioner Salic B. Dumarpa. Commissioner Proculo T. Sarmen dissented.

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

[5] *Id*. at 193-201; penned by Commissioner Proculo T. Sarmen and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Dominador B. Medroso, Jr.

[6] *Id*. at 367-368.

[7] *Id*. at 333.

[8] *Id*. at 55-56.

[9] *Id*. at 57.

On December 30, 2005, respondent received another Memorandum[10] from Leo requiring her to explain the circumstances surrounding the agreement between the Restobar and Pepsi Products Philippines, Inc. (Pepsi), and the benefits she derived therefrom. Leo accused her of having signed said contract without authority from him and of not informing him of the benefits arising from the contract. The Memorandum also indicated that Pepsi gave the Restobar 10 cases of soft drinks during its opening night, and additional 67 cases for December 2005 but its records reflected receiving only 20 out of said 67 cases.

In her Explanation,[11] respondent stated that on October 24, 2005, in the presence of Jovenal[12] Ablanque (Ablanque), Sales Manager of Pepsi, Leo verbally authorized her to sign the contract with Pepsi on behalf of the Restobar. The following day, Ablanque returned to the Restobar, and respondent signed the contract pursuant to Leo's verbal instruction. She gave no explanation anent the benefits arising from the contract as she purportedly did not intervene in Leo and Ablanque's discussion on the matter. She added that the Restobar received only 10 and additional 20 cases of Pepsi drinks, and she did not receive personal benefits arising from the contract.

On January 2, 2006, Leo issued another Memorandum[13] requiring respondent to answer why she signed the Pepsi contract even without authority to do so, and to explain whether her apology addressed to Leo was an acceptance of her fault on the charges against her.

In her Answer,[14] respondent remained firm that she did not receive any personal benefits from Pepsi. Also, she stated that she apologized to Leo because she knew that the latter had "feelings of doubt" about her but it was not because she accepted the accusations against her.

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[10] *Id*. at 58.

[11] *Id*. at 59-60.

[12] *Id*. at 75.

[13] *Id*. at 61.

[14] *Id*. at 62.

Later, in a Memorandum[15] dated January 3, 2006, respondent was required to answer these charges: 1) she committed dishonesty when she charged to the Restobar's account 50% of the food she ordered therefrom without approval of its Owner or Manager; 2) she violated her duties when she did not inform Leo of the signing of the Pepsi contract; and, 3) she failed to account for 47 soft drinks cases that Pepsi gave the Restobar.

In her Explanation,[16] respondent asserted that the charge of dishonesty was not related to the Pepsi contract such that she opted not to answer said accusation. With regard to the alleged missing Pepsi drinks, she affirmed that Pepsi clarified the matter already, particularly to where these soft drinks were placed or given.

In a Letter[17] dated January 4, 2006, Pepsi, through its Settlement and Credit Manager Jerome T. Eslabon, certified that Pepsi gave the Restobar 10 cases of Pepsi products on its opening day, and 20 cases of Pepsi 12 oz. on December 7, 2005. It stressed that it did not give cash assistance or cash equivalent to any staff of the Restobar. It also asked Leo to disregard the erroneous volume of documents it inadvertently gave him, and assured him that Pepsi already adjusted his records to reflect the correct figures.

However, on January 12, 2006, on the ground of loss of trust and confidence, Leo terminated respondent effective January 15, 2006.[18]

Respondent thus filed an Amended Complaint[19] for illegal dismissal, illegal suspension, non-payment of 13th month pay, separation pay in lieu of reinstatement, moral and exemplary

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[15] *Id*. at 63.

[16] *Id*. at 64.

[17] *Id*. at 67-68.

[18] *Id*. at 66.

[19] *Id*. at 70.

damages, and attorney's fees against Kimwa, and herein petitioners, the Restobar, the Apartelle, Leo, and/or Amelia Y. Lua (Amelia).

In her Position Paper,[20] respondent claimed that petitioners and Kimwa failed to establish that she was dismissed for valid causes. She argued that as Administrative Officer/HR Head, she was tasked to oversee the operations of the Restobar and the Apartelle, including the authority to sign the agreement with Pepsi. According to her, Leo also authorized her to sign the agreement in his behalf, and such authority was communicated to her in the presence of the Sales Manager of Pepsi.

In addition, respondent emphasized that she received no personal benefits in connection with the Pepsi contract, and there was no proof that she received anything from Pepsi. She also stressed that Pepsi was delivering its products to the Restobar and the Apartelle, not to her. In fine, she argued that her having entered the Pepsi contract was insufficient basis for petitioners and Kimwa to lose their trust in her, and use the same to terminate her.

For their part, petitioners and Kimwa, in their Position Paper,[21] argued that it was Amelia, Leo's sister, who owned the Restobar and the Apartelle. They averred that these establishments were separate entities from Kimwa, and Leo was merely its Manager. They further claimed that on October 15, 2005, respondent resigned from Kimwa and transferred to the Restobar and the Apartelle for higher pay.

In addition, petitioners and Kimwa asserted that respondent was validly terminated as she committed dishonesty, abuse of confidence, and breach of trust against her employer. They explained that respondent entered into a contract with Pepsi, whereby the Restobar committed to purchase 2,400 cases of Pepsi products per year for a period of two years or from October 2005 to October 2007. They stressed that respondent entered this contract without prior authority from Leo or Amelia, and

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[20] *Id*. at 43-53.

[21] *Id*. at 118-136.

without disclosure to them of the benefits arising therefrom. They also alleged that respondent committed dishonesty when she charged some of her meals and offer/invitation expenses to the Restobar, without approval of its Owner or Manager. They likewise stated that respondent was given opportunity to explain her side before she was terminated.

Furthermore, petitioners and Kimwa insisted that while under the employ of Kimwa, respondent received advance payment of her benefits, separation pay and other claims. They added that having received monetary benefits, respondent had no more cause of action against them.

Ruling of the Executive Labor Arbiter

On November 20, 2007, the Executive Labor Arbiter (LA) rendered a Decision[22] dismissing the Complaint for lack of merit. The LA, nonetheless, ordered petitioners and Kimwa to pay respondent separation pay amounting to ₱15,000.00.

The LA decreed that petitioners and Kimwa validly dismissed respondent on the ground of loss of trust and confidence. He pointed out that employers cannot be compelled to retain the services of their employees who were guilty of acts inimical to the interests of the employer; and, the dismissal of an erring employee was a measure of self-protection.

The LA also declared that respondent committed acts contrary to the interest of her employer when she charged personal food consumption to the Restobar, entered into an exclusive contract with Pepsi, and failed to account for the Pepsi products donated to the Restobar. He further stated that petitioners and Kimwa complied with the required procedural due process when they issued memoranda informing respondent of the charges against her and giving her notice of her dismissal.

Nevertheless, the LA granted respondent one month salary as separation pay ratiocinating that respondent entered the Pepsi

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[22] *Id*. at 170-180; penned by Executive Labor Arbiter Noel Augusto S. Magbanua.

contract in good faith and she presumed that she was authorized to enter the same.

Respondent appealed the LA Decision.

Ruling of the National Labor Relations Commission

On November 28, 2008, the NLRC issued its Resolution[23] finding respondent's dismissal illegal. It set aside the LA Decision and ordered petitioners to pay respondent backwages, separation pay, moral and exemplary damages, 13th month pay differential, and attorney's fees. The dispositive portion of the NLRC Resolution reads:

> WHEREFORE, premises laid, the appealed Decision of the Executive Labor Arbiter dated November 20, 2007 is hereby set aside and a new one is entered finding complainant Laarne Densing illegally dismissed and respondents Leo Restaurant and Bar Café and Mountain Suite Apartelle and/or Leo Y. Lua and Amelia Y. Lua, proprietors of the said establishment, to be solidarily liable to pay complainant Laarne Densing's backwages, based on her latest salary, to be computed from the date of her dismissal on January 15, 2006 up to the finality of this resolution; separation pay, based on her latest salary, to be computed from the inception of her employment on January 2, 2002 up to the finality of this Resolution; moral and exemplary damages in the amount of Fifty Thousand (Php50,000.00) each; 13th month pay differential in the amount of Php1,250.00; and ten percent (10%) attorney's fees computed from the total monetary awards.
>
> SO ORDERED.[24]

According to the NLRC, respondent's claim that she had the authority to enter the contract with Pepsi was supported by evidence, which included the Sworn Statement of the Sales Manager of Pepsi, and a Certification from concerned Pepsi Managers that Pepsi donated only 10 cases of softdrinks and additional 20 cases of Pepsi 12 oz. to the Restobar.

The NLRC added that even assuming that respondent was without explicit authority from the owner of the Restobar, she still validly

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[23] *Id.* at 193-201.

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

entered the contract with Pepsi as the signing thereof was within her duty as the one in charge of the operations of the Restobar. It also noted that there was no showing that respondent was ill-motivated in signing the Pepsi contract; and she signed it to the best interest of the Restobar.

The NLRC ruled that the imputation that respondent charged food to the Restobar was related to her representation privilege granted her by the Restobar; and, there was no evidence that she abused this privilege.

Petitioners and Kimwa moved for a reconsideration of the November 28, 2008 NLRC Resolution.

On June 4, 2009, the NLRC granted the Motion for Reconsideration. It set aside its November 28, 2008 Resolution, and dismissed the Complaint for lack of merit.[25]

In reversing itself, the NLRC held that respondent's functions did not include any authority to sign or execute contracts for and in behalf of the Restobar. It added that even assuming that Leo verbally authorized her to sign the Pepsi agreement, respondent signed the same in her name, as if she was the Restobar's owner. It also held that if not for the fact that respondent was suspended and later dismissed, the whereabouts of the donated Pepsi products would not have been traced. It likewise faulted respondent for charging 50% of her meals to the Restobar without approval from its Owner or Chief Officer. It added that respondent was given opportunity to be heard when various memoranda were issued to her.

On July 31, 2009, the NLRC denied[26] respondent's Motion for Reconsideration.

Ruling of the Court of Appeals

Respondent filed with the CA a Petition for *Certiorari* essentially reiterating that she was illegally dismissed.

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[25] *Id*. at 33-39.

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

On November 27, 2012, the CA rendered the assailed Decision[27] setting aside the June 4, 2009 and July 31, 2009 Resolutions of the NLRC, and reinstating the November 28, 2008 NLRC Resolution.

The CA reasoned that as Administrative Officer/HR Head, respondent held a position of trust and confidence. Nevertheless, it explained that petitioners failed to prove that respondent committed any of the following acts imputed against her: a) signing the Pepsi agreement on behalf of the Restobar without authority from Leo; b) failure to account for the products donated by Pepsi to the Restobar; and, c) unauthorized charges of food on the account of the Restobar.

The CA stressed that the foregoing grounds had been adequately passed upon in the NLRC November 28, 2008 Resolution before it reversed itself and issued its June 4, 2009 and July 31, 2009 Resolutions. It added that even if respondent had no express authority to sign the agreement with Pepsi, her having entered it was not sufficient to dismiss her from work, especially in the absence of malicious intent or fraud on her part. It pointed out that the Restobar did not suffer damage because of respondent's act.

According to the CA, respondent even acted in good faith when she signed the contract with Pepsi on the impression that it was part of her duties and responsibilities. It also quoted with approval the November 28, 2008 NLRC Resolution declaring that there was no evidence that respondent abused her representation privilege, which included the charging of food expense when entertaining guests of the Restobar. Finally, it held that respondent did not deserve the penalty of dismissal especially so since she committed no prior infractions in her more than three years of service.

On July 12, 2013, the CA denied[28] petitioners' Motion for Reconsideration.

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[27] *Id.* at 332-346.

[28] *Id.* at 367-368.

Petitioners thus filed this Petition raising these grounds:

1. [T]he Honorable Appellate Court erred in [a]ccepting the [t]heory of the Respondent that Kimwa Construction operated Leo's Restobar or Leo's Restaurant and Bar Café, Mountain Suite Business Apartelle.[29]

2. [T]he Honorable Appellate Court erred when it [h]eld that x x x to justify the dismissal of an employee base[d] on loss of trust and confidence, the acts of said employee should be proven by substantial evidence and founded on clearly established facts.[30]

3. [T]he Petition for Review [r]aises a question of law and of facts that justif[y r]eview of the Appellate Court's Decision and its denial of the Motion for Reconsideration.[31]

4. [T]he Appellate Court also erred in [granting] Moral and Exemplary Damages [to respondent].[32]

Petitioners argue that the CA erred in holding that Kimwa owned and operated the Restobar and the Apartelle. They assert that these establishments are single proprietorships owned by Amelia and managed by Leo. They also asseverate that there are sufficient bases to dismiss respondent as she signed the exclusivity contract with Pepsi as if she was the owner of the Restobar, and she did not account for the products donated by Pepsi to the latter. Finally, they submit that respondent is not entitled to moral and exemplary damages as they did not act in bad faith in dismissing her.

Respondent, on her end, counters that although she held a position of trust and confidence, there is no showing that she committed willful breach of trust against her employer. She argued that she acted in good faith when she signed the exclusivity

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[29] *Rollo*, p. 17.

[30] *Id.* at 18.

[31] *Id.* at 22.

[32] *Id.*

contract with Pepsi such that there is no reason to hold that she committed any dishonest conduct that would warrant her employer's loss of trust in her.

Issue

Whether respondent was validly dismissed on the ground of loss of trust and confidence.

Our Ruling

The Court denies the Petition.

As a rule, the findings of fact of the CA when fully supported by evidence are conclusive and binding on the parties and are not reviewable by the Court. However, this rule admits of exceptions including such instance where the factual findings of the CA are contrary to those of the labor tribunals.[33]

In this case, the LA and the NLRC are one in ruling that respondent was validly dismissed from work. The CA ruled otherwise. Considering these divergent positions, the Court deems it necessary to review, re-evaluate, and re-examine the findings of the CA as they are contrary to those of the LA and the NLRC.[34]

First, petitioners deny that Kimwa owned and operated the Restobar and the Apartelle. They claim that Amelia owned these establishments, and Leo only managed them.

The Court is unconvinced.

As will be discussed hereunder, sufficient pieces of evidence show that Kimwa, Leo, and Amelia owned, managed, and operated the Restobar and the Apartelle. They also continuously employed respondent, previously as liaison officer and thereafter as Administrative Officer/HR Head of the Restobar and the Apartelle.

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[33] *Torres v. Rural Bank of San Juan, Inc*., 706 Phil. 355, 368 (2013).

[34] *Id.*

On July 4, 2005, while respondent was still a liaison officer of Kimwa, Leo, as "Proprietor/Chief Executive Officer of Kimwa Construction & Development Corp./Mountain Suite Business Apartelle" appointed her as Administrative Officer/HR Head of the Restobar and the Apartelle to be effective as soon as the establishments were officially operational.[35] On October 19, 2005, Leo, in the same capacity as cited above, confirmed the appointment of respondent and declared its effectivity beginning October 18, 2005.[36]

Moreover, in his January 2, 2006 Memorandum,[37] while respondent was acting as Administrative Officer/HR Head of the Restobar and the Apartelle, Leo required her to temporarily report at Kimwa's Main Office. Apart from this, all Memoranda[38] to Explain issued by Leo to respondent as well as the Notice[39] of her Termination were written under the heading "Kimwa Construction & Dev. Corp." It is also worth noting that the Restobar is a namesake of Leo as the same is named "Leo's Restaurant and Bar Café." As regards Amelia, petitioners repeatedly alleged that she is the owner of the Restobar and the Apartelle and she never disputed this matter.

At the same time, it is settled that where it shows that business entities are owned, controlled, and conducted by the same parties, law and equity will disregard the legal fiction that they are distinct and shall treat them as one entity in order to protect the rights of third persons. Here, it appearing that Kimwa, Leo, and Amelia owned, controlled and managed the Restobar and the Apartelle, they are treated as a single entity accountable for the dismissal of respondent.[40]

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[35] CA *rollo*, p. 55.

[36] *Id*. at 56.

[37] *Id*. at 57.

[38] *Id*. 57-58, 61, 63, 65.

[39] *Id*. at 66.

[40] See *Vicmar Development Corporation v. Elarcosa*, G.R. No. 202215, December 9, 2015.

Based on the foregoing, petitioners continually employed respondent from the time she was assigned in Kimwa until she was appointed Administrative Officer/HR Head of the Restobar and the Apartelle.

Second, petitioners argue that respondent was validly terminated for loss of trust and confidence.

Such argument is without merit.

An employer has the right to dismiss an employee for just causes, which include willful breach of trust and confidence reposed on him or her by the employer. To temper such right to dismiss, and to reconcile it with the employee's security of tenure, it is the employer who has the burden to show that the dismissal of the employee is for a just cause.[41] Such determination of just cause must also be made with fairness, in good faith, and only after observance of due process of law.[42]

Moreover, to dismiss an employee on the ground of loss of trust and confidence, two requisites must concur: (a) the concerned employee must be holding a position of trust; and, (b) the loss of trust must be based on willful breach of trust based on clearly established facts.[43]

Loss of trust and confidence as a ground for dismissal is never intended for abuse by reason of its subjective nature. It must be pursuant to a breach done willfully, knowingly and purposely without any valid excuse. It must rest on substantial grounds and not on mere suspicion, whims, or caprices of the employer.[44]

In fine, "loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily

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[41] *Torres v. Rural Bank of San Juan, Inc.*, *supra* note 33 at 369.

[42] *Lima Land, Inc. v. Cuevas*, 635 Phil. 36, 48 (2010).

[43] *Torres v. Rural Bank of San Juan, Inc.*, *supra* note 33 at 369-370.

[44] *Lima Land, Inc. v. Cuevas*, *supra* note 42 at 49-50.

asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."[45]

Here, respondent, as Administrative Officer/HR Head of the Restobar and the Apartelle, had the following duties and functions:

1. Has the authority/information in all operation, administrative and functional matters.
2. Reports directly to the owner.
3. Oversees the entire operations of the business that includes over-all property/furnitur[e] maintenance & expenditures.
4. Handles all employees of the establishments.
5. Carries out HR policies & procedures[.]
6. Responsible in the recruitment, screening & selection of new employment for vacant position.
7. Plans & conducts new employee orientation to foster positive attitude towards company goals.
8. Develops & maintains a human resourc[e] system that meets top management information needs.
9. Wage and salary administration.
10. Labor & Employee relations, welfare & benefits.[46]

As far as the first requisite is concerned, respondent is shown to occupy a position of trust as her managerial work was directly related to management policies, and generally required exercise of discretion and independent judgment.[47]

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[45] *General Bank & Trust Co. v. Court of Appeals,* 220 Phil. 243, 252 (1985).

[46] CA *rollo,* p. 74.

[47] *M+Z Zander Philippines, Inc. v. Enriquez,* 606 Phil. 591, 607 (2009).

Nonetheless, the second requirement is wanting since petitioners failed to prove that their loss of trust on respondent was founded on clearly established facts.

Records show that on December 30, 2005, Leo required respondent to explain her supposed infractions when she signed, without the approval of the owner, the contract between the Restobar and Pepsi; and her failure to account the items Pepsi donated to the Restobar.

Respondent aptly explained these matters to Leo. According to her, Leo verbally authorized her to sign the agreement with Pepsi. This verbal instruction was given in the presence of Ablanque, Sales Manager of Pepsi.

In his Affidavit[48] dated February 9, 2006, Ablanque corroborated respondent's assertion. He certified that during his visits in the Restobar, he discussed with Leo his proposal of an exclusivity contract between Pepsi and the Restobar. In the course of their negotiation in September 2005, Leo agreed to the contract and authorized respondent to sign the same.

Also, as declared by the CA, even granting for the sake of argument that respondent signed the Pepsi contract without the express authority from Leo, her act was well within her functions. As above quoted, respondent 1) had the authority in all operational, administrative and functional matters of the Restobar and the Apartelle; and, 2) had the duty to oversee the entire operations of the business, including the over-all property/ furniture, maintenance and expenditures.[49]

Therefore, having entered the Pepsi contract is not sufficient basis for petitioners to lose their trust in respondent. Leo authorized her to enter said agreement. Even assuming that there was no explicit order for her to do so, respondent still acted within her authority as in-charge of all operation, administrative and functional matters of the establishments.

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[48] CA *rollo*, p. 75.

[49] *Id.* at 74.

Notably, although the LA ruled that respondent was validly dismissed, the LA (in granting separation pay), recognized that respondent acted in good faith when she entered into the Pepsi contract, *viz.*:

> [Respondent] x x x nonetheless entered into said agreement in good faith. [Respondent] presumed that she was authorized to enter into said Exclusivity Agreement. In this regard, the undersigned is inclined to grant [respondent's] claim for separation pay considering that her dismissal is premised on a vague authority. x x x[50]

Indeed, there was no malice or any fraudulent intent on the part of respondent when she signed the Pepsi contract. There is likewise no evidence that she personally benefited therefrom. In fact, the Restobar itself received the items donated by Pepsi, and the Restobar did not suffer any damage arising from the Pepsi contract.

Loss of trust and confidence must stem from dishonest, deceitful or fraudulent acts. In the absence of such malicious intent or fraud on the part of respondent, she committed no willful breach of trust against her employer.[51]

In addition, the Court finds that the charge that respondent failed to account for a certain number of products Pepsi donated to the Restobar is without basis.

On January 4, 2006, Pepsi clarified that it donated only 10 cases of its products on the opening night of the Restobar, and an additional 20 cases of Pepsi 12 oz. on December 7, 2005. It added that Pepsi gave no other donation to the Restobar or its staff. Pepsi admitted its lapses, and apologized to Leo; it also requested him to disregard the inadvertent entries in the documents it gave him.

