
# PHILIPPINE REPORTS

# VOL. 799

## NOVEMBER 9, 2016 TO NOVEMBER 15, 2016

**VOLUME 799**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

NOVEMBER 9, 2016 TO NOVEMBER 15, 2016

SUPREME COURT
MANILA
2017

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2017


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# REPORT OF CASES

**DETERMINED IN THE**

## SUPREME COURT OF THE PHILIPPINES

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**THIRD DIVISION**

[A.C. No. 11059. November 9, 2016]

**JOSE ANTONIO F. BALINGIT,** *complainant, vs.* **ATTY. RENATO M. CERVANTES and ATTY. TEODORO B. DELARMENTE,** *respondents.*

**SYLLABUS**

**1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); LAWYERS OWE FIDELITY TO THEIR CLIENT'S CAUSE AND MUST ALWAYS BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN THEM.—** It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them. They are duty bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients. Every case lawyers handle deserves their full and undivided attention, diligence, skill and competence, regardless of its importance and whether they accept it for a fee or for free, and to constantly keep in mind that not only the property but also the life of their clients may be at stake. x x x We have repeatedly held that when a lawyer accepts a case, he undertakes to give his utmost attention, skill, and competence to it. His client has the right to expect that he will discharge his duties diligently and exert his best efforts, learning, and ability to prosecute or defend his client's cause with reasonable dispatch.

**2. ID.; ID.; LAWYERS ARE ADVISED TO AVOID CONTROVERSIES WITH CLIENTS CONCERNING THEIR COMPENSATION AND TO RESORT TO JUDICIAL ACTION ONLY TO PREVENT IMPOSITION, INJUSTICE, OR FRAUD; VIOLATION IN CASE AT BAR.—** Indeed, it is highly improper for a lawyer to impose additional professional fees upon his client which were never mentioned nor agreed upon at the time of the engagement of his services. Assuming respondents are entitled to additional payment of professional fees, their manner of enforcing it still warrants disciplinary sanction. Rule 20.4 of the CPR advises lawyers to avoid controversies with clients concerning their compensation and to resort to judicial action only to prevent imposition, injustice or fraud. This is because matters of fees present an irreconcilable conflict of interests between a client and his lawyer. Suits to collect fees should be avoided and should be filed only when circumstances force lawyers to resort to it, such as "when [a] conflict has reached such point that it only becomes the lawyer's duty to withdraw from the action but to assert his right to compensation because of the intolerable attitude assumed by his client, x x x." In these exceptional circumstances, a lawyer may enforce his right to his fees by filing the necessary petition as an incident of the main action in which his services were rendered. x x x In the present case, when complainant refused to pay, Atty. Cervantes proceeded to file a criminal case for *estafa* and deportation proceedings against complainant and his family. This we cannot countenance. x x x Here, We find that the *estafa* and deportation proceedings filed against complainant and his family were meant to harass and compel the latter to accede to respondents' demand for additional professional fees.

**3. ID.; ID.; WHEN A LAWYER RECEIVES MONEY FROM HIS CLIENT FOR A PARTICULAR PURPOSE AND DOES NOT USE THE MONEY FOR SUCH PURPOSE, THE LAWYER MUST IMMEDIATELY RETURN THE MONEY TO HIS CLIENT.—** [W]e have previously held that when a lawyer receives money from his client for a particular purpose and the lawyer does not use the money for such purpose, the lawyer must immediately return the money to his client. In the present case, respondents received ₱45,000.00 to file a separate civil action for damages against David. Atty. Cervantes also allegedly received ₱10,000.00 from complainant's daughter-

in-law but no evidence was adduced to support this claim. Thus, respondents should be ordered to return the amount of ₱45,000.00 to complainant.

**APPEARANCES OF COUNSEL**

*Alcid Favila Bayobay & Partners* for complainant.

**D E C I S I O N**

**JARDELEZA, *J.*:**

This resolves the administrative complaint[1] filed by Jose Antonio F. Balingit (complainant) against Atty. Renato M. Cervantes and Atty. Teodoro B. Delarmente (respondents).

**Facts**

Complainant is a former Filipino citizen who subsequently became a naturalized British citizen.[2] On July 9, 2011, complainant's two (2) sons, Jose Antonio Balingit, Jr. (Jose Antonio, Jr.) and Carlo Balingit (Carlo), who were on board their respective motorcycles, figured in a head-on collision with the car driven by David A. Alizadeh (David). Carlo sustained serious physical injuries, while Jose Antonio, Jr. was pronounced dead on arrival at the hospital. Kristopher Rocky Kabigting, Jr. (Kristopher), Jose Antonio Jr.'s passenger, also suffered physical injuries. As a result, on July 13, 2011, an information[3] for criminal negligence was filed against David with the Municipal Trial Court in Cities (MTCC), Antipolo City.

Subsequently, complainant, together with Carlo, Kristopher, and the heirs of Jose Antonio Jr., engaged the legal services of respondents in filing a separate civil suit for damages and an administrative case with the Professional Regulation Commission (PRC) against David, who recently passed the physician board

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

[2] *Id.* at 2.

[3] *Id.* at 4, 90-91.

exam at that time.[4] Thus, on August 8, 2011, Atty. Cervantes sent a demand letter[5] to David for payment of ₱2,000,000.00 plus 25% thereof as attorney's fees. Also, on August 22, 2011, Atty. Cervantes sent a letter[6] to the PRC informing the latter of the pending criminal case against David and requesting that the issuance of David's license to practice medicine be deferred or suspended until the termination of David's criminal case. On September 16, 2011, the PRC replied[7] and informed Atty. Cervantes of the requirements in order to file an administrative case against David.

Meanwhile, Atty. Cervantes prepared and signed an Agreement[8] dated August 18, 2011 embodying the terms of respondents' engagement. Addressed to Kristopher, Carlo, and the heirs of Jose Antonio, Jr., the Agreement provided:

> This will formalize our agreement whereby our law firm shall represent you in the **civil case for damages** to be filed against DAVID A. ALIZADEH, et al., relative to that tragic incident on **July 9, 2011** that occurred in Antipolo City. We hereby confirm the terms for the handling thereof, to wit:
>
> **1. Acceptance Fee.** Treating you as a most favored client, our acceptance fee is only **Thirty Thousand Pesos (₱30,000.00)** to be paid upon the signing hereof;
>
> **2. Appearance Fee. Four Thousand Pesos (₱4,000.00)** for every appearance by any of our lawyer/s before the court;
>
> **3. Success Fee. Twenty Percent (20%)** of any amount that may be actually collected by reason of the successful handling of the case;
>
> **4. Official and other Fees,** such as docket fees, transcript of stenographic notes, expenses for messengerial, mailing,

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[4] *Id.* at 4-5.

[5] *Id.* at 15.

[6] *Id.* at 16-17.

[7] *Id.* at 49.

[8] *Id.* at 122.

photocopying services and expenses for representation shall be for your account.[9] (Emphasis in the original.)

Kristopher, Carlo, and the heirs of Jose Antonio, Jr. did not sign the Agreement.[10] Just the same, complainant paid the sum of ₱45,000.00 as partial acceptance fee for the filing of the civil suit for damages as evidenced by a handwritten receipt issued by Atty. Delarmente.[11] In addition, Atty. Cervantes allegedly received ₱10,000.00 from Imelda Balingit (Imelda), complainant's daughter-in-law, without issuing any receipt.[12] However, despite respondents' receipt of the ₱45,000.00 and complainant's submission to respondents of the necessary documents,[13] as of December 19, 2011, when the present complaint was filed, and until today, respondents have failed to institute the separate civil suit for damages agreed upon.[14]

Meanwhile, the criminal case was referred to mediation by the trial court for possible settlement of the civil aspect of the case. During the negotiations, complainant and the representatives of David agreed to settle.[15] Thus, on October 13, 2011, a Compromise Agreement[16] was signed by complainant, one Anthony T. Balingit, Carlo, and the representatives of David. David agreed to pay ₱1,000,000.00 in exchange for the execution of an affidavit of desistance in the criminal case and dismissal and/or withdrawal of any civil case for damages.[17] The Agreement was set for the consideration and approval of the MTCC Antipolo City on November 9, 2011.[18]

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[9] *Id.*

[10] *Id.*

[11] *Rollo,* pp. 18, 99.

[12] *Id.* at 7.

[13] *Id.* at 81.

[14] *Id.* at 7, 10-11.

[15] *Id.* at 7-8.

[16] *Id.* at 50.

[17] *Id.*

[18] *Id.* at 8.

Atty. Cervantes, upon discovering that complainant entered into a Compromise Agreement, attended the November 9, 2011 hearing and demanded 10% of the amount of the compromise as attorney's fees and ₱5,000.00 as appearance fee from complainant.[19] Complainant refused on the ground that the compromise was entered into before the mediator.[20] On November 10, 2011, Atty. Cervantes sent a demand letter[21] to complainant seeking payment of ₱100,000.00 as attorney's fees, representing 10% of the amount of the compromise, and appearance fee of ₱5,000.00 for his attendance in the November 9, 2011 hearing. As complainant still refused to pay, Atty. Cervantes filed a criminal complaint[22] for *estafa* against complainant, his wife, and his sons, as well as a complaint for deportation with the Bureau of Immigration, on the ground that complainant and his family are undesirable British aliens.[23]

On December 19, 2011, complainant filed the present disbarment case against respondents before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD).[24] On even date, the latter required respondents to file their answer.[25] Respondents filed separate motions for extension of time to submit their answers praying that they be given until February 9, 2012 to file their respective answers.[26]

Atty. Delarmente failed to file his answer whereas Atty. Cervantes filed a motion to admit his verified answer[27] only on March 27, 2012.

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[19] *Id.*

[20] *Id.*

[21] *Id.* at 19-21.

[22] *Id.* at 42-44.

[23] *Id.* at 105-106.

[24] *Supra* note 1.

[25] *Rollo,* p. 31.

[26] *Id.* at 22-28.

[27] *Id.* at 35-41.

Atty. Cervantes denies receiving ₱10,000.00 from Imelda and claims that he learned of complainant's payment of ₱45,000.00 only later.[28] As for his failure to file the separate civil suit for damages, Atty. Cervantes claims that he has not received the acceptance and docket fees to file the case.[29]

Atty. Cervantes also argues that the Compromise Agreement has no legal effect since complainant is not a compulsory heir of Jose Antonio, Jr., who was legally married with two (2) children. Hence, it should have been the heirs of the deceased that entered into the Compromise Agreement. Just the same, Atty. Cervantes asserts that he should be paid his portion of the settlement as his attorney's fees since it was due to the demand letters he sent to David and the complaint he filed with the PRC that moved David's family to enter into a Compromise Agreement.[30]

Investigating Commissioner Atty. Peter Irving C. Corvera (Commissioner Corvera) set the case for mandatory conference and required the parties to submit their respective mandatory conference briefs.[31] Respondents, however, did not submit their conference briefs and repeatedly failed to appear in the mandatory conference despite notice. On motion of complainant's counsel, Commissioner Corvera terminated the mandatory conference and required all parties to submit their respective verified position papers.[32] Complainant complied with the Commissioner's directive and filed his Position Paper[33] on October 11, 2012 but respondents again failed to submit their verified position papers.

In his Report and Recommendation[34] dated January 2, 2014, Commissioner Corvera found respondents guilty of grave

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[28] *Id.* at 39.

[29] *Id.* at 40.

[30] *Id*.

[31] *Id.* at 54.

[32] *Id*. at 75.

[33] *Id.* at 78-89.

[34] *Id*. at 134-140.

misconduct and violation of Rule 1.03, Canon 15, Canon 20, and Rule 20.04 of the Code of Professional Responsibility (CPR) and recommended that they be suspended from the practice of law for six (6) months.

On December 13, 2014, the IBP Board of Governors passed Resolution No. XXI-2014-886[35] adopting and approving the Report and Recommendation of the Investigating Commissioner but reducing the penalty to suspension from the practice of law for three (3) months.

**Ruling**

We affirm the Report and Recommendation of the IBP-CBD finding respondents guilty of being remiss in their duties as counsels for complainant.

It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them. They are duty bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients.[36] Every case lawyers handle deserves their full and undivided attention, diligence, skill and competence, regardless of its importance and whether they accept it for a fee or for free, and to constantly keep in mind that not only the property but also the life of their clients may be at stake.[37] Relevant provisions of the CPR provide:

CANON 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.

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

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[35] *Id.* at 133.

[36] *Tria-Samonte v. Obias,* A.C. No. 4945, October 8, 2013, 707 SCRA 1, 9.

[37] *Consolidated Farms, Inc. v. Alpon, Jr.,* A.C. No. 5525, March 4, 2005, 452 SCRA 668, 672.

CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

Respondents clearly transgressed the foregoing rules when they failed and refused to file the separate civil action for damages against David despite their receipt of payment and the relevant documents from complainant. We cannot give credence to Atty. Cervantes' defense that because complainant did not pay the requisite filing and acceptance fees, he was not able to file the separate civil case for damages. The receipt Atty. Delarmente issued clearly indicated that the sum of ₱45,000.00 paid by the complainant covers the acceptance and filing fees for the civil suit.[38]

We have repeatedly held that when a lawyer accepts a case, he undertakes to give his utmost attention, skill, and competence to it. His client has the right to expect that he will discharge his duties diligently and exert his best efforts, learning, and ability to prosecute or defend his client's cause with reasonable dispatch.[39]

Worse, Atty. Cervantes demanded payment of ₱5,000.00 appearance fee and 10% of the settlement as success fee even though the hearing was for the criminal case and the Compromise Agreement was entered in the course of the criminal proceedings; thus, outside the scope of respondents' engagement. Indeed, it is highly improper for a lawyer to impose additional professional fees upon his client which were never mentioned nor agreed upon at the time of the engagement of his services.[40]

Assuming respondents are entitled to additional payment of professional fees, their manner of enforcing it still warrants disciplinary sanction. Rule 20.4 of the CPR advises lawyers to

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[38] *Rollo*, p. 99.

[39] *Ceniza v. Rubia*, A.C. No. 6166, October 2, 2009, 602 SCRA 1, 11.

[40] *Miranda v. Carpio*, A.C. No. 6281, September 26, 2011, 658 SCRA 197, 206-207.

avoid controversies with clients concerning their compensation and to resort to judicial action only to prevent imposition, injustice or fraud. This is because matters of fees present an irreconcilable conflict of interests between a client and his lawyer.[41] Suits to collect fees should be avoided and should be filed only when circumstances force lawyers to resort to it,[42] such as "when [a] conflict has reached such point that it only becomes the lawyer's duty to withdraw from the action but to assert his right to compensation because of the intolerable attitude assumed by his client, x x x."[43]

In these exceptional circumstances, a lawyer may enforce his right to his fees by filing the necessary petition as an incident of the main action in which his services were rendered.[44] Thus, in *Malvar v. Kraft Food Philippines, Inc.*,[45] We approved the filing of a motion for intervention as a measure to protect a counsel's right to the fees agreed upon with his client. Alternatively, an aggrieved lawyer may also file an independent *civil* action against his client for the payment of his fees. The former is preferable to avoid multiplicity of suits.[46]

In the present case, when complainant refused to pay, Atty. Cervantes proceeded to file a criminal case for *estafa* and deportation proceedings against complainant and his family. This we cannot countenance. In *Retuya v. Gorduiz*,[47] We suspended a lawyer for six (6) months for filing a groundless case for *estafa* against his own client when the latter refused to pay his attorney's fees due to disagreements as to the amount.

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[41] Agpalo, *LEGAL AND JUDICIAL ETHICS*, 2009, 8TH ed., p. 427.

[42] *Pineda v. De Jesus*, G.R. No. 155224, August 23, 2006, 499 SCRA 608, 612.

[43] Agpalo, *LEGAL AND JUDICIAL ETHICS*, 2009, 8TH ed., pp. 427-428.

[44] *Pineda v. De Jesus*, *supra* note 42.

[45] G.R. No. 183952, September 9, 2013, 705 SCRA 242.

[46] *Pineda v. De Jesus*, *supra* note 42.

[47] A.C. No. 1388, March 28, 1980, 96 SCRA 526.

Relatedly, in *Alcantara v. De Vera,*[48] We held that there is nothing ethically remiss in a lawyer who files numerous cases in different fora, as long as he does so in good faith, in accordance with the Rules, and without any ill-motive or purpose other than to achieve justice and fairness.[49] Here, We find that the *estafa* and deportation proceedings filed against complainant and his family were meant to harass and compel the latter to accede to respondents' demand for additional professional fees.

As for the appropriate penalty, Commissioner Corvera recommended that respondents be suspended from the practice of law for six (6) months. The IBP Board of Governors reduced the recommended penalty to three (3) months. We observe that the resolution is bereft of any explanation showing the bases for such modification in contravention of Section 12(a), Rule 139-B of the Rules of Court which mandates that "[t]he decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based." We frown on the unexplained change made by the IBP Board of Governors in the recommended penalty. Absent any justification on the reduction of the penalty, We sustain the IBP-CBD's recommended penalty.

Regarding the issue of whether respondents should be directed to return the filing fees they received from complainant, We ruled in *Anacta v. Resurreccion*[50] that:

> x x x If the matter involves violations of the lawyer's oath and code of conduct, then it falls within the Court's disciplinary authority. However, if the matter arose from acts which carry civil or criminal liability, and which do not directly require an inquiry into the moral fitness of the lawyer, then the matter would be a proper subject of a judicial action which is understandably outside the purview of the Court's disciplinary authority. **Thus, we hold that when the matter subject of the inquiry pertains to the mental and moral fitness of the respondent to remain as member of the legal fraternity,**

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[48] A.C. No. 5859, November 23, 2010, 635 SCRA 674.

[49] *Alcantara v. De Vera, supra* at 681.

[50] A.C. No. 9074, August 14, 2012, 678 SCRA 352.

**the issue of whether the respondent be directed to return the amount received from his client shall be deemed within the Court's disciplinary authority.**[51] (Emphasis supplied.)

In addition, we have previously held that when a lawyer receives money from his client for a particular purpose and the lawyer does not use the money for such purpose, the lawyer must immediately return the money to his client.[52]

In the present case, respondents received ₱45,000.00 to file a separate civil action for damages against David. Atty. Cervantes also allegedly received ₱10,000.00 from complainant's daughter-in-law but no evidence was adduced to support this claim. Thus, respondents should be ordered to return the amount of ₱45,000.00 to complainant.