Since Pepsi clarified the matter and as established, there is no unaccounted donation made by Pepsi to the Restobar, then the allegation – that respondent committed loss of trust because of unaccounted donation from Pepsi – is untenable. Indeed, petitioners'

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[50] *Id.* at 179.

[51] *Lima Land, Inc. v. Cuevas*, *supra* note 42 at 51-52.

loss of trust and confidence was merely simulated. It was arbitrarily asserted despite sufficient evidence to the contrary.[52]

Moreover, the charge of dishonesty against respondent for purportedly charging 50% of the food she personally ordered to the account of the Restobar is unsubstantiated. This accusation was cited in Leo's January 3, 2006 Memorandum but was not at all specified in the Notice of Termination against respondent as said notice centered on respondent's act of having entered the contract with Pepsi. In any case, as correctly observed in the November 28, 2008 Resolution of the NLRC, Restobar "was not really saddled by those entertainment expenses because the foods and meals were eventually deducted against [respondent's] salary, which for one reason or another [respondent] offered no objection."[53]

Finally, the Court sustains the grant of moral and exemplary damages, and attorney's fees in favor of respondent.

Moral damages is awarded to an illegally dismissed or suspended employee when the employer acted in bad faith or fraud, or in such manner oppressive to labor or contrary to morals, good customs or public policy,[54] as in this case.

As discussed, petitioners primarily charged respondent of having entered the contract with Pepsi without authority from the Owner or the Manager of the Restobar. Nevertheless, as also established, Leo was well aware of this contract, as Pepsi itself attested. The Restobar also directly received the Pepsi products. Moreover, despite respondent having explained herself, and Pepsi having fully and timely clarified the matters surrounding the contract, petitioners still dismissed respondent. It thus appears that such dismissal was pre-determined by petitioners even before respondent explained herself regarding the charges against her.

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[52] *General Bank & Trust Co. v. Court of Appeals*, *supra* note 45.

[53] CA *rollo*, p. 199.

[54] *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 458.

For having shown bad faith or such "conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity,"[55] petitioners are liable to pay respondent moral damages amounting to ₱50,000.00. They are likewise liable to pay respondent exemplary damages amounting to ₱50,000.00 as it is also shown that her dismissal was carried out in such a malicious and oppressive manner. Such grant of exemplary damages is deemed necessary to deter employers from committing the same or similar acts. The award of attorney's fees is likewise sustained since exemplary damages is awarded here, and considering further that respondent has been compelled to file this case and incurred expenses to protect her interest.[56]

To recapitulate, in order to dismiss an employee on the ground of loss of trust and confidence, the employee must be guilty of an actual and willful breach of duty duly supported by substantial evidence.[57] Since petitioners failed to show that respondent actually and willfully breached their trust, then the CA properly ruled that petitioners dismissed her without any valid cause. Henceforth, the CA properly set aside the NLRC Resolutions dated June 4, 2009 and July 31, 2009, and reinstated the NLRC Resolution dated November 28, 2008.

WHEREFORE, the Petition is **DENIED**. The Decision dated November 27, 2012 and Resolution dated July 12, 2013 of the Court of Appeals in CA-G.R. SP No. 03222-MIN are **AFFIRMED**.

SO ORDERED.

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

Leonen, J., on official leave.

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[55] *Id*.

[56] *Id*. at 464-466.

[57] *Lima Land, Inc. v. Cuevas*, *supra* note 42 at 50.

SECOND DIVISION

[G.R. No. 215802. October 19, 2016]

RIZALINA GEMINA, ROSARIO ACANTILADO, JUANITA REYES, EFREN EUGENIO, ROMELIA EUGENIO, AMADOR EUGENIO, JR., ANTONIO EUGENIO, LERMA E. RIBAC, ELVIRA E. SIMEON and TOMAS EUGENIO, all represented by CANDIDO GEMINA, JR., *petitioners, vs.* **JUANITO EUGENIO, LOLITA EUGENIO-SEVILLA, BONIFACIO EUGENIO, ELEONOR EUGENIO, JOSE EUGENIO, and the SPOUSES LAUREL AND ZENAIDA MARIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ORDINARY CIVIL ACTION AND SPECIAL PROCEEDING, DISTINGUISHED.— An ordinary civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. A special proceeding, on the other hand, is a remedy by which a party seeks to establish a status, a right or a particular fact.

2. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTY-IN-INTEREST; ONE WHO STANDS TO BE BENEFITED OR INJURED BY THE JUDGMENT IN THE SUIT OR THE ONE ENTITLED TO THE AVAILS THEREOF.— The Rules of Court provide that only a real party-in-interest is allowed to prosecute and defend an action in court. A real party-in-interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof. Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. A plaintiff is a real party in interest when he is the one who has a legal right to enforce or protect.

3. ID.; ID.; ORDINARY CIVIL ACTIONS; A DECLARATION OF HEIRSHIP IS IMPROPER IN AN ORDINARY CIVIL ACTION BECAUSE THE MATTER IS WITHIN THE EXCLUSIVE COMPETENCE OF THE COURT IN A SPECIAL PROCEEDING; EXCEPTION.— In cases wherein the alleged heirs of a decedent, in whose name a property was registered, sue to recover the said property through the institution of an ordinary civil action, such as a complaint for reconveyance and partition or nullification of transfer certificate of titles and other deeds or documents related thereto, the Court has consistently ruled that a declaration of heirship is improper in an ordinary civil action because the matter is within the exclusive competence of the court in a special proceeding. x x x In the case at bench, while the complaint was denominated as an action for annulment of instrument, a review of the allegations therein reveals that the right being asserted by the petitioners is their right as heirs of Spouses Eugenio. The petitioners, however, have yet to substantiate their claim as the legal heirs of Spouses Eugenio who are, thus, entitled to the subject property. Neither is there anything in the records of this case which would show that a special proceeding had been instituted to have themselves declared as heirs of Spouses Eugenio. Thus, there is a need to establish their status as such heirs in the proper forum. By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with if it appears from the records of the case that the only property left by the decedent was the subject matter of the case and that the parties had already presented evidence to establish their right as heirs of the decedent, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, could not be re-opened. Here, none of the foregoing exceptions, or any of similar nature, appears to exist.

4. ID.; ID.; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION; MAY BE WAIVED IF NOT RAISED IN A MOTION TO DISMISS.— The RTC's dismissal of the case for failure to state a cause of action should be treated as dismissal for lack of cause of action for it was made after the trial on the merits. x x x As the rule now stands, the neglect to invoke the ground of failure to

> state a cause of action in a motion to dismiss or in the answer would result in its waiver. x x x [F]ailure to state a cause of action may be cured under Section 5, Rule 10 of the Rules of Court x x x. In this case, the ground of failure to state a cause of action was indeed waived because the respondents did not raise the same in a motion to dismiss or in their answer.

APPEARANCES OF COUNSEL

Cagatan Tamondong & Associates for petitioners.
Francisco Musni for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the October 17, 2012 Decision[1] and the November 13, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 94865, which affirmed the July 31, 2009 Decision[3] and the November 16, 2009 Order[4] of the Regional Trial Court, Branch 14, Laoag City *(RTC)* in Civil Case No. 13225-12, a case for annulment of instrument.

Spouses Candido Eugenio and Fernanda Geronimo *(Spouses Eugenio)* were the registered owners of a parcel of land designated as Lot 25742 situated in Brgy. Barit, Laoag City, with an area of 5,299 square meters and covered by Original Certificate of Title *(OCT)* No. 15218 *(subject property)*.

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[1] Penned by Associate Justice Jane Aurora C. Lantion with Presiding Justice Vicente S.E. Veloso and Associate Justice Eduardo B. Peralta, Jr., concurring; *rollo,* pp. 58-67.

[2] *Id.* at 69-70.

[3] Penned by Judge Charles A. Aguila; records, pp. 219-244.

[4] *Id.* at 292-294.

Tomas, Cristina, Severina, Catalino, and Antero, all surnamed Eugenio, were the children of Spouses Eugenio. Petitioners Rizalina Gemina, Rosario Acantilado and Juanita Reyes are the heirs of Cristina and Severina; petitioner Efren Eugenio is the heir of Catalino; petitioners Perfecto Eugenio, Romelia Eugenio, Amador Eugenio, Jr., Antonio Eugenio, Elvira Simeon, and Lerma Rebac are the heirs of Antero; and petitioner Tomas Eugenio is the heir of Tomas.

In January 2004, Rizalina learned that the subject property was sold by a certain Francisco Eugenio *(Francisco)* to respondent Spouses Laurel and Zenaida Mariano *(Spouses Mariano)*.

The petitioners, through Candido Gemina, Jr. *(Candido, Jr.)*, called the attention of Spouses Mariano regarding the subject property. According to Spouses Mariano, they bought 4,000 square meters of the subject property, brokered by Francisco, through two (2) deeds of absolute sale.

The matter not being settled, the petitioners, represented by Candido, Jr., filed a complaint for annulment of the instruments before the RTC. They alleged that they were the legal heirs of the deceased Spouses Eugenio, who were the registered owners of the subject property. They further averred that the vendors sold the subject property without the consent of all the legal heirs, thus, the contract of sale was null and void.

The RTC Ruling

In a Decision, dated July 31, 2009, the RTC dismissed the complaint on the ground that the petitioners were not the real parties in interest. It noted that from the allegations in the complaint, the right that the petitioners sought to protect or enforce was that of an heir. Thus, it held that there was a need to establish their status as heirs in a special proceeding for that purpose before they could institute an ordinary civil action to enforce their rights in the subject property and to have legal personality to seek the nullity of the instruments which affected their rights in the said property.

The RTC, however, declared that Spouses Mariano were buyers in good faith and for value. It found that the petitioners had failed to rebut the presumption of regularity of performance of duty of the notaries public who notarized the two (2) instruments of sale and the presumption of good faith in favor of the buyers. The RTC noted that the unrebutted testimony of respondent Laurel Mariano *(Laurel)*showed that he was prudent in ascertaining the identities of the vendors of the property. It was also pointed out that some of the heirs were introduced to Spouses Mariano by Francisco, who, in turn, represented to Laurel that the duplicate owner's copy of the title was lost. The RTC disposed the case in this wise:

WHEREFORE, in view of the foregoing disquisition, this court hereby renders judgment:

(1) dismissing the instant complaint on the ground that the plaintiffs are not the real parties in interest and the complaint states no cause of action;

(2) adjudging the defendants spouses Laurel Mariano and Zenaida Mariano as buyer in good faith and for value because their vendors have lawful shares, interests and participation in the portion of Lot No. 25742 and in the other property/ properties as part of the intestate estate of the late spouses Candido Eugenio and Fernanda Geronimo;

(3) ordering the plaintiffs and their henchmen, representatives or assigns to respect the ownership and possession of the defendants spouses Laurel Mariano and Zenaida Mariano over the portions sold to them;

(4) ordering the plaintiffs to pay jointly and solidarily to the defendants spouses Laurel Mariano and Zenaida Mariano the following civil liability, *viz*:

a. ₱500,000.00 as and by way of moral damages;
b. ₱100,000.00 as and by way of exemplary damages;
c. ₱75,000.00 as and by way of nominal damages;
d. ₱25,000.00 as and by way of temperate damages in

lieu of actual expenses as it cannot be ignored that the above-named defendants spouses have incurred expenses in protecting and defending their rights subject of the complaint against them.

(5) ordering the plaintiffs to pay the cost of the suit.

SO ORDERED.[5]

The petitioners moved for reconsideration, but their motion was denied by the RTC in an order, dated November 16, 2009.

Aggrieved, the petitioners filed an appeal before the CA.

The CA Ruling

In its assailed Decision, dated October 17, 2012, the CA affirmed the decision of the RTC. It agreed with the RTC that the petitioners must first institute a special proceeding to determine their status as heirs of Spouses Eugenio before they could file an ordinary civil action to nullify the deeds of sale. It found that the petitioners were not the real parties in interest to file the suit in the RTC. Hence, the CA ruled that the RTC correctly dismissed the petitioners' complaint for want of cause of action. The dispositive portion reads:

WHEREFORE, premises considered, the Decision dated July 31, 2009 of the Regional Trial Court of Laoag City, Branch 14 is hereby affirmed with modification in that the award for moral and exemplary damages are hereby deleted.

SO ORDERED.[6]

The petitioners moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated November 13, 2014.

Hence, this petition.

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

[6] *Id.* at 66.

ISSUES

I

WHETHER THE PETITIONERS MUST INSTITUTE A SPECIAL PROCEEDING TO DETERMINE THEIR STATUS AS HEIRS OF SPOUSES EUGENIO BEFORE THEY COULD FILE AN ORDINARY ACTION FOR ANNULMENT OF INSTRUMENT

II

WHETHER THE COURT COULD STILL ADJUDGE SPOUSES MARIANO AS BUYERS IN GOOD FAITH AFTER IT ALREADY RULED THAT THE PETITIONERS WERE NOT THE REAL PARTIES IN INTEREST.

The petitioners argue that the issue regarding their capacity to file the complaint and pray for the nullification of the questioned sale should be deemed waived considering that the same was never raised either as a ground in a motion to dismiss or as an affirmative defense; that when the respondents submitted in evidence the family tree showing the petitioners' lineage to the deceased registered owners, they already admitted that the petitioners were heirs of Spouses Eugenio; and that the RTC erred in adjudging Spouses Mariano as buyers in good faith because if indeed the petitioners' complaint failed to state a cause of action, the only judgment that the RTC could have rendered was a dismissal of the case.

In their Comments on the Petition for Review,[7] dated October 5, 2015, the respondents contended that the petitioners must first file a special proceeding to determine that they were the legal heirs of Spouses Eugenio before they could institute an ordinary action for the annulment of the deeds of sale; and that the petitioners did not present any evidence to prove that they were the legal heirs of the deceased registered owners.

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[7] *Rollo*, pp. 82-87.

In their Reply,[8] dated March 17, 2016, the petitioners reiterated their argument that failure to state a cause of action must be raised in a motion to dismiss or as a defense in the answer, and that failure to do so would result in a waiver of such ground; that it would be superfluous to subject the estate to administration proceedings as the petitioners had already presented evidence to establish their right as heirs of Spouses Eugenio; and that the necessity of the institution of a separate special proceeding to deal specifically on the issue of heirship would only become essential if the parties in the ordinary civil case could not agree on the matter.

The Court's Ruling

The petitioners must institute a special proceeding to determine their status as heirs of Spouses Eugenio

An ordinary civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.[9] A special proceeding, on the other hand, is a remedy by which a party seeks to establish a status, a right or a particular fact.[10]

The Rules of Court provide that only a real party-in-interest is allowed to prosecute and defend an action in court. A real party-in-interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof.[11] Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate

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[8] *Id.* at 92-103.

[9] Section 3(a), Rule 1, Rules of Court.

[10] Section 3(c), Rule 1, Rules of Court.

[11] Section 2, Rule 3, Rules of Court.

or consequential interest. A plaintiff is a real party in interest when he is the one who has a legal right to enforce or protect.[12]

In cases wherein the alleged heirs of a decedent, in whose name a property was registered, sue to recover the said property through the institution of an ordinary civil action, such as a complaint for reconveyance and partition or nullification of transfer certificate of titles and other deeds or documents related thereto, the Court has consistently ruled that a declaration of heirship is improper in an ordinary civil action because the matter is within the exclusive competence of the court in a special proceeding. In the case of *Portugal v. Portugal-Beltran*,[13] the Court wrote:

> The common doctrine in Litam, Solivio and Guilas in which the adverse parties are putative heirs to the estate of a decedent or parties to the special proceedings for its settlement is that if the special proceedings are pending, or **if there are no special proceedings filed but there is, under the circumstances of the case, a need to file one, then the determination of, among other issues, heirship should be raised and settled in said special proceedings.** Where special proceedings had been instituted but had been finally closed and terminated, however, or if a putative heir has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased.[14] (Emphasis supplied)

In the case at bench, while the complaint was denominated as an action for annulment of instrument, a review of the allegations therein reveals that the right being asserted by the petitioners is their right as heirs of Spouses Eugenio.

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[12] *Reyes v. Enriquez*, G.R. No. 162956, April 10, 2008, 551 SCRA 86, 92.

[13] 504 Phil. 456 (2005).

[14] *Id.* at 469.

The petitioners, however, have yet to substantiate their claim as the legal heirs of Spouses Eugenio who are, thus, entitled to the subject property. Neither is there anything in the records of this case which would show that a special proceeding had been instituted to have themselves declared as heirs of Spouses Eugenio. Thus, there is a need to establish their status as such heirs in the proper forum.

By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with if it appears from the records of the case that the only property left by the decedent was the subject matter of the case and that the parties had already presented evidence to establish their right as heirs of the decedent,[15] or when a special proceeding had been instituted but had been finally closed and terminated, and hence, could not be re-opened.[16]

Here, none of the foregoing exceptions, or any of similar nature, appears to exist. Moreover, the petitioners failed to substantiate their claim that they were the heirs of Spouses Eugenio because *first*, based on the testimony of petitioner Juanita Reyes, it appeared that Spouses Eugenio had other children aside from those mentioned in the complaint.[17] *Second*, the petitioners did not submit the death certificates of Spouses Eugenio. *Finally*, the entry at the back of the copy of OCT No. 15218, which was the subject of the sale between the heirs of Spouses Eugenio and a certain Josefa Z. Cu, indicated that Spouses Eugenio had left only four (4) children contrary to what the petitioners alleged in their complaint.

Thus, with these circumstances, there is a greater necessity for the institution of a special proceeding for the determination of the lawful heirs of Spouses Eugenio.

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[15] *Heirs of Ypon v. Ricaforte*, 713 Phil. 570, 577 (2013).

[16] *Id.*

[17] TSN, September 8, 2005, pp. 3-6.

The RTC properly dismissed the case for lack of cause of action

The RTC's dismissal of the case for failure to state a cause of action should be treated as dismissal for lack of cause of action for it was made after the trial on the merits.

In his book entitled Remedial Law Compendium,[18] Justice Florenz D. Regalado, a recognized commentator on remedial law, explained the distinction between failure to state a cause of action and lack of cause of action:

> What is contemplated, therefore, is a failure to state a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the pleading. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence does not prove a cause of action. This is, therefore, a matter of insufficiency of evidence. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted.

As the rule now stands, the neglect to invoke the ground of failure to state a cause of action in a motion to dismiss or in the answer would result in its waiver. The reason for the deletion is that failure to state a cause of action may be cured under Section 5, Rule 10 of the Rules of Court:[19]

> Section 5. *Amendment to conform to or authorize presentation of evidence*. — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings.

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[18] Volume I, Ninth Revised Ed. (2005), p. 182.

[19] *Pacaña v. Rovila Water Supply, Inc*., 722 Phil. 460, 473 (2013).

Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

In this case, the ground of failure to state a cause of action was indeed waived because the respondents did not raise the same in a motion to dismiss or in their answer. The RTC continued to try the case and even attempted to determine if the petitioners were the lawful heirs of Spouses Eugenio. After examining the records, the Court is of the view that it is better to first resolve the issue of heirship in a separate proceeding.

The ground for dismissal being that the petitioners are not the real parties-in-interest, it was premature on the part of the RTC and the CA to declare that the respondents are buyers in good faith. Hence, this judgment is without prejudice to the filing of an action for annulment of instrument and/or reconveyance of property against the proper parties after a determination of the lawful heirs of Spouses Eugenio in a separate proceeding.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Leonen, J., on official leave.

SECOND DIVISION

[G.R. No. 218952. October 19, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AURELIO GUILLERGAN *y* GULMATICO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ASCERTAINING THE IDENTITY OF THE ILLEGAL DRUG AND/OR ILLEGAL DRUG PARAPHERNALIA SEIZED.— In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of RA 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165; and (b) there was an unbroken link in the chain of custody with respect to the confiscated items.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; SAVING CLAUSE IN CASE OF NON-COMPLIANCE THEREWITH; OF UTMOST IMPORTANCE IS THE PRESERVATION OF INTEGRITY AND THE EVIDENTIARY RULE OF THE SEIZED ITEMS.— Section 21(1), Article II of RA 9165, describes the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs x x x Section 21 is further reiterated in Section 21(a) of the IRR of RA 9165 with a saving clause in case of non-compliance, "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." In *People v. Dimaano*, we held that the purpose of Section 21 is to protect the accused from malicious imputations of guilt by abusive police officers. However, Section 21 cannot be used to thwart the legitimate efforts of law enforcement agents. Slight infractions or nominal deviations by the police from the prescribed method of handling

the *corpus delicti* should not exculpate an otherwise guilty defendant. Substantial adherence to Section 21 will suffice as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. x x x In *People v. Lucio*, we held that failure to strictly comply with Section 21(1), Article II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items which the prosecution has fully established in this case.

3. ID.; ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED FROM THE SEIZURE OF THE ILLEGAL DRUG TO ITS SUBMISSION TO THE COURT.— In *People v. Kamad*, we held that the following links must be established in the chain of custody: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Rameses M. Padilla for appellant.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 14 January 2015 of the Court of Appeals (CA) in CA-G.R.

[1] *Rollo*, pp. 4-23. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

CR-HC No. 01361. The CA affirmed *in toto* the Decision[2] dated 12 May 2011 of the Regional Trial Court (RTC) of Iloilo City, Branch 36, in Criminal Case No. 05-61639, finding appellant Aurelio Guillergan y Gulmatico (Guillergan) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165[3] (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On 7 September 2005, Guillergan was charged in an Information for violation of Section II,[4] Article II of RA 9165. The Information states:

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[2] CA *rollo*, pp. 34-53. Penned by Judge Victor E. Gelvezon.

[3] 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 23 January 2002.

[4] Article II Unlawful Acts and Penalties

Section 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;
(2) 10 grams or more of morphine;
(3) 10 grams or more of heroin;
(4) 10 grams or more of cocaine or cocaine hydrochloride;
(5) 50 grams or more of methamphetamine hydrochloride or "shabu";
(6) 10 grams or more of marijuana resin or marijuana resin oil;
(7) 500 grams or more of marijuana; and
(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

That on or about the 4th day of September, 2005, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously have in his possession and control the following, to wit: 5.723 grams of crystalline substance contained in thirty nine (39) small elongated heat-sealed transparent plastic bags placed inside a plastic bottle and 0.132 gram of crystalline substance contained in four (4) heat-sealed transparent plastic packets placed in a cigarette aluminum foil or a total of 5.855 grams which turned positive to the test for methamphetamine hydrochloride (SHABU), a dangerous drug, without the authority to possess the same.[5]

On 22 September 2005, at the arraignment, Guillergan pleaded not guilty. Thereafter, at the pre-trial conference, the following facts were admitted by the parties:

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(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] CA *rollo*, p. 34.

1) The prosecution and defense stipulated that the trial court has jurisdiction to try the instant case.

2) Guillergan admitted that he is the same Aurelio Guillergan y Gulmatico charged in the Information.

During the trial, the prosecution presented four witnesses — three from the Philippine Drug Enforcement Agency (PDEA), Region 6, who were all involved in the arrest of Guillergan and the recovery of the illegal items from the latter's possession and control, namely: (1) SPO4 Glicerio Gafate, (2) PO1 Frederick Capasao, and (3) PO1 Danilo Lauron, and the last witness from the Philippine National Police (PNP) Crime Laboratory, Region 6, who examined the items subject of the case, namely (4) P/Sr. Insp. Agustina Ompoy, the Forensic Chemical Officer of the said laboratory.

The defense, on the other hand, presented (1) Guillergan, (2) Antonio Jaleco, the Barangay Captain of Brgy. Baldoza, Lapaz, Iloilo City, and (3) Reynold Blam, Barangay Kagawad of the same barangay, both of whom claimed that they were present when the house of Guillergan was searched by the PDEA.

The prosecution summed up its version of the facts: At around 9:30 in the evening of 4 September 2005, members of the PDEA, Region 6, and representatives of the media, Julius Padilla of Aksyon 5 and Rhonson Hofilena, went to Guillergan's house in Brgy. Baldoza, Lapaz, Iloilo City to implement a search warrant.[6] On the way, the PDEA team passed by the house of Brgy. Captain Jaleco and invited him to witness the implementation of the warrant. Brgy. Captain Jaleco came with Brgy. Kagawad Blam. Upon arrival at Guillergan's house, the barangay officials knocked on Guillergan's main door. Someone opened the door and the barangay officials entered the house followed by PO1 Capasao and PO1 Lauron, the PDEA members tasked to be the searching party. SPO4 Gafate and some members of the PDEA team stayed outside the house and acted as perimeter security.

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[6] Search Warrant No. 05-21 issued by Judge Lolita Contreras-Besana on 26 August 2005, effective within 10 days from date of issuance.

The search warrant was presented to Guillergan and he signed the Consent of Conduct Search. PO1 Capasao and PO1 Lauron proceeded to search Guillergan's room downstairs in the presence of the two barangay officials, the media representatives, and Au-Au, Guillergan's wife. During the room search, PO1 Capasao recovered inside the steel tube stand or brace of the bed four sachets of shabu wrapped in an aluminum cigarette foil and a plastic bottle containing 39 plastic sachets of shabu. The total weight of the 43 heat-sealed plastic sachets was 5.855 grams. Likewise, PO1 Lauron recovered money amounting to ₱2,060 inside a cabinet. They continued the search in other parts of the house, including the room upstairs, but did not find anything else.

The items recovered were brought to the living room and placed on the table. PO1 Capasao, in the presence of the barangay officials and the media representatives, listed each of the recovered items in the Certificate of Inventory/Seized Articles. After the inventory, the recovered items were placed under the custody of SPO4 Gafate, the Exhibit Custodian of PDEA, who brought said items to the PDEA office for safekeeping.

The next day, PO1 Lauron retrieved the seized items from SPO4 Gafate and in the presence of PO1 Capasao marked the items as "AG-1" to "AG-39" pertaining to the 39 elongated heat-sealed plastic sachets and "AG-40" to "AG-43" referring to the four small heat-sealed plastic sachets. The items were then brought to the Iloilo City Prosecution Office where they were inventoried in the presence of Prosecutor Durana, the barangay officials, media representative Julius Padilla, and Guillergan who all signed the inventory document. The seized items were also photographed in said office. After the inventory, the items were returned to Judge Besana who issued the warrant. Subsequently, after the items were presented in court, they were returned to the custody of PDEA. PO1 Lauron then brought the items to the PNP Crime Laboratory, Region 6, for examination. The money found, in the amount of ₱2,060, was returned to SPO4 Gafate.

On 6 September 2005, PDEA made a request to the PNP Crime Laboratory, Region 6, for the laboratory examination

of the seized items. P/ Sr. Insp. Ompoy, the Forensic Chemical Officer, testified that although it was PO1 Rizalde Magbanua, the duty officer of the crime laboratory at the time who personally received the specimens, she witnessed the receipt of said items, since she was also in the office at that time. After PO1 Magbanua recorded the receipt in the office logbook, the specimens were turned over to P/Sr. Insp. Ompoy for chemical and confirmatory tests. She took representative samples of the specimens for examination and found that the specimens contained methamphetamine hydrochloride (shabu) as indicated in Chemistry Report No. D-245-05.

The defense, on the other hand, summed up its version of the facts: At around 9:30 in the evening of 4 September 2005, members of the PDEA, Region 6, coordinated with Brgy. Captain Jaleco of Brgy. Baldoza, Lapaz, Iloilo City to implement, a search warrant at the house of Guillergan. Brgy. Captain Jaleco invited Brgy. Kagawad Blam and they both accompanied the PDEA team. Upon arrival at Guillergan's house, they were allowed to enter the house. The occupants were gathered at the terrace while the search was conducted. Nothing was recovered on the first floor but the policemen who went up the second floor announced that they recovered something there. When Brgy. Captain Jaleco went up, he was shown a bottle containing shabu. Thereafter, Guillergan was brought to Lapaz Police Station where he was detained.

In its Decision dated 12 May 2011, the RTC found Guillergan guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165. The RTC found that the accounts of the PDEA team members who conducted the search were convincing and worthy of credence. The RTC was convinced that the search of the house, together with the recovery of the items, was valid and that the prosecution had duly established the chain of custody of the recovered items. The dispositive portion of the decision states:

WHEREFORE, judgment is hereby rendered finding accused Aurelio Guillergan y Gulmatico GUILTY beyond reasonable doubt

of violation of Section 11, Article II of Republic Act No. 9165 and sentencing him to suffer an indeterminate penalty of imprisonment ranging from Twenty (20) Years and One (1) Day to life imprisonment and to pay the fine of Four Hundred Thousand (₱400,000.00) Pesos.

The shabu (Exhibits "H-l" to "H-39" and "I-l-A" to "I-l-D") subjects of the case are hereby confiscated in favor of the government and the OIC Branch Clerk of Court is directed to turn over said items to the Philippine Drug Enforcement Agency, Region 6 for proper disposition pursuant to existing rules and regulations.

However, the money amounting to ₱2,060.00 (Exhibit "J") which [has] not been shown to be [an effect] of the crime [is] ordered to be returned to the accused.

SO ORDERED.[7]

Guillergan filed an appeal with the CA. Guillergan raised a lone error by the RTC:

THE LOWER COURT ERRED IN FINDING THE GUILT OF THE ACCUSED-APPELLANT HAD BEEN PROVEN BEYOND REASONABLE DOUBT.[8]

The Ruling of the Court of Appeals

In its Decision dated 14 January 2015, the CA affirmed *in toto* the decision of the RTC. The dispositive portion of the decision states:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The assailed *Decision dated 12 May 2011* of the Regional Trial Court (RTC) of Iloilo City, 6th Judicial Region, Branch 36, in Criminal Case No. 05-61639 is AFFIRMED *in toto*.

Costs *de oficio.*

SO ORDERED.[9]

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[7] CA *rollo*, p. 53.

[8] *Rollo*, p. 10.

[9] *Id*. at 22.

Guillergan now comes before the Court assailing the decision of the CA for failure of the apprehending officers to follow the proper chain of custody in handling seized evidence.

The Ruling of the Court

The appeal lacks merit.

Guillergan insists that there had been procedural deviations from the mandatory requirements in Section 21, Article II of RA 9165 since (1) no photographs were taken of the illegal drugs; (2) the seized items were not immediately marked; (3) no evidence how the seized items were managed, preserved, and recorded from the forensic chemist until their presentation in court; and (4) the apprehending officers did not immediately deliver the seized items and the inventory to the judge who issued the search warrant.

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of RA 9165 has been complied with or falls within the saving clause provided in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165; and (b) there was an unbroken link in the chain of custody with respect to the confiscated items.[10]

Section 21(1), Article II of RA 9165, which describes the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, provides:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/ or surrendered, for proper disposition in the following manner:

[10] *People v. Alivio*, 664 Phil. 565, 576-577 (2011).

> (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.

Section 21 is further reiterated in Section 21 (a) of the IRR of RA 9165 with a saving clause in case of non-compliance, "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."

In *People v. Dimaano*,[11] we held that the purpose of Section 21 is to protect the accused from malicious imputations of guilt by abusive police officers. However, Section 21 cannot be used to thwart the legitimate efforts of law enforcement agents. Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant. Substantial adherence to Section 21 will suffice as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

Section l(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[12] defines chain of custody as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction. Such record.

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[11] G.R. No. 174481, 10 February 2016.

[12] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment. Adopted and approved on 18 October 2002.

of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and times when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *People v. Kamad*,[13] we held that the following links must be established in the chain of custody:

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

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

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

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

In the present case, the records show that PO1 Capasao made an inventory of the recovered items in the presence of Guillergan and his wife, the barangay officials, and the media representatives, as reflected in the Certificate of Inventory/Seized Articles. PO1 Capasao then turned over the said items to SPO4 Gafate, PDEA's exhibit custodian, for safekeeping. The next day, PO1 Lauron retrieved the seized items from SPO4 Gafate and in the presence of PO1 Capasao marked all 43 items and then brought them to the Iloilo City Prosecution Office. There, they were inventoried and photographed in the presence of a prosecutor, the same barangay officials, one of the media representatives who witnessed the arrest and confiscation, and Guillergan. Afterwards, the items were brought to the judge who issued the warrant, returned to the custody of PDEA and then turned over to the crime laboratory for examination. Although another officer, PO1 Magbanua, from the crime laboratory, personally received the specimens for examination from PDEA, P/Sr. Insp. Ompoy, the Forensic Chemical Officer, gave her testimony in court that she was the one who conducted chemical and confirmatory tests on said specimens which tested positive for shabu, a dangerous drug.

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[13] 624 Phil. 289, 304 (2010).

From the recitation of facts, as well as the evidence on record, we believe that the chain of custody had been sufficiently observed by the PDEA officers. The links in the chain are the following:

(1) At the house of Guillergan where the illegal drugs were found, the apprehending officer listed each of the seized items in the presence of the barangay officials, media representatives, and Guillergan himself even if no photographs were taken and the items were not marked after seizure. The items were then turned over by the apprehending officer to the custody of PDEA's exhibit custodian for safekeeping;

(2) The next day, the seized items were marked at the office of PDEA and brought to the Iloilo City Prosecution Office where they were inventoried and photographed then returned to the judge who issued the warrant;

(3) After the seized items were presented in court, the items were brought to the crime laboratory for examination; and

(4) Chemical and confirmatory tests revealed that the specimens contained shabu as indicated in the forensic chemist's report.

Here, the prosecution was able to demonstrate that the drugs seized from Guillergan were the same items presented in evidence as part of the *corpus delicti*. The testimonies of the prosecution witnesses, corroborated by the testimonies of two of the defense witnesses, established the continuous whereabouts of the exhibits consisting of the seized items, between the time they came into possession of the police officers until they were tested in the laboratory up to the time they were offered in evidence. Thus, we find no reversible error committed by the RTC and CA in convicting Guillergan of the offense charged.

Also, both the RTC and CA gave full faith and credence to the prosecution witnesses, the three PDEA officers who arrested Guillergan and recovered the illegal drugs from Guillergan's possession and control, and found that their testimonial accounts were consistent with the documentary evidence submitted in court. Both the RTC and CA also observed that no ill-motive was imputed to the PDEA team to falsely accuse and testify

against Guillergan. Thus, as police officers, they enjoy the presumption of regularity in the performance of their official duties unless proven otherwise. Further, Guillergan's defenses of denial and frame-up are inherently weak since they are self-serving and can be easily fabricated.

In sum, we find no cogent reason to depart from the decision of the RTC and CA. In *People v. Lucio*,[14] we held that failure to strictly comply with Section 21(1), Article II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items which the prosecution has fully established in this case. Further, the penalty imposed by the RTC on Guillergan for illegal possession of dangerous drugs, as provided in Section II,[15] Article II of RA 9165, is in order.

WHEREFORE, we **DISMISS** the appeal. We **AFFIRM** the Decision dated 14 January 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01361.

SO ORDERED.

Brion, del Castillo, and *Mendoza, JJ.,* concur.

Leonen, J., on official leave.

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[14] 711 Phil. 591, 612-613 (2013).

[15] SEC. 11. Possession of Dangerous Drugs. — x x x x

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; x x x

SECOND DIVISION

[G.R. No. 219037. October 19, 2016]

RCBC SAVINGS BANK, *petitioner, vs.* **NOEL M. ODRADA,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CIVIL ACTIONS; SALES; OBLIGATIONS OF THE VENDOR; IMPLIED WARRANTY AGAINST HIDDEN DEFECTS; DISCUSSED.— Under the law on sales, a contract of sale is perfected the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price which is the consideration. From that moment, the parties may reciprocally demand performance. Performance may be done through delivery, actual or constructive. Through delivery, ownership is transferred to the vendee. However, the obligations between the parties do not cease upon delivery of the subject matter. The vendor and vendee remain concurrently bound by specific obligations. The vendor, in particular, is responsible for an implied warranty against hidden defects. Article 1547 of the Civil Code states: "In a contract of sale, unless a contrary intention appears, there is an implied warranty that the thing shall be free from any hidden faults or defects." Article 1566 of the Civil Code provides that "the vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof." As a consequence, the law fixes the liability of the vendor for hidden defects whether known or unknown to him at the time of the sale. The law defines a hidden defect as one which would render the thing sold unfit for the use for which it is intended, or would diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it.

2. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; MANAGER'S CHECK; WHILE THIS COURT HAS CONSISTENTLY HELD THAT A MANAGER'S CHECK IS AUTOMATICALLY ACCEPTED, A HOLDER OTHER THAN A HOLDER IN DUE COURSE IS STILL SUBJECT

TO DEFENSES.— Jurisprudence defines a manager's check as a check drawn by the bank's manager upon the bank itself and accepted in advance by the bank by the act of its issuance. It is really the bank's own check and may be treated as a promissory note with the bank as its maker. Consequently, upon its purchase, the check becomes the primary obligation of the bank and constitutes its written promise to pay the holder upon demand. It is similar to a cashier's check both as to effect and use in that the bank represents that the check is drawn against sufficient funds. x x x [T]he mere issuance of a manager's check creates a privity of contract between the holder and the drawee bank, the latter primarily binding itself to pay according to the tenor of its acceptance. The drawee bank, as a result, has the unconditional obligation to pay a manager's check to a holder in due course irrespective of any available personal defenses. However, while this Court has consistently held that a manager's check is automatically accepted, a holder **other than a holder in due course** is still subject to defenses.

3. ID.; ID.; LIABILITY OF ACCEPTOR UNDER SECTION 62; AS A GENERAL RULE, THE DRAWEE BANK IS NOT LIABLE UNTIL IT ACCEPTS AN INSTRUMENT.— As a general rule, the drawee bank is not liable until it accepts. Prior to a bill's acceptance, no contractual relation exists between the holder and the drawee. Acceptance, therefore, creates a privity of contract between the holder and the drawee so much so that the latter, once it accepts, becomes the party primarily liable on the instrument. Accordingly, acceptance is the act which triggers the operation of the liabilities of the drawee (acceptor) under Section 62 of the Negotiable Instruments Law. Thus, once he accepts, the drawee admits the following: (a) existence of the drawer (b) genuineness of the drawer's signature; (c) capacity and authority of the drawer to draw the instrument; and (d) existence of the payee and his then capacity to endorse.

4. ID.; ID.; ID.; ID.; THE DRAWEE BANK OF A MANAGER'S CHECK MAY INTERPOSE PERSONAL DEFENSES OF THE PURCHASER OF THE MANAGER'S CHECK IF THE HOLDER IS NOT A HOLDER IN DUE COURSE.— [I]f the holder of a manager's check is not a holder in due course, can the drawee bank interpose a personal defense of the purchaser? In *Mesina v. Intermediate Appellate Court* and *United Coconut Planters Bank v. Intermediate Appellate Court* x x x

This Court ruled that the issuing bank could validly refuse payment because Mesina was not a holder in due course. Unequivocally, the Court declared: "**the holder of a cashier's check who is not a holder in due course cannot enforce such check against the issuing bank which dishonors the same**." In the same manner, in *United Coconut Planters Bank* (UCPB), this Court ruled that the drawee bank was legally justified in refusing to pay the holder of a manager's check who did not hold the check in due course. x x x The foregoing rulings clearly establish that the drawee bank of a manager's check may interpose personal defenses of the purchaser of the manager's check if the holder is not a holder in due course.

5. ID.; ID.; HOLDER IN DUE COURSE; THE LAW REQUIRES THAT A PARTY MUST HAVE ACQUIRED THE INSTRUMENT IN GOOD FAITH AND FOR VALUE; DISCUSSED.— Section 52 of the Negotiable Instruments Law defines a holder in due course as one who has taken the instrument under the following conditions: (a) That it is complete and regular upon its face; (b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact; (c) That he took it **in good faith** and **for value**; (d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. To be a holder in due course, the law requires that a party must have acquired the instrument *in good faith* and *for value*. Good faith means that the person taking the instrument has acted with due honesty with regard to the rights of the parties liable on the instrument and that at the time he took the instrument, the holder has no knowledge of any defect or infirmity of the instrument. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument would amount to bad faith. Value, on the other hand, is defined as any consideration sufficient to support a simple contract. x x x Section 58 of the Negotiable Instruments Law provides: "In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. x x x."

APPEARANCES OF COUNSEL

Agbayani Regino Amboy & Associates for petitioner.
Richard J. Nethercott for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the 26 March 2014 Decision[2] and the 18 June 2015 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 94890.

The Facts

In April 2002, respondent Noel M. Odrada (Odrada) sold a second-hand Mitsubishi Montero (Montero) to Teodoro L. Lim (Lim) for One Million Five Hundred Ten Thousand Pesos (₱1,510,000). Of the total consideration, Six Hundred Ten Thousand Pesos (₱610,000) was initially paid by Lim and the balance of Nine Hundred Thousand Pesos (₱900,000) was financed by petitioner RCBC Savings Bank (RCBC) through a car loan obtained by Lim.[4] As a requisite for the approval of the loan, RCBC required Lim to submit the original copies of the Certificate of Registration (CR) and Official Receipt (OR) in his name. Unable to produce the Montero's OR and CR, Lim requested RCBC to execute a letter addressed to Odrada informing the latter that his application for a car loan had been approved.

On 5 April 2002, RCBC issued a letter that the balance of the loan would be delivered to Odrada upon submission of the

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[1] *Rollo*, pp. 9-23. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 29-36. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.

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

[4] *Id.* at 29.

OR and CR. Following the letter and initial down payment, Odrada executed a Deed of Absolute Sale on 9 April 2002 in favor of Lim and the latter took possession of the Montero.[5]

When RCBC received the documents, RCBC issued two manager's checks dated 12 April 2002 payable to Odrada for Nine Hundred Thousand Pesos (₱900,000) and Thirteen Thousand Five Hundred Pesos (₱13,500).[6] After the issuance of the manager's checks and their turnover to Odrada but prior to the checks' presentation, Lim notified Odrada in a letter dated 15 April 2002 that there was an issue regarding the roadworthiness of the Montero. The letter states:

April 15, 2002

Mr. Noel M. Odrada
C/o Kotse Pilipinas
Fronting Ultra, Pasig City

Thru: Shan Mendez

Dear Mr. Odrada,

Please be inform[ed] that I am going to cancel or exchange the (1) one unit Montero that you sold to me thru Mr. Shan Mendez because it did not match your representations the way Mr. Shan Mendez explained to me like:

1. You told me that the said vehicle has not experience[d] collision. However, it is hidden, when you open its engine cover there is a trace of a head-on collision. The condenser is smashed,; the fender support is not align[ed], both bumper supports] connecting [the] chassis were crippled and welded, the hood support was repaired, etc.

2. The 4-wheel drive shift is not functioning. When Mr. Mendez was asked about it, he said it would not function until you can reach the speed of 30 miles.

3. During Mr. Mendez['s] representation, he said the odometer has still an original mileage data but found tampered.

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[5] *Id.* at 30.

[6] *Id.*

4. You represented the vehicle as model 1998 however; it is indicated in the front left A-pillar inscribed at the identification plate [as] model 1997.

Therefore, please show your sincerity by personally inspecting the said vehicle at RCBC, Pacific Bldg. Pearl Drive, Ortigas Center, Pasig City. Let us meet at the said bank at 10:00 A.M., April 17, 2002.

Meanwhile, kindly hold or do not encash the manager's check[s] issued to you by RCBC until you have clarified and satisfied my complaints.