**WHEREFORE**, Atty. Teodoro B. Delarmente and Atty. Renato M. Cervantes are hereby **SUSPENDED** from the practice of law for six (6) months. Both are **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely. They are also **DIRECTED** to return to complainant the amount of ₱45,000.00. Finally, respondents are **DIRECTED** to report to this Court the date of their receipt of this Decision to enable this Court to determine when their suspension shall take effect.

Let a copy of this Decision be attached to respondents' personal records with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

**SO ORDERED.**

*Peralta*,[*] *Perez*, and *Reyes, JJ.*, concur.

*Velasco, Jr. (Chairperson), J.*, on leave.

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[51] *Id.* at 366.

[52] *Small v. Banares*, A.C. No. 7021, February 21, 2007, 516 SCRA 323, 328.

[*] Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

**FIRST DIVISION**

[G.R. No. 177387. November 9, 2016]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **SECRETARY OF JUSTICE, and PHILIPPINE AMUSEMENT AND GAMING CORPORATION,** *respondents.*

**SYLLABUS**

**1. TAXATION; REPUBLIC ACT NO. 1125 *VIS-Á-VIS* P.D. NO. 242; THE COURT OF TAX APPEALS HAS EXCLUSIVE APPELLATE JURISDICTION TO REVIEW THE DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE IN CASES INVOLVING DISPUTED ASSESSMENTS; FAILURE OF THE SECRETARY OF JUSTICE TO DESIST FROM EXERCISING JURISDICTION DESPITE BECOMING AWARE OF THE PRONOUNCEMENT OF THE SUPREME COURT RESOLVING THE INCONSISTENCY OR CONFLICT BETWEEN R.A. 1125 AND P.D. 242 CONSTITUTES GRAVE ABUSE OF DISCRETION; DOCTRINE OF *STARE DECISIS* REQUIRES ADHERENCE TO THE RULING OF THE COURT.—** PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004, *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the

part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.

**2. ID.; REPUBLIC ACT NO. 7716; PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR) IS EXEMPT FROM THE PAYMENT OF VALUE-ADDED TAX (VAT); RA 7716 DID NOT EXPRESSLY REPEAL PAGCOR'S CHARTER AND DID NOT EXCLUDE PAGCOR'S EXEMPTION UNDER ITS CHARTER, P.D. 1869, FROM THE GRANT OF EXEMPTION FROM VAT.—** [A] basic rule in statutory construction is that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. R.A. No. 7716, a general law, did not provide for the express repeal of PAGCOR's Charter, which is a special law; hence, the general repealing clause under Section 20 of R.A. No. 7716 must pertain only to franchises of electric, gas, and water utilities, while the term *other franchises* in Section 102 of the NIRC should refer only to transport, communications and utilities, exclusive of PAGCOR's casino operations. x x x R.A. No. 7716 indicates that Congress has not intended to repeal PAGCOR's privilege to enjoy the 5% franchise tax in lieu of all other taxes. A contrary construction would be unwarranted and myopic nitpicking. x x x Unlike the case of PAL, however, R.A. No. 7716 does not specifically exclude PAGCOR's exemption under P.D. No. 1869 from the grant of exemptions from VAT; hence, the petitioner's contention that R.A. No. 7716 expressly amended PAGCOR's franchise has no leg to stand on. Moreover, PAGCOR's exemption from VAT, whether under R.A. No. 7716 or its amendments, has been settled in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal*

*Revenue*, whereby the Court, citing *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, has declared: **Petitioner is exempt from the payment of VAT, because PAGCORs charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.**

**3. ID.; NATIONAL INTERNAL REVENUE CODE (NIRC); WITHHOLDING TAX; PAGCOR IS LIABLE TO PAY FINAL WITHHOLDING TAX ON FRINGE BENEFITS (FBT); CAR PLAN PROVIDED BY PAGCOR TO QUALIFIED OFFICERS IS CONSIDERED FRINGE BENEFIT BUT NOT THE PAYMENT OF MEMBERSHIP DUES AND FEES.—** FBT is treated as a final income tax on the employee that shall be withheld and paid by the employer on a calendar quarterly basis. As such, PAGCOR is a mere withholding agent inasmuch as the FBT is imposed on PAGCOR's employees who receive the fringe benefit. PAGCOR's liability as a withholding agent is not covered by the tax exemptions under its Charter. The car plan extended by PAGCOR to its qualified officers is evidently considered a fringe benefit as defined under Section 33 of the NIRC. To avoid the imposition of the FBT on the benefit received by the employee, and, consequently, to avoid the withholding of the payment thereof by the employer, PAGCOR must sufficiently establish that the fringe benefit is required by the nature of, or is necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer. PAGCOR asserted that the car plan was granted "not only because it was necessary to the nature of the trade of PAGCOR but it was also granted for its convenience." The records are lacking in proof as to whether such benefit granted to PAGCOR's officers were, in fact, necessary for PAGCOR's business or for its convenience and advantage. Accordingly, PAGCOR should have withheld the FBT from the officers who have availed themselves of the benefits of the car plan and remitted the same to the BIR. As for the payment of the membership dues and fees, the Court finds that this is not considered a fringe benefit that is subject to FBT and which holds PAGCOR liable for final withholding tax. x x x Considering that the payments of membership dues and fees are not borne by PAGCOR for its employees, they cannot be considered as fringe benefits which are subject to FBT under Section 33 of

the NIRC. Hence, PAGCOR is not liable to withhold FBT from its employees.

**4. ID.; ID.; ID.; COMPENSATION INCOME THAT PAGCOR PAID TO ITS CONTRACTUAL, CASUAL, CLERICAL, AND MESSENGERIAL EMPLOYEES IS SUBJECT TO EXPANDED WITHHOLDING TAX.—** Other than the ₱4,243,977.96 payments made to COA, the remainder of ₱71,611,563.60 compensation income that PAGCOR paid for the services of its contractual, casual, clerical and messengerial employees are clearly subject to expanded withholding tax by virtue of Section 79 (A) of the NIRC[.]

**5. ID.; ASSESSMENT; PRESUMPTION IN FAVOR OF THE CORRECTNESS OF TAX ASSESSMENTS, APPLIED.—** It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. Hence, it is incumbent upon the taxpayer to credibly show that the assessment was erroneous in order to relieve himself from the liability it imposes. PAGCOR failed in this regard. Hence, except for the assessment for deficiency expanded withholding taxes pertaining to the payments made to the COA for its audit services and for the prizes and other promo items, the Court upholds the BIR's assessment for deficiency expanded withholding taxes.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Office of the Government Corporate Counsel* for respondents.

**D E C I S I O N**

**BERSAMIN, *J.*:**

Petitioner Commissioner of Internal Revenue (CIR) commenced this special civil action for *certiorari* to annul the December 22, 2006 resolution[1] and the March 12, 2007

[1] *Rollo*, pp. 40-53.

resolution,[2] both issued by the Secretary of Justice in OSJ Case No. 2004-1, alleging that respondent Secretary of Justice acted without or in excess of his jurisdiction, or in grave abuse of discretion amounting to lack or excess of jurisdiction.

The dispositive portion of the assailed December 22, 2006 resolution states:

> **WHEREFORE**, premises considered, PAGCOR is declared exempt from payment [of] all taxes, save for the franchise tax as provided for under Section 13 of PD 1869, as amended, the presidential issuance not having been expressly repealed by RA 7716.[3]

while the March 12, 2007 resolution denied the CIR's motion for reconsideration of the December 22, 2006 resolution.

**Antecedents**

Respondent Philippine Amusement and Gaming Corporation (PAGCOR) has operated under a legislative franchise granted by Presidential Decree No. 1869 (P.D. No. 1869), its Charter,[4] whose Section 13(2) provides that:

> **(2) Income and other Taxes - (a) Franchise Holder:**
>
> **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five percent (5%) of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority. (bold emphasis supplied)

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[2] *Id.* at 54-59.

[3] *Id.* at 53.

[4] *Consolidating and Amending Presidential Decree Nos. 1067-A, 2067-B, 1067-C, 1339 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).*

Notwithstanding the aforesaid 5% franchise tax imposed, the Bureau of Internal Revenue (BIR) issued several assessments against PAGCOR for alleged deficiency value-added tax (VAT), final withholding tax on fringe benefits, and expanded withholding tax, as follows:

| **ASSESSMENT** | **DATE ISSUED** | **PERIOD COVERED** | **TOTAL AMOUNT DUE(inclusive of interest, surcharge and compromise penalty)** |
|---|---|---|---|
| No. 33-1996/1997/1998 (for deficiency VAT)[5] | November 14, 2002 | 1996/1997/1998 | ₱4,078,476,977.26 |
| No. 33-99 (for deficiency VAT, final withholding tax on fringe benefits, and expanded withholding tax)[6] | November 25, 2002 | 1999 | ₱6,678,346,966.49 |
| No. 33-2000 (for deficiency VAT and final withholding tax on fringe benefits)[7] | March 18, 2003 | 2000 | ₱2,953,321,685.92 |
| | | **TOTAL** | **₱13,710,145,629.67** |

[5] *Rollo*, pp. 60-67, 70 (the BIR required PAGCOR to pay the assessed amount not later than December 27, 2002).

[6] *Id*. at 68, 71-74, 76 (the assessment consists of the following unpaid taxes, inclusive of interest, surcharge and compromise penalty, namely: (1) VAT - ₱1,946,079,965.21; (2) Final withholding tax on fringe benefits - ₱941,350,192.12; Expanded withholding tax - ₱3,790,916,809.16; the BIR required PAGCOR to pay the foregoing assessment on or before January 20, 2003).

[7] *Id*. at 75-81 (the assessment covers: (1) deficiency VAT - ₱2,097,426,943.63, inclusive of interest, surcharge and compromise penalty; and (2) deficiency final withholding tax on fringe benefits ₱855.894,742.29, inclusive of interest, surcharge and compromise penalty; PAGCOR was required to pay the assessed deficiency taxes by April 30, 2003).

On December 18, 2002, PAGCOR filed a letter-protest with the BIR against Assessment Notice No. 33-1996/1997/1998 and Assessment Notice No. 33-99.[8]

On March 31, 2003, PAGCOR filed a letter-protest against Assessment Notice No. 33-2000, in which it reiterated the assetions made in its December 18, 2002 letter-protest.[9]

In reply to both letters-protest, the BIR requested PAGCOR to submit additional documents to enable the conduct of the reinvestigation.[10]

The CIR did not act on PAGCOR's letter-protest against Assessment Notice No. 33-1996/1997/1998 and Assessment Notice No. 33-99 within the 180-day period from the latter's submission of additional documents.[11] Hence, PAGCOR filed an appeal with the Secretary of Justice on January 5, 2004 relative to Assessment Notice No. 33-1996/1997/1998 and Assessment Notice No. 33-99.[12]

Meanwhile, in response to PAGCOR's letter-protest dated March 31, 2003, BIR Regional Director Teodorica Arcega issued a letter dated December 15, 2003 reiterating the assessment for deficiency VAT for taxable year 2000,[13] stating thusly:

> In a memorandum to the Regional Director dated December 15, 2003 the Chief Legal Division, this Region, confirmed the taxability of PAGCOR under Section 108(A) of the 1997 Tax Code, as amended, effective Jan. 1, 1996 (VAT Review Committee Ruling No. 041-2001).
>
> In view of the confirmation of the Legal Division we hereby reiterate the assessments forwarded to your office under Final Assessment No. 33-2000 dated March 18, 2003 amounting to ₱2,097,426,943.00.

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[8] *Id*. at 9-11; 42.

[9] *Id*. at 11, 42.

[10] *Id*. at 10-11, 42-43.

[11] *Id*. at 11.

[12] *Id*. at 82-104.

[13] *Id*. at 108-109.

However, the BIR only recomputed the deficiency final withholding tax on thnge benefits and expanded withholding tax, and reduced the assessments to ₱12,212,199.85 and ₱6,959,525.10, respectively.[14]

PAGCOR elevated its protest against Assessment Notice No. 33-2000 to the CIR, but the 180-day period prescribed by law also lapsed without any action on the part of the CIR.[15] Consequently, on August 4, 2004, PAGCOR brought another appeal to the Secretary of Justice covering Assessment Notice No. 33-2000.[16]

The Secretary of Justice consolidated PAGCOR's two appeals.

After the parties traded pleadings, the Secretary of Justice summoned them to a preliminary conference to discuss, *inter alia*, any possible settlement or compromise.[17] When no amicable settlement was reached, the consolidated appeals were considered submitted for resolution.[18]

On December 22, 2006, Secretary of Justice Raul M. Gonzales rendered the first assailed resolution declaring PAGCOR exempt from the payment of all taxes except the 5% franchise tax provided in its Charter.[19]

On March 12, 2007, Secretary Gonzales issued the second assailed resolution denying the CIR's motion for reconsideration.[20]

Hence, this special civil action for *certiorari*.

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[14] *Id*. at 108-109.

[15] *Id*. at 11.

[16] *Id*. at 110-129.

[17] *Id*. at 45.

[18] *Id*.

[19] *Supra* note 1.

[20] *Supra* note 2.

**Issues**

The grounds for the petition for *certiorari* are as follows:

I

RESPONDENT SECRETARY OF JUSTICE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION IN ASSUMING JURISDICTION OVER THE PETITION ON DISPUTED TAX ASSESSMENTS FILED BY RESPONDENT PAGCOR.

II

RESPONDENT SECRETARY OF JUSTICE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT R.A. NO. 7716 (VAT LAW) DID NOT REPEAL P.D. NO. 1869 (CHARTER OF PAGCOR); HENCE, PAGCOR HAS NOT BECOME LIABLE FOR THE PAYMENT OF THE 10% VAT IN LIEU OF THE 5% FRANCHISE TAX.

III

RESPONDENT SECRETARY OF JUSTICE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION IN ABSOLVING PAGCOR OF ITS DUTY AND RESPONSIBILITY AS WITHHOLDING AGENT TO WITHHOLD AND REMIT FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX AND EXPANDED WITHHOLDING TAX.[21]

Otherwise put, the issues to be resolved are: (1) whether or not the Secretary of Justice has jurisdiction to review the disputed assessments; (2) whether or not PAGCOR is liable for the payment of VAT; and (3) whether or not PAGCOR is liable for the payment of withholding taxes.

**Ruling**

The petition for *certiorari* is partly granted.

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[21] *Id*. at 15.

**1.**

**The Secretary of Justice has no jurisdiction to review the disputed assessments**

The petitioner contends that it is the Court of Tax Appeals (CTA), not the Secretary of Justice, that has the exclusive appellate jurisdiction in this case, pursuant to Section 7(1) of Republic Act No. 1125 (R.A. No. 1125), which grants the CTA the exclusive appellate jurisdiction to review, among others, the decisions of the Commissioner of Internal Revenue "in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other law or part of law administered by the Bureau of Internal Revenue."

PAGCOR counters, however, that it is the Secretary of Justice who should adjudicate the dispute by virtue of Chapter 14 of the *Revised Administrative Code of 1987*, which provides:

CHAPTER 14. CONTROVERSIES AMONG GOVERNMENT OFFICES AND CORPORATIONS.

SEC. 66. *How settled*. - All disputes/claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned and controlled corporations, such as those arising from the interpretation and application of statues, contracts or agreements shall be administratively settled or adjudicated in the manner provided for in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commission and local governments.

SEC. 67. *Disputes Involving Questions of Law*. - All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as ex-officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

SEC. 68. *Disputes Involving Questions of Fact and Law*. - Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The Secretary of Justice, in all other cases not falling under paragraph (1).

Although acknowledging the validity of the petitioner's contention, the Secretary of Justice still resolved the disputed assessments on the basis that the prevailing doctrine at the time of the filing of the petitions in the Department of Justice (DOJ) on January 5, 2004 was that enunciated in *Development Bank of the Philippines v. Court of Appeals*,[22] whereby the Court ruled that:

x x x (T)here is an "irreconcilable repugnancy x x x between Section 7(2) of R.A. NO. 1125 and P.D. No. 242," and hence, that the latter enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

Later on, the Court reversed itself in *Philippine National Oil Company v. Court of Appeals*,[23] and held as follows:

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect R.A. No. 1125. R.A. No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of R.A. No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, x x x.

Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:

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[22] G.R. No. 86625, December 22, 1989, 180 SCRA 609, 617.

[23] G.R. Nos. 109976 and 112800, April 26, 2005, 457 SCRA 32, 81.

While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.[24]

We disagree with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004.[25] *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country,[26] and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose

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[24] *Rollo*, p. 50.

[25] *Id*. at 82-104 & 110-129.

[26] Article 8, *Civil Code*.

decisions all other courts and everyone else should take their bearings.[27]

Nonetheless, the Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR to blame in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals*. The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR. While a judicial interpretation becomes a part of the law as of the date that the law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.[28]

The Court now undertakes to settle the controversy because of the urgent need to promptly decide it. We cannot lose sight of the fact that PAGCOR is among the most prolific income-generating institutions that contribute immensely to the country's developing economy. Any controversy involving PAGCOR should be resolved expeditiously considering the underlying public interest in the matter at hand. To dismiss the petitions in order to have PAGCOR bring a similar petition in the CTA would not serve the interest of justice.[29] On previous occasions, the Court has overruled the defense of jurisdiction in the interest of public welfare and for the advancement of public policy whenever, as in this case, an extraordinary situation existed.[30]

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[27] *Ang Ping v. Regional Trial Court, Br. 40*, G.R. No. 75860, September 17, 1987, 154 SCRA 77, 86.

[28] See *People v. Jabinal*, L-30061, February 27, 1974, 55 SCRA 607, 612.

[29] *Ramos v. Central Bank of the Philippines*, G.R. No. L-29352, October 4, 1971, 41 SCRA 565, 584.

[30] *Id*. at 584, citing *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925); *People v. Zulueta*, 89 Phil. 752 (1951); *Botelho Shipping Corporation v. Leuterio*, L-20420, May 30, 1963, 8 SCRA 121.