Sincerely yours,

Teodoro L. Lim

Cc: Dario E. Santiago, RCBC loan
Legal[7]

Odrada did not go to the slated meeting and instead deposited the manager's checks with International Exchange Bank (Ibank) on 16 April 2002 and redeposited them on 19 April 2002 but the checks were dishonored both times apparently upon Lim's instruction to RCBC.[8] Consequently, Odrada filed a collection suit[9] against Lim and RCBC in the Regional Trial Court of Makati.[10]

In his Answer,[11] Lim alleged that the cancellation of the loan was at his instance, upon discovery of the misrepresentations by Odrada about the Montero's roadworthiness. Lim claimed that the cancellation was not done *ex parte* but through a letter[12] dated 15 April 2002.[13] He further alleged that the letter was

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[7] Records, p. 23.

[8] *Rollo*, p. 30.

[9] Civil Case No. 02-453.

[10] Branch 66, Makati City.

[11] Records, pp. 18-21.

[12] *Id.* at 23.

[13] *Id.* at 19.

delivered to Odrada prior to the presentation of the manager's checks to RCBC.[14]

On the other hand, RCBC contended that the manager's checks were dishonored because Lim had cancelled the loan. RCBC claimed that the cancellation of the loan was prior to the presentation of the manager's checks. Moreover, RCBC alleged that despite notice of the defective condition of the Montero, which constituted a failure of consideration, Odrada still proceeded with presenting the manager's checks.

It was later disclosed during trial that RCBC also sent a formal notice of cancellation of the loan on 18 April 2002 to both Odrada and Lim.[15]

The Regional Trial Court's Ruling

In its Decision[16] dated 1 October 2009, the trial court ruled in favor of Odrada. The trial court held that Odrada was the proper party to ask for rescission.[17] The lower court reasoned that the right of rescission is implied in reciprocal obligations where one party fails to perform what is incumbent upon him when the other is willing and ready to comply. The trial court ruled that it was not proper for Lim to exercise the right of rescission since Odrada had already complied with the contract of sale by delivering the Montero while Lim remained delinquent in payment.[18] Since Lim was not ready, willing, and able to comply with the contract of sale, he was not the proper party entitled to rescind the contract.

The trial court ruled that the defective condition of the Montero was not a supervening event that would justify the dishonor of the manager's checks. The trial court reasoned that a manager's

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[14] *Id.*

[15] *Rollo,* p. 30.

[16] *Id.* at 55-62. Penned by Judge Joselito Villarosa.

[17] *Id.* at 59.

[18] *Id.*

check is equivalent to cash and is really the bank's own check. It may be treated as a promissory note with the bank as maker. Hence, the check becomes the primary obligation of the bank which issued it and constitutes a written promise to pay on demand.[19] Being the party primarily liable, the trial court ruled that RCBC was liable to Odrada for the value of the manager's checks.

Finally, the trial court found that Odrada suffered sleepless nights, humiliation, and was constrained to hire the services of a lawyer meriting the award of damages.[20]

The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> (a) Directing defendant RCBC to pay plaintiff the amount of Php 913,500.00 representing the cash equivalent of the two (2) manager's checks, plus 12% interest from the date of filing of the case until fully paid;
>
> (b) Directing defendants to solidarily pay moral damages in the amount of Php 500,000.00 and exemplary damages in the amount of Php 500,000.00;
>
> (c) Directing defendants to solidarity pay attorney's fees in the amount of Php 300,000.00.
>
> Finally, granting the cross-claim of defendant RCBC, Teodoro L. Lim is hereby directed to indemnify RCBC Savings Bank for the amount adjudged for it to pay plaintiff.
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> SO ORDERED.[21]

RCBC and Lim appealed from the trial court's decision.

The Court of Appeals' Ruling

In its assailed 26 March 2014 Decision, the Court of Appeals dismissed the appeal and affirmed the trial court's 1 October 2009 Decision.

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[19] *Id.* at 60.

[20] *Id.* at 61.

[21] *Id.* at 62.

The Court of Appeals ruled that the two manager's checks, which were complete and regular, reached the hands of Lim who deposited the same in his bank account with Ibank. RCBC knew that the amount reflected on the manager's checks represented Lim's payment for the remaining balance of the Montero's purchase price. The appellate court held that when RCBC issued the manager's checks in favor of Odrada, RCBC admitted the existence of the payee and his then capacity to endorse, and undertook that on due presentment the checks which were negotiable instruments would be accepted or paid, or both according to its tenor.[22] The appellate court held that the effective delivery of the checks to Odrada made RCBC liable for the checks.[23]

On RCBC's defense of want of consideration, the Court of Appeals affirmed the finding of the trial court that Odrada was a holder in due course. The appellate court ruled that the defense of want of consideration is not available against a holder in due course.[24]

Lastly, the Court of Appeals found that the award of moral and exemplary damages and attorney's fees was excessive. Hence, modification was proper.

The dispositive portion of the Decision reads:

> WHEREFORE, the impugned Decision of the court a quo in Civil Case No. 02-453 is hereby AFFIRMED with MODIFICATION insofar as the reduction of awards for moral, exemplary damages and attorney's fees to ₱50,000.00, ₱20,000.00, and ₱20,000.00 respectively.
>
> SO ORDERED.[25]

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[22] *Id.* at 34.

[23] *Id.*

[24] Act No. 2031 (1911), Sec. 24.

[25] *Rollo,* p. 35.

RCBC and Lim filed a motion for reconsideration[26] on 28 April 2014. In its 18 June 2015 Resolution, the Court of Appeals denied the motion for lack of merit.[27]

RCBC alone[28] filed this petition before the Court. Thus, the decision of the Court of Appeals became final and executory as to Lim.

The Issues

RCBC presented the following issues in this petition:

A. The court a quo gravely erred in finding that as between Odrada as seller and Lim as buyer of the vehicle, only the former has the right to rescind the contract of sale finding failure to perform an obligation under the contract of sale on the part of the latter only despite the contested roadworthiness of the vehicle, subject matter of the sale.

1. Whether or not the court a quo erred in holding that Lim cannot cancel the auto loan despite the failure in consideration due to the contested roadworthiness of the vehicle delivered by Odrada to him.[29]

B. The court a quo gravely erred when it found that Odrada is a holder in due course of the manager's checks in question despite being informed of the cancellation of the auto loan by the borrower, Lim.

1. Whether or not Lim can validly countermand the manager's checks in the hands of a holder who does not hold the same in due course.[30]

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

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

[28] The records show that RCBC was the only party in the original case which filed an appeal to this Court.

[29] *Rollo,* p. 13.

[30] *Id.* at 19.

Odrada failed to file a comment[31] within the period prescribed by this Court.[32]

The Ruling of this Court

We grant the petition.

Under the law on sales, a contract of sale is perfected the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price which is the consideration. From that moment, the parties may reciprocally demand performance.[33] Performance may be done through delivery, actual or constructive. Through delivery, ownership is transferred to the vendee.[34] However, the obligations between the parties do not cease upon delivery of the subject matter. The vendor and vendee remain concurrently bound by specific obligations. The vendor, in particular, is responsible for an implied warranty against hidden defects.

Article 1547 of the Civil Code states: "In a contract of sale, unless a contrary intention appears, there is an implied warranty that the thing shall be free from any hidden faults or defects."[35] Article 1566 of the Civil Code provides that "the vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof."[36] As a consequence, the law fixes the liability of the vendor for hidden defects whether known or unknown to him at the time of the sale.

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[31] Rule 47, Sec. 7: *Effect of failure to file comment.* – When no comment is filed by any of the respondents, the case may be decided on the basis of the record, without prejudice to any disciplinary action which the court may take against the disobedient party.

[32] Counsel for Odrada failed to file comment on the petition within the period prescribed in the Resolution dated 30 September 2015, which period expired on 22 November 2015.

[33] CIVIL CODE, Art. 1475.

[34] CIVIL CODE, Art. 1478.

[35] CIVIL CODE, Art. 1547(2).

[36] CIVIL CODE, Art. 1485.

The law defines a hidden defect as one which would render the thing sold unfit for the use for which it is intended, or would diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it.[37]

In this case, Odrada and Lim entered into a contract of sale of the Montero. Following the initial downpayment and execution of the deed of sale, the Montero was delivered by Odrada to Lim and the latter took possession of the Montero. Notably, under the law, Odrada's warranties against hidden defects continued even after the Montero's delivery. Consequently, a misrepresentation as to the Montero's roadworthiness constitutes a breach of warranty against hidden defects.

In *Supercars Management & Development Corporation v. Flores*,[38] we held that a breach of warranty against hidden defects occurred when the vehicle, after it was delivered to respondent, malfunctioned despite repairs by petitioner.[39] In the present case, when Lim acquired possession, he discovered that the Montero was not roadworthy. The engine was misaligned, the automatic transmission was malfunctioning, and the brake rotor disks needed refacing.[40] However, during the proceedings in the trial court, Lim's testimony was stricken off the record because he failed to appear during cross-examination.[41] In effect, Lim was not able to present clear preponderant evidence of the Montero's defective condition.

RCBC May Refuse to Pay Manager's Checks

We address the legal question of whether or not the drawee bank of a manager's check has the option of refusing payment by interposing a personal defense of the purchaser of the manager's check who delivered the check to a third party.

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[37] CIVIL CODE, Art. 1561.

[38] 487 Phil. 259 (2004).

[39] *Id* at 268.

[40] Records, pp. 27-29.

[41] *Id*. at 213.

In resolving this legal question, this Court will examine the nature of a manager's check and its relation to personal defenses under the Negotiable Instruments Law.[42]

Jurisprudence defines a manager's check as a check drawn by the bank's manager upon the bank itself and accepted in advance by the bank by the act of its issuance.[43] It is really the bank's own check and may be treated as a promissory note with the bank as its maker.[44] Consequently, upon its purchase, the check becomes the primary obligation of the bank and constitutes its written promise to pay the holder upon demand.[45] It is similar to a cashier's check[46] both as to effect and use in that the bank represents that the check is drawn against sufficient funds.[47]

As a general rule, the drawee bank is not liable until it accepts.[48] Prior to a bill's acceptance, no contractual relation exists between the holder[49] and the drawee. Acceptance, therefore, creates a privity of contract between the holder and the drawee so much so that the latter, once it accepts, becomes the party primarily liable on the instrument.[50] Accordingly, acceptance is the act which triggers the operation of the liabilities of the drawee (acceptor) under Section 62[51] of the Negotiable Instruments Law. Thus, once he accepts,

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[42] Act No. 2031 (1911).

[43] *Rizal Commercial Banking Corporation v. Hi-Tri Development Corporation*, 687 Phil. 481 (2012); *Bank of the Philippine Islands v. Roxas*, 562 Phil. 161 (2007); *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538 (2000); *Tan v. Court of Appeals*, G.R. No. 108555, 20 December 1994, 239 SCRA 310.

[44] *Id*.

[45] *Tan v. Court of Appeals*, G.R. No. 108555, 20 December 1994, 239 SCRA 310.

[46] For purposes of brevity and applying the previous rulings of this Court when the Court refers to a manager's check, cashier's checks are also included.

[47] *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538 (2000).

[48] Act No. 2031 (1911), Sec. 127.

[49] Payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

[50] Act No. 2031 (1911), Sec. 127.

[51] Sec. 62. *Liability of Acceptor*. – The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

the drawee admits the following: (a) existence of the drawer; (b) genuineness of the drawer's signature; (c) capacity and authority of the drawer to draw the instrument; and (d) existence of the payee and his then capacity to endorse.

As can be gleaned in a long line of cases decided by this Court, a manager's check is accepted by the bank upon its issuance. As compared to an ordinary bill of exchange where acceptance occurs after the bill is presented to the drawee, the distinct feature of a manager's check is that it is accepted in advance. Notably, the mere issuance of a manager's check creates a privity of contract between the holder and the drawee bank, the latter primarily binding itself to pay according to the tenor of its acceptance.

The drawee bank, as a result, has the unconditional obligation to pay a manager's check to a holder in due course irrespective of any available personal defenses. However, while this Court has consistently held that a manager's check is automatically accepted, a holder **other than a holder in due course** is still subject to defenses. In *International Corporate Bank v. Spouses Gueco*,[52] which involves a delivered manager's check, the Court still considered whether the check had become stale:

> It has been held that, if the check had become stale, it becomes imperative that the circumstances that caused its non-presentment be determined. In the case at bar, there is no doubt that the petitionezr bank held on the check and refused to encash the same because of the controversy surrounding the signing of the joint motion to dismiss. We see no bad faith or negligence in this position taken by the bank.[53]

In *International Corporate Bank*, this Court considered whether the holder presented the manager's check within a reasonable time after its issuance – a circumstance required for holding the instrument in due course.[54]

(a) The existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument, and

(b) The existence of the payee and his then capacity to indorse.

[52] 404 Phil. 353 (2001).

[53] *Id.* at 368.

[54] Sec. 53. When person not deemed holder in due course. – Where an

Similarly, in *Rizal Commercial Banking Corporation v. Hi-Tri Development Corporation*,[55] the Court observed that the mere issuance of a manager's check does not *ipso facto* work as an automatic transfer of funds to the account of the payee.[56] In order for the holder to acquire title to the instrument, there still must have been effective delivery. Accordingly, the Court, taking exception to the manager's check automatic transfer of funds to the payee, declared that: "the doctrine that the deposit represented by a manager's check automatically passes to the payee is inapplicable, because the instrument – although accepted in advance remains undelivered."[57] This Court ruled that the holder did not acquire the instrument in due course since title had not passed for lack of delivery.[58]

We now address the main legal question: if the holder of a manager's check is not a holder in due course, can the drawee bank interpose a personal defense of the purchaser?

Our rulings in *Mesina v. Intermediate Appellate Court*[59] and *United Coconut Planters Bank v. Intermediate Appellate Court*[60] shed light on the matter.

In *Mesina*, Jose Go purchased a manager's check from Associated Bank. As he left the bank, Go inadvertently left the check on top of the desk of the bank manager. The bank manager entrusted the check for safekeeping to another bank official who at the time was attending to a customer named Alexander Lim.[61] After the bank official answered the telephone and returned

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instrument payable on demand is negotiated on an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

[55] 687 Phil. 481 (2012).

[56] *Id.* at 499.

[57] *Id.* at 500.

[58] Notably, under Section 16 of the Negotiable Instruments Law, a complete yet undelivered negotiable instrument gives rise to a personal defense.

[59] 229 Phil. 495 (1986).

[60] 262 Phil. 397 (1990).

[61] *Mesina v. Intermediate Appellate Court, supra* at 498.

from the men's room, the manager's check could no longer be found. After learning that his manager's check was missing, Go immediately returned to the bank to give a stop payment order on the check. A third party named Marcelo Mesina deposited the manager's check with Prudential Bank but the drawee bank sent back the manager's check to the collecting bank with the words "payment stopped." When asked how he obtained the manager's check, Mesina claimed it was paid to him by Lim in a "certain transaction."[62]

While this Court acknowledged the general causes and effects of a manager's check, it noted that other factors were needed to be considered, namely the manner by which Mesina acquired the instrument. This Court declared:

> Petitioner's allegations hold no water. Theories and examples advanced by petitioner on causes and effects of a cashier's check such as (1) it cannot be countermanded in the hands of a holder in due course and (2) a cashier's check is a bill of exchange drawn by the bank against itself are general principles which cannot be aptly applied to the case at bar, without considering other things. Petitioner failed to substantiate his claim that he is a holder in due course and for consideration or value as shown by the established facts of the case. Admittedly, petitioner became the holder of the cashier's check as endorsed by Alexander Lim who stole the check. He refused to say how and why it was passed to him. He had therefore notice of the defect of his title over the check from the start.[63]

Ultimately, the notice of defect affected Mesina's claim as a holder of the manager's check. **This Court ruled that the issuing bank could validly refuse payment because Mesina was not a holder in due course.** Unequivocally, the Court declared: **"the holder of a cashier's check who is not a holder in due course cannot enforce such check against the issuing bank which dishonors the same."**[64]

In the same manner, in *United Coconut Planters Bank* (UCPB),[65] this Court ruled that the drawee bank was legally justified in refusing

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[62] *Mesina v. Intermediate Appellate Court, supra* at 499.

[63] *Mesina v. Intermediate Appellate Court, supra* at 502.

[64] *Mesina v. Intermediate Appellate Court, supra* at 502.

[65] *United Coconut Planters Bank v. Intermediate Appellate Court, supra* note 60.

to pay the holder of a manager's check who did not hold the check in due course. In UCPB, Altiura Investors, Inc. purchased a manager's check from UCPB, which then issued a manager's check in the amount of Four Hundred Ninety Four Thousand Pesos (₱494,000) to Makati Bel-Air Developers, Inc. The manager's check represented the payment of Altiura Investors, Inc. for a condominium unit it purchased from Makati Bel-Air Developers, Inc. Subsequently, Altiura Investors, Inc. instructed UCPB to hold payment due to material misrepresentations by Makati Bel-Air Developers, Inc. regarding the condominium unit.[66] Pending negotiations; and while the stop payment order was in effect, Makati Bel-Air Developers, Inc. insisted that UCPB pay the value of the manager's check. UCPB refused to pay and filed an interpleader to allow Altiura Investors, Inc. and Makati Bel-Air Developers, Inc. to litigate their respective claims. Makati Bel-Air Developers, Inc. also filed a counterclaim against UCPB in the amount of Five Million Pesos (₱5,000,000) based on UCPB's violation of its warranty on its manager's check.[67]

In upholding UCPB's refusal to pay the value of the manager's check, this Court reasoned that Makati Bel-Air Developers, Inc.'s title to the instrument became defective when there arose a partial failure of consideration.[68] We held that UCPB could validly invoke a personal defense of the purchaser against Makati Bel-Air Developers, Inc. because the latter was not a holder in due course of the manager's check:

There are other considerations supporting the conclusion reached by this Court that respondent appellate court had committed reversible error. Makati Bel-Air was a party to the contract of sale of an office condominium unit to Altiura, for the payment of which the manager's check was issued. Accordingly, Makati Bel-Air was fully aware, at

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[66] *United Coconut Planters Bank v. Intermediate Appellate Court, supra* note 60 at 399.

[67] *United Coconut Planters Bank v. Intermediate Appellate Court, supra* note 60 at 400.

[68] *United Coconut Planters Bank v. Intermediate Appellate Court, supra* note 60 at 403.

the time it had received the manager's check, that there was, or had arisen, at least partial failure of consideration since it was unable to comply with its obligation to deliver office space amounting to 165 square meters to Altiura. Makati Bel-Air was also aware that petitioner Bank had been informed by Altiura of the claimed defect in Makati Bel-Air's title to the manager's check or its right to the proceeds thereof. *Vis-a-vis* both Altiura and petitioner Bank, Makati Bel-Air was not a holder in due course of the manager's check.[69]

The foregoing rulings clearly establish that the drawee bank of a manager's check may interpose personal defenses of the purchaser of the manager's check if the holder is not a holder in due course. In short, the purchaser of a manager's check may validly countermand payment to a holder who is not a holder in due course. Accordingly, the drawee bank may refuse to pay the manager's check by interposing a personal defense of the purchaser. Hence, the resolution of the present case requires a determination of the status of Odrada as holder of the manager's checks.

In this case, the Court of Appeals gravely erred when it considered Odrada as a holder in due course. Section 52 of the Negotiable Instruments Law defines a holder in due course as one who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;

(b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;

(c) That he took it **in good faith** and **for value**;

(d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Emphasis supplied)

To be a holder in due course, the law requires that a party must have acquired the instrument *in good faith* and *for value.*

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[69] *United Coconut Planters Bank v. Intermediate Appellate Court, supra* note 60 at 403.

Good faith means that the person taking the instrument has acted with due honesty with regard to the rights of the parties liable on the instrument and that at the time he,took the instrument, the holder has no knowledge of any defect or infirmity of the instrument.[70] To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument would amount to bad faith.[71]

Value, on the other hand, is defined as any consideration sufficient to support a simple contract.[72]

In the present case, Odrada attempted to deposit the manager's checks on 16 April 2002, a day after Lim had informed him that there was a serious problem with the Montero. Instead of addressing the issue, Odrada decided to deposit the manager's checks. Odrada's actions do not amount to good faith. Clearly, Odrada failed to make an inquiry even when the circumstances strongly indicated that there arose, at the very least, a partial failure of consideration due to the hidden defects of the Montero. Odrada's action in depositing the manager's checks despite knowledge of the Montero's defects amounted to bad faith. Moreover, when Odrada redeposited the manager's checks on 19 April 2002, he was already formally notified by RCBC the previous day of the cancellation of Lim's auto loan transaction. Following *UCPB*,[73] RCBC may refuse payment by interposing a personal defense of Lim - that the title of Odrada had become defective when there arose a partial failure or lack of consideration.[74]

RCBC acted in good faith in following the instructions of Lim. The records show that Lim notified RCBC of the defective condition

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[70] Act No. 2031 (1911), Sec. 52.

[71] Act No. 2031 (1911), Sec. 56.

[72] Act No. 2031 (1911), Sec. 25.

[73] *Supra* note 60.

[74] Sec. 28. *Effect of want of consideration.* - Absence or failure of consideration is a matter of defense as against any person not a holder in due course x x x.

of the Montero before Odrada presented the manager's checks.[75] Lim informed RCBC of the hidden defects of the Montero including a misaligned engine, smashed condenser, crippled bumper support, and defective transmission. RCBC also received a formal notice of cancellation of the auto loan from Lim and this prompted RCBC to cancel the manager's checks since the auto loan was the consideration for issuing the manager's checks. RCBC acted in good faith in stopping the payment of the manager's checks.

Section 58 of the Negotiable Instruments Law provides: "In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable, x x x." Since Odrada was not a holder in due course, the instrument becomes subject to personal defenses under the Negotiable Instruments Law. Hence, RCBC may legally act on a countermand by Lim, the purchaser of the manager's checks.

Lastly, since Lim's testimony involving the Montero's hidden defects was stricken off the record by the trial court, Lim failed to prove the existence of the hidden defects and thus Lim remains liable to Odrada for the purchase price of the Montero. Lim's failure to file an appeal from the decision of the Court of Appeals made the decision of the appellate court final and executory as to Lim. RCBC cannot be made liable because it acted in good faith in carrying out the stop payment order of Lim who presented to RCBC the complaint letter to Odrada when Lim issued the stop payment order.

WHEREFORE, we **GRANT** the petition. We **REVERSE** and **SET ASIDE** the 26 March 2014 Decision and the 18 June 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 94890 only insofar as RCBC Savings Bank is concerned.

SO ORDERED.

Brion, del Castillo, and *Mendoza, JJ.*, concur.

Leonen, J., on official leave.

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[75] Records, pp. 51-52.

SECOND DIVISION

[G.R. No. 219558. October 19, 2016]

HEIRS OF JOHNNY AOAS, REPRESENTED BY BETTY PUCAY, *petitioners, vs.* **JULIET AS-IL,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT PROCEEDINGS; BOUNDARY DISPUTE CAN ONLY BE RESOLVED IN THE CONTEXT OF AN *ACCION REIVINDICATORIA*, AND NOT IN AN ENJECTMENT CASE, AS BOUNDARY DISPUTE IS NOT ABOUT POSSESSION, BUT ENCROACHMENT.— Settled is the rule that a boundary dispute, as in this case, can only be resolved in the context of an *accion reivindicatoria,* and not in an ejectment case. In *Manalang v. Bacani*, the Court held that boundary dispute cannot be resolved in ejectment proceedings as it involves different issues, to wit: **The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiff's property. A boundary dispute cannot be settled summarily under Rule 70 of the Rules of Court, the proceedings under which are limited to unlawful detainer and forcible entry.** In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant's possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession de facto. Given the foregoing, the CA erred in affirming the ejectment of the Heirs of Aoas considering that the issue raised cannot be properly ventilated in a forcible entry case as the main contention of the parties deal with encroachment. In other words, the MTC in passing upon the case, acted without authority as the case was beyond the ambit of a summary proceeding.

APPEARANCES OF COUNSEL

Noel G. Ngolob for petitioners.
The Law Firm of Avila Reyes Maceda Lim Arevalo Libiran Marquez Cadio and Dalloran for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioners Heirs of Johnny Aoas *(Heirs of Aoas)*, represented by Betty Pucay, question the September 17, 2014 Decision[2] and June 8, 2015 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 117020, which reversed the October 6, 2010 Resolution[4] of the Regional Trial Court of La Trinidad, Benguet, Branch 63*(RTC)*, in Civil Case No. 06-CV-2275.

In reversing the said resolution, the CA reinstated the August 31, 2010 RTC Decision[5] which affirmed *in toto* the August 9, 2006 Decision[6] of the Municipal Trial Court of Itogon, Benguet *(MTC)*, in a forcible entry case, docketed as Civil Case No. 446, filed by respondent Juliet As-il *(As-il)* against the Heirs of Johnny Aoas. The MTC decision ordered the Heirs of Aoas or their representative and all persons acting under them to vacate and turn over peacefully the actual and material possession of a 42 square meter lot located in Tuding, Itogon, Benguet,

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[1] *Rollo*, pp. 4-13.

[2] *Id.* at 16-27. Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes, concurring.

[3] *Id.* at 29-30. Penned by Associate Justice Isabel A. Paredes, with Associate Justices Hakim S. Abdulwahid and Isaias Dicdican, concurring.

[4] *Id.* at 31-34. Penned by Judge Benigno M. Galacgac.

[5] *Id.* at 35-41. Penned by Judge Benigno M. Galacgac.

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

covered by Transfer Certificate of Title *(TCT)* No. T-57645 to respondent As-il.

The Antecedent

As-il filed a complaint for forcible entry and damages against the Heirs of Aoas before the MTC, claiming absolute ownership and possessory rights over the 42 square meter portion of a parcel of land covered by **TCT No. T-57645**. She alleged that since time immemorial, she, by her predecessors and successors-in-interest, had been in actual, open, physical, and notorious possession of the subject property; that sometime in January 2005, she discovered that the Heirs of Aoas, by stealth and strategy, initiated the preparatory digging, clearing and construction of a house and enclosing the subject land, thus, depriving and dispossessing her of the same; and that when confronted, they asserted ownership of the same property. From the foregoing, As-il asked the MTC to order the Heirs of Aoas to vacate the subject property and that compensation be given to her as well as damages and attorney's fees.

In their Answer, the Heirs of Aoas contended that the area As-il claimed was their property, it being part of a land registered in their names under **TCT No. T-32507;** that they had been in continuous, public and adverse possession and occupation of it; that they have erected a residential house and undertook activities such as fencing, rip-rapping and other improvements done openly and publicly on the said property; that it was only after completion of the residential house when As-il asserted her claim over the property; and that in the belief of being the true owners, they refused As-il's demands to turn over the property.

At the MTC Level

During trial, the MTC, with the concurrence of both parties, ordered the conduct of a *relocation survey* over the property. A Survey Commission was agreed to be formed and upon completion of its tasks, a report was issued which, however, failed to address the question on ownership. It merely confirmed

that the properties *overlapped each* other. In other words, conflict in boundaries was acknowledged.

In its August 9, 2006 Decision, the MTC ruled that a portion of the land claimed by the Heirs of Aoas encroached a part of the land registered under As-il's name. It found that As-il had prior physical possession over the subject property, which could not be defeated by the subsequent possession of the Heirs of Aoas. Thus:

> **WHEREFORE**, in view of all the foregoing, Judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:
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> a) Ordering the defendants, their representative and all persons acting under them to vacate and to turn over peacefully the actual and material possession of the 42 square meter lot indicated (PORTION of LOT 4 (ALLEY) occupied by the HRS AOAS, REP. BY PUCAY AREA-42 sq.m.) in the Joint Relocation Survey/Sketch Plan prepared by the Survey Commission and marked as Exh. "D" for the plaintiff and Exh. "4" for the defendants which is part and parcel of the land of the plaintiff covered by Transfer Certificate of Title No. T-57645;
>
> b) [t]o remove any and all of the improvements found within the 42 square meters within sixty (60) days from the finality of the judgment;
>
> c) to pay by way of compensation for the reasonable use and occupation of the said 42 square meters fixed at a reasonable amount of ₱1,000.00 a month from the commencement of the action until the same shall have been fully paid;
>
> d) to pay by way of attorney's fees in the amount of ₱5,000; and;
>
> e) to pay the costs
>
> **SO ORDERED**.[7]

Aggrieved, the Heirs of Aoas appealed before the RTC.

RTC Ruling

[7] *Id.* at 47.

In its August 31, 2010 Decision, the RTC initially affirmed the MTC decision. It reiterated that as per the report of the Survey Commission, a portion of the property owned by the Heirs of Aoas encroached the property of As-il. The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing, the instant appeal is hereby DISMISSED for lack of merit. And the Decision appealed from is hereby **AFFIRMED** *in toto.*
>
> **SO ORDERED**.[8]

Acting on petitioners' motion for reconsideration, however, the *RTC reversed itself.* Thus, in its October 6, 2010 Resolution,[9] the RTC dismissed the complaint for forcible entry stating that had it earlier considered the Tax Declaration of Real Property No. 007-02522 in the names of Heirs of Aoas, its conclusions and that of the MTC would have been different.

It opined that the said tax declaration, which was formally offered as Exhibit "3", showed that the Heirs of Aoas had already been in possession of the subject property even prior to the year 2000, negating As-il's claim that she was deprived of her prior possession. The RTC observed that while the Heirs of Aoas submitted a position paper together with the documentary evidence and affidavits of witnesses, As-il did not. Thus, it posited that As-il's complaint was unsupported by evidence, which was insufficient to debunk the documentary evidence of the Heirs of Aoas, specifically the tax declaration supporting the latter's right to possess the disputed portion of the lot. Thus:

> **WHEREFORE**, in view of the foregoing, the Decision rendered by this Court dated August 31, 2010 is hereby **RECONSIDERED** and **SET ASIDE.** In its stead, another judgment is hereby rendered **REVERSING** the Decision appealed from. The Complaint filed by the appellee is hereby **DISMISSED**, for lack of merit.
>
> **SO ORDERED**.[10]

Unsatisfied, As-il appealed before the CA.

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[8] *Id.* at 41.

[9] *Id.* at 31-34. Penned by Judge Benigno M. Galacgac.

[10] *Id.* at 34.

The CA Ruling

In its September 17, 2014 Decision,[11] the CA held that points of law, theories, issues and arguments, including the tax assessments, not brought to the attention of the trial court could not be and ought not to be considered by a reviewing court, as those could not be raised for the first time on appeal. Considering that the tax declaration used by the RTC as basis to reverse its earlier decision and that of the MTC was not presented during the trial proper, the appellate court upheld the right of As-il to evict the Heirs of Aoas, as earlier adjudged by the MTC and the RTC in the latter's earlier decision. Thus, it disposed:

> **WHEREFORE**, the Petition for Review is **GRANTED**. The assailed Resolution is **SET ASIDE**. The Decision of August 31, 2010 of the Regional Trial Court is **REINSTATED**.[12]

Aggrieved, the Heirs of Aoas moved for reconsideration but their motion was denied by the CA in its June 8, 2015 Resolution.[13]

Hence, this petition raising this

SOLE ISSUE

WHETHER THE HONORABLE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN SETTING ASIDE THE RESOLUTION OF THE REGIONAL TRIAL COURT AND THAT THE PETITIONERS HAVE COMMITTED FORCIBLE ENTRY.[14]

The Heirs of Aoas argue that the issue as to who has a better right over the disputed property with an area of 42 square meters could not be resolved in an ejectment suit considering that they

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[11] *Id.* at 16-27. Penned by Associate Justice Michael P. Elbinias, with Associate Justices lsaias P. Dicdican and Victoria Isabel A. Paredes, concurring.

[12] *Id.* at 27.

[13] *Id.* at 29-30. Penned by Associate Justice Isabel A. Paredes, with Associate Justices Hakim S. Abdulwahid and Isaias Dicdican, concurring,

[14] *Id.* at 8.

had built their structures within the confines of their property covered by TCT No. T-32507; that no stealth or strategy was employed in erecting their residential house over the area because they possessed and occupied the property within the metes and bound of their land as described in their certificate of title; that even if the tax declaration were to be disregarded, other documents still prove their prior possession of the land even prior to year 2000, citing official tax receipts of real property payments for 1994 up to 2005; that these tax receipts supported the conclusion that they were in possession of the property even before the year 2000 as well as the fact that their house was built sometime in 1997; that the tax declaration merely confirmed their possession; and that even without the tax assessment, their actual right to possess the property should be affirmed as it has been substantiated already during trial.

In her Comment,[15] dated December 17, 2015, As-il manifested that she was adopting, by way of reference and incorporation, the CA decision as her Comment.

In their Reply,[16] dated April 11, 2016, the Heirs of Aoas manifested that they would just adopt the arguments/discussion in the petition they had filed earlier.

The Court's Ruling

The petition is meritorious.

The Heirs of Aoas insist that the CA should have not found them liable for forcible entry.

The Court, however, finds that the real issue here is whether an ejectment case under Rule 70 was a proper remedy to resolve this controversy.

From a deeper analysis of the records and attendant circumstances, it is clear that this case deals not with the right to possess the property. Instead, the main discussions in the lower courts and the CA went around the boundary dispute between the contending parties over the 42 square meter parcel of land. This is apparent

[15] *Id.* at 46-47.

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

from the fact that the properties being claimed by both parties are covered by separate certificates of title and overlapped each other. Stated differently, both parties lay claim to that property on the basis of their certificates of title, both of which cover the contested land. The MTC and RTC findings confirm this.

In its decision, the MTC stated as follows:

> The ground verification survey conducted by Survey Commission shows that the theory of the plaintiff is true and correct. A portion of the titled land of the plaintiff on the East is invaded by the titled land of the defendants on the West by 42 square meters. The shaded portion ALLEY 3.00. wide portion of Lot 4-PSU-174581-AMD. is the encroachment or overlapping. The defendants therefore have encroached or invaded or intruded into the 42 suare meters area which is clearly within the metes and bounds of the titled land of the plaintiff. Whatever claim of possession insisted by the defendants must yield to the possession of the plaintiff. The reason is but a conclusion of logic and common sense.

The RTC on the other hand similarly stated the following:

> In asserting their ownership over the disputed lot, the plaintiff-appellee claimed that the same formed part of the parcel of land covered by Transfer Certificate of Title No. T-57645 in her name.
>
> On the other hand, the defendants-appellants also maintained that the said disputed portion is situated within the parcel of land covered by Transfer of Certificate of Title No. T-32507 in the names of their late parents Johnny and Jocelyn Aoas,
>
> x x x x x x x x x
>
> And as per said Report of the Survey Commission xxx apart from three (3) others who are separately occupying a portion thereof, an extent of 42 sq. ms., is being occupied by the defendants which is a part and parcel of land covered by Transfer Certificate of Title No. T-57645 in the name of the plaintiff. Such findings of the Survey Commission readily resolved in the affirmative, the issue agreed upon by the parties in the pre-trial as "whether or not the defendants have unlawfully encroached a portion of the lot of the plaintiff.

Settled is the rule that a boundary dispute, as in this case, can only be resolved in the context of an *accion reivindicatoria,* and

not in an ejectment case.[17] In *Manalang v. Bacani*, the Court held that boundary dispute cannot be resolved in ejectment proceedings as it involves different issues, to wit: **The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiffs property. A boundary dispute cannot be settled summarily under Rule 70 of the Rules of Court, the proceedings under which are limited to unlawful detainer and forcible entry.** In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant's possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession de facto.[18] [Emphasis supplied]

Given the foregoing, the CA erred in affirming the ejectment of the Heirs of Aoas considering that the issue raised cannot be properly ventilated in a forcible entry case as the main contention of the parties deal with encroachment. In other words, the MTC in passing upon the case, acted without authority as the case was beyond the ambit of a summary proceeding.

All other issues raised need not be discussed as the remedy availed of by the parties was improper in the first place. To afford the parties the constitutional right to due process, this case should be dismissed without prejudice to the proper filing of a case in the proper forum.

WHEREFORE, the petition is **GRANTED**. The September 17, 2014 Decision and June 8, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 117020 are hereby **REVERSED** and **SET ASIDE,** without prejudice.

SO ORDERED.

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

Leonen, J., on official leave.

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[17] *Manalang v. Bacani,* G.R. No. 156995, January 12, 2015, 745 SCRA 27.

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

THIRD DIVISION

[G.R. No. 223561. October 19, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMMY PITALLA, JR.** ***y*** **DIOSA** ***a.k.a.*** **"BEBE,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS.—** When the offended party is under 12 years of age, the crime committed is termed "statutory rape" as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM MAY BE SUFFICIENT TO PRODUCE A CONVICTION.—** The testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused. It bears stressing that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused. By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases.

3. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— [T]he credibility of witnesses and their testimonies is a matter best undertaken by the trial court given its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. In the case at bar, the trial court found the victim and her testimony to be credible, which findings are affirmed by the CA. It is well-settled that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA.

4. ID.; ID.; ALIBI IS INHERENTLY A WEAK DEFENSE WHICH REQUIRES PROOF THAT IT WAS PHYSICALLY IMPOSSIBLE FOR ACCUSED TO HAVE BEEN AT THE TIME AND PLACE OF THE COMMISSION OF THE CRIME.— Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.

5. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PENALTY.— In accordance with Article 266-B, the penalty for the offense of rape of a minor below twelve (12) years of age is *reclusion perpetua*. However, to conform to Our pronouncement in *People v. Jugueta*, the exemplary damages awarded must be increased from Thirty Thousand Pesos (₱30,000) to Seventy-Five Thousand Pesos (₱75,000).

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

For review is the Decision[1] dated October 16, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01852 affirming the Decision[2] dated March 13, 2014 of the Regional Trial Court (RTC) of Bacolod City, Branch 43 in Criminal Case No. 07-30303, finding accused-appellant Jimmy Pitalla, Jr. y Diosa a.k.a. "Bebe" guilty of the crime of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act No. 8353.[3]

In line with our ruling in *People v. Cabalquinto*,[4] the real name of the victim, as well as any information which tends to establish or compromise her identity, shall be withheld. The initials AAA shall be used instead to represent her.

Factual Antecedents

On May 17, 2007, the Office of the City Prosecutor of Bacolod City charged accused-appellant in an Information,[5] the accusatory portion of which reads:

> That on or about the 9th day of May 2007 in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, did, then and there wilfully, unlawfully and feloniously commit the act of sexual assault by inserting his penis into the genitalia of the herein offended party, AAA, an 8-year old minor, against her will and consent.

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[1] *Rollo*, pp. 4-27. Penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi.

[2] CA *rollo*, pp. 55-64.

[3] Otherwise known as the "Anti-Rape Law of 1997."

[4] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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

An act contrary to law.

The facts, as narrated by the CA, are as follows:

Version of the Prosecution

At around 5:00 p.m. on May 9, 2007, eight-year old AAA, together with her two brothers, were washing themselves beside a deep well just five meters from the back of their house. As her brothers were done, she told them to go home ahead of her. She then saw Pitalla gathering some scrap materials nearby. Pitalla then approached her and offered to get water for her from the well. Just about two meters away from the deep well is a dilapidated nipa hut, which was used as a stockroom for scrap materials. Pitalla told AAA to go to the nearby nipa hut and instructed her to take off her clothes and panty. At first, she did not follow him, but Pitalla covered her mouth and carried her towards the nipa hut. Inside the nipa hut, Pitalla again told her to take off her clothes and panty, under threats that he will shoot her and her entire family if she would not follow his instructions. AAA reluctantly undressed for fear of losing her family. Pitalla also took off his clothes while AAA stood in front of him. Pitalla then inserted his penis into her vagina, and told her to spread her legs wider; otherwise, he would shoot her in the head. Pitalla penetrated her three (3) times and made push and pull motions. AAA then told Pitalla to stop for a while for she wanted to urinate. She took this opportunity to escape and run towards her father, who was with a friend, her uncle, and her grandmother in their house. When she told them that she was raped, they ran towards the nipa hut but Pitalla was no longer there. AAA merely described the clothes of the person who raped her, but she could not state his name as she did not know the person. They then went to the police station at about 6:00 p.m. of the same day to report the incident.[6]

At the police station, SPO1 Mimir Guanco (Guanco), who was on duty at that time, together with PO1 Villacastin, went to the area where the incident took place to conduct an

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

investigation. A person by the name of Joel Sevillano (Sevillano) told them that at the time of the incident, he was with AAA's father in their house. He informed the police officers that at that time, he saw a person sitting near AAA while she was washing herself near the deep well. The said person was a man known to him as "Bebe Pitalla," a resident of Villa Felicidad, Barangay Estefina, Bacolod City. SPO1 Guanco then asked Sevillano to accompany them, together with the victim and victim's parents to the house of Bebe Pitalla to enable the victim to identify if he was the one who raped her. When they reached the house of Bebe Pitalla, PO1 Villacastin informed Bebe Pitalla's mother of what happened. Upon seeing Bebe Pitalla, AAA became upset and cried. SPO1 Guanco comforted her and asked her if the person named Bebe Pitalla was the one who molested her. AAA replied in the affirmative. Bebe Pitalla remained silent and at that point, SPO1 Guanco arrested him and told him of his rights. Bebe Pitalla's mother told the police officers that his real name was Jimmy Pitalla. The police officers then brought him to the Women and Children's Desk at the Bacolod City Police Station.[7]

Version of the Defense

For his part, Pitalla testified that on May 9, 2007, he was at home the whole time resting, when, at 7:00 p.m., two policemen arrived in their house and informed him that somebody accused him of committing a crime that he did not do. These policemen thereafter forced him to ride in their vehicle and brought him to the police station where he, for the first time, saw AAA. According to Pitalla, prior to May 9, 2007, he did not know AAA or her family and that he had no prior conflict or disagreement with the said child or any member of her family.[8]

Ruling of the RTC

After hearing, the RTC rendered a Decision dated March 13, 2014 finding Pitalla guilty as charged. The dispositive portion of the Decision reads:

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

[8] *Id.* at 8.

WHEREFORE, in view of all the foregoing, this Court finds the accused **JIMMY PITALLA, JR. y DIOSA "Guilty"** beyond reasonable doubt for the commission of the crime of Rape punished under Article 266-A(1)(d) in relation to Article 266-B of the Revised Penal Code of the Philippines, as amended, and there being no mitigating nor aggravating circumstance, he is accordingly sentenced to suffer the penalty of ***Reclusion Perpetua*** and all its accessory penalties provided for by the law.

Accused is likewise ordered to indemnify the private offended party, [AAA], the following amounts:

1) Fifty Thousand Pesos (₱50,000.00) representing the civil indemnity;
2) Thirty Thousand Pesos (₱30,000.00) representing the moral damages; and
3) Twenty Thousand Pesos (₱20,000.00) representing the exemplary damages.

SO ORDERED.