**2.**
**PAGCOR is exempt from payment of VAT**

The CIR insists that under VAT Ruling No. 04-96 (dated May 14, 1996), VAT Ruling No. 030-99 (dated March 18, 1999), and VAT Ruling No. 067-01 (dated October 8, 2001), R.A. No. 7716[31] has expressly repealed, amended, or withdrawn the 5% franchise tax provision in PAGCOR's Charter; hence, PAGCOR was liable for the 10% VAT.[32]

The relevant provisions of R.A. No. 7716 on which the insistence has been anchored are the following:

SEC. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 102. Value-added tax on sale of services and use or lease of properties. - (a) Rate and base of tax. - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase 'sale or exchange of services' means the performance of all kinds of service in the Philippines for others for a fee, remuneration or consideration, including x x x service of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; x x x"

SEC. 12. Section 117 of the National Internal revenue Code, as amended, is hereby further amended further to read as follows:

"SEC. 117. Tax on Franchises.- Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on electric, gas and water utilities a tax of two percent (2%) on the gross

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[31] *An Act Restructuring the Value Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and For Other Purposes*; effective January 1, 1996.

[32] *Rollo*, p. 25.

receipts derived from the business covered by the law granting the franchise. x x x"

SEC. 20. Repealing Clauses. - The provisions of any special law relative to the rate of franchise taxes are hereby expressly repealed. x x x

The CIR argues that PAGCOR's gambling operations are embraced under the phrase *sale or exchange of services, including the use or lease of properties*; that such operations are not among those expressly exempted from the 10% VAT under Section 3 of R.A. No. 7716; and that the legislative purpose to withdraw PAGCOR's 5% franchise tax was manifested by the language used in Section 20 of R.A. No. 7716.

The CIR's arguments lack merit.

Firstly, a basic rule in statutory construction is that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion.[33] R.A. No. 7716, a general law, did not provide for the express repeal of PAGCOR's Charter, which is a special law; hence, the general repealing clause under Section 20 of R.A. No. 7716 must pertain only to franchises of electric, gas, and water utilities, while the term *other franchises* in Section 102 of the NIRC should refer only to transport, communications and utilities, exclusive of PAGCOR's casino operations.

Secondly, R.A. No. 7716 indicates that Congress has not intended to repeal PAGCOR's privilege to enjoy the 5% franchise tax in lieu of all other taxes. A contrary construction would be unwarranted and myopic nitpicking. In this regard, we should follow the following apt reminder uttered in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*:[34]

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[33] See *National Power Corp. v. Presiding Judge, RTC Branch XXV*, G.R. No. 72477, October 16, 1990, 190 SCRA 477, 482.

[34] G.R. No. 170680, October 2, 2009, 602 SCRA 159, 164-165.

A law must not be read in truncated parts: its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions. but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context. *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.

In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

Although Section 3 of R.A. No. 7716 imposes 10% VAT on the sale or exchange of services, including the use or lease of properties, the provision also considers transactions that are subject to 0% VAT.[35] On the other hand, Section 4 of R.A. No. 7716 enumerates the transactions exempt from VAT, *viz.*:

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[35] SEC. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 102. Value-added tax on sale of service and use or lease of properties. – x x x

(b) *Transaction subject to zero-rate*. - The following services performed in the Philippines by Vat-registered persons shall be subject to 0%:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

(3) Services rendered to persons or entities whose exemptions under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate.

SEC. 4. Section 103 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 103. Exempt transactions. - **The following shall be exempt from the value-added tax**:

x x x x

"(q) **Transactions which are exempt under special laws**, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, and 1590, and nonelectric cooperatives under republic Act No. 6938, or international agreements to which the Philippines is a signatory;

x x x x" (bold emphasis supplied.)

Anent the effect of R.A. No. 7716 on franchises, the Court has observed in *Tolentino v. The Secretary of Finance*[36] that:

Among the provisions of the NIRC amended is § 103, which originally read:

§103. *Exempt transactions*. - The following shall be exempt from the value-added tax:

.....

(q) Transactions which are exempt under special laws or international agreements to which the Philippines is a signatory.

Among the transactions exempted from the VAT were those of PAL because it was exempted under its franchise (P.D. No. 1590) from the payment of all "other taxes ... now or in the near future," in consideration of the payment by it either of the corporate income tax or a franchise tax of 2%.

As a result of its amendment by Republic Act No. 7716, §103 of the NIRC now provides:

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(4) Services rendered to vessels, engaged exclusively in international shipping; and

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

[36] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

> §103. *Exempt transactions*. - The following shall be exempt from the value-added tax:
>
> .....
>
> (q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, 1590 .....
>
> The effect of the amendment is to remove the exemption granted to PAL, as far as the VAT is concerned.
>
> x x x x
>
> x x x Republic Act No. 7716 expressly amends PAL's franchise (P.D. No. 1590) by specifically excepting from the grant of exemptions from the VAT PAL's exemption under P.D. No. 1590. This is within the power of Congress to do under Art. XII, § 11 of the Constitution, which provides that the grant of a franchise for the operation of a public utility is subject to amendment, alteration or repeal by Congress when the common good so requires.[37]

Unlike the case of PAL, however, R.A. No. 7716 does not specifically exclude PAGCOR's exemption under P.D. No. 1869 from the grant of exemptions from VAT; hence, the petitioner's contention that R.A. No. 7716 expressly amended PAGCOR's franchise has no leg to stand on.

Moreover, PAGCOR's exemption from VAT, whether under R.A. No. 7716 or its amendments, has been settled in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue*,[38] whereby the Court, citing *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*,[39] has declared:

> **Petitioner is exempt from the payment of VAT, because PAGCORs charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.**

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[37] *Id*. at 673-675.

[38] G.R. No. 172087, March 15, 2011, 645 SCRA 338.

[39] G.R. No. 147295, February 16, 2007, 516 SCRA 93.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

> [R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:
>
> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*.
>
> (A) *Rate and Base of Tax*. There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x
>
> x x x x
>
> **(B)** ***Transactions Subject to Zero Percent (0%) Rate***. The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;
>
> x x x x
>
> As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*. x x x The Court ruled that PAGCOR and Acesite were both exempt from paying VAT, thus:

x x x x

**PAGCOR is exempt from payment of indirect taxes**

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

Sec. 13. *Exemptions.*

x x x x

(2) *Income and other taxes*. - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

**A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect.** We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes,**PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations.** The unmistakable conclusion is that PAGCOR is not liable for the ₱30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.**

**The manner of charging VAT does not make PAGCOR liable to said tax.**

It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method, that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method, and in particular, the

first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

**VAT exemption extends to Acesite**

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (**now Sec. 108 [b] [3] of R.A. 8424**), which provides:

> Section 102. *Value-added tax on sale of services*. - (a) Rate and base of tax - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT registered persons shall be subject to 0%.
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate (emphasis supplied).

The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. **Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.**

Although the basis of the exemption of PAGCOR and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424, it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.[40]

Clearly, the assessments for deficiency VAT issued against PAGCOR should be cancelled for lack of legal basis.

The Court also deems it warranted to cancel the assessments for deficiency withholding VAT pertaining to the payments made by PAGCOR to its catering service contractor.

In two separate letters dated December 12, 2003[41] and December 15, 2003,[42] the BIR conceded that the unmonetized meal allowances of PAGCOR's employees were not subject to fringe benefits tax (FBT). However, the BIR held PAGCOR liable for expanded withholding VAT for the payments made to its catering service contractor who provided the meals for its employees. Accordingly, the BIR assessed PAGCOR with deficiency withholding VAT for taxable year 1999 in the amount of ₱4,077,667.40, inclusive of interest and compromise penalty; and for taxable year 2000 in the amount of ₱12,212,199.85, exclusive of interest and penalties.

The payments made by PAGCOR to its catering service contractor are subject to zero-rated (0%) VAT in accordance with Section 13(2) of P.D. No. 1869 in relation to Section 3 of R.A. No. 7716, *viz.*:

SEC. 13. Exemptions. -

(1) x x x

(2) (a) x x x

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[40] *Supra* note 38, at 359-364.

[41] *Rollo*, pp. 361-365.

[42] *Id*. at 367-368.

> (b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees, or levies, shall inure to the benefit and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
>
> x x x x
>
> SEC. 3. Section 102 of the National Internal Revenue Code, as amended. is hereby further amended to read as follows:
>
> "SEC.102. *Value-added tax on sale of service and use or lease of properties*. - x x x
>
> "(b) *Transaction subject to zero-rate*. - The following services performed in the Philippines by Vat-registered persons shall be subject to 0%:
>
> "x x x x
>
> "(3) Services rendered to persons or entities whose exemptions under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate.

As such, the catering service contractor, who is presumably a VAT -registered person, shall impose a zero rate (0%) output tax on its sale or lease of goods, services or properties to PAGCOR. Consequently, no withholding tax is due on such transaction.

**3.**

**PAGCOR is liable for the payment of withholding taxes**

Through the letters dated December 12, 2003[43] and December 15, 2003,[44] the BIR recomputed the assessments for deficiency

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[43] *Id*. at 361-365.

[44] *Id*. at 366-368.

final withholding taxes on fringe benefits under Assessment No. 33-99 and Assessment No. 33-2000, respectively, as follows:

| | Period Covered | Recomputed Amount |
|---|---|---|
| Assessment No. 33-99 | | |
| Final Withholding Tax on Fringe Benefits | 1999 | ₱13,337,414.58, inclusive of penalty and interest |
| Assessment No. 33-2000 | | |
| Final Withholding Tax on Fringe Benefits | 2000 | ₱12,212,199.85, exclusive of penalty and interest |

The amount of the assessment for deficiency expanded withholding tax under Assessment No. 33-99 remained at ₱3,790,916,809.16.

We now resolve the validity of the foregoing assessments.

**a. Final Withholding Tax on Fringe Benefits**

The recomputed assessment for deficiency final withholding taxes related to the car plan granted to PAGCOR's employees and for its payment of membership dues and fees.

Under Section 33 of the NIRC, FBT is imposed as:

> A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code.

FBT is treated as a final income tax on the employee that shall be withheld and paid by the employer on a calendar quarterly basis.[45] As such, PAGCOR is a mere withholding agent inasmuch as the FBT is imposed on PAGCOR's employees who receive the fringe benefit. PAGCOR's liability as a withholding agent is not covered by the tax exemptions under its Charter.

The car plan extended by PAGCOR to its qualified officers is evidently considered a fringe benefit[46] as defined under Section 33 of the NIRC. To avoid the imposition of the FBT on the benefit received by the employee, and, consequently, to avoid the withholding of the payment thereof by the employer, PAGCOR must sufficiently establish that the fringe benefit is required by the nature of, or is necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

PAGCOR asserted that the car plan was granted "not only because it was necessary to the nature of the trade of PAGCOR

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[45] Section 2.33[A], Revenue Regulations 3-98.

[46] SEC. 33. Special Treatment of Fringe Benefit. -

(A) x x x

(B) Fringe Benefit defined. - For purposes of this Section. the term 'fringe benefit' means any good service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees as defined herein) such as, but not limited to the following:

(1) Housing;

(2) Expense account;

(3) Vehicle of any kind;

(4) Household personnel such as maid, driver and others;

(5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;

(6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;

(7) Expenses for foreign travel;

(8) Holiday and vacation expenses;

(9) Educational assistance to the employee or his dependents; and

(10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

but it was also granted for its convenience."[47] The records are lacking in proof as to whether such benefit granted to PAGCOR's officers were, in fact, necessary for PAGCOR's business or for its convenience and advantage. Accordingly, PAGCOR should have withheld the FBT from the officers who have availed themselves of the benefits of the car plan and remitted the same to the BIR.

As for the payment of the membership dues and fees, the Court finds that this is not considered a fringe benefit that is subject to FBT and which hold PAGCOR liable for final withholding tax. According to PAGCOR, the membership dues and fees are:

> 57. x x x expenses borne by [respondent] to cover various memberships in social, athletic clubs and similar organizations. x x x
>
> 58. Respondent's nature of business is casino operations and it derives business from its customers who play at the casinos. In furtherance of its business, PAGCOR usually attends its VIP customers, amenities such as playing rights to golf clubs. The membership of PAGCOR to these golf clubs and other organizations are intended to benefit respondent's customers and not its employees. Aside from this, the membership is under the name of PAGCOR, and as such, cannot be considered as fringe benefits because it is the customers and not the employees of PAGCOR who benefit from such memberships.[48]

Considering that the payments of membership dues and fees are not borne by PAGCOR for its employees, they cannot be considered as fringe benefits which are subject to FBT under Section 33 of the NIRC. Hence, PAGCOR is not liable to withhold FBT from its employees.

**b. Expanded Withholding Tax**

The BIR assessed PAGCOR with deficiency expanded withholding tax for the year 1999 under Assessment No. 33-

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[47] *Rollo*, pp. 122, 274-275.

[48] *Id*. at 275.

99 amounting to ₱3,790,916,809.16, inclusive of surcharge and interest, which was computed as follows:[49]

| | | |
|---|---|---|
| Taxable Basis per Investigation | ₱ | 2,441,948,878.00 |
| Expanded Withholding Tax due per investigation | | 45,762,839.60 |
| Less: Tax paid | | 43,490,484.05 |
| Deficiency Expanded Withholding Tax Due | ₱ | 2,398,458,393.95 |
| Add: 25% surcharge | | |
| 20% interest per annum from __ 12-20-02 | | 1,392,433,415.21 |
| Compromise Penalty | | |
| **TOTAL AMOUNT DUE & COLLECTIBLE** | ₱ | 3,790,891,809.16 |

Later, BIR issued a letter dated December 12, 2003 showing therein a recomputation of the assessment, to wit:[50]

| | | | |
|---|---|---|---|
| Taxable Basis per Investigation | | ₱ | 2,441,948,878.00 |
| EWT due per investigation | | | 45,762,839.60 |
| Less: Tax paid | | | 43,490,484.05 |
| Def. EWT | | ₱ | 2,272,355.55 |
| Add: Interest 1-26-00 to 12-26-03 | P1,780,311.85 | | |
| Compromise | 25,000.00 | | 1,805,311.85 |
| Def. EWT | | ₱ | 4,077,667.40 |

PAGCOR submits that the BIR erroneously assessed it for the deficiency expanded withholding taxes, explaining thusly:

44. The computation made by the revenue officers for the year 1999 for expanded withholding taxes against respondent are also not correct because it included payments amounting to ₱682,120,262 which should not be subjected to withholding tax;

45. Of the said amount, ₱194,999,366 cover importations or various items for the sole and exclusive use of the casinos x x x:

x x x x x x x x x

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[49] *Id*. at 73.

[50] *Id*. at 364.

46. The breakdown of respondent's payments which were assessed expanded withholding tax by the BIR but which should not have been made subject thereto are as follows:

a) Taxable Compensation Income amounting to ₱71,611,563.60, representing salaries of contractuals and casuals, clerical and messengerial and other services, cost of COA services and unclaimed salaries and other benefits recognized as income but subsequently claimed **(attached as Annexes "10" to "18" and made integral parts hereof)**;

b) Prizes and other promo items amounting to ₱16,185,936.61 which were already subjected to 20% final withholding tax. Pursuant to Revenue Regulations 2-98, prizes and promo items shall be subject only to 20% final tax **(attached as Annexes "19" to "51" and made integral parts hereof)**;

c) Reimbursements amounting to ₱18,246,090.35 which were paid directly by agents/employees as over the counter purchases subsequently liquidated/reimbursed by PAGCOR pursuant to BIR rulings 129-92 and 345-88;

d) Taxes amounting to ₱6,679,807.53, the amount of which should not be subjected to expanded withholding tax for obvious reasons;

e) Security Deposit amounting to ₱3,450,000.00 which was written off after the Regional Trial Court, Branch 226 of Quezon City through Presiding Judge, Leah S. Domingo-Regala, rendered a decision based on a compromise agreement in Civil Case No. 097-31299 entitled "Felina Rodriguez-Luna, et al vs. Philippine Amusement and Gaming Corporation" **(attached as Annex "52" and made an integral part hereof)**;[51]

PAGCOR's submission is partly meritorious. The Court finds that PAGCOR is not liable for deficiency expanded withholding tax on its payment for: (1) audit services rendered by the Commission on Audit (COA), amounting to ₱4,243,977.96,[52] and (2) prizes and other promo items amounting to ₱16,185,936.61.[53]

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[51] *Id*. at 272-273.

[52] *Id*. at 316-321.

[53] *Id*. at 97.

PAGCOR's payment to the COA for its audit services is exempted from withholding tax pursuant to Sec. 2.57.5 (A) of Revenue Regulation (RR) 2-98, which states:

SEC. 2.57.5. ***Exemption from Withholding Tax*** - The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;

On the other hand, the prizes and other promo items amounting to ₱16,185,936.61 were already subjected to the 20% final withholding tax[54] pursuant to Section 24(B)(1) of the NIRC.[55] To impose another tax on these items would amount to obnoxious or prohibited double taxation because the taxpayer would be taxed twice by the same jurisdiction for the same purpose.[56]

Hence, except for the foregoing, the Court uphold the validity of the assessment against PAGCOR for deficiency expanded withholding tax.

We explain.

Other than the ₱4,243,977.96 payments made to COA, the remainder of the ₱71,611,563.60 compensation income that PAGCOR paid for the services of its contractual, casual, clerical and messengerial employees are clearly subject to expanded

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[54] *Id*. at 98 and 272.

[55] SEC. 24. Income Tax Rates.

(A) x x x

(B) Rate of Tax on Certain Passive Income.

(1) Interests, Royalties, Prizes, and Other Winnings. - A final tax at the rate of twenty percent (20%) is hereby imposed upon x x x; prizes (except prizes amounting to Ten thousand pesos (₱10,000) or less which shall be subject to tax under Subsection (A) of Section 24; and other winnings (except Philippine Charity Sweepstakes and Lotto winnings), derived from sources within the Philippines: x x x

[56] *Pepsi Cola Bottling Co. of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, G.R. No. L-31156, February 27, 1976, 69 SCRA 460, 466-467.

withholding tax by virtue of Section 79 (A) of the NIRC which reads:

> Sec. 79 Income Tax Collected at Source. —
>
> (A) Requirement of Withholding. - Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the *Secretary of Finance*, upon recommendation of the Commissioner: Provided, however, That no withholding of a tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage, or Five thousand pesos (₱5,000) per month, whichever is higher.