In convicting Pitalla of the crime charged, the RTC gave more weight and credence on the prosecution's evidence. The trial court observed that AAA was able to positively identify Pitalla as the perpetrator of the crime. AAA cried and became upset when SPO1 Guanco presented Pitalla to her for identification. She also identified the accused in open court as the one who sexually abused her.[9] The commission of the rape was supported by the medical findings of Dr. Eli Cong (Dr. Cong), the medico-legal officer who examined AAA after the rape was committed. According to Dr. Cong, several lacerations and wounds were found in the vagina of AAA, which could have been caused by a blunt instrument, including a finger or a penis.[10] Moreover, the RTC found AAA's testimony credible, for being consistent, equivocal, and straightforward, in the narration of the incident.[11]

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[9] CA *rollo*, p. 56.

[10] *Id.* at 63.

[11] *Id.* at 62; *rollo*, p. 9.

In contrast, the RTC found Pitalla's defenses of alibi and denial weak, as he failed to prove that he was elsewhere during the commission of the crime, and that it was physically impossible for him to be physically present at the place of the crime.[12] Thus, the trial court concluded that Pitalla's bare denial cannot outweigh AAA's affirmative testimony.

On appeal to the CA, Pitalla argued that inconsistencies in the testimony of AAA tarnished her credibility as a witness, and that the prosecution failed to prove his identity as the person who raped AAA. Thus, the prosecution failed to establish his guilt beyond reasonable doubt.

Ruling of the Court of Appeals

On October 16, 2015, the CA affirmed the RTC's Decision, with modifications as to the amount of damages awarded. The appellate court increased the civil indemnity awarded from Fifty Thousand Pesos (₱50,000) to Seventy-Five Thousand Pesos (₱75,000), moral damages from Thirty Thousand Pesos (₱30,000) to Seventy-Five Thousand Pesos (₱75,000), and exemplary damages from Twenty Thousand Pesos (₱20,000) to Thirty Thousand Pesos (₱30,000), plus legal interest at the rate of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid. The *fallo* of the CA's Decision reads:

WHEREFORE, premises considered, the present Appeal is **DISMISSED**. The Decision dated 13 March 2014 of the Regional Trial Court Branch 43, Bacolod City finding the Accused-Appellant Jimmy Pitalla, Jr. guilty beyond reasonable doubt for the commission of the crime of Rape punished under Article 266-A-1(d) in relation to Article 266-B of the Revised Penal Code and sentencing him to suffer the penalty of **Reclusion Perpetua** and all its accessory penalties provided for by law is hereby **AFFIRMED** but with the following modifications.

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[12] CA *rollo*, p. 62.

This Court orders him to pay:

(i) Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity;
(ii) Seventy Five Thousand Pesos (₱75,000.00) as Moral Damages; and
(iii) Thirty Thousand Pesos (₱30,000.00) as Exemplary Damages.
(iv) In addition, interest is imposed on all damages awarded at the rate of 6% per annum from date of finality of judgment until fully paid.

SO ORDERED.

Aggrieved, Pitalla filed the instant appeal.

The sole issue for resolution of this Court is whether the prosecution has proved the guilt of Pitalla for the rape of AAA beyond reasonable doubt.

Our Ruling

We affirm the conviction of Pitalla for rape under Article 266-A in relation to Article 266-B of the RPC, which respectively provide:

Art. 266-A. Rape; When And How Committed. – Rape is Committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. x x x (emphasis supplied)

x x x x x x x x x

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

x x x x x x x x x

When the offended party is under 12 years of age, the crime committed is termed "statutory rape" as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years.[13] To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[14]

In this case, the prosecution satisfactorily established all the elements of statutory rape.

AAA testified that on May 9, 2007, Pitalla forcibly carried her to a nipa hut where he proceeded to have carnal knowledge of her. The finding of Dr. Cong that several lacerations and wounds were found in the vagina of AAA, which could have been caused by a blunt instrument, including a finger or a penis,[15] supports this allegation. At the time of the rape, AAA was only eight years old, as evidenced by her Certificate of Baptism and School Report Card.[16]

Moreover, both the trial and appellate courts found that AAA positively and unequivocally identified Pitalla as her molester on two occasions. *First*, SPO1 Guanco testified that AAA identified Pitalla as the one who molested her in the afternoon of May 9, 2007,[17] thus:

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[13] *People v. Crisostomo*, G.R. No. 196435, January 29, 2014, 715 SCRA 99.

[14] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465.

[15] *Rollo*, p. 9; CA *rollo*, p. 63.

[16] *Id*. at 24.

[17] *Id*. at 15; CA *rollo*, p. 58.

Pros. Tiu:

Q: What happened after you reached Villa Felicidad?

A: We were able to locate the house of Bebe Pitalla and my companion, PO1 Villacastin, approached the mother of Bebe Pitalla and informed him of that incident and afterwards when Bebe Pitalla was there the child, AAA, identified Bebe Pitalla as the one responsible in molesting her.[18]

Second, AAA positively identified Pitalla as her rapist in court.[19]

The testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused.[20]

It bears stressing that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused.[21] By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[22] Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases.[23]

In this regard, *People v. Abat*[24] teaches that the evaluation of the credibility of witnesses and their testimonies is a matter

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[18] *Id*. Direct examination conducted by Prosecutor Gwendolyn Tiu.

[19] *Id*. at 17.

[20] *People v. Manalili*, G.R. No. 191253, August 28, 2013,704 SCRA 305; citing *People v. Perez*, G. R. No. 182924, 24 December 2008, 575 SCRA 653.

[21] *People v. Gahi*, G.R. No. 202976, February 19, 2014, 717 SCRA 209.

[22] *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246.

[23] *People v. Ocdol*, G.R. No. 200645, August 20, 2014, 733 SCRA 561.

[24] G.R. No. 202704, April 2, 2014, 720 SCRA 557.

best undertaken by the trial court given its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. In the case at bar, the trial court found the victim and her testimony to be credible, which findings are affirmed by the CA. It is well-settled that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA.[25]

Applied in the present case, the ruling of the trial court on this matter, as affirmed by the court *a quo*, must be given weight by this Court. The Court does not see any reason to disturb the RTC and the CA's appreciation of AAA's testimony.

Suffice to state that Pitalla's allegation of incredulity of AAA's testimony rests on thin ground and is so trivial in nature which does not affect the merits of the case. AAA's inconsistency in her narration on whether she took her dress and her panty off, or only her panty, prior to the rape, does not in any way weaken her credibility. Such inconsistency is so inconsequential and does not diminish the fact that Pitalla's guilt had been established beyond reasonable doubt, as shown by the totality of the prosecution's evidence.

Anent Pitalla's defenses of denial and alibi, the same fail to impress. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.[26] For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[27] While Pitalla alleged that he was at home when the rape took place, he failed to show that it was physically impossible for him to be at the scene of the crime at that time.

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[25] *Casitas v. People*, G.R. No. 152358, February 5, 2004, 422 SCRA 242, 248.

[26] *People v. Gani*, G.R. No. 195523, June 5, 2013, 697 SCRA 530.

[27] *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587.

All told, Pitalla's conviction for the rape of AAA under Article 266-A stands. In accordance with Article 266-B, the penalty for the offense of rape of a minor below twelve (12) years of age is *reclusion perpetua*. However, to conform to Our pronouncement in *People v. Jugueta*,[28] the exemplary damages awarded must be increased from Thirty Thousand Pesos (₱30,000) to Seventy-Five Thousand Pesos (₱75,000).

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 16, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 01852 is hereby **AFFIRMED** with **MODIFICATION**. As modified, the judgment shall read, as follows:

> WHEREFORE, premises considered, the present Appeal is **DISMISSED**. The Decision dated 13 March 2014 of the Regional Trial Court Branch 43, Bacolod City finding the Accused-Appellant Jimmy Pitalla, Jr. guilty beyond reasonable doubt for the commission of the crime of Rape punished under Article 266-A-1(d) in relation to Article 266-B of the Revised Penal Code and sentencing him to suffer the penalty of **Reclusion Perpetua** and all its accessory penalties provided for by law is hereby **AFFIRMED** but with the following modifications.
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> This Court orders him to pay:
>
> (v) Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity;
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> (vi) Seventy Five Thousand Pesos (₱75,000.00) as Moral Damages; and
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> (vii) Seventy-Five Thousand Pesos (₱75,000.00) as Exemplary Damages.
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> (viii) In addition, interest is imposed on all damages awarded at the rate of 6% per annum from date of finality of judgment until fully paid.

SO ORDERED.

Peralta, Perez, Reyes, and *Jardeleza, JJ.,* concur.

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

SECOND DIVISION

[G.R. No. 224889. October 19, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MC HENRY SUAREZ *y* ZURITA, JOHN JOSEPH RAVENA *y* ACOSTA and JOHN PAUL VICENCIO *y* BARRANCO,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** The Court reiterates that the trial judge's evaluation of the credibility of a witness and of his testimony is accorded the highest respect because of his unique opportunity to directly observe the demeanor of the witness that enables him to determine whether the witness is telling the truth or not. Such evaluation, when affirmed by the CA, is binding on the Court unless the appellant reveals facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.

2. **ID.; ID.; ID.; UPHELD IN THE ABSENCE OF ILL-MOTIVE.—** The Court finds that Nancy had no malicious motive whatsoever to falsely testify against the accused. Her admitted resentment against accused Ravena for non-payment of his loan to her, apart from being flimsy and self-serving, had no relevant value. It could not have moved her to make up stories against him just to get even. The penalty is not commensurate. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that their testimonies are entitled to full faith and credit.

3. **CRIMINAL LAW; CONSPIRACY; MAY BE DEDUCED FROM THE MODE AND MANNER IN WHICH THE OFFENSE WAS PERPETRATED; THE ACT OF ONE IS THE ACT OF ALL.—** Conspiracy may be deduced from the

mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act. x x x Action in concert to achieve a common design is the hallmark of conspiracy. Where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.

4. REMEDIAL LAW; EVIDENCE; DENIAL; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONIES.— In their defense, the accused simply invoked denial. Such defense is inherently weak and cannot prevail over the positive identification made by prosecution witness Nancy and the dying declaration of Roger himself. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.

5. ID.; ID.; ALIBI; WEAK DEFENSE THAT EVEN WHEN CORROBORATED DESERVES SCANT CONSIDERATION; NON-FLIGHT IS NOT CONCLUSIVE PROOF OF INNOCENCE.— Accused' defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. Accused miserably failed to discharge this burden. The fact that accused presented witnesses to corroborate their respective alibis deserve scant consideration. Their testimonies could only be viewed with skepticism due to the weakness of the alibi said witnesses were corroborating. Accused could easily fabricate an alibi and ask their relatives and friends to corroborate it. Further, the Court is not convinced with the argument interposed by accused Suarez and Vicencio that it was highly improbable for them, after having killed someone, to continue to stay in an area relatively near the *locus criminis*

where they could be easily located and arrested. They maintain that their non-flight supports their plea of innocence. Unfortunately for accused, there is no case law holding non-flight as an indication or as conclusive proof of innocence.

6. CRIMINAL LAW; REVISED PENAL CODE; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT APPRECIATED AS THE FIGHT WHICH ENSUED WAS NOT PLANNED AND HAPPENED IN THE SPUR OF THE MOMENT.— The Court upholds the finding of the RTC that treachery did not attend the killing of Roger. There is treachery when the following essential elements are present, *viz*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. As correctly ruled by the RTC, the fight which ensued between Roger and all the accused was not planned and happened in the spur of the moment. Hence, it cannot be declared with certainty that the boxing and stabbing were consciously and deliberately adopted by the accused to thereby ensure the commission of the offense without risk to them arising from the defense which the offended party might make. Besides, Roger had already been forewarned of the danger that might befall him before he approached the accused.

7. ID.; ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; REQUIRES NOTORIOUS INEQUALITY OF FORCES BETWEEN THE VICTIM AND THE AGGRESSOR THAT IS PLAINLY AND OBVIOUSLY ADVANTAGEOUS TO THE AGGRESSOR AND PURPOSELY SELECTED TO FACILITATE THE COMMISSION OF THE CRIME.— Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime. It has been held that the mere presence of two assailants, one of them armed with a knife, does not *ipso facto* indicate an abuse of superior strength. Mere superiority in numbers is not indicative of the presence of this circumstance. In *People v. Casingal*, it was held that the fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength

of the aggressors and the victim. The evidence must establish that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties. x x x To qualify a killing to murder, the circumstances invoked must be proven as indubitably as the killing itself and cannot be deduced from mere supposition.

8. ID.; ID.; HOMICIDE; PENALTY AND CIVIL DAMAGES.— The Court finds Suarez, Ravena and Vicencio guilty only of homicide, defined in, and penalized by, Article 249 of the Revised Penal Code. There being no modifying circumstances in the commission of homicide, accused should each be meted an indeterminate penalty, the minimum of which shall be taken from the entirety of *prision mayor*, ranging from six (6) years and one (1) day to twelve (12) years, and the maximum period of which shall be taken from the medium period of *reclusion temporal*, ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The award of actual damages in the amount of ₱104,446.44 should be maintained as the same had been duly proved by the heirs of Roger. The amounts to be awarded as civil indemnity and moral damages should be fixed at ₱50,000.00 each, being in consonance with the prevailing jurisprudence. Considering that no aggravating circumstance was proven during the trial, the award of ₱30,000.00 as exemplary damages must be deleted. Further, in line with the Court's recent pronouncement, the interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the October 20, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CEB-CR H.C. No. 01723, which affirmed the June 21, 2013 Decision[2] of the Regional Trial Court, Branch 35, Iloilo City *(RTC)*, in Criminal Case No. 11-69572, finding accused Mc Henry Suarez *y* Zurita *(Suarez)*, John Joseph Ravena *y* Acosta *(Ravena)* and John Paul Vicencio *y* Barranco *(Vicencio)* guilty beyond reasonable doubt of the crime of Murder.

Suarez, Ravena and Vicencio were indicted for Murder in an Information, dated February 7, 2011, which alleged that accused, conniving and mutually helping each other, stabbed and killed one Roger Setera *(Roger)* on or about the 2nd day of February 2011 and that the killing was qualified by treachery and abuse of superior strength.

Version of the Prosecution

The People's version of the events as summarized by the Office of the Solicitor General *(OSG)* in the Consolidated Appellee's Brief[3] are as follows:

> Prosecution witness Nancy Lauresta ("Nancy") is an employee of 123 Videoke Bar located at Bonifacio St. in Oton, Iloilo. On February 2, 2011, she was one of the employees working at the said bar, opening it at around 4:00 p.m. and attending to the customers therein. At around 9:30 p.m., appellants Vicencio and Suarez arrived at the bar. Appellant Ravena joined them later on. Roger Setera (Roger), the victim in this case, arrived at 10:30 p.m. with two (2) of his companions.

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[1] Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justice Pamela Ann Abella Maxino and Associate Justice Jhosep Y. Lopez, concurring; *rollo,* pp. 5-13.

[2] Penned by Judge Fe Gallon-Gayanilo; *CA rollo,* pp. 27-39.

[3] *Id.* at 100-120.

At 12 o'clock midnight, appellants decided to leave. Before actually leaving however, two (2) incidents involving appellants occurred. First, while still inside the bar, appellant Vicencio uttered, "Parts, wala sang matabo sa aton" ("Parts, nothing will happen to us"). Suarez, who was holding a bottle, threw it against the floor and then said, "Ano guid haw" ("So what"). The second incident happened as appellants were exiting the bar. They were stopped on the way out by the cashier who told them that they have yet to pay their bill. Appellant Ravena then took out a ₱100.00 bill from his pocket and gave it to the cashier saying "Ta, here's the ₱100.00, you might tell my mother that I did not pay the bill." This was not enough though as the balance of ₱40.00 remained. It was a Tiyay Esang who settled the balance later on.

After these two (2) incidents, appellants left the bar and proceeded to a lamppost outside. The lamppost stood 3 meters away from where Nancy was standing as she was gathering bottles and cleaning the tables outside. While standing, Suarez broke a bottle again and the three started to push each other. At this point, the victim Roger was also outside the bar and shouted at appellants, "You all go home." Appellants made a sign to Roger with their fingers, beckoning the latter to come closer. In response to this, Roger approached them. When Roger Setera got close, Vicencio and Suarez started to simultaneously and continuously box him. Roger parried their punches with his arm. While this was going on, Ravena who was positioned at the back of Roger delivered a stab blow to the latter's back. Ravena then ran away followed by Suarez and Vicencio. They ran to the back portion of the market headed towards the beach area.

Prosecution witness Prudencio Taño ("Prudencio"), who was drinking with Roger along with other companions did not notice that Roger had left his chair and went to appellants. He was only alerted when he and his companions heard Roger shout that he was hit. Prudencio stood up and went to Roger and asked him, "What happened to you, Pre?" Roger then replied, "They stabbed me and I am wounded!" Prudencio then asked Roger who was it that stabbed him and Roger replied with "the children." Afterwards, Prudencio saw "Jun" and "Bongbong" running towards the dark area. Prudencio called for a tricycle because Roger asked that he be brought to the hospital. Roger was loaded onto a tricycle and brought to the police station in order that Roger be transferred to the ambulance that was parked there, as well as to blotter the incident. At the police station, they reported the incident to PO3 Jose Minerva ("PO3 Minerva")

who was on duty that night. Roger told him that he was "stabbed by three persons he knew." Prudencio and PO3 Minerva accompanied Roger in the ambulance. Inside the ambulance, Prudencio asked Roger who was it that stabbed him and Roger replied that it was "Joseph Acosta" or "Janjan." When they arrived at the hospital, Prudencio called up the family of Roger, her sister, Sharon, and Atty. Naciongayo. Aforementioned persons followed by policemen. The following morning Roger died.

After Roger was taken to the hospital, PO3 Minerva went back to the crime scene in order to investigate. When he arrived there, he met the attendants of 123 Videoke Bar including Nancy Lauresta. He asked the attendants who stabbed Setera and was told that it was appellants who stabbed Roger. After this initial investigation, the police conducted a hot pursuit operation, through which they were able to arrest Suarez and Vicencio. Appellant Ravena, however, was able to flee and, thus, was not apprehended in the operation.

Dr. Owen Jaen Lebaquin, Medico-Legal Officer, PNP Camp Delgado, conducted the autopsy on the cadaver of Roger. In connection with his examination, he issued Medico-Legal Report No. M-060-2011 which revealed that Roger sustained "stab wound at the right lumbar area of the back which also lacerated the right kidney, measuring by 3 x 1 cm., 10 cm. from the posterior midline, 15 cm. deep, directed anteriorwards slightly upwards medialwards lacerating the right kidney" and that he died "due to a stab wound at the right lumbar area at the back."

Accordingly to Dr. Lebaquin, the assailant could have been standing directly at the back of Roger when the stab blow was inflicted. The wound sustained by Roger was fatal because it lacerated the kidney. However, instantaneous death could have been prevented with immediate medical attention.[4]

Version of the Defense

Suarez, Ravena and Vicencio denied the accusation against them and gave the following version in their Appellants Brief to substantiate their claim of innocence:

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[4] *Id.* 105-107.

On February 2, 2011, at around 1:00 in the afternoon, Ravena was at his house washing his clothes when Vicencio, his childhood friend, arrived for a visit. After washing his clothes for two hours, Ravena rested. Later, Vicencio invited Ravena to play basketball at the plaza. At around 3:10 o'clock that afternoon, Vicencio and Ravena arrived at the plaza and hanged out for twenty minutes. Thereafter, they played basketball for more than an hour. At 4:45 o'clock in the afternoon, they went back to the house of Ravena and hanged out there until 8:30 o'clock in the evening.

At past 8:30 o'clock in the evening, Vicencio and Ravena went to the 123 Videoke Bar and arrived there at 9:00 o'clock. Tiyay Esang, Panoy Vicencio Ariane and Royroy Salcedo and his two companions were already there. Ravena and Vicencio settled on one of the tables and talked with each other. Fifteen minutes after, they ordered two bottles of Red Horse beer.

While Vicencio and Ravena were drinking, at about 10:00 o'clock, they saw Suarez passed by, walking on his way home. They invited the latter to join them. Suarez joined them and they ordered a bottle of Red Horse for him. While they were drinking, Ravena noticed the argument which ensued between Roger and Royroy when Roger denied the latter's request to buy him a drink. In this altercation, Royroy told Roger, "You will have something later."

Vicencio, Ravena and Suarez continued drinking until 11:30 o'clock that evening and prepared themselves to go home. They chipped-in to pay the bill amounting to ₱120.00. Vicencio and Ravena paid the bill to the cashier. When they were about to go out, the cashier called their attention that their bill was not fully paid. They argued with the cashier that they paid for what they had consumed. Tiyay Esang pacified them and paid the balance of ₱40.00.

On their way out of the videoke bar, suddenly, Suarez threw an empty bottle on the road as a reaction to the embarrassing situation which arose from the argument relating to the payment of their account. Vicencio and Ravena approached him and asked him why he threw the bottle. Suarez did not answer. Momentarily, Roger approached them and uttered, "Gaano kamo dodri, gapaisog-isog?" ("Are you displaying your bravery here?"). Upon hearing Roger's statement, Suarez and Vicencio fled. Then the group of Royroy approached Roger and a fight ensued between them. Ravena ran away and when he reached his house, he rested for a while. When his mother asked

him why he was running home and catching his breath, he answered that a dog was running after him. His mother told him to rest.

The following day, Ravena heard that Roger was killed and that he was one of the suspects. At first, he did not mind the imputation but on February 3, 2011, he asked his mother to call his uncle Buddy Carvajal so that the latter can accompany him to surrender at the police station. Accompanied by his father, girlfriend and Carvajal, he surrendered.

Suarez, for his part, fled towards the house of his grandmother where he was staying near the beach. While he was walking towards the beach for fresh air, he was surprised when policemen accosted him and told him to go with them to the police station. At the police station, he asked the authorities what his offense was, however, he was told to keep quiet and not to ask questions. Later, he heard that he was one of the suspects in the stabbing incident that happened at the videoke bar. Later, the ambulance which brought Roger to the hospital arrived. Its driver asked as to who was the companion of Royroy Salcedo in stabbing Roger because that was the name that was uttered by the latter.

Vicencio heard a shout emanating from inside of the videoke bar and for fear that he might be implicated because Suarez threw a bottle of beer, he fled. When he arrived home, he went to the kitchen to look for food but found nothing. His mother Virginia woke up and gave him money to buy bread at Red's which is located in front of the gymnasium. On his way thereto, a policeman named Saluya arrested him. He protested his arrest and asked the policeman what his offense was but the policeman did not answer. At the police station, the policeman told him that he will be released if the other suspect was captured.

On the night of February 2, 2011, Jesus Suarez (Tiyay Esang), together with Panoy Villavicencio, was at the videoke bar drinking when Vicencio, Ravena and Suarez arrived. Suarez approached her to buy them drinks, however, she told him that she had no money. When she and Panoy finished drinking, she went to the cashier and inquired how much was the balance of the group of Suarez. The cashier informed her that the balance was ₱40.00, so she paid it. Before she left the videoke bar, she told Vicencio, Ravena and Suarez to go home immediately after they were through. Then, she left the place.

Virginia Vicencio was lying down when her son Vicencio arrived. The latter told her that he was starving and was looking for food. She told him that there was no food and gave him money to buy bread. Then, she heard someone calling her and told that her son was arrested. She went out of the house and proceeded to where his son was. There, she saw her son being held by police officers Minerva and Sabijon. The policemen were asking her son who his companions were so that he will be released. Later, her son was brought to and detained at the police station.[5]

The Ruling of the RTC

On June 21, 2013, the RTC rendered its decision finding Suarez, Ravena and Vicencio guilty as charged. It did not lend credence to the twin defenses of denial and alibi proffered by the accused, stating that said defenses could not prevail over the testimony of Nancy Lauresta *(Nancy)*, who categorically and convincingly testified that she saw Ravena stab Roger while he was being punched by Suarez and Vicencio. The RTC noted that the accused could not show any ill motive that could have impelled Nancy to falsely implicate them in such a heinous crime. Hence, it concluded that there is neither cause nor reason to withhold credence from her testimony.

The RTC also wrote that the testimony of Prudencio Taño *(Taño)* on Roger's dying declaration effectively unmasked the identities of the accused as his assailants. It was, however, of the view that evidence of treachery was wanting because Roger must have been forewarned of the risk and danger that could befall him. Hence, it could not be said that the boxing and stabbing were consciously and deliberately adopted by the accused. Nevertheless, it opined that the attendance of abuse of superior strength qualified the killing to murder. The RTC added that the manner by which the accused committed the felonious act revealed a community of criminal design. Hence, it concluded that there was conspiracy. The decretal portion of the RTC decision reads:

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[5] *Id.* at 17-19.

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding accused **MC HENRY SUAREZ y ZURITA, JOHN JOSEPH RAVENA y ACOSTA**, and **JOHN PAUL VICENCIO y BARRANCO**, **GUILTY**, beyond reasonable doubt of **MURDER** under Article 248 of the Revised Penal Code. Accordingly, each is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA***.

As civil liability, they are ordered to pay, jointly and severally, the heirs of Roger Setera the amounts of ₱75,000.00 as indemnity *ex-delicto*, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱104,446.44 as actual damages and an interest of 6% per annum on all the awards of damages from the finality of judgment until fully paid.

They shall be credited with the full time of the preventive imprisonment they have undergone under the conditions set out in Article 29 of the Revised Penal Code.

SO ORDERED.[6]

Not in conformity, Suarez, Ravena and Vicencio appealed the RTC decision before the CA.

The Ruling of the CA

In its assailed October 20, 2015 Decision, the CA found no palpable error in the judgment of conviction rendered by the RTC against Suarez, Ravena and Vicencio. According to the CA, the narration of Nancy as to how the event took place and the exact participation of Suarez, Ravena and Vicencio in the commission of the crime, deserved credence and full probative weight. It likewise gave evidentiary weight on Roger's dying declaration, as testified to by Taño which revealed that Ravena was the person who stabbed him and that Suarez and Vicencio participated in the commission of the crime. In its assessment, the accused acted in concert and in pursuance of a common objective. It added that the qualifying circumstance of abuse of superior strength attended the killing of Roger. Hence, it agreed that the crime committed by the accused was murder. In the end, it decreed:

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[6] *Id.* at 39.

WHEREFORE, in view of the foregoing, the appeal is **DENIED**. The Decision dated 21 June 2013 of the Regional Trial Court of Iloilo City, Branch 35, in Criminal Case No. 11-69572 finding appellants Mc Henry Suarez y Zurita, John Joseph Ravena y Acosta and John Paul Vicencio y Barranco guilty beyond reasonable doubt of Murder is **AFFIRMED** *in toto*.

SO ORDERED.[7]

Hence, this appeal.

In a Resolution,[8] dated July 27, 2016, the Court required both parties to file their supplemental briefs, if they so desired. Both parties, however, opted to adopt the briefs they filed before the CA as their supplemental briefs.[9]

The Issues

Although Ravena is no longer questioning in his Appellant's Brief the finding of the RTC as to his guilt for the killing of Roger, nonetheless, he prays for the modification of his conviction from murder to homicide. He submits for the Court's review the following assignment of errors he previously presented before the CA:

I

THE HONORABLE REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT JOHN JOSEPH RAVENA AND HIS CO-ACCUSED OF THE CRIME OF MURDER BY APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH BASED ON ITS FINDINGS THAT THERE WAS A COMBINED STRENGTH AMONG THE THREE (3) ACCUSED IN ORDER TO CONSUMMATE THE OFFENSE INSPITE OF LACK OF EVIDENCE TO SUPPORT THE PRESENCE OF THE AFORESAID QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH.

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[7] *Rollo,* p. 12.

[8] *Id.* at 19A-20.

[9] *Id*. at 27-29; 33-34.

II

THE HONORABLE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER INSTEAD OF HOMICIDE.[10]

In their separate Appellants' Brief, Suarez and Vicencio insisted on their innocence of the crime charged, pleading the following

GROUNDS

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS SUAREZ AND VICENCIO OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[11]

II

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE ACCUSED APPELLANTS SUAREZ AND VICENCIO ACTED IN CONCERT WITH RAVENA IN STABBING THE VICTIM.[12]

III

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH WHEN IT WAS NOT PROVEN BY THE PROSECUTION.[13]

Synthesized, the issues herein focus on: (a) the credibility of the prosecution witness Nancy Lauresta; (b) the sufficiency of the prosecution evidence to prove the commission of the

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

[11] *Id*. at 48.

[12] *Id*. at 53.

[13] *Id*. at 55.

crime and the identities of the culprits thereof; (c) the existence of conspiracy; and (d) the presence or absence of the qualifying circumstance of abuse of superior strength.

The Ruling of the Court

The appeal is partly meritorious.

Both the RTC and the CA considered Nancy's eyewitness testimony credible. The Court concurs with this finding of the courts below.

The Court reiterates that the trial judge's evaluation of the credibility of a witness and of his testimony is accorded the highest respect because of his unique opportunity to directly observe the demeanor of the witness that enables him to determine whether the witness is telling the truth or not.[14] Such evaluation, when affirmed by the CA, is binding on the Court unless the appellant reveals facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[15]

In the case at bench, however, the accused did not present any fact or circumstance of weight that the RTC or the CA overlooked, misapprehended, or misinterpreted that, if considered, would alter the finding that they were responsible for the killing of Roger herein. Accordingly, the Court sees no reason to disregard the total credence accorded by the lower courts to Nancy's eyewitness account.

To the Court's view, Nancy's identification of all the accused as the perpetrators was positive and reliable for being based on her recognition of each of them during the incident. Despite gruelling cross-examination, she steadfastly related the principal occurrence and had consistently and invariably identified accused as the culprits of the gruesome killing. She is very familiar with each of the accused as they were regular customers of the videoke bar and were all residents of the same barangay, which

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[14] *People v. Pascual*, 541 Phil. 369, 377 (2007).

[15] *People v. Domingo*, 616 Phil. 261, 269 (2009).

eliminated any possibility of mistaken identification. She spotted them from a distance of only three meters away under a good condition of visibility as the incident happened under a lighted lamppost. Moreover, Nancy detailed the distinct acts committed by each of the accused during their assault on Roger.

There was no better indicator of the reliability and accuracy of her recollection than its congruence with the physical evidence adduced at the trial. The result of the post-mortem examination conducted by Dr. Owen Jaen Lebaquin *(Lebaquin)* showed that the victim sustained a "*stab wound at the right lumbar area of the back which also lacerated the right kidney, measuring by 3 x 1 cm., 10 cm. from the posterior midline, 15 cm. deep, directed anteriorwards slightly upwards medialwards lacerating the right kidney*,"[16] which confirmed Nancy's testimonial declaration about the victim having been stabbed at his back.

The Court finds that Nancy had no malicious motive whatsoever to falsely testify against the accused. Her admitted resentment against accused Ravena for non-payment of his loan to her, apart from being flimsy and self-serving, had no relevant value. It could not have moved her to make up stories against him just to get even. The penalty is not commensurate. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that their testimonies are entitled to full faith and credit.[17]

Aside from the testimony of Nancy, the dying declaration of Roger left no doubt as to the identity of the perpetrator. Roger was very well aware of his imminent death and his declaration to Taño that Ravena was responsible for his stab wound was made in the belief that he would not survive his injury. The declarations of Roger related to circumstances pertaining to his impending death and he would have been competent to testify had he survived.

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[16] *CA rollo,* p. 30.

[17] *People v. Tabaco*, 336 Phil. 771, 796 (1997).

Accused Suarez and Vicencio contend that Roger's dying declaration failed to implicate them to the killing inasmuch as it did not specifically mention them as his assailants. The argument is untenable. The Court adopts with conformity the following disquisition of the CA on this score:

> xxx It bears stressing that when Setera (Roger) was first asked who stabbed and wounded him, he answered that it was "the children." When Setera was asked a second time if he knew who stabbed him, he categorically pointed to appellant Ravena as the perpetrator. Thus, while appellants Suarez and Vicencio were not named, their companion Ravena was clearly identified as the person who stabbed Setera. Since it was established that appellants were together at the time and date of the incident, it can be safely concluded that "the children" who Setera pointed to as the persons who stabbed and wounded him were in fact Ravena, Suarez and Vicencio. This Court entertains no doubt as to their participation in the crime charged.[18]

Accordingly, Roger's dying declaration, taken together with the positive testimony of Nancy, established the guilt of the accused beyond reasonable doubt.

Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest.[19] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.[20]

Here, the evidence on record disclosed that upon hearing the commotion caused by accused, Roger, who was then outside the videoke bar, yelled at them to go home. All the accused

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[18] *Rollo*, p. 10.

[19] *People v. de la Rosa, Jr.*, 395 Phil. 643, 659 (2000).

[20] *People v. Del Castillo*, 679 Phil. 233, 254 (2012).

then flashed the "dirty finger" at Roger and beckoned him to come closer to them. Roger reacted to the taunts and approached them. When Roger got close to them, Suarez and Vicencio started raining fist blows on him. Roger defended himself by parrying the punches with his arms. Ravena, who was positioned behind Roger, suddenly delivered the fatal blow. Specifically, Ravena stabbed Roger at the right lumbar area which lacerated his right kidney. After the stabbing, the three accused ran away.

The combined efforts of the accused were perpetrated with concerted coordination, indicating their common objective to inflict injury on Roger. Thus, conspiracy is present. The fact that Suarez and Vicencio only delivered punches against Roger would not exculpate them from criminal liability considering that their overt acts were crucial in the commission of the crime. Action in concert to achieve a common design is the hallmark of conspiracy. Where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.[21]

In their defense, the accused simply invoked denial. Such defense is inherently weak and cannot prevail over the positive identification made by prosecution witness Nancy and the dying declaration of Roger himself. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.[22]

Accused' defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[23] Accused miserably failed to discharge this burden.

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[21] *People v. Drew*, 422 Phil. 614, 628 (2001).

[22] *People v. Calonge*, 637 Phil. 435, 455 (2010).

[23] *People v. Abella*, 624 Phil. 18, 36 (2010).

The fact that accused presented witnesses to corroborate their respective alibis deserve scant consideration. Their testimonies could only be viewed with skepticism due to the weakness of the alibi said witnesses were corroborating. Accused could easily fabricate an alibi and ask their relatives and friends to corroborate it.[24] Further, the Court is not convinced with the argument interposed by accused Suarez and Vicencio that it was highly improbable for them, after having killed someone, to continue to stay in an area relatively near the *locus criminis* where they could be easily located and arrested. They maintain that their non-flight supports their plea of innocence. Unfortunately for accused, there is no case law holding non-flight as an indication or as conclusive proof of innocence.[25]

Treachery

The Court upholds the finding of the RTC that treachery did not attend the killing of Roger. There is treachery when the following essential elements are present, *viz*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[26] As correctly ruled by the RTC, the fight which ensued between Roger and all the accused was not planned and happened in the spur of the moment. Hence, it cannot be declared with certainty that the boxing and stabbing were consciously and deliberately adopted by the accused to thereby ensure the commission of the offense without risk to them arising from the defense which the offended party might make. Besides, Roger had already been forewarned of the danger that might befall him before he approached the accused.

Abuse of Superior Strength

Now, was the killing of Roger committed with abuse of superior strength?

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[24] *People v. Torres*, G.R. No. 189850, September 22, 2014, 735 SCRA 687, 704.

[25] *People v. Diaz*, 443 Phil. 67, 89 (2003).

[26] *People v. Villarico, Sr.*, 662 Phil. 399, 422 (2011).

The Court rules in the negative. The conviction of the accused for murder is substantively flawed, as both the RTC and the CA erroneously appreciated the presence of abuse of superior strength as a qualifying circumstance. An examination of the evidence tells us that no conclusive proof exists showing the presence of this circumstance in the commission of the crime.

Both the RTC and CA similarly reached the conclusion that the accused employed abuse of superior strength to ensure the execution and success of the crime. The CA wrote:

> xxx The deliberate intent on the part of appellants to abuse their superior strength and number over Setera can be inferred from the way they planned their attack on him. While Setera was distracted from the simultaneous punches thrown by Suarez and Vicencio, Ravena purposely took advantage of the situation and stabbed Setera at the back with ease. The disparate inequality of strength and number created an unfair advantage in favor of appellants.[27]

This reasoning is flawed.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime.[28] It has been held that the mere presence of two assailants, one of them armed with a knife, does not *ipso facto* indicate an abuse of superior strength.[29] Mere superiority in numbers is not indicative of the presence of this circumstance.[30]

In *People v. Casingal*,[31] it was held that the fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength,

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[27] *Rollo*, p. 9.

[28] *People v. Daquipil*, 310 Phil. 327, 348 (1995).

[29] *People v. Asis*, 349 Phil. 736, 747 (1998).

[30] *People v. Escoto*, 313 Phil. 785, 800 (1995).

[31] 312 Phil. 945, 956 (1995).

there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage.[32] To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked.[33] The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[34]

Here, the prosecution failed to proffer proof as to the relative disparity in age, size and strength, or force, except the showing that three assailants, one of them (Ravena) armed with a pointed object, attacked Roger. Neither did it present evidence to show that Roger suffered from an inferior physical condition from which the circumstance could be inferred. In fact, there was evidence that Roger was able to parry the fist blows delivered by Suarez and Vicencio.

The events leading to the stabbing belie any finding of deliberate intent on the part of the accused to abuse their superior strength. The testimony of the prosecution witness, Nancy, showed that the encounter between Roger and his assailants was unplanned and unpremeditated.

Roger was simply outside the videoke bar, while the assailants were pushing each other after Suarez threw a bottle on the ground. When Roger screamed at Suarez, Ravena and Vicencio and told them to go home, all of them beckoned him to come closer. Thereafter, the fight ensued. Indeed, there was no conscious effort on the part of the accused to use or take advantage of any superior strength and number that they then enjoyed. Particularly, it was not clearly shown that the accused, taking advantage of their number, purposely resorted to simultaneously and continuously punch Roger so that Ravena would be free to stab him at the back. The evidence on this point is simply too

[32] *Valenzuela v. People*, 612 Phil. 907, 917 (2009).

[33] *People v. Ventura*, 477 Phil. 458, 484 (2004).

[34] *People v. Moka*, 273 Phil. 610, 621 (1991).

sketchy and insufficient for a definitive conclusion. To qualify a killing to murder, the circumstances invoked must be proven as indubitably as the killing itself and cannot be deduced from mere supposition.[35] What was shown with certainty and clarity is the accused' intent to kill, as shown by the stab wound in the right lumbar area of the back of Roger lacerating his right kidney which resulted in his death the following morning.

In the light of the foregoing, the Court is compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. In sum then, the Court finds Suarez, Ravena and Vicencio guilty only of homicide, defined in, and penalized by, Article 249 of the Revised Penal Code. There being no modifying circumstances in the commission of homicide, accused should each be meted an indeterminate penalty, the minimum of which shall be taken from the entirety of *prision mayor*, ranging from six (6) years and one (1) day to twelve (12) years, and the maximum period of which shall be taken from the medium period of *reclusion temporal*, ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

The award of actual damages in the amount of ₱104,446.44 should be maintained as the same had been duly proved by the heirs of Roger. The amounts to be awarded as civil indemnity and moral damages should be fixed at ₱50,000.00 each, being in consonance with the prevailing jurisprudence.[36] Considering that no aggravating circumstance was proven during the trial, the award of ₱30,000.00 as exemplary damages must be deleted. Further, in line with the Court's recent pronouncement, the interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[37]

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[35] *People v. Baltar, Jr.*, 401 Phil. 1, 14 (2000).

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

[37] *People v. Maglente*, G.R. No. 201445, November 27, 2013, 722 SCRA 388, 405.

WHEREFORE, the assailed October 20, 2015 Decision of the Court of Appeals in CA-G.R. CEB-CR H.C. No. 01723 is **MODIFIED** as follows:

1) Mc Henry Suarez *y* Zurita, John Joseph Ravena *y* Acosta and John Paul Vicencio *y* Barranco are found guilty beyond reasonable doubt of the crime of Homicide. Accordingly, each is sentenced to an indeterminate penalty of Six (6) Years and One (1) Day of *prision mayor*, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *reclusion temporal*, as maximum;

2) Mc Henry Suarez y Zurita, John Joseph Ravena y Acosta and John Paul Vicencio y Barranco are ordered to pay, jointly and severally, the heirs of Roger Setera the amounts of ₱104,446.44 as actual damages, ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The award of ₱30,000.00 as exemplary damages is deleted.

3) The accused-appellants are ordered to pay, jointly and severally, legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.

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

Leonen, J., on official leave.

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or theft; and 4. There is on the part of the accused, intent to gain for himself or for another." (Lim *vs.* People, G.R. No. 211977, Oct. 12, 2016) p. 215

— To establish the first element of fencing, sufficient proof of ownership of the subject property must be presented. (*Id*.)

Section 6 — [T]he clearance stated in Sec. 6 of P.D. No. 1612 is only required if several conditions are met: *first*, that the person, store, establishment or entity is in the business of buying and selling of any good, article, item, object, or anything of value; *second*, that such thing of value was obtained from an unlicensed dealer or supplier thereof; and *third*, that such thing of value is to be offered for sale to the public; in the present case, the first and third requisites were not met. (Lim *vs.* People, G.R. No. 211977, Oct. 12, 2016) p. 215

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— Falsification and dishonesty constitute violations of the Lawyer's Oath and Canon 10 of the Code of Professional Responsibility. (*Id*.)

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to be performed; 3. the kind of supervision received; 4. mental and/or physical strain required in the completion of the work; 5. nature and extent of internal and external relationships; 6. kind of supervision exercised; 7. decision-making responsibility; 8. responsibility for accuracy of records and reports; 9. accountability for funds, properties, and equipment; and 10. hardship, hazard, and personal risk involved in the job. (Dev't. Academy of the Phils. *vs.* Chairperson Pulido Tan, G.R. No. 203072, Oct. 18, 2016) p. 537

— The general rule is that all allowances are deemed included in the standardized salary; Sec. 12 on certain allowances permitted to be given on top of standardized salaries; the key consideration is a showing that they are given to government employees of certain offices due to the unique nature of the office and of the work performed by the employee. (*Id*.)