In addition, Section 2.57.3(C) of RR 2-98 states that:

> SEC. 2.57.3 Persons Required to Deduct and Withhold. - The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:
>
> x x x x x x x x x
>
> (c) All government offices including government-owned or controlled corporations, as well as provincial, city and municipal governments.

As for the rest of the assessment for deficiency expanded withholding tax arising from PAGCOR's (1) reimbursement for over-the-counter purchases by its agents amounting to ₱18,246,090.34; (2) tax payments of ₱6,679,807.53; (3) security deposit totalling ₱3,450,000.00; and (4) importations worth ₱194,999,366.00, the Court observes that PAGCOR did not present sufficient and convincing proof to establish its non-liability.

With regard to the reimbursement for over-the-counter purchases by its agents, PAGCOR merely relied on BIR Ruling Nos. 129-92 and 345-88 to support its claim that it should not be liable to withhold taxes on these payments without submitting any proof to show that there were really actual payments made.[57]

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[57] *Rollo*, p. 273.

There is also nothing in the records to show that the amount of ₱6,679,807.53 really represented PAGCOR's tax payments,[58] or that the amount of ₱194,999,366.00 were, in fact, paid for PAGCOR's importations of various items in furtherance of its business.

Even the ₱3,450,000.00 security deposit that it claims to have been written-off based on the compromise agreement in Civil Case No. 097-31299 was not sufficiently proved to be tax exempt. The only document presented by PAGCOR to support its contention was a copy of the trial court's decision in the civil case. However, nowhere in the decision mentioned the security deposit.

It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed. They will be presumed to have taken into consideration all the facts to which their attention was called.[59] Hence, it is incumbent upon the taxpayer to credibly show that the assessment was erroneous in order to relieve himself from the liability it imposes. PAGCOR failed in this regard. Hence, except for the assessment for deficiency expanded withholding taxes pertaining to the payments made to the COA for its audit services and for the prizes and other promo items, the Court uphold the BIR's assessment for deficiency expanded withholding taxes.

**WHEREFORE**, the Court **PARTIALLY GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the Resolutions dated December 22, 2006 and March 12, 2007 of the Secretary of Justice in OSJ Case No. 2004-1 **FOR LACK OF JURISDICTION; DECLARES** that Republic Act No. 7716 did not repeal Section 13(2) of Presidential Decree 1869, and, **ACCORDINGLY**, the **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** is **EXEMPT** from value-added tax.

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[58] *Id*.

[59] *Collector of Internal Revenue v. Bohol Land Trans. Co.*, 107 Phil. 965, 974 (1960).

The Court **FURTHER RESOLVES** to:

(1) **CANCEL** Assessment No. 33-1996/1997/1998 dated November 14, 2002, which assessed **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for deficiency value-added tax;

(2) **CANCEL** Assessment No. 33-99 dated November 25, 2002, insofar as it assessed **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for deficiency —

(a) value-added tax;

(b) expanded withholding value-added tax on payments made by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** to its catering service contractor;

(c) final withholding tax on fringe benefits relating to the membership fees and dues paid by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for the benefit of its clients and customers; and

(d) expanded withholding tax on compensation income paid by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** to the Commission on Audit for its audit services, and expanded withholding tax on the prizes and other promo items, which were already subjected to the 20% final withholding tax;

(3) **CANCEL** Assessment No. 33-2000 dated March 18, 2003, insofar as it assessed **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for deficiency —

(a) value-added tax;

(b) expanded withholding value-added tax on payments made by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** to its catering service contractor; and

(c) final withholding tax on fringe benefits relating to the membership fees and dues paid by **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** for the benefit of its clients and customers;

Respondent **PHILIPPINE AMUSEMENT AND GAMING CORPORATION** is **DIRECTED TO PAY** to the Bureau of Internal Revenue:

(1) its deficiency final withholding tax on fringe benefits arising from the car plan it granted to its qualified officers and employees under Assessment No. 33-99 and Assessment No. 33-2000; and

(2) its deficiency expanded withholding tax under Assessment No. 33-99, except on compensation income paid to the Commission on Audit for its audit services and on prizes and other promo items.

Upon receipt of respondent **PHILIPPINE AMUSEMENT AND GAMING CORPORATION**'s payment for the foregoing tax deficiencies, the Bureau of Internal Revenue is **DIRECTED TO WITHHOLD** 5% thereof and **TO REMIT** the same to the Office of the Solicitor General pursuant to Section 11(1)[60] of Republic Act No. 9417 (*An Act to Strengthen the Office of the Solicitor General, by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes*).

No pronouncement on costs of suit.

**SO ORDERED.**

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

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[60] Sec. 11 *Funding*. - The funds required for the implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, and other benefits above, shall be taken from:

(i) five percent (5%) of monetary awards given by the Courts to client departments, agencies and instrumentalities of the Government, including those under court-approved compromise agreements; x x x

**SECOND DIVISION**

[G.R. No. 182944. November 9, 2016]

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), represented by SEC. HERMOGENES E. EBDANE, JR., and METROPOLITAN MANILA DEVELOPMENT AUTHORITY, represented by CHAIRMAN BAYANI F. FERNANDO,** *petitioners, vs.* **CITY ADVERTISING VENTURES CORPORATION, represented by DEXTER Y. LIM,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A RULE 65 PETITION IS AN ORIGINAL ACTION, INDEPENDENT OF THAT FROM WHICH THE ASSAILED RULING AROSE WHILE A RULE 45 PETITION IS A CONTINUATION OF THE CASE SUBJECT OF THE APPEAL.—** The distinctions between Rule 65 and Rule 45 petitions have long been settled. A Rule 65 petition is an original action, independent of the action from which the assailed ruling arose. A Rule 45 petition, on the other hand, is a mode of appeal. As such, it is a continuation of the case subject of the appeal. x x x As it is a mere continuation, a Rule 45 petition (apart from being limited to questions of law) cannot go beyond the issues that were subject of the original action giving rise to it. Rule 45 petitions engendered by prior Rule 65 petitions for certiorari and/or prohibition are, therefore, bound by the same basic issue at the crux of the prior Rule 65 petition, that is, "issues of jurisdiction or grave abuse of discretion." When Rule 45 petitions are brought before this Court, they remain tethered to the "sole office" of the original action to which they owe their existence: "the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction."

**2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; FOR A WRIT OF PRELIMINARY INJUNCTION TO BE ISSUED, THE APPLICANT MUST**

**SHOW, BY *PRIMA FACIE* EVIDENCE, AN EXISTING RIGHT BEFORE TRIAL, A MATERIAL AND SUBSTANTIAL INVASION OF THIS RIGHT, AND THAT THE WRIT IS NECESSARY TO PREVENT IRREPARABLE INJURY.—** For a writ of preliminary injunction to be issued, the applicant must show, by *prima facie* evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury. x x x Rule 58, Section 3 of the 1997 Rules of Civil Procedure identifies the instances when a writ of preliminary injunction may be issued: x x x As *Marquez v. Sanchez* summarized, "the requisites of preliminary injunction whether mandatory or prohibitory x x x In satisfying these requisites, parties applying for a writ of preliminary injunction need not set out their claims by complete and conclusive evidence. *Prima facie* evidence suffices: x x x Clearly, a writ of preliminary injunction is an ancillary and interlocutory order issued as a result of an impartial determination of the context of both parties. It entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits. Although a trial court judge is given a latitude of discretion, he or she cannot grant a writ of injunction if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant. Even if this is present, the trial court must satisfy itself that the injury to be suffered is irreparable.

3. **POLITICAL LAW; REPUBLIC ACT NO. 8975 (AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS); REMOVING OR DISMANTLING BILLBOARDS, BANNERS, AND SIGNAGES CANNOT QUALIFY AS ACTS RELATING TO THE IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS, OR OF NATIONAL GOVERNMENT PROJECTS WITHIN THE CONTEMPLATION OF REPUBLIC ACT NO. 8975.—** Republic Act No. 8975 was enacted to "ensure the expeditious and efficient implementation and completion *of government infrastructure projects*," specifically for the

purposes of "avoid[ing] unnecessary increase in construction, maintenance and/or repair costs and to immediately enjoy the social and economic benefits therefrom." Its scope and aims are clear. Removing or dismantling billboards, banners, and signages cannot qualify as acts relating to the implementation and completion of "government infrastructure projects," or of "national government projects" within the contemplation of Republic Act No. 8975. They do not involve the construction, operation, maintenance, repair, or rehabilitation of structures for public use. Neither do they involve the acquisition, supply, or installation of equipment and materials relating to such structures; nor the reduction of costs or the facilitation of public utility. What they entail are preventive and even confiscatory mechanisms. Moreover, while it is also true that public taking may be a prelude to the completion of facilities for public use (e.g., expropriation for infrastructure projects), petitioners' removal and confiscation here do not serve that specific end. Rather, they serve the overarching interest of public safety.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioners.

*Ammuyutan Purisima Ortega & Disierto Law Firm* for respondent.

*Lara Uy Santos Law Offices* collaborating counsel for respondent.

## D E C I S I O N

**LEONEN, *J.*:**

For a writ of preliminary injunction to be issued, the applicant must show, by prima facie evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury.

This resolves a Petition for Review on Certiorari[1] praying that the assailed December 3, 2007[2] and May 14, 2008[3] Resolutions of the Court of Appeals in CA G.R. SP No. 101420 be set aside; and that Branch 66 of the Regional Trial Court of Makati City be prohibited from conducting further proceedings in Civil Case No. 06-899.[4] The Petition also prays that the Regional Trial Court be ordered to dismiss Civil Case No. 06-899.[5]

The Court of Appeals' December 3, 2007 Resolution denied petitioners Department of Public Works and Highways and the Metropolitan Manila Development Authority's Petition for Certiorari and Prohibition,[6] which sought to annul the Regional Trial Court's November 21, 2006[7] and April 11, 2007[8] Orders in Civil Case No. 06-899. The Court of Appeals' May 14, 2008 Resolution denied the Motion for Reconsideration of the Department of Public Works and Highways and the Metropolitan Manila Development Authority.[9]

The Regional Trial Court's November 21, 2006 Order granted City Advertising Ventures Corporation's prayer for the issuance of a writ of preliminary injunction in its Complaint for "Violation

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[1] *Rollo*, pp. 23-68. The Petition was filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 73-74. The Resolution was penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes (now Associate Justice of this Court) and Fernanda Lampas-Peralta of the Special Tenth Division, Court of Appeals, Manila.

[3] *Id*. at 76-77. The Resolution was penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes (now Associate Justice of this Court) and Fernanda Lampas-Peralta of the Former Special Tenth Division, Court of Appeals, Manila.

[4] *Id*. at 66.

[5] *Id*.

[6] *Id*. at 290-337.

[7] *Id*. at 227-228.

[8] *Id*. at 288-289.

[9] *Id*. at 76-77.

of [Administrative Order No.] 160, Tort, [and] Injunction,"[10] which was docketed as Civil Case No. 06-899. The April 11, 2007 Order of the Regional Trial Court denied the Department of Public Works and Highways and the Metropolitan Manila Development Authority's Omnibus Motion,[11] which sought reconsideration of its November 21, 2006 Order.

Respondent City Advertising Ventures Corporation is a company engaged in the advertising business, such as putting up banners and signages within Metro Manila.[12]

On December 28, 2005, City Advertising Ventures Corporation entered into a lease agreement with the MERALCO Financing Services Corporation[13] for the use of 5,000 of Manila Electric Company's (MERALCO) lampposts to display advertising banners.[14] Under this contract, City Advertising Ventures Corporation obtained sign permits from Quezon City's Department of Engineering, Office of the Building Official, Signboard Permit Section.[15] It obtained similar permits for the cities of Pasay and Makati.[16] City Advertising Ventures Corporation likewise obtained permits for setting up pedestrian overpass banners in Quezon City.[17]

When Typhoon Milenyo hit in September 2006, several billboards in Metro Manila were blown by strong winds and fell. In its wake, Former President Gloria Macapagal-Arroyo, through Executive Secretary Eduardo R. Ermita, issued

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[10] *Id*. at 95-106. The Complaint was with a prayer for temporary restraining order, preliminary injunction, and preliminary mandatory injuction.

[11] *Id*. at 229-279.

[12] *Id*. at 220.

[13] *Id*. "[T]he sole Meralco-authorized marketing and managing firm for meralco-owned streetlight posts constructed and standing on various locations in different streets and municipalities in the Philippines."

[14] *Id*. at 221.

[15] *Id*. at 96 and 221. Annexes "A" to "M" of respondent's Complaint.

[16] *Id*. at 223.

[17] *Id*. at 96. Annexes "N" to "HH" of respondent's Complaint.

Administrative Order No. 160[18] dated October 4, 2006 "[d]irecting the Department of Public Works and Highways to conduct field investigations, evaluations and assessments of all billboards and determine those that are hazardous and pose imminent danger to life, health, safety and property of the general public and to abate and dismantle the same."[19] Six (6) days later, on October 10, 2006, Administrative Order No. 160-A[20] was issued, supplementing Administrative Order No. 160 and "[s]pecifying the legal grounds and procedures for the prohibition and abatement of billboards and signboards constituting public nuisance or other violations of law."[21]

Section 1 of Administrative Order No. 160 laid out instructions to the Department of Public Works and Highways, as follows:

SECTION 1. Tasks of the DPWH. The DPWH is hereby tasked to:

1.1. Conduct field inspection and determine (a) billboards posing imminent danger or threat to the life, health, safety and property of the public; (b) billboards violating applicable laws, rules and regulations; (c) billboards constructed within the easement of road right-of-way; and (d) billboards constructed without the necessary permit. Priority shall be given to billboards located along major roads in Metro Manila and other cities and other national highways and major thoroughfares, as determined by DPWH;

1.2. Upon evaluation and assessment, issue a certification as to those billboards found to be hazardous and violative of existing standards prescribed by the National Building Code, Structural Code of the Philippines and other related legal issuances furnishing copy [sic] of the certification to the LGUs concerned which have jurisdiction over the location of the billboards;

1.3. Abate and dismantle those billboards, commercial or non-commercial, constructed on private or public properties found to be falling under any and all grounds enumerated in paragraph 1.1. above;

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[18] *Id*. at 86-89.

[19] *Id*. at 86.

[20] *Id*. at 91-93.

[21] *Id*. at 91.

1.4. Submit a detailed written report to the Department of Justice (DOJ) to serve as basis for the possible filing of appropriate civil or criminal cases;

1.5. Call upon the Philippine National Police (PNP) to provide assistance in the dismantling of billboards and other off-site signs declared as covered under paragraph 1.1. above.[22]

Section 2 of Administrative Order No. 160 provided that the Department of Public Works and Highways shall be assisted by the Metro Manila Development Authority and by local government units:

SECTION 2. Assistance by MMDA and LGUs. The Metropolitan Manila Development Authority (MMDA) and/or the concerned LGUs are hereby directed to give full support and assistance to the DPWH for the immediate inspection, assessment and abatement of billboards found to be hazardous and violative of the National Building Code, Structural Code of the Philippines and other related issuances.[23]

Proceeding from Articles 694,[24] 695,[25] and 699[26] of the Civil Code, Administrative Order No. 160-A identified the

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[22] *Id*. at 87.

[23] *Id*.

[24] CIVIL CODE, Art. 694 provides:

Article 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

(1) Injures or endangers the health or safety of others; or

(2) Annoys or offends the senses; or

(3) Shocks, defies or disregards decency or morality; or

(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or

(5) Hinders or impairs the use of property.

[25] CIVIL CODE, Art. 695 provides:

Article 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals maybe unequal. A private nuisance is one that is not included in the foregoing definition.

[26] CIVIL CODE, Art. 699 provides:

Article 699. The remedies against a public nuisance are:

remedies available to the Department of Public Works and Highways:

SECTION 4. Remedies Against Public Nuisance. Pursuant to Article 699 of the Civil Code, in relation to AO No. 160, dated October 4, 2006, the Department of Public Works and Highways (DPWH), through its Secretary, with the help of the Metropolitan Manila Development Authority (MMDA), and the various local government units (LGUs), through the local Building Officials, shall take care that one or all of the following remedies against public nuisances are availed of:

(a) A prosecution under the Revised Penal Code or any local ordinance; or

(b) A civil action; or

(c) Abatement, without judicial proceedings, if the local Building Official determines that this is the best remedy under the circumstances.[27]

On October 6, 2006, the Department of Public Works and Highways announced that they would start dismantling billboards.[28] During its operations, it was able to remove 250 of City Advertising Ventures Corporation's lamppost banners and frames, 12 pedestrian overpass banners, 17 pedestrian overpass frames, and 36 halogen lamps.[29]

City Advertising Ventures Corporation then filed before the Regional Trial Court of Makati City its Complaint for "Violation of [Administrative Order No.] 160, Tort, [and] Injunction with Prayer for [Temporary Restraining Order], Preliminary Injunction, and Preliminary Mandatory Injunction"[30] dated October 18, 2006.

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(1) A prosecution under the Penal Code or any local ordinance: or

(2) A civil action; or

(3) Abatement, without judicial proceedings.

[27] *Rollo*, pp. 92-93.

[28] *Id*. at 99.

[29] *Id*.

[30] *Id*. at 95-106.

Asserting that Administrative Order No. 160 pertained specifically to "billboards" (i.e., "large panel[s] that carr[y] outdoor advertising") and not to small advertising fixtures such as its signages and banners, City Advertising Ventures Corporation claimed that the Department of Public Works and Highways exceeded its authority when it dismantled its banners and other fixtures.[31] It also claimed that the Department of Public Works and Highways "seriously impeded the pursuit of [its] legitimate business and . . . unlawfully deprived [it] of property, income and income opportunities . . . without due process of law,"[32] violated Articles 19,[33] 20,[34] 21[35] and 32(2), (6), and (8)[36] of the Civil Code, and

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[31] *Id*. at 99-100.

[32] *Id*. at 101.

[33] CIVIL CODE, Art. 19 provides:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[34] CIVIL CODE, Art. 20 provides:

Article 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

[35] CIVIL CODE, Art. 21 provides:

Article 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[36] Civil Code, Art. 32 provides:

Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

. . . .

(2) Freedom of speech;

. . . .

(6) The right against deprivation of property without due process of law;

. . . .

(8) The right to the equal protection of the laws;

. . . .

impaired contractual obligations.[37]

After conducting summary hearings on October 25 and 30, 2006, Branch 66 of the Regional Trial Court of Makati City issued the Order[38] dated October 31, 2006 granting City Advertising Ventures Corporation's prayer for a temporary restraining order. This Order stated:

> Such being the case, the Court is left with no recourse but to GRANT the Temporary Restraining Order from [sic] a period of twenty (20) days from today.
>
> ACCORDINGLY, the defendants are hereby restrained from further removing, dismantling, and confiscating any of plaintiff's lamppost and pedestrian overpass banners.
>
> In the meantime, let the hearing on the plaintiff's application for Writ of Preliminary Injunction [be set] on November 8, 2006 at 2:00 p.m.
>
> Let a copy of this order be served upon the defendants at the expense of the plaintiff through the Process Server of this Court.
>
> SO ORDERED.[39]

In the Order[40] dated November 21, 2006, the Regional Trial Court granted City Advertising Ventures Corporation's prayer for the issuance of a writ of preliminary injunction:

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In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

[37] *Rollo*, p. 102.

[38] *Id*. at 220-225. The Order was penned by Judge Reynaldo M. Laigo.

[39] *Id*. at 225.

[40] *Id*. at 227-228. The Order was penned by Judge Joselito Villarosa.

Wherefore, plaintiff's prayer for the issuance of a writ or preliminary injunction is granted. Accordingly, let a writ of injunction issue upon the filing by the plaintiff of a bond in the amount of PESOS ONE HUNDRED THOUSAND (₱100,000.00) executed to the defendants to the effect that the plaintiff will pay all damages defendants may suffer by reason of this injunction should the Court finally decide that the plaintiff is not entitled thereto. The defendants, their agents and representatives are hereby ordered to cease and desist from further removing, dismantling and confiscating any of plaintiff's lamppost and pedestrian overpass banners.

Let the hearing on the main case be set on January 23, 2006 [sic] at 8:30 in the morning.

SO ORDERED.[41]

In response, the Department of Public Works and Highways and the Metropolitan Manila Development Authority filed an Omnibus Motion for Reconsideration and Clarification of the November 21, 2006 Order and for the Dissolution of the Writ of Preliminary Injunction.[42] They asserted that City Advertising Ventures Corporation failed to show a clear legal right worthy of protection and that it did not stand to suffer grave and irreparable injury.[43] They likewise asserted that the Regional Trial Court exceeded its authority in issuing a writ of preliminary injunction.[44]

In the Order[45] dated April 11, 2007, the Regional Trial Court denied the Omnibus Motion.

Thereafter, the Department of Public Works and Highways and the Metropolitan Manila Department Authority filed before the Court of Appeals a Petition for Certiorari and Prohibition.[46]

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[41] *Id*. at 228.

[42] *Id*. at 23-67.

[43] *Id*. at 229-279.

[44] *Id*. at 249.

[45] *Id*. at 288-289.

[46] *Id*. at 290-337.

In its assailed December 3, 2007 Resolution,[47] the Court of Appeals denied the Petition. In its assailed May 14, 2008 Resolution,[48] the Court of Appeals denied the Motion for Reconsideration.

Hence, this Petition[49] was filed.

On November 3, 2008, respondent City Advertising Ventures Corporation filed its Comment.[50] On April 14, 2009, petitioners filed their Reply.[51]

In the Resolution[52] dated July 7, 2010, this Court issued a temporary restraining order enjoining the implementation of the Regional Trial Court's November 21, 2006 and April 11, 2007 Orders, as well as of a subsequent May 21, 2010 Order, which reiterated the trial court's November 21, 2006 and April 11, 2007 Orders.

For resolution is the sole issue of whether the Regional Trial Court gravely abused its discretion in issuing its November 21, 2006 and April 11, 2007 Orders.

**I**

After seeking relief from the Court of Appeals through the remedy of a petition for certiorari and prohibition under Rule 65 of the 1997 Rules of Civil Procedure, petitioners come to this Court through a petition for review on certiorari under Rule 45. The distinctions between Rule 65 and Rule 45 petitions have long been settled. A Rule 65 petition is an original action, independent of the action from which the assailed ruling arose. A Rule 45 petition, on the other hand, is a mode of appeal. As such, it is a continuation of the case

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[47] *Id*. at 73-74.

[48] *Id*. at 76-77.

[49] *Id*. at 23-68.

[50] *Id*. at 376-391.

[51] *Id*. at 406-432.

[52] *Id*. at 349-351.

subject of the appeal. In *Sy v. Commission on Settlement of Land Problems*:[53]

> [T]he remedy of certiorari under Rule 65 is not a component of the appeal process. It is an original and independent action that is not a part of the trial which resulted in the rendition of the judgment complained of. In contrast, the exercise of our appellate jurisdiction refers to a process which is but a continuation of the original suit.[54]

As it is a mere continuation, a Rule 45 petition (apart from being limited to questions of law) cannot go beyond the issues that were subject of the original action giving rise to it. This is consistent with the basic precept that:

> As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.[55]

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[53] 417 Phil. 378 (2001) [Per *J.* De Leon, Jr., Second Division].

[54] *Id*. at 393, *citing Dando v. Fraser*, G.R. No. 102013, October 8, 1993, 227 SCRA 126, 134 [Per *J.* Quiason, First Division] and *Morales v. Court of Appeals*, 340 Phil. 397, 416 (1997) [Per *J.* Davide, Jr., Third Division]. *Del Rosario v. Bonga*, 402 Phil. 949, 960 (2001) [Per *J.* Panganiban, Third Division] recognized exceptions: "Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy" (Citations omitted).

[55] *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001) [Per *J.* Panganiban, Third Division], *citing Keng Hua v. Court of Appeals*, 349 Phil. 925, 937 (1998) [Per *J.* Panganiban, First Division]; *Arcelona v. Court of Appeals*, 345 Phil. 250, 275-276 (1997) [Per *J.* Panganiban, Third Division]; *Mendoza v. Court of Appeals*, 340 Phil. 364 (1997) [Per *J.* Panganiban, Third Division]; *Remman Enterprises, Inc., v. Court of Appeals*, 335 Phil. 1150, 1162 (1997) [Per *J.* Panganiban, Third Division], and RULES OF COURT, Rule 44, Sec. 15.

Rule 45 petitions engendered by prior Rule 65 petitions for certiorari and/or prohibition are, therefore, bound by the same basic issue at the crux of the prior Rule 65 petition, that is, "issues of jurisdiction or grave abuse of discretion."[56] When Rule 45 petitions are brought before this Court, they remain tethered to the "sole office"[57] of the original action to which they owe their existence: "the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction."[58]

When petitioners sought relief from the Court of Appeals, what they sought to remedy was the Regional Trial Court's issuance of its November 21, 2006 and April 11, 2007 Orders. These were interlocutory orders pertaining to a temporary relief extended to respondent, that is, a writ of preliminary injunction. These orders were not judgments that completely disposed of Civil Case No. 06-899. They were not the Regional Trial Court's final ruling on Civil Case No. 06-899. By the time petitioners sought redress from the Court of Appeals (and even at the time of the filing of their appeal before this Court), the Regional Trial Court had not yet even ruled on the merits of Civil Case No. 06-899.

The question before the Court of Appeals was, therefore, limited to the matter of whether the Regional Trial Court's issuance of a writ of preliminary injunction was tainted with grave abuse of discretion. On appeal from the original action brought before the Court of Appeals, it is this same, singular issue that confronts us.

This Court cannot, at this juncture, entertain petitioners' prayer that the Regional Trial Court be ordered to dismiss Civil Case

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[56] *Odango v. National Labor Relations Commission*, G.R. No. 147420, June 10, 2004, 431 SCRA 633, 639 [Per *J.* Carpio, First Division], *citing Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 611 (2001) [Per *J.* Buena, Second Division].

[57] *Id*.

[58] *Id*. at 427-428, *citing Oro v. Judge Diaz*, 413 Phil. 416 (2001) [Per *J.* Panganiban, Third Division].

No. 06-899. Ruling on the complete cessation of a civil action on grounds other than those permitted by Rule 16[59] of the 1997 Rules of Civil Procedure (on motions to dismiss filed before the filing of an answer and before the conduct of trial; on grounds such as supervening events that render a pending action moot, unlitigable; or on grounds that render relief impracticable or impossible) compels an examination of the merits of a case. The case must then be litigated—through trial, reception of evidence, and examination of witnesses. This entire process will be frustrated were this Court to rule on Civil Case No. 06-899's dismissal on the basis only of allegations made in reference to provisional relief extended before trial even started.

In ruling on the propriety of the Regional Trial Court's issuance of a writ of preliminary injunction, both the Court of Appeals and this Court are to be guided by the established standard on what constitutes grave abuse of discretion:

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[59] RULES OF COURT, Rule 16, Sec. 1 provides:

Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) That venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

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

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and

(j) That a condition precedent for filing the claim has not been complied with.

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[60]

The sole question, then, is whether the Regional Trial Court, in issuing a writ of preliminary injunction in favor of respondent, acted in a manner that was practically bereft of or violative of legally acceptable standards.

We turn to the basic principles governing the issuance of writs of preliminary injunction.

**II**

A writ of preliminary injunction is issued in order to:

[P]revent threatened or continuous irremediable injury to some of the parties *before their claims can be thoroughly studied and adjudicated*. Its sole aim is to preserve the status quo until the merits of the case can be heard fully[.] Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant.[61] (Emphasis supplied)

Rule 58, Section 3 of the 1997 Rules of Civil Procedure identifies the instances when a writ of preliminary injunction may be issued:

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[60] *Aurelio v. Aurelio*, 665 Phil 693, 703-704 (2011) [Per J. Peralta, Second Division], *citing Solvic Industrial Corporation v. National Labor Relations Commission*, 357 Phil. 430, 438 (1998) [Per J. Panganiban, First Division]; and *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil. 859, 864 (1999) [Per J. Quisumbing, Second Division].

[61] *First Global Realty and Development Corporation v. San Agustin*, 427 Phil. 593, 601-602 (2002) [Per J. Panganiban, Third Division], *citing Republic of the Philippines v. Silerio*, 338 Phil. 784, 791-792 (1997) [Per J. Romero, Second Division]; and *Spouses Crystal v. Cebu International School*, 408 Phil. 409, 420-422 (2001) [Per J. Panganiban, Third Division].

Section 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

As *Marquez v. Sanchez*[62] summarized, "the requisites of preliminary injunction whether mandatory or prohibitory are the following":

(1) the applicant must have a clear and unmistakable right, that is a right *in esse*;

(2) there is a material and substantial invasion of such right;

(3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[63] (Emphasis in the original)

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[62] 544 Phil. 507 (2007) [Per *J.* Velasco, Jr., Second Division].

[63] *Id*. at 517-518, *citing Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority*, 393 Phil. 843, 859 (2000) [Per *J.* Ynares-Santiago, First Division]; and *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703-704 (2002) [Per *J.* Corona, Third Division].

In addition to these substantive requirements, RULES OF COURT, Rule 58, Sec. 4 spells out the procedural requirements that must be satisfied before a writ of preliminary injunction may be issued:

Section 4. Verified application and bond for preliminary injunction or temporary restraining order. — A preliminary injunction or temporary restraining order may be granted only when:

In satisfying these requisites, parties applying for a writ of preliminary injunction need not set out their claims by complete and conclusive evidence. Prima facie evidence suffices:

> It is crystal clear that at the hearing for the issuance of a writ of preliminary injunction, *mere prima facie evidence is needed* to establish the applicant's rights or interests in the subject matter of the main action. It is not required that the applicant should conclusively show that there was a violation of his rights as this issue will still be fully litigated in the main case. Thus, an applicant for a writ is required *only to show that he has an ostensible right to the final relief prayed for* in his complaint.[64] (Emphasis supplied)

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(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

[64] *Republic v. Evangelista*, 504 Phil. 115, 123 (2005) [Per J. Puno, Second Division], *citing Buayan Cattle Co., Inc. v. Quintillan*, 213 Phil. 244, 254

*Spouses Nisce v. Equitable PCI Bank*[65] discussed the requisites, vis-a-vis the proof required, for issuing a writ of preliminary injunction:

> The plaintiff praying for a writ of preliminary injunction must further establish that he or she has a present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages. In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. Thus, where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction.
>
> However, to establish the essential requisites for a preliminary injunction, the evidence to be submitted by the plaintiff need not be conclusive and complete. The plaintiffs are only required to show that they have an ostensible right to the final relief prayed for in their complaint. A writ of preliminary injunction is generally based solely on initial or incomplete evidence. Such evidence need only be a sampling intended merely to give the court an evidence of justification for a preliminary injunction pending the decision on the merits of the case, and is not conclusive of the principal action which has yet to be decided.[66]

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(1984) [Per *J*. Makasiar, Second Division]; *Developers Group of Companies, Inc. v. Court of Appeals*, G.R. No. 104583, March 8, 1993, 219 SCRA 715, 722 [Per *J*. Cruz, First Division]; and *Saulog v. Court of Appeals*, 330 Phil. 590, 602 (1996) [Per *J*. Puno, Second Division].

[65] 545 Phil. 138 (2007) [Per *J*. Callejo, Sr., Third Division].

[66] *Id*. at 160-161, *citing Searth Commodities Corporation v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 628 [Per *J*. Gutierrez, Jr., Third Division]; *Medina v. Greenfield Development Corporation*, 485 Phil. 533, 543 (2004) [Per *J*. Austria-Martinez, Second Division]; *Olalia, et al. v. Hizon, et al*., 274 Phil. 66, 74 (1991) [Per *J*. Cruz, First Division]; *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 940 (2002) [Per *J*. Panganiban, Third Division]; *La Vista Association, Inc. v. Court of Appeals*, 344 Phil. 30, 44 (1997) [Per *J*. Bellosillo, First Division]; and *Saulog v. Court of Appeals*, 330 Phil. 590, 602 (1996) [Per *J*. Hermosisima, Jr., First Division].

Clearly, a writ of preliminary injunction is an ancillary and interlocutory order issued as a result of an impartial determination of the context of both parties. It entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits. Although a trial court judge is given a latitude of discretion, he or she cannot grant a writ of injunction if there is no clear legal right materially and substantially breached from a prima facie evaluation of the evidence of the complainant. Even if this is present, the trial court must satisfy itself that the injury to be suffered is irreparable.

**III**

Respondent satisfied the standards for the issuance of a writ of preliminary injunction. The Regional Trial Court acted in keeping with these standards and did not gravely abuse its discretion in extending temporary relief to respondent.

**III.A**

Petitioners have conceded that respondent entered into a lease agreement enabling the latter to use MERALCO's lampposts to display advertising banners.[67] Respondent obtained permits from the local government units of Makati, Pasay, and Quezon City so that it could put up banners and signages on lampposts and pedestrian overpasses.[68]

There was no allegation nor contrary proof "[t]hat the ordinary course of business has been followed."[69] Respondent must have obtained the customary permits and clearances (e.g., Mayor's

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[67] *Rollo*, p. 221.

[68] *Id*. at 96 and 221, Annexes "A" to "HH" of respondent's Complaint.

[69] REV. RULES ON EVID., Rule 131, Sec. 3(q):

Section 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . .

(q) That the ordinary course of business has been followed[.]

and business permits as well as registration with the Securities and Exchange Commission and with the Bureau of Internal Revenue) necessary to make itself a going concern.

Respondent's lease agreement with MERALCO Financing Services Corporation and its having secured permits from local government units, for the specific purpose of putting up advertising banners and signages, gave it the right to put up such banners and signages. Respondent had in its favor a property right, of which it cannot be deprived without due process. This is respondent's right *in esse*, that is, an actual right. It is not merely a right *in posse*, or a potential right.

**III.B**

Petitioners counter that respondent had no right to put up banners and signages. They point out that on September 2, 2004, the Metro Manila Council passed MMDA Regulation No. 04-004, "[p]rescribing guidelines on the installation and display of billboards and advertising signs along major and secondary thoroughfares, avenues, streets, roads, parks and open spaces within Metro Manila and providing penalties for violation thereof."[70]

Section 13 of this Regulation identified the officers responsible for issuing clearances for the installation of "billboards/signages and advertising signs," as follows:

> Section 13. The MMDA, thru the Chairman or his duly authorized representative, shall be the approving authority in the issuance of clearance in the installation of billboards/signboards and advertising signs along major thoroughfares of Metro Manila. Upon securing clearance from the MMDA, a permit from the Local Government Unit must be secured. (The list of major thoroughfares is hereto attached as Appendix A of this Regulation).
>
> The City/Municipal Mayor or his duly authorized representative shall be the approving authority in the issuance of permit for the installation/posting billboards/signboards and advertising signs along local roads and private properties of Metro Manila.

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[70] *Rollo,* pp. 78-83.

Petitioners claim that the dismantling of respondent's banners and signages was "[f]or want of the required MMDA clearance(s) . . . and for other violation[s] of MMDA Regulation No. 04-004."[71] Petitioners also counter that "sidewalk and streetlight posts are outside the commerce of men"[72] and, therefore, cannot be spaces for respondent's commercial activities. They also claim that respondent's contract with MERALCO Financing Services Corporation has since expired.[73] Petitioners likewise underscore that the right to non-impairment of contracts "is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare."[74]

Petitioners may subsequently and after trial prove that they are correct. A more thorough examination of prevailing laws, ordinances, and pertinent regulations may later on establish that the use of lampposts and pedestrian overpasses as platforms for visual advertisements advancing private commercial interests contradict the public character of certain spaces. Likewise, petitioners did *subsequently* adduce evidence that, by December 29, 2006, respondent's contract with MERALCO Financing Services Corporation had expired.[75] After trial, it may later on be found that respondent's proprietary interest may be trumped by the general welfare.

*However, at the point when the Regional Trial Court was confronted with respondent's prayer for* temporary relief, all that respondent needed was a right ostensibly in existence. Precisely, a writ of preliminary injunction is issued "***before*** [parties'] claims can be thoroughly studied and adjudicated."[76]

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[71] *Id*. at 31.

[72] *Id*. at 52.

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

[74] *Id*. at 53.

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

[76] *First Global Realty and Development Corporation v. San Agustin*, 427 Phil. 593, 601 (2002) [Per *J*. Panganiban, Third Division]. *See also Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282 [Per

MMDA Regulation No. 04-004's clearance requirements appear to stand in contrast with the permits obtained by respondent from the local government units of Makati, Pasay, and Quezon City. Whether the permits suffice by themselves, or whether respondent's alleged non-compliance with MMDA Regulation No. 04-004 is fatal to its cause, are matters better resolved by a process more painstaking than the summary hearings conducted purely for the purpose of extending provisional remedy.

The phrase "outside the commerce of men"[77] is not an incantation that can be invoked to instantly establish the accuracy of petitioners' claims. 'Public spaces' are not a monolithic, homogenous mass that is impervious to private activity. Determining whether the specific locations where respondent conducts its business is absolutely excluded from commercial activity requires more rigorous fact-finding and analysis.

Although "public health, safety, morals and general welfare"[78] may justify intrusion into private commercial interests, the exercise of police power entails considerations of due process, fitness, and propriety. Even when these considerations are invoked, they do not peremptorily and invariably set aside private property rights. When acting in view of these considerations, state organs must still do so with restraint and act only to the extent reasonably necessary. Whether state organs actually did so is something that can only be adjudged when the competing claims of the State and of private entities are conscientiously and deliberately appraised.

Even by petitioners' own allegation, the expiration of respondent's lease agreement with MERALCO Financing Services Corporation did not happen until after November 21, 2006, when the Regional Trial Court issued the contentious

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*J*. Callejo, Sr., Second Division]; *Mabayo Farms, Inc. v. Court of Appeals*, 435 Phil. 112, 118 (2002) [Per *J*. Quisumbing, Second Division].

[77] *Rollo*, p. 52.

[78] *Id*. at 53.

writ of preliminary injunction.[79] It was a subsequent fact, which could have only been proven later during trial, and which was still inefficacious when respondent pleaded for provisional relief.

Petitioners' own arguments demonstrate the need for litigation—a thorough study and adjudication—of the parties' competing claims. When the Regional Trial Court extended provisional relief on November 21, 2006, it did not yet have the benefit of exhaustive litigation. That it acted without such benefit is not something for which it can be faulted. It did not gravely abuse its discretion then, because it did not ***yet*** need to engage in full litigation.

**III.C**

Turning to the other requisites for the issuance of a writ of preliminary injunction, we find that respondent adequately averred and showed a material and substantial invasion of its ostensible right, for which the writ or preliminary injunction was necessary lest that invasion persist and it be made to suffer irreparable injury.

As respondent pointed out, the filing of its Complaint was precipitated by the removal of no less than 250 of its lamppost banners and frames, as well as 12 of its pedestrian overpass banners, 17 pedestrian overpass frames, and 36 halogen lamps.[80] All these were done in the span of less than two (2) weeks.[81] Petitioners do not dispute this. Moreover, nowhere does it appear that petitioners intended to restrict themselves to these 250 lamppost banners and frames, 12 pedestrian overpass banners, 17 pedestrian overpass frames, and 36 halogen lamps. On the contrary, their incessant attempts at having the Regional Trial Court's writ of preliminary injunction lifted—first, on reconsideration at the Regional Trial Court itself; next, on certiorari and prohibition, and later, on reconsideration at the Court of Appeals; then, on appeal before this Court; and still

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

[80] *Id*. at 99.

[81] *Id*.

later, on their June 15, 2010 Motion before this Court—are indicative of their sheer resolve to dismantle more. Respondent was left with no justifiable recourse but to seek relief from our courts.

Petitioners' admitted and pronounced course of action directly obstructed respondent's ability to avail itself of its rights under its lease agreement and the permits it secured from local government units. What petitioners sought to restrict was the very essence of respondent's activity as a business engaged in advertising via banners and signages. As the Regional Trial Court explained in its April 11, 2007 Order:

> It bears stressing that the lifeblood of a business rests on effective advertising strategies. One of which is the posting of billboards and signages at strategic places. The manner of posting may be regulated by the government but must comply with certain requirements, and should not result in taking of property without due process or in wanton disregard of existing laws. It stands to reason that [petitioners] are not vested with blanket authority to confiscate billboards without warning and in violation of existing laws.[82]

**IV**

Administrative Order No. 160's mere existence, absent a showing of compliance with its instructions, gives no solace to petitioners. Administrative Order No. 160 expressed the Chief Executive's general directive for the abatement of billboards that pose a hazard to the general welfare. In doing so, it did not give petitioner Department of Public Works and Highways unbridled authority to dismantle all billboards and signages. Administrative Order No. 160 prescribed a well-defined process for the carrying out of petitioner Department of Public Works and Highways' functions. Before any such abatement and dismantling—as permitted by paragraph 1.3—paragraphs 1.1 and 1.2 of Administrative Order No. 160 require the Department of Public Works and Highways to: first, conduct field inspections; second, make evaluations and assessments; third, issue certifications as to those billboards found to be hazardous and

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[82] *Id*. at 288.

violative of existing standards; and fourth, furnish copies of these certifications to concerned local government units.

Six (6) days after it was issued, Administrative Order No. 160 was supplemented by Administrative Order No. 160-A.[83] This subsequent issuance recognized that hazardous billboards are public nuisances.[84] Thus, in its Section 4, it prescribed remedies consistent with Article 699 of the Civil Code:

(a) A prosecution under the Revised Penal Code or any local ordinance; or

(b) A civil action; or

(c) Abatement, without judicial proceedings, if the local Building Official determines that this is the best remedy under the circumstances.[85]

In its October 31, 2006 Order, which issued an initial 20-day temporary restraining order in favor of respondent, the Regional Trial Court emphasized that despite the opportunity extended to petitioners (in the October 25 and 30, 2006 summary hearings) to present evidence of their compliance with paragraphs 1.1 and 1.2 of Administrative Order No. 160, with Section 4 of Administrative Order No. 160-A, or with Article 699 of the Civil Code, petitioners failed to show any such evidence.[86] From all indications, petitioners proceeded to dismantle respondent's banners and signages without having first completed formal or systematic field inspections, as well as evaluations and assessments, and without having first issued written certifications and furnished local government units with copies of these

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[83] *Id*. at 91-93.

[84] This is defined under CIVIL CODE, Art. 695:

Article 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

[85] *Rollo*, p. 93.

[86] *Id*. at 225.

certifications. In the 12-day span between petitioner Department of Public Works and Highways' October 6, 2006 announcement that it would start dismantling billboards, and respondent's October 18, 2006 Complaint, petitioners managed to dismantle a considerable number of respondent's banners and signages while apparently ignoring the same regulations from which they drew their authority:

> So far, no evidence has been presented by the [petitioners] to the satisfaction of this Court that they had strictly observed the procedure laid down by Administrative Order No. 160 and prescribed by law for the abatement of billboards and signboards found to have been a public nuisance before carrying their tasks of dismantling the banners and other temporary signages belonging to [respondent].[87]

In its November 21, 2006 Order, the Regional Trial Court reiterated that petitioners had yet to adduce proof of their prior compliance with paragraphs 1.1 and 1.2 of Administrative Order No. 160, with Section 4 of Administrative Order No. 160-A, or with Article 699 of the Civil Code. This, even after the conduct of another hearing on November 8, 2006:[88]

> The Court finds that the continuous removal and destruction of [respondent's] billboards without due notice and without following the procedure provided under the law. No price can be placed on the deprivation of a person's right to his property without due process of law.
>
> The New Civil Code provides for remedies against a public nuisance which [respondent's] billboards are classified by [petitioners].
>
> Article 699 of the New Civil Code provides that a public nuisance [may be] prosecuted under the penal code or any local ordinance, by civil action or by abatement. The district health officer if required to determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance. Any private person may abate a public nuisance which is specially injurious to him by removing or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing

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[87] *Id*.

[88] *Id*. at 228.

unnecessary injury. But it is necessary: (1) That demand be first made upon the owner or possessor of the property to abate the nuisance; (2) That such demand has been rejected; (3) That the abatement be approved by the district health officer and executed with the assistance of the local police[; and] (4) That the value of the destruction does not exceed three thousand pesos.

However, as found by the Court in the Order granting the temporary restraining order, no evidence was presented by [petitioners] to prove that they had strictly observed the procedure laid down by Administrative Order No. 160 or the provisions of the New Civil Code on abatement of public nuisance.[89]

In its April 11, 2007 Order, the Regional Trial Court again emphasized the utter lack of such proof from petitioners:[90]

The Court maintains [that] there is no justifiable reason to dissolve the issued preliminary injunction. The fact remains that [petitioners] disregarded the minimum requirements of due process under Administrative Order [No.] 160 when they dismantled [respondent's] banners duly licensed by the local government concerned and covered by a legitimate agreement with MERALCO. No proof was shown by [petitioners] that they had complied with the requirements of [Administrative Order No.] 160 particularly as to the evaluation and certification process prior to the dismantling, or to the creation of a task force, or at least a finding that said banners or [respondent] are nuisances or hazardous. Worse, they jumped right into abatement, skipping initial investigatory stages and the all-important feature that id due process.[91]

The Court of Appeals' assailed December 3, 2007 Resolution drew attention to petitioners' failure to show proof of such compliance.[92] Even now, in their Petition for Review on Certiorari

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[89] *Id*.

[90] *Id.* at 289.

[91] *Id*.

[92] *Id*. at 74: "Significantly, the questioned court orders focus on the failure of the petitioners to observe due process, *i.e*., the procedure outlined in Administrative Orders Nos. 160 and 160-A that were issued by the President."

before us, petitioners make no reference whatsoever to satisfying Administrative Order No. 160's, 160-A's, and the Civil Code's procedural requisites.

Even if it were to be assumed that Administrative Order No. 160's and 160-A's procedural requirements completely and impeccably satisfy the standards of due process, it remains that petitioners have not shown that they complied with these administrative mechanisms. Their complete and protracted silence on this compliance is glaring. It would have been easy for them to simply state that they have complied with the same instrument from which they are drawing their authority. Petitioners' utter inability to even make any such allegation, let alone to offer proof of compliance with Administrative Order No. 160's and 160-A's due process safeguards is detrimental to their cause.

**V**

Petitioners' final bid at securing this Court's favor is through a reference to Republic Act No. 8975.[93] Section 3 of Republic Act No. 8975 provides:

> Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. - No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:
>
> (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
>
> (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

[93] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes (2000).

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Petitioners claim that Republic Act No. 8975's prohibition applies to their efforts to protect the public's welfare by dismantling billboards.[94]

Republic Act No. 8975 was enacted to "ensure the expeditious and efficient implementation and completion *of government infrastructure projects,*"[95] specifically for the purposes of "avoid[ing] unnecessary increase in construction, maintenance and/or repair costs and to immediately enjoy the social and economic benefits therefrom."[96] Its scope and aims are clear.

Removing or dismantling billboards, banners, and signages cannot qualify as acts relating to the implementation and completion of "government infrastructure projects," or of

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[94] *Rollo*, p. 61.

[95] Rep. Act No. 8975, Sec. 1.

[96] *Id*.

"national government projects"[97] within the contemplation of Republic Act No. 8975. They do not involve the construction, operation, maintenance, repair, or rehabilitation of structures for public use. Neither do they involve the acquisition, supply, or installation of equipment and materials relating to such structures; nor the reduction of costs or the facilitation of public utility. What they entail are preventive and even confiscatory mechanisms. Moreover, while it is also true that public taking may be a prelude to the completion of facilities for public use (e.g., expropriation for infrastructure projects), petitioners' removal and confiscation here do not serve that specific end. Rather, they serve the overarching interest of public safety.

Petitioners prevented and threatened to prevent respondent from engaging in its cardinal business activity. Their admitted actions and apparent inactions show that the well-defined due process mechanisms outlined by Administrative Order No. 160 and 160-A were not followed. Confronted with acts seemingly tantamount to deprivation of property without due process of law, the Regional Trial Court acted well within its competence when it required petitioners to temporarily desist, pending a more complete and circumspect estimation of the parties' rights.

**WHEREFORE**, the Petition is **DENIED**. The assailed December 3, 2007 and May 14, 2008 Resolutions of the Court of Appeals in CA-G.R. SP No. 101420 are **AFFIRMED** without prejudice to the ultimate disposition of Civil Case No. 06-899.

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[97] The term "national government projects" is defined under Rep. Act No. 8975, Sec. 2, as:

Sec. 2. Definition of Terms. -

(a) "National government projects" shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government owned and-controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

The temporary restraining order dated July 7, 2010 is **LIFTED**.

**SO ORDERED**.

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

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

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**THIRD DIVISION**

[G.R. No. 189026. November 9, 2016]

**PHILIPPINE TELEGRAPH & TELEPHONE CORP.,** *petitioner, vs.* **SMART COMMUNICATIONS, INC.,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; REPUBLIC ACT NO. 7925 (THE PUBLIC TELECOMMUNICATIONS POLICY ACT OF THE PHILIPPINES); THE NATIONAL TELECOMMUNICATIONS COMMISSION (NTC) IS GIVEN THE AUTHORITY TO APPROVE OR ADOPT ACCESS CHARGE ARRANGEMENTS BETWEEN TWO PUBLIC TELECOMMUNICATION ENTITIES (PTEs).—** The Public Telecommunications Policy Act of the Philippines (RA 7925) gave the NTC the authority to approve or adopt access charge arrangements between two public telecommunication entities. x x x RA 7925 recognizes and encourages bilateral negotiations between PTEs, but it does not strictly adopt a *laissez-faire* policy. It imposes strictures that restrain within reason how PTEs conduct their business. The law aims to foster a healthy competitive environment by striking a balance between the freedom of PTEs to make business

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[*] On official leave.

decisions and to interact with one another on the one hand and the affordability of rates on the other. However, one can speak of healthy competition only between equals. Thus, consistent with Section 19, Article XII of the Constitution, RA 7925 seeks to break up the monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting new industry entrants protection against dominant carriers through equitable access charges and equal access clauses in interconnection agreements and through the strict policing of predatory pricing by dominant carriers. Specifically, Section 18 of RA 7925 regulates access charge arrangements between two PTEs: x x x The first paragraph mandates that any agreement pertaining to access charges must be submitted to the NTC for approval; in case the parties fail to agree, the matter shall be resolved by the NTC. x x x Under Section 18, it is either the access charge formula or revenue-sharing arrangement that is submitted to the NTC for approval. x x x Therefore, the Agreement should have been submitted to the NTC for its review and approval in accordance with the second paragraph of Section 18.

**2. ID.; ID.; ID.; ID.; ID.; THE PROCEEDING BEFORE THE NTC IS QUASI-JUDICIAL IN NATURE AS IT INVOLVES A DETERMINATION OF THE FAIR AND REASONABLE ACCESS CHARGES WHICH AFFECT THE RIGHTS OF PTEs; CASE AT BAR.—** It is clear that the law did not intend the approval to simply be a ministerial function. The second paragraph of Section 18 enumerates the guidelines to be considered by the NTC before it approves the access charges. Thus, the NTC must be satisfied that the access charge formula is fair and reasonable based on factors such as cost, public necessity and industry returns; otherwise, it has the discretion to disapprove the rates in the event that it finds that they fall short of the statutory standards. Evidently, the proceeding under Section 18 is quasi-judicial in nature. Any action by the NTC would particularly and immediately affect the rights of the interconnecting PTEs—in this case, Smart and PT&T—rather than being applicable to all PTEs throughout the Philippines. The NTC, therefore, correctly treated the dispute as adversarial and gave both Smart and PT&T the opportunity to be heard.

**3. REMEDIAL LAW; CIVIL ACTIONS; JURISDICTION; DOCTRINE OF PRIMARY JURISDICTION; THE RTC**

**CANNOT PROCEED WITH THE CIVIL CASE UNTIL THE NTC HAS FINALLY DETERMINED IF THE ACCESS CHARGES ARE FAIR AND REASONABLE; CASE AT BAR.—** Section 18 of RA 7925 authorizes the NTC to determine the equity, reciprocity and fairness of the access charges stipulated in Smart and PT&T's Agreement. This does not, however, completely deprive the RTC of its jurisdiction over the complaint filed by Smart. The Agreement has other stipulations which do not require the NTC's expertise. But insofar as Smart's complaint involved the enforcement of, as well as the collection of sums based on the rates subject of the NTC proceedings, the RTC cannot proceed with the civil case until the NTC has finally determined if the access charges are fair and reasonable. Hence, the more prudent course of action for the RTC would have been to hold the civil action in abeyance until after a determination of the NTC case. Indeed, logic and the doctrine of primary jurisdiction dictate such move.

**4. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; RULE OF NON-INTERFERENCE WITH TRIBUNALS OF CONCURRENT OR COORDINATE JURISDICTION; RTC CANNOT RESTRAIN NTC FROM EXERCISING ITS STATUTORY POWER OF REVIEWING ACCESS CHARGES IN INTERCONNECTION AGREEMENTS; CASE AT BAR.—** In view of the legislative history of the NTC, it is clear that Congress intended NTC, in respect of its quasi-judicial or adjudicatory functions, to be co-equal with regional trial courts. Hence, the RTC cannot interfere with the NTC's exercise of its quasi-judicial powers without breaching the rule of non-interference with tribunals of concurrent or coordinate jurisdiction. x x x This rule of non-interference applies not only to courts of law having equal rank but also to quasi-judicial agencies statutorily at par with such courts. x x x In this case, the NTC was already in the process of resolving the issue of whether the access charges stipulated in the Agreement were fair and equitable pursuant to its mandate under RA 7925 when the RTC issued the assailed writ of preliminary injunction. Mediation conferences had been conducted and, failing to arrive at a settlement, the NTC had ordered the parties to submit their respective pleadings. Simply put, the NTC had already assumed jurisdiction over the issue involving access charges. Undeniably, the RTC exceeded its

jurisdiction when it restrained the NTC from exercising its statutory authority over the dispute.

**APPEARANCES OF COUNSEL**

*De la Cuesta De las Alas & Tantuico* for petitioner.
*Espanol Syquia-Santos Plaza-Cortez Tuano & Malagar* for respondent.

**D E C I S I O N**

**JARDELEZA, *J.*:**

Since 1979, the National Telecommunications Commission (NTC) has been the lead government agency in charge of regulating the telecommunications industry. The Public Telecommunications Policy Act of the Philippines[1] (RA 7925) gave the NTC the authority to approve or adopt access charge arrangements between two public telecommunication entities. The issues here are whether the NTC has primary jurisdiction over questions involving access charge stipulations in a bilateral interconnection agreement, and whether regular courts can restrain the NTC from reviewing the negotiated access charges.

I

Petitioner Philippine Telegraph & Telephone Corporation (PT&T) and respondent Smart Communications, Inc. (Smart) entered into an Agreement[2] dated June 23, 1997 for the interconnection of their telecommunication facilities. The Agreement provided for the interconnection of Smart's Cellular Mobile Telephone System (CMTS), Local Exchange Carrier (LEC) and Paging services with PT&T's LEC service. Starting 1999, however, PT&T had difficulty meeting its financial obligations to Smart.[3] Thus, on November 28, 2003, the parties

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[1] Republic Act No. 7925 (1995).

[2] *Rollo*, pp. 109-130.

[3] *Id.* at 37.

amended the Agreement, which extended the payment period and allowed PT&T to settle its obligations on installment basis. The amended Agreement also specified, among others, that Smart's access charge to PT&T would increase from ₱1.00 to ₱2.00 once PT&T's unpaid balance reaches ₱4 Million and that PT&T's access charge to Smart would be reduced from ₱8.69 to ₱6.50. Upon full payment, PT&T's access charge would be further reduced to ₱4.50.[4]

On April 4, 2005, Smart sent a letter informing PT&T that it increased the access charge from ₱1.00 to ₱2.00 starting April 1, 2005 in accordance with the amended Agreement. However, on September 2, 2005, PT&T sent a letter to Smart claiming that the latter overcharged PT&T on outbound calls to Smart's CMTS.[5] PT&T cited the NTC resolution in a separate dispute between Smart and Digitel, where the NTC ultimately disallowed the access charges imposed by Smart for being discriminatory and less favorable than terms offered to other public telecommunication entities (PTEs). Accordingly, PT&T demanded a refund of ₱12,681,795.13 from Smart.[6]

Thereafter, on September 15, 2005, PT&T filed a letter-complaint with the NTC raising the issue that the access charges imposed by Smart were allegedly "discriminatory and not in conformity with those of other carriers."[7] On January 20, 2006, the NTC ordered Smart and PT&T to attend mediation conferences in order to thresh out the issues.[8] After the mediation efforts failed, the NTC directed the parties to file their respective pleadings, after which it would consider the case submitted for resolution. But before the parties were able to submit the pleadings, Smart filed a complaint with the Regional Trial Court of Makati City (RTC) against PT&T on April 7, 2006.[9] Smart

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[4] *Id.* at 38; 131-132.

[5] *Id.* at 38.

[6] *Id.* at 81.

[7] *Id.* at 80.

[8] *Id*. at 82.

[9] *Id.* at 313-338.

alleged that PT&T was in breach of its contractual obligation when it failed to pay its outstanding debt and denied its liability to Smart. Accordingly, Smart prayed that PT&T be ordered to pay the sum of ₱1,387,742.33 representing its unpaid obligation and to comply with the amended Agreement.[10] Smart also asked the RTC to issue a temporary restraining order against the NTC and PT&T, which the RTC granted on April 25, 2006.[11]

In its answer to the complaint,[12] PT&T sought for the dismissal of the civil case on the grounds of lack of jurisdiction, non-observance of the doctrine of primary jurisdiction, exhaustion of administrative remedies, *litis pendentia* and *res judicata*. It also prayed that the restraining order be immediately set aside. After several hearings, the RTC issued a writ of preliminary injunction in favor of Smart.[13] The RTC reasoned that allowing the NTC to proceed and adjudicate access charges would violate Smart's contractual rights. The RTC also denied PT&T's motion to dismiss, finding that the nature of the civil case was incapable of pecuniary estimation which squarely falls within its jurisdiction.[14] It added that the NTC has no jurisdiction to adjudicate breaches of contract and award damages.

PT&T elevated the case to the Court of Appeals through a petition for *certiorari*. The Court of Appeals held that the RTC did not commit grave abuse of discretion and, consequently, denied the petition.[15] It found that the RTC had jurisdiction over the case because it involved an action for specific performance, *i.e.*, PT&T's compliance with the Agreement, and is therefore incapable of pecuniary estimation. And insofar as

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[10] *Id.* at 326.

[11] *Id*. at 142-143.

[12] *Id.* at 144-162.

[13] *Id*. at 203-205.

[14] *Id.* at 211-213.

[15] *Id*. at 36-46. Eighth Division, penned by Associate Justice Isaias Dicdican, with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Marlene Gonzales-Sison, concurring.

the dispute involved an alleged breach of contract, there was no need to refer the matter to the NTC because it had no jurisdiction over breach of contract cases.[16]

After its motion for reconsideration was denied by the Court of Appeals, PT&T filed this petition for review[17] seeking to overturn the RTC's order of injunction and non-dismissal of Smart's complaint. PT&T principally argues that the NTC has primary jurisdiction over the determination of access charges. PT&T characterizes the NTC case as one involving the validity of interconnection rates, as opposed to one involving purely a breach of contract and claim for damages cognizable by the RTC. PT&T adds that the writ of preliminary injunction issued by the RTC against NTC constitutes interference with a co-equal body. Smart counters by claiming that the dispute was purely contractual; hence, it properly falls within the jurisdiction of the RTC. Although the Agreement contained technical terms, Smart's position is that the NTC has no jurisdiction over bilateral interconnection agreements voluntarily negotiated and entered into by PTEs.

II

Like the Court of Appeals below, Smart relies on the argument that its complaint before the RTC is one which is incapable of pecuniary estimation and, accordingly, falls within the RTC's jurisdiction. Smart's theory is that, because it is seeking to enforce the Agreement, the action falls within the ruling of *Boiser v. Court of Appeals*[18] that the regular courts, not the NTC, have jurisdiction over cases involving breach of contract and damages. Invoking the freedom to contract and non-impairment clause, Smart posits that "[t]he specialized knowledge and expertise of the NTC is not indispensable or even necessary in this case since x x x [Smart] simply seeks to enforce and implement the contractual agreement between the parties and their rights and

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[16] *Id.* at 42-45.

[17] *Id.* at 3-35.

[18] G.R. No. 61438, June 24, 1983, 122 SCRA 945.

obligations in relation thereto."[19] Responding to PT&T's claim that it is seeking the NTC intervention only to resolve the issue on validity of the rates of charges between the two PTEs, Smart downplays this by stating that there is no dispute on the applicable rates since these were already stated in the Agreement.[20]

We cannot agree with Smart's position. While it is true that regional trial courts, as courts of general jurisdiction, can take cognizance of cases that are incapable of pecuniary estimation—including actions for breach of contract and damages—the fact that the interconnection agreement between Smart and PT&T involved access charges warrants a more nuanced analysis.

RA 7925 recognizes and encourages bilateral negotiations between PTEs, but it does not strictly adopt a *laissez-faire* policy. It imposes strictures that restrain within reason how PTEs conduct their business.[21] The law aims to foster a healthy competitive environment by striking a balance between the freedom of PTEs to make business decisions and to interact with one another on the one hand and the affordability of rates on the other.[22] However, one can speak of healthy competition only between equals. Thus, consistent with Section 19,[23] Article XII of the Constitution, RA 7925 seeks to break up the monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting new industry entrants protection against dominant carriers through equitable access charges and equal access clauses in interconnection agreements and through the strict policing of predatory pricing by dominant carriers.[24]

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[19] *Rollo*, p. 304.

[20] *Id.* at 288-312.

[21] *Globe Telecom, Inc. v. National Telecommunications Commission*, G.R. No. 143964, July 26, 2004, 435 SCRA 110, 132.

[22] RA 7925, Sec. 4(f).

[23] The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

[24] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, G.R. No. 143867, March 25, 2003, 399 SCRA 442, 449-450.

Specifically, Section 18 of RA 7925 regulates access charge arrangements between two PTEs:

> *Access Charge/Revenue Sharing.* — The access charge/revenue sharing arrangements between all interconnecting carriers shall be negotiated between the parties and the agreement between the parties shall be submitted to the Commission. In the event the parties fail to agree thereon within a reasonable period of time, the dispute shall be submitted to the Commission for resolution.
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> In adopting or approving an access charge formula or revenue sharing agreement between two or more carriers, particularly, but not limited to a local exchange, interconnecting with a mobile radio, interexchange long distance carrier, or international carrier, **the Commission shall ensure equity, reciprocity and fairness among the parties concerned**. **In so approving the rates for interconnection between the telecommunications carriers, the Commission shall take into consideration the costs of the facilities needed to complete the interconnection, the need to provide the cross-subsidy to local exchange carriers to enable them to fulfill the primary national objective of increasing telephone density in the country and assure a rate of return on the local exchange network investment that is at parity with those earned by other segments of the telecommunications industry**: Provided, That international carriers and mobile radio operators which are mandated to provide local exchange services, shall not be exempt from the requirement to provide the cross-subsidy when they interconnect with the local exchanges of other carriers: Provided, further, That the local exchanges which they will additionally operate, shall equally be entitled to the cross-subsidy from other international carriers, mobile radio operators, or inter-exchange carriers interconnecting with them. (Emphasis supplied.)

The first paragraph mandates that any agreement pertaining to access charges must be submitted to the NTC for approval; in case the parties fail to agree, the matter shall be resolved by the NTC. Smart contends that the NTC's authority under the second paragraph of Section 18 is limited to instances where the parties fail to agree on the rates. This interpretation is incorrect. There is no indication that—and Smart has not pointed to any significant reason why—the second paragraph of Section 18 should be construed as limited to the latter instances. On

the contrary, We observe that Congress deliberately used the word "approve," in conjunction with "adopt," in describing the action that the NTC may take. The plain dictionary meaning of approve is "to express often formally agreement with and support of or commendation of as meeting a standard."[25] This presupposes that something has been submitted to the NTC, as the approving authority, contrasted with the NTC adopting its own formula. Under Section 18, it is either the access charge formula or revenue-sharing arrangement that is submitted to the NTC for approval. Smart and PT&T's Agreement, insofar as it specifies the access charge rates for the interconnection of their networks, falls within the coverage of the provision. Therefore, the Agreement should have been submitted to the NTC for its review and approval in accordance with the second paragraph of Section 18. Conspicuously, however, neither Smart nor PT&T claims that the access charges in the Agreement have been submitted to, much less approved, by the NTC. This further justifies the intervention of the NTC.

It is clear that the law did not intend the approval to simply be a ministerial function. The second paragraph of Section 18 enumerates the guidelines to be considered by the NTC before it approves the access charges. Thus, the NTC must be satisfied that the access charge formula is fair and reasonable based on factors such as cost, public necessity and industry returns; otherwise, it has the discretion to disapprove the rates in the event that it finds that they fall short of the statutory standards.[26] Evidently, the proceeding under Section 18 is quasi-judicial in nature. Any action by the NTC would particularly and immediately affect the rights of the interconnecting PTEs—in this case, Smart and PT&T—rather than being applicable to all PTEs throughout the Philippines.[27] The NTC, therefore,

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[25] Webster's Third New International Dictionary of the English Language Unabridged, Merriam-Webster Inc., Springfield, MA, 1993.

[26] See *Panay Autobus Co. v. Philippine Railway Co.*, 57 Phil. 872 (1933).

[27] *Philippine Communications Satellite Corporation v. Alcuaz*, G.R. No. 84818, December 18, 1989, 180 SCRA 218, 228.

correctly treated the dispute as adversarial and gave both Smart and PT&T the opportunity to be heard.

The mere fact that Smart and PT&T negotiated and executed a bilateral interconnection agreement does not take their stipulations on access charges out of the NTC's regulatory reach. This has to be so in order to further one of the declared policies of RA 7925 of expanding the telecommunications network by improving and extending basic services in unserved and underserved areas *at affordable rates*.[28] A contrary ruling would severely limit the NTC's ability to discharge its twin mandates of protecting consumers and promoting consumer welfare,[29] and would go against the trend towards greater delegation of judicial authority to administrative agencies in matters requiring technical knowledge.[30] Smart cannot rely on the non-impairment clause because it is a limit on the exercise of legislative power and not of judicial or quasi-judicial power.[31] As discussed in the preceding paragraph, the approval of the access charge formula under Section 18 is a quasi-judicial function.

The foregoing interpretation is equally supported by the structure of RA 7925. Congress gave the NTC broad powers over interconnection matters in order to achieve the goal of universal accessibility. Apart from the authority to approve or adopt interconnection rates, the NTC can even "[m]andate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services through appropriate modalities of interconnection and at a reasonable and fair level of charges, which make provision for the cross subsidy to unprofitable local exchange service areas so as to promote telephone density and provide the most extensive access to basic telecommunications

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[28] RA 7925, Sec. 4(b).

[29] RA 7925, Sec. 5(e) & 5(g).

[30] *Bank of Commerce v. Planters Development Bank*, G.R. Nos. 154470-71, September 24, 2012, 681 SCRA 521, 566.

[31] *Bank of the Philippine Islands v. Securities and Exchange Commission*, G.R. No. 164641, December 20, 2007, 541 SCRA 294, 301.

services available at affordable rates to the public."[32] Such extensive powers may generally be traced to the Constitution, which recognizes the vital role of communication and information in nation-building.[33] In *Philippine Long Distance Telephone Co.* (PLDT) *v. National Telecommunications Commission*,[34] we explained why the NTC may regulate—in that case, mandate—interconnection between PTEs:

> The interconnection which has been required of PLDT is a form of "intervention" with property rights [recognized by Article XII, Section 6 of the Constitution] dictated by "the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines, x x x to maximize the use of telecommunications facilities available, x x x in recognition of the vital role of communications in nation building x x x and to ensure that all users of the public telecommunications service have access to all other users of the service wherever they may be within the Philippines at an acceptable standard of service and at reasonable cost" (DOTC Circular No. 90-248). Undoubtedly, the encompassing objective is the common good. The NTC, as the regulatory agency of the State, merely exercised its delegated authority to regulate the use of telecommunications networks when it decreed interconnection.
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> The decisive considerations are public need, public interest, and the common good. x x x Article II, Section 24 of the 1987 Constitution, recognizes the vital role of communication and information in nation building. It is likewise a State policy to provide the environment for the emergence of communications structures suitable to the balanced flow of information into, out of, and across the country (Article XVI, Section 10, x x x). A modern and dependable communications network rendering efficient and reasonably priced services is also indispensable for accelerated economic recovery and development. To these public and national interests, public utility companies must bow and yield.[35] (Emphasis omitted.)

The same reasoning obtains here. Access charges directly affect the State's goal of making basic telecommunications

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[32] RA 7925, Sec. 5(c).

[33] CONSTITUTION, Art. II, Sec. 24.

[34] G.R. No. 88404, October 18, 1990, 190 SCRA 717.

[35] *PLDT v. National Telecommunications Commission, supra,* at 734-737.

services accessible to everyone at affordable rates. If the access charges are too high, the cost to end-users may well be prohibitive. Smart cannot simply invoke the freedom of contract to shield it from the intervention of the NTC, especially when the law itself sanctions the agency's intervention. As correctly pointed out by PT&T, "[b]ecause petitioner and respondent are public utility PTEs subject to regulation by the NTC, their freedom to enter into contracts is not absolute but subject to the police power of the State, especially when it comes to matters affecting public interest and convenience."[36]

The case relied upon by Smart, *Boiser*, finds no application here for the simple reason that the dispute in that case did not involve access charges. *Boiser* arose from PLDT's alleged failure to observe the 30-day pre-disconnection notice requirement stated in the parties' Interconnecting Agreement. In holding that regular courts had jurisdiction, we said that "[t]here is nothing in the Commission's powers which authorizes it to adjudicate breach of contract cases, much less to award moral and exemplary damages."[37] In stark contrast, jurisdiction over negotiated access charge formulas, such as Smart and PT&T's Agreement, has been allocated to the NTC by express provision of law.

In fine, Section 18 of RA 7925 authorizes the NTC to determine the equity, reciprocity and fairness of the access charges stipulated in Smart and PT&T's Agreement. This does not, however, completely deprive the RTC of its jurisdiction over the complaint filed by Smart. The Agreement has other stipulations which do not require the NTC's expertise. But insofar as Smart's complaint involved the enforcement of, as well as the collection of sums based on the rates subject of the NTC proceedings, the RTC cannot proceed with the civil case until the NTC has finally determined if the access charges are fair and reasonable. Hence, the more prudent course of action for the RTC would have been to hold the civil action in abeyance until after a determination of the NTC case. Indeed, logic and

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[36] *Rollo*, p. 17.

[37] *Supra* note 18 at 953.

the doctrine of primary jurisdiction dictate such move. In *San Miguel Properties, Inc. v. Perez*,[38] we held that:

> The doctrine of primary jurisdiction has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. A case that requires for its determination the expertise, specialized skills, and knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact, relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts. The application of the doctrine does not call for the dismissal of the case in the court but only **for its suspension until after the matters within the competence of the administrative body are threshed out and determined**.
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> To accord with the doctrine of primary jurisdiction, **the courts cannot and will not determine a controversy involving a question within the competence of an administrative tribunal, the controversy having been so placed within the special competence of the administrative tribunal under a regulatory scheme**. In that instance, **the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute**. Consequently, if the courts cannot resolve a question that is within the legal competence of an administrative body prior to the resolution of that question by the latter, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, suspension or dismissal of the action is proper.[39] (Emphasis supplied; citations omitted.)

Here, it would be more proper for the RTC to yield its jurisdiction in favor of the NTC since the determination of a central issue, *i.e.*, the matter of access charges, requires the special competence and expertise of the latter. "In this era of clogged court dockets, administrative boards or commissions

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[38] G.R. No. 166836, September 4, 2013, 705 SCRA 38.

[39] *San Miguel Properties, Inc. v. Perez, supra,* at 60-61.

with special knowledge, experience and capability to promptly hear and determine disputes on technical matters or intricate questions of facts, subject to judicial review in case of grave abuse of discretion, are well-nigh indispensable. Between the power lodged in an administrative body and a court, therefore, the unmistakable trend is to refer it to the former."[40]

III

Under Rule 58, Section 2 of the 1997 Rules of Civil Procedure, the court where the action is pending may grant the provisional remedy of preliminary injunction. Generally, trial courts have the ancillary jurisdiction to issue writs of preliminary injunction in cases falling within its jurisdiction, including civil actions that are incapable of pecuniary estimation[41] and claims for sum of money exceeding ₱400,000.00,[42] among others. There are, however, exceptions to this rule, such as when Congress, in the exercise of its power to apportion jurisdiction,[43] restricts the authority of regular courts to issue injunctive reliefs. For example, the Labor Code prohibits any court from issuing injunctions in cases involving or arising from labor disputes.[44]

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[40] *GMA Network, Inc. v. ABS-CBN Broadcasting Corporation*, G.R. No. 160703, September 23, 2005, 470 SCRA 727, 737.

[41] The following civil actions are considered as incapable of pecuniary estimation:

(1) Actions for specific performance;

(2) Actions for support which will require the determination of the civil status;

(3) The right to support of the plaintiff;

(4) Those for the annulment of decisions of lower courts;

(5) Those for the rescission or reformation of contracts; and

(6) Interpretation of a contractual stipulation.

*Surviving Heirs of Alfredo R. Bautista v. Lindo*, G.R. No. 208232, March 10, 2014, 718 SCRA 321, 330.

[42] For Metro Manila. *Batas Pambansa Blg*. 129 (The Judiciary Reorganization Act of 1980), Sec. 19(8), as amended by Republic Act No. 7691.

[43] CONSTITUTION, Art. VIII, Sec. 2.

[44] LABOR CODE, Art. 266.

Similarly, Republic Act No. 8975[45] (RA 8975) provides that no court, other than the Supreme Court, may issue provisional injunctive reliefs which would adversely affect the expeditious implementation and completion of government infrastructure projects.[46] Another well-recognized exception is that courts could not interfere with the judgments, orders, or decrees of a court of concurrent or coordinate jurisdiction.[47] This rule of non-interference applies not only to courts of law having equal rank but also to quasi-judicial agencies statutorily at par with such courts.[48]

The NTC was created pursuant to Executive Order No. 546[49] (EO 546), promulgated on July 23, 1979. It assumed the functions formerly assigned to the Board of Communications and the Telecommunications Control Bureau and was placed under the administrative supervision of the Ministry of Public Works. Meanwhile, the Board of Communications previously exercised the authority which originally pertained to the Public Service Commission (PSC).[50] Under Executive Order No.

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[45] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes (2000).

[46] RA 8975, Sec. 3.

[47] *Ching v. Court of Appeals*, G.R. No. 118830, February 24, 2003, 398 SCRA 88, 92-93, citing *Orais v. Escaño*, 14 Phil. 208 (1909); *Nuñez v. Low*, 19 Phil. 244 (1911); *Cabigao and Izquierdo v. Del Rosario and Lim*, 44 Phil. 182 (1922); *Hubahib v. Insular Drug Co.*, 64 Phil. 119 (1937); *National Power Corp. v. De Veyra*, G.R. No. L-15763, December 22, 1961, 3 SCRA 646; *Luciano v. Provincial Governor*, G.R. No. L-30306, June 20, 1969, 28 SCRA 517; *De Leon v. Salvador*, G.R. No. L-30871, December 28, 1970, 36 SCRA 567; *Cojuangco v. Villegas*, G.R. No. 76838, April 17, 1990, 184 SCRA 374; *Darwin v. Tokonaga*, G.R. No. 54177, May 27, 1991, 197 SCRA 442.

[48] *Municipality of Malolos v. Libangang Malolos, Inc.*, G.R. No. 78592, August 11, 1988, 164 SCRA 290, 296.

[49] Creating A Ministry of Public Works and Ministry of Transportation and Communications.

[50] Created by Commonwealth Act No. 146 (CA 146), as amended, otherwise known as the Public Service Act. The Public Service Commission

125,[51] issued in January 1987, the NTC became an attached agency of the Department of Transportation and Communications.

Section 16 of EO 546 provides that, with respect to the NTC's quasi-judicial functions, its decisions shall be appealable in the same manner as the decisions of the Board of Communications had been appealed. The rulings and decisions of the Board were, in turn, appealable in the same manner as the rulings and decisions of the PSC.[52] Under Section 35 of the Public Service Act, the Supreme Court had jurisdiction to review any order, ruling, or decision of the PSC.[53] In *Iloilo Commercial and Ice Company v. Public Service Commission*,[54] we categorically held that courts of first instance have no power to issue a restraining order directed to the PSC.[55] In that case, the PSC instructed the city fiscal to file a criminal action against the owner and manager of Iloilo Commercial and Ice Company for allegedly operating a public utility without the required certificate of public convenience. The company brought a complaint in the Court of First Instance of Iloilo for an injunction to restrain the PSC from proceeding

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was abolished by Presidential Decree No. 1 dated September 24, 1972 as part of an integrated reorganization plan of the executive department.

[51] Reorganizing the Ministry of Transportation and Communications, Defining Its Powers and Functions, and for Other Purposes, as amended by Executive Order No. 125-A (April 13, 1987).

[52] Integrated Reorganization Plan (1972), Part X, Chapter I, Art. III, Sec. 7.

[53] CA 146, as amended, Sec. 35. The Supreme Court is hereby given jurisdiction to review any order, ruling, or decision of the Commission and to modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the Commission to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that it was without the jurisdiction of the Commission. The evidence presented to the Commission, together with the record of the proceedings before the Commission, shall be certified by the secretary of the Commission to the Supreme Court. Any order, ruling, or decision of the Commission may likewise be reviewed by the Supreme Court upon a writ of certiorari in proper cases. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court.

[54] 56 Phil. 28 (1931).

[55] *Id.* at 30-31. Also cited in *Regalado v. Provincial Commander of Negros Occidental,* G.R. No. L-15674, November 29, 1961, 3 SCRA 503, 504.

against the company and its officers. The Court, speaking through Justice Malcolm, said:

> The Public Service Law, Act No. 3108, as amended, creates a Public Service Commission which is vested with the powers and duties therein specified. The Public Service Commissioners are given the rank, prerogatives, and privileges of Judges of First Instance. Any order made by the commission may be reviewed on the application of any person or public service affected thereby, by certiorari, in appropriate cases or by petition, to the Supreme Court, and the Supreme Court is given jurisdiction to review any order of the Commission and to modify or set it aside (Sec. 35).
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> x x x **In the absence of a specific delegation of jurisdiction to Courts of First Instance to grant injunctive relief against orders of the Public Service Commission, it would appear that no court, other than the Supreme Court, possesses such jurisdiction. To hold otherwise would amount to a presumption of power in favor of one branch of the judiciary, as against another branch of equal rank**. If every Court of First Instance had the right to interfere with the Public Service Commission in the due performance of its functions, unutterable confusion would result. The remedy at law is adequate, and consists either in making the proper defense in the criminal action or in the Ice Company following the procedure provided in the Public Service Law. An injunction is not the proper remedy, since other and exclusive remedies are prescribed by law.[56] (Emphasis supplied.)

The above ruling is deemed to have been modified by *Batas Pambansa Blg*. 129, which granted the Court of Appeals exclusive appellate jurisdiction over "all final judgments, resolutions, orders or awards of Regional Trial Courts and *quasi-judicial agencies, instrumentalities, boards or commission*" except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution and the Labor Code.[57] In this regard, Rule 43 of the Rules of Court provides that an appeal from any award, judgment or resolution of or authorized by a quasi-judicial agency in the exercise of

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[56] *Supra* note 54 at 30-31.

[57] Batas Pambansa Blg. 129, Sec. 9(3).

its quasi-judicial functions, *including the NTC*, shall be through a petition for review with the Court of Appeals.[58]

In view of the legislative history of the NTC, it is clear that Congress intended NTC, in respect of its quasi-judicial or adjudicatory functions, to be co-equal with regional trial courts. Hence, the RTC cannot interfere with the NTC's exercise of its quasi-judicial powers without breaching the rule of non-interference with tribunals of concurrent or coordinate jurisdiction. In this case, the NTC was already in the process of resolving the issue of whether the access charges stipulated in the Agreement were fair and equitable pursuant to its mandate under RA 7925 when the RTC issued the assailed writ of preliminary injunction. Mediation conferences had been conducted and, failing to arrive at a settlement, the NTC had ordered the parties to submit their respective pleadings. Simply put, the NTC had already assumed jurisdiction over the issue involving access charges. Undeniably, the RTC exceeded its jurisdiction when it restrained the NTC from exercising its statutory authority over the dispute.

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. The Decision dated February 18, 2009, as well as the Resolution dated July 23, 2009, of the Court of Appeals in CA-G.R. SP No. 97737 are **SET ASIDE**. The writ of preliminary injunction issued by the Regional Trial Court, Branch 146, Makati City is **DISSOLVED**. The Regional Trial Court, Branch 146, Makati City is further directed to **SUSPEND** its proceedings until the National Telecommunications Commission makes a final determination on the issue involving access charges.

**SO ORDERED**.

*Peralta*,[*] *Perez*, and *Perlas-Bernabe*,[**] *JJ.*, concur.

*Velasco, Jr. (Chairperson), J.*, on leave.

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[58] RULES OF COURT, Rule 43, Secs. 1 & 5.

[*] Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[**] Designated as Additional Member in lieu of Hon. Bienvenido L. Reyes per Raffle dated October 22, 2012.

**THIRD DIVISION**

[G.R. No. 192369. November 9, 2016]

**MARIA VICTORIA TOLENTINO-PRIETO,** *petitioner, vs.* **ROBERT S. ELVAS,** *respondent.*

[G.R. No. 193685. November 9, 2016]

**ROBERT S. ELVAS,** *petitioner, vs.* **INNSBRUCK INTERNATIONAL TRADING and/or MARIVIC TOLENTINO (a.k.a. MARIA VICTORIA TOLENTINO-PRIETO),** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE FACT THAT THE DELAY IN FILING OF THE PETITION WAS ONLY ONE DAY IS NOT A LEGAL JUSTIFICATION FOR NON-COMPLIANCE WITH THE RULE REQUIRING THAT IT BE FILED WITHIN THE REGLEMENTARY PERIOD.—** The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. Elvas calls for our compassion to overlook the one day delay in the filing of his petition; however, we have ruled time and again that our kind consideration is not for the undeserving. While it is within our power to relax the rule on timeliness of appeals, the circumstances obtaining in this case do not warrant our liberality. x x x In addition, the fact that the delay in the filing of the petition was only one day is not a legal justification for non-compliance with the rule requiring that it be filed within the reglementary period.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPEAL BOND; APPEALS FROM THE JUDGMENT OF THE LABOR ARBITER WHICH INVOLVE A MONETARY AWARD MAY BE PERFECTED ONLY UPON POSTING OF A CASH OR SURETY BOND ISSUED BY A REPUTABLE BONDING COMPANY DULY ACCREDITED BY THE NLRC IN**

**THE AMOUNT EQUIVALENT TO THE MONETARY AWARD IN THE JUDGMENT APPEALED FROM.—** Article 229 of the Labor Code mandates that appeals from the judgment of the LA which involve a monetary award may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in the amount equivalent to the monetary award in the judgment appealed from. x x x The statutory and regulatory provisions under Sections 1, 4, 5 and 6, Rule VI of the 2011 NLRC Rules of Procedure explicitly provide that an appeal from the LA to the NLRC must be perfected within 10 calendar days from receipt of such decisions, awards or orders of the LA. In a judgment involving a monetary award, the appeal shall be perfected only upon (1) proof of payment of the required appeal fee; (2) posting of a cash or surety bond issued by a reputable bonding company; and (3) filing of a memorandum of appeal.

3. **ID.; ID.; ID.; WHILE POSTING OF AN APPEAL BOND IS MANDATORY AND JURISDICTIONAL, THE SUPREME COURT SANCTIONS THE RELAXATION OF THE RULE IN CERTAIN MERITORIOUS CASES.—** While posting of an appeal bond is mandatory and jurisdictional, we sanction the relaxation of the rule in certain meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period. x x x Further, Article 227 of the same Code authorizes the NLRC to "use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure." In the case before us, the NLRC opined that it is in the best interest of justice that the appeal be allowed so that the case could be resolved on its merits. In this regard, we cite *Rada v. NLRC*, where we ruled that the NLRC did not commit grave abuse of discretion when it entertained the employer's appeal despite the posting of the surety bond beyond the reglementary period. We explained that "[w]hile it is true that the payment of the supersedeas bond is an essential requirement in the perfection of an appeal, however, where

the fee had been paid although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demands that the appeal be given due course."

**4. REMEDIAL LAW; APPEALS; OUR RULES RECOGNIZE THE BROAD DISCRETIONARY POWER OF AN APPELLATE COURT TO WAIVE THE LACK OF PROPER ASSIGNMENT OF ERRORS AND TO CONSIDER ERRORS NOT ASSIGNED.—** *The CA may rule upon an unassigned error to arrive at a complete and just resolution of the case.* x x x Our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. x x x Evidently, the exceptions obtain in this case. The CA effectively avoided dispensing piecemeal justice when it did not confine itself to the resolution only of the procedural aspect of the case but ruled on the merits – that is, the issue of illegal dismissal. Since the LA and the NLRC had varying views of the merits, it would best serve the interest of justice that the CA lays the issue to a definitive rest. Additionally, it cannot be gainsaid that an appeal throws the entire case open for review.

**APPEARANCES OF COUNSEL**

*Ferrer & Associates Law Office* for Maria Victoria Tolentino-Prieto.

*Valerio & Maderazo Law Offices* for Robert S. Elvas.

**D E C I S I O N**

**JARDELEZA, *J.*:**

These are consolidated petitions for review[1] assailing the July 21, 2009 Decision[2] and May 17, 2010 Resolution[3] of the

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[1] *Rollo* (G.R. No. 192369), pp. 10-27; *Rollo* (G.R. No. 193685), pp. 10-36.

[2] *Rollo* (G.R. No. 192369), pp. 29-42, penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court) with Associate Justices Monina Arevalo-Zenarosa and Priscilla J. Baltazar-Padilla, concurring.

[3] *Id.* at 44-45.

Court of Appeals (CA) in CA-G.R. SP No. 107070, which reversed the June 30, 2008 Decision[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000089-08. The CA found that Robert S. Elvas (Elvas) was illegally dismissed from service, reinstating the November 13, 2007 Decision[5] of the Labor Arbiter (LA) in NLRC NCR Case No. 00-09-07571-06.

**Facts**

Innsbruck International Trading (Innsbruck), owned by Maria Victoria Toletino-Prieto (Tolentino) [collectively, respondents], is engaged in the sanitation and fumigation of garbage dump trucks.[6] The Municipal Government of Rodriguez, Rizal, awarded it with the operation of the Wash Bay Station, a government project that involves the fumigation or decongestion of garbage dump trucks coming from all over Metro Manila, for the purpose of reducing or eliminating the odor caused by the dumping of garbage at the Rodriguez, Rizal landfill.[7] Elvas was employed as a checker at the Wash Bay Station. He records the number of dump trucks sanitized by Innsbruck and collects ₱30.00 from each of the truck fumigated.[8] For a 12-hour day's work, he receives a salary of ₱250.00.[9] Sometimes, he also discharges the function of a cashier with a duty to collect payments from other checkers and surrender them to the money collector.[10]

Sometime in February 2006, Tolentino allegedly discovered, based on the station logbook report and the report made by the Wash Bay Station Municipal Supervisor, that there were discrepancies between the number of dump trucks recorded and

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[4] *Id.* at 117-127, penned by Commissioner Nieves E. Vivar-De Castro.

[5] *Id.* at 90-103, penned by Labor Arbiter Dolores Peralta-Beley.

[6] *Id.* at 30.

[7] *Id.*

[8] *Id.*

[9] *Rollo* (G.R. No. 192369), p. 13.

[10] *Id.* at 30, 94.

the amount of payment remitted by Elvas and the other employees.[11] Tolentino then sent a Letter-Memorandum dated May 25, 2006 to Elvas giving him 24 hours from receipt to explain why his employment should not be terminated because of his involvement in the non-remittance of collections.[12] Elvas responded in a Letter dated May 29, 2006, asserting that he cannot answer the allegation against him given the limited period of time, and the fact that he was not furnished with the station logbook and other related documents.[13] He warned Tolentino that her accusation is a form of coercion and an act constituting constructive dismissal. He asked her to desist from pursuing acts which cause him anxiety and sleepless nights.[14] Thereafter, on September 11, 2006, he filed a Complaint for illegal dismissal, underpayment of salaries, 13th month pay, Emergency Cost of Living Allowance (ECOLA) and separation pay in lieu of reinstatement against respondents before the NLRC.[15]

In his position paper, Elvas argued that the Letter-Memorandum was Tolentino's way of forcing him to resign from work.[16] Tolentino's accusation was baseless since she never came up with specifics. She simply dismissed him from work on May 30, 2006; then, instituted an unfounded criminal case against him, which Tolentino later abandoned by not appearing in the preliminary investigation.[17] Elvas also alleged that Tolentino did not follow the two-notice requirement when she terminated his employment. He denied that he took flight and no longer reported for work after he was handed the Letter-Memorandum. On the contrary, he was told not to report for work and he saw for himself the employees who replaced him.[18]

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[11] *Id.* at 95.

[12] *Id.* at 92.

[13] *Id.* at 122-123.

[14] *Id.* at 123.

[15] *Id.* at 31.

[16] *Id.* at 92.

[17] *Id.* at 93.

[18] *Id.* at 94.

Respondents countered that Elvas kept on evading the investigation conducted by the former by absenting himself during the scheduled investigation. During the confrontation with the other checkers, namely, Edilberto Rabe (Rabe) and Leonardo Constantino (Constantino), they admitted that they misappropriated the collection with Elvas.[19] The admission prompted Tolentino to file criminal complaints of *estafa* against them. Despite the pendency of the criminal action, Tolentino averred that she still gave Elvas an opportunity to explain his side of the case through the Letter-Memorandum. Hence, there was no violation of due process. More importantly, Tolentino contended that Elvas was not illegally dismissed from service as he himself abandoned his work.[20]

**Labor Arbiter's Ruling**

The LA ruled in favor of Elvas and declared that he was illegally terminated from his employment. The LA noted that the admissions of Rabe and Constantino cannot be used against Elvas because nowhere in their affidavit did they state that the latter was an accomplice in their misappropriation. Other than the daily remittance and summary of purchases, Tolentino failed to adduce any evidence to support Elvas' participation in the misappropriation. There was likewise no abandonment of work on the part of Elvas because he had duly established that he continued working for Tolentino despite the low pay and the dire state and condition of the Rizal