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— Failure to strictly comply therewith does not *ipso facto* render the seizure and custody over the seized items void; conditions. (People *vs*. Goco *y* Ombrog, G.R. No. 219584, Oct. 17, 2016) p. 433

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— The chain of custody of the dangerous drugs must be clearly and competently shown; non-compliance with the procedure must be justified. (People *vs.* Reyes, G.R. No. 199271, Oct. 19, 2016) p. 671

— The prosecution must present testimonies about every link in the chain, from the seizure of the items up until their presentation in court as evidence. (People *vs.* Goco *y* Ombrog, G.R. No. 219584, Oct. 17, 2016) p. 433

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— Essential elements for a successful prosecution of illegal possession of dangerous drugs, sufficiently established. (Luy *y* Ganuelas *vs*. People, G.R. No. 200087, Oct. 12, 2016) p. 201

— In order to convict an accused for illegal possession of dangerous drugs, the prosecution must prove that: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (People *vs.* Goco *y* Ombrog, G.R. No. 219584, Oct. 17, 2016) p. 433

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Corporate powers and capacity — The power of a corporation to validly convey any of its real or personal properties must be pursuant to a legitimate corporate purpose, or is at least reasonable and necessary to further its purpose. (Agdao Landless Residents Association, Inc. *vs.* Maramion, G.R. Nos. 188642 & 189425, Oct. 17, 2016) p. 281

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Individual suit and derivative suit — Individual suits are filed when the cause of action belongs to the stockholder personally, and not to the stockholders as a group, or to the corporation, *e.g.* denial of right to inspection and denial of dividends to a stockholder; a derivative suit, on the other hand, is one which is instituted by a shareholder or a member of a corporation, for and in behalf of the corporation for its protection from acts committed by directors, trustees, corporate officers, and even third persons. (Agdao Landless Residents Association, Inc. *vs.* Maramion, G.R. Nos. 188642 & 189425, Oct. 17, 2016) p. 281

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the latter had taken steps to convert the legal possession into illegal possession. (Perez *vs*. Lasaceña, G.R. No. 211539, Oct. 17, 2016) p. 369

ELECTIONS

Certificate of candidacy — If the certificate of candidacy is void *ab initio*, the candidate is not considered a candidate from the very beginning; the qualified candidate who placed second to the disqualified one should have been proclaimed as winner. (Diambrang *vs*. COMELEC, G.R. No. 201809, Oct. 11, 2016) p. 109

EMPLOYER-EMPLOYEE RELATIONSHIP

Concept — It is the law that defines and governs an employment relationship whose terms are not restricted by those fixed in the written contract; monthly retainer's fee covered by the term "wages". (Bazar *vs*. Ruizol, G.R. No. 198782, Oct. 19, 2016) p. 656

Four-fold test — The control test is the most determinative indicator of employer-employee relationship. (Bazar *vs*. Ruizol, G.R. No. 198782, Oct. 19, 2016) p. 656

EMPLOYMENT

Employer — Business entities owned, controlled and conducted by the same parties shall be treated as one entity to protect the rights of third persons. (Leo's Restaurant and Bar Café *vs.* Densing, G.R. No. 208535, Oct. 19, 2016) p. 743

EMPLOYMENT, TERMINATION OF

Gross and habitual neglect of duties — Failure of a supervisor to perform his duties. (Publico *vs.* Hospital Managers, Inc., G.R. No. 209086, Oct. 17, 2016) p. 356

Loss of trust and confidence — To dismiss an employee on the ground of loss of trust and confidence, two requisites must concur: (a) the concerned employee must be holding a position of trust; and (b) the loss of trust must be based on willful breach of trust based on clearly established

facts. (Leo's Restaurant and Bar Café *vs*. Densing, G.R. No. 208535, Oct. 19, 2016) p. 743

Procedural due process — With respect to procedural due process, it is settled that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing; the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. (Ramirez *vs*. Polyson Industries, Inc., G.R. No. 207898, Oct. 19, 2016) p. 711

Slowdown — Appreciated even in the absence of a no-strike clause in a bargaining contract, statute or rule. (Ramirez *vs.* Polyson Industries, Inc., G.R. No. 207898, Oct. 19, 2016) p. 711

— The act of labor officers inducing workers not to render overtime work considering the circumstances was a calculated effort amounting to overtime boycott or work slowdown. (*Id*.)

Two aspects of due process — Due process under the labor code involves two aspects: first is substantive, which refers to the valid and authorized causes of termination of employment under the Labor Code; and second is procedural, which points to the manner of dismissal. (Ramirez *vs*. Polyson Industries, Inc., G.R. No. 207898, Oct. 19, 2016) p. 711

ENERGY REGULATORY COMMISSION (ERC)

Performance-based Regulation (PBR) methodology — ERC ruling approving respondent's proposed rate pursuant to Performance-based Regulation (PBR) methodology cannot be collaterally attacked through the instant petition. (Nat'l. Association of Electricity Consumers for Reforms (NASECORE) *vs*. Meralco, G.R. No. 191150, Oct. 10, 2016) p. 12

— Failure of the petitioners to object and/or attend public consultations despite due notice is fatal; the assailed ERC ruling has long become final and executory and hence, immutable. (*Id*.)

Rate on Return Based (RORB) methodology and PBR methodology — Distinguished. (Nat'l. Association of Electricity Consumers for Reforms (NASECORE) *vs*. Meralco, G.R. No. 191150, Oct. 10, 2016) p. 12

— ERC's shift from the RORB to PBR methodology should be deemed a supervening event which rendered the requirement of COA audit before approving rate increase applications as directed in *Lualhati* moot and academic. (*Id*.)

EVIDENCE

Equipoise rule **—** Where the evidence on an issue of fact is in equipoise, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. (Angeles *y* Olano *vs*. People, G.R. No. 212562, Oct. 12, 2016) p. 241

Hearsay evidence **—** Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced; the exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. (Lim *vs.* People, G.R. No. 211977, Oct. 12, 2016) p. 215

Innocent purchaser for value **—** The claim that one is an innocent purchaser for value is a matter of defense and he who asserts it has the burden of proving the same. (Magsano *vs.* Pangasinan Savings and Loan Bank, Inc., G.R. No. 215038, Oct. 17, 2016) p. 392

Official receipts and sales invoice — A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer

or agreement to sell or transfer goods and services; a "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or persons rendering services and client or customer. (Takenaka Corp.-Phil. Branch *vs.* Commissioner of Internal Revenue, G.R. No. 193321, Oct. 19, 2016) p. 647

Parol evidence rule — Exceptions to the parole evidence rule cannot apply herein; respondents failed to put in issue in their complaint that the deeds of sale do not express the parties' true intent. (Rep. of the Phils. *vs.* Roque, Jr., G.R. No. 203610, Oct. 10, 2016) p. 33

— Forbids any addition to the terms of a written agreement by testimony showing that the parties orally agreed on other terms before the signing of the document; exceptions. (*Id*.)

— Respondents failed to allege that the terms of the deeds of sale are ambiguous or obscure to require the presentation of parole evidence to ascertain the parties' intent. (*Id*.)

Public documents — A duly notarized document, by virtue of its notarization, enjoys a presumption of regularity. (Lim *vs.* People, G.R. No. 211977, Oct. 12, 2016) p. 215

— Enjoy a presumption of regularity which may only be rebutted by clear, strong and convincing evidence as to exclude all controversy as to falsity. (Perez *vs*. Lasaceña, G.R. No. 211539, Oct. 17, 2016) p. 369

— Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. (Tan *vs.* People, G.R. No. 218902, Oct. 17, 2016) p. 411

FORUM SHOPPING

Violation of — A party may validly question the decision in a regular appeal and at the same time assail the execution pending appeal *via certiorari* without violating the non-

forum shopping rule. (Sps. Nicolas *vs.* Agrarian Reform Beneficiaries Association (ARBA), G.R. No. 179566, Oct. 19, 2016) p. 618

GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445)

Certificate showing appropriation to meet contract — The absence thereof does not preclude the contractor from receiving payment for the services rendered as stipulated in the contract. (RG Cabrera Corp., Inc. *vs*. DPWH, G.R. No. 221773, Oct. 18, 2016) p. 563

General liability for unlawful expenditures — Personal liability of the official found to be directly responsible therefor; liberal application on disallowed expenditures in case of good faith. (Dev't. Academy of the Phils. *vs*. Chairperson Pulido Tan, G.R. No. 203072, Oct. 18, 2016) p. 537

HOMICIDE

Penalty and civil damages — Discussed. (People *vs*. Suarez *y* Zurita, G.R. No. 224889, Oct. 19, 2016) p. 829

ILLEGAL DISMISSAL

Reliefs — Reliefs that are proper are backwages and reinstatement/separation pay. (Bazar *vs*. Ruizol, G.R. No. 198782, Oct. 19, 2016) p. 656

INFORMATION

Sufficiency — Every element constituting the offense must be alleged in the information. (People *vs*. Cilot *y* Mariano, G.R. No. 208410, Oct. 19, 2016) p. 725

INTERESTS

Interest on money judgment — The stipulation on the interest rate is void when the stipulated interest rate is unconscionable, in which case, courts may reduce the interest rate as reason and equity demand. (Fausto *vs*. Multi Agri-Forest and Community Dev't. Cooperative, G.R. No. 213939, Oct. 12, 2016) p. 259

JUDGES

Code of Judicial Ethics — A judge must behave with propriety at all times both in his professional and private life; violated when judge had an affair with a married woman. (Tuvillo *vs*. Judge Laron, A.M. No. MTJ-10-1755, Oct. 18, 2016) p. 449

Conduct — Provides that a former member of the Bench is prohibited from handling any case upon which he had previously acted in a judicial capacity. (Atty. Pasok *vs*. Atty. Zapatos, A.C. No. 7388, Oct. 19, 2016) p. 573

— The restriction extends beyond his tenure in relation to matters in which he had intervened as judge. (*Id*.)

Gross misconduct — Judge strongly condemned for demanding money from a party litigant who has a pending case before him. (Tuvillo *vs*. Judge Laron, A.M. No. MTJ-10-1755, Oct. 18, 2016) p. 449

Immorality — Penalties. (Tuvillo *vs*. Judge Laron, A.M. No. MTJ-10-1755, Oct. 18, 2016) p. 449

JUDGMENTS

Doctrine of immutability of final judgment — Applied. (Lozada *vs*. Mendoza, G.R. No. 196134, Oct. 12, 2016) p. 168

Doctrine of immutability of judgment — The Supreme Court has the power to relax the doctrine if there exist a special or compelling circumstance warranting the re-examination of the case despite its finality. (People *vs*. Layag, G.R. No. 214875, Oct. 17, 2016) p. 386

Execution of judgment pending appeal — To justify execution pending appeal, the existence of good reasons is essential. (Sps. Nicolas *vs.* Agrarian Reform Beneficiaries Association (ARBA), G.R. No. 179566, Oct. 19, 2016) p. 618

Finality of — When a decision becomes final and executory, the same can no longer be disturbed. (Gonzalo Puyat & Sons, Inc. *vs.* Alcaide (deceased), G.R. No. 167952, Oct. 19, 2016) p. 591

Interpretation of — Where there is conflict between the dispositive part and the body of the decision, the former prevails. (People *vs*. Cilot *y* Mariano, G.R. No. 208410, Oct. 19, 2016) p. 725

JUDICIAL ADMISSION

Effect — Removes an admitted fact from the field of controversy and the production of evidence is dispensed with. (Tan *vs.* People, G.R. No. 218902, Oct. 17, 2016) p. 411

JURISDICTION OF METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS IN CIVIL CASES (R.A. NO. 7691)

Claims before first level courts outside of Metro Manila — The increase in jurisdictional amount for all kinds of claims before first level courts outside of Metro Manila is to be implemented in a staggered basis over a period of ten years. (Fausto *vs.* Multi Agri-Forest and Community Dev't. Cooperative, G.R. No. 213939, Oct. 12, 2016) p. 259

KIDNAPPING

Elements — The elements of kidnapping under Art. 267 of the Revised Penal Code are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Cilot *y* Mariano, G.R. No. 208410, Oct. 19, 2016) p. 725

— The primary element of kidnapping is deprivation of liberty in any manner. (*Id*.)

Penalty — Discussed. (People *vs*. Cilot *y* Mariano, G.R. No. 208410, Oct. 19, 2016) p. 725

LOANS

Contract of loan — For the all-embracing or dragnet clauses to secure future and other loans, the loans thereby secured must be sufficiently described in the mortgage contract. (PNB *vs*. Heirs of Benedicto and Azucena Alonday, G.R. No. 171865, Oct. 12, 2016) p. 152

— The agricultural loan and the commercial loan obtained by respondents from petitioner bank should be treated individually and separately. (*Id*.)

— The delivery of the proceeds of the loan by the lender to the borrower is indispensable to perfect the contract of loan. (Sps. Sy *vs*. Westmont Bank, G.R. No. 201074, Oct. 19, 2016) p. 694

MOTION FOR RECONSIDERATION

Second motion for reconsideration — A second motion for reconsideration is generally prohibited; while the rules provide for exceptions, a motion for reconsideration may be entertained only before the ruling sought to be reconsidered becomes final. (Buenavista Properties, Inc. *vs*. Mariño, G.R. No. 212980, Oct. 10, 2016) p. 56

MOTION TO DISMISS

Failure to state a cause of action — May be waived if not raised in a motion to dismiss. (Gemina *vs*. Eugenio, G.R. No. 215802, Oct. 19, 2016) p. 763

1997 NATIONAL INTERNAL REVENUE CODE (NIRC)

Section 220 — Recommendation of the Regional Director to file a complaint constitutes as compliance with the requirement of Sec. 220 of the NIRC which requires approval of the BIR Commissioner before filing a case for recovery of taxes. (People *vs*. Valeriano, G.R. No. 199480, Oct. 12, 2016) p. 192

NEGOTIABLE INSTRUMENTS LAW

Holder in due course — The law requires that a party must have acquired the instrument in good faith and for value; discussed. (RCBC Savings Bank *vs*. Odrada, G.R. No. 219037, Oct. 19, 2016) p. 788

Liability of acceptor under Section 62 — The drawer bank is not liable until it accepts an instrument. (RCBC Savings Bank *vs*. Odrada, G.R. No. 219037, Oct. 19, 2016) p. 788

OBLIGATIONS

Delay — Notice or demand is not necessary before the debtor incurs in delay when the obligation expressly so declares. (Fausto *vs.* Multi Agri-Forest and Community Dev't. Cooperative, G.R. No. 213939, Oct. 12, 2016) p. 259

OMBUDSMAN ACT OF 1989 (R.A. NO. 6770)

Jurisdiction of the Office of the Ombudsman — An administrative case filed against public officers for their alleged unfair and discriminatory acts in relation to their official function during their tenure should be resolved by the Office of the Ombudsman. (Sps. Buffe *vs*. Sec. Gonzalez, A.C. No. 8168, Oct. 12, 2016) p. 143

PARTIES TO CIVIL ACTIONS

Real party-in-interest — One who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof. (Gemina *vs.* Eugenio, G.R. No. 215802, Oct. 19, 2016) p. 763

PLEADINGS

Actionable documents — Failure to spell out the words "specifically deny the genuineness and due execution of the promissory notes", not fatal; rule substantially complied where specific denial can be deduced in the answer. (Sps. Sy *vs*. Westmont Bank, G.R. No. 201074, Oct. 19, 2016) p. 694

— Liberal application of the rules on technicalities. (*Id*.)

PLEADINGS AND PRACTICES

Interference with the processes — The Court strongly warns a non-party to the case not to interfere with the processes of the present case or to malign the Court or its members. (Buenavista Properties, Inc. *vs*. Mariño, G.R. No. 212980, Oct. 10, 2016) p. 56

PRESUMPTIONS

Presumption of innocence — Presumption of innocence superior to presumption of regular performance of official duty. (People *vs.* Reyes, G.R. No. 199271, Oct. 19, 2016) p. 671

PROPERTY

Co-ownership — Mortgage of a co-owned property by a co-owner without the consent of the other co-owners, effect. (Magsano *vs*. Pangasinan Savings and Loan Bank, Inc., G.R. No. 215038, Oct. 17, 2016) p. 392

— Upon the death of a spouse, the conjugal partnership is dissolved and an implied ordinary co-ownership between the surviving spouse and the other heirs of the deceased spouse arises. (*Id*.)

PROSECUTION OF OFFENSES

Information — The prosecution has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the said crime. (Lim *vs*. People, G.R. No. 211977, Oct. 12, 2016) p. 215

QUASI-DELICTS

Liability of employer — In cases where both Art. 2180 of the Civil Code and the registered-owner rule apply, the plaintiff must first establish that the employer is the registered owner of the vehicle in question and once the plaintiff successfully proves ownership, there arises a disputable presumption that the requirements of Art. 2180 have been proven. (Greenstar Express, Inc. *vs*. Universal Robina Corp., G.R. No. 205090, Oct. 17, 2016) p. 329

RULES OF PROCEDURE

Liberal construction — Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. (Sps. Nicolas *vs.* Agrarian Reform Beneficiaries Association (ARBA), G.R. No. 179566, Oct. 19, 2016) p. 618

Res judicata and stare decisis non quieta et movere — The doctrines of *res judicata* and *stare decisis non quieta et movere* are general procedural law principles which both deal with the effects of previous but factually similar dispositions to subsequent cases and both bar the litigation of the same or similar issues raised in the first suit. (Sps. Nicolas *vs.* Agrarian Reform Beneficiaries Association (ARBA), G.R. No. 179566, Oct. 19, 2016) p. 618

SALES

Certificate of title — Where the land sold is a registered land, the purchaser may rely on the correctness of the certificate of title, but when the land is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor. (Magsano *vs.* Pangasinan Savings and Loan Bank, Inc., G.R. No. 215038, Oct. 17, 2016) p. 392

Contract of — Where the Republic entered into a sale transaction, it is not bound by the condition applicable in expropriation cases. (Rep. of the Phils. *vs.* Roque, Jr., G.R. No. 203610, Oct. 10, 2016) p. 33

Deed of sale — Although denominated as conditional, a deed of sale is absolute in nature in the absence of any stipulation reserving title to the seller until full payment of the purchase price, such that ownership of the thing sold passes to the buyer upon actual or constructive delivery. (Perez *vs.* Rasaceña, G.R. No. 211539, Oct. 17, 2016) p. 369

Obligations of the vendor — Implied warranty against hidden defects; discussed. (RCBC Savings Bank *vs.* Odrada, G.R. No. 219037, Oct. 19, 2016) p. 788

SETTLEMENT OF DISPUTES

Mediation or conciliation — Not a mandatory requirement before seeking recourse to regular courts. (Fausto *vs.* Multi Agri-Forest and Community Dev't. Cooperative, G.R. No. 213939, Oct. 12, 2016) p. 259

SPECIAL ECONOMIC ZONE ACT OF 1995 (R.A. NO. 7916), AS AMENDED BY R.A. NO. 8748

Salary Standardization — The disallowance of the payment of additional Christmas bonus to PEZA officers and employees for the previous years does not automatically make the responsible officers liable; good faith absolves responsible officers of PEZA from liability for refund. (Phil. Economic Zone Authority (PEZA) *vs.* COA, G.R. No. 210903, Oct. 11, 2016) p. 117

— While the Philippine Economic Zone Authority (PEZA) is exempt from the Salary Standardization Law (SSL), any increase in salary or compensation shall be subject to the approval of the President notwithstanding the power granted to its Board of Directors to fix the compensation and benefits of its employees. (*Id.*)

STATE

Immunity from suit — Failure of the Republic to abide by the conditions under the contract it entered into constitutes an implied waiver of its immunity. (Rep. of the Phils. *vs.* Roque, Jr., G.R. No. 203610, Oct. 10, 2016) p. 33

STATUTORY RAPE

Elements — To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant. (People *vs.* Pitalla, Jr. *y* Diosa *a.k.a.* "Bebe," G.R. No. 223561, Oct. 19, 2016) p. 817

Penalty — Discussed. (People *vs.* Pitalla, Jr. *y* Diosa *a.k.a.* "Bebe," G.R. No. 223561, Oct. 19, 2016) p. 817

STRIKES

Union officer who knowingly participates in an illegal strike — Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status. (Ramirez *vs.* Polyson Industries, Inc., G.R. No. 207898, Oct. 19, 2016) p. 711

TAXATION

Zero-rated sales — Claim for refund of excess input value-added tax (VAT) arising from zero-rated sales; timeliness discussed in the case of Mindanao II Geothermal Partnership *vs.* Commissioner of Internal Revenue. (Takenaka Corp.-Phil. Branch *vs.* Commissioner of Internal Revenue, G.R. No. 193321, Oct. 19, 2016) p. 647

THEFT

Elements — The elements of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. (Lim *vs.* People, G.R. No. 211977, Oct. 12, 2016) p. 215

TREACHERY

As a qualifying circumstance — Not appreciated as the fight which ensued was not planned and happened in the spur of the moment. (People *vs.* Suarez *y* Zurita, G.R. No. 224889, Oct. 19, 2016) p. 829

UNLAWFUL DETAINER

Complaint for — It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it states

the following: "(a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession; (c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment." (Perez *vs*. Rasaceña, G.R. No. 211539, Oct. 17, 2016) p. 369

Concept — A requisite for a valid cause of action is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. (Perez *vs*. Rasaceña, G.R. No. 211539, Oct. 17, 2016) p. 369

URBAN LAND REFORM LAW (P.D. NO. 1517)

Right of first refusal — The legitimate tenant's right of first refusal to purchase the leased property depends on whether the disputed property in Metro Manila is situated in an area specifically declared to be both an area for priority development and urban land reform zone. (Perez *vs*. Rasaceña, G.R. No. 211539, Oct. 17, 2016) p. 369

WITNESSES

Credibility of — Findings of the trial court affirmed by the Court of Appeals, respected. (People *vs*. Suarez *y* Zurita, G.R. No. 224889, Oct. 19, 2016) p. 829

— Testimonies upheld in the absence of ill-motive; affirmative assertions prevail against negative assertions. (Ramirez *vs*. Polyson Industries, Inc., G.R. No. 207898, Oct. 19, 2016) p. 711

— Testimony of rape victim may be sufficient to produce a conviction. (People *vs.* Pitalla, Jr. *y* Diosa *a.k.a.* "Bebe," G.R. No. 223561, Oct. 19, 2016) p. 817

— The jurisprudential rule that the lone uncorroborated testimony of the offended victim, so long as the testimony

is clear, positive, and probable, may prove the crime as charged, may not be automatically applied in a case where there is another person who could have shed some light on the incident. (Angeles *y* Olano *vs.* People, G.R. No. 212562, Oct. 12, 2016) p. 241

— When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that their testimonies are entitled to full faith and credit. (People *vs.* Suarez *y* Zurita, G.R. No. 224889, Oct. 19, 2016) p. 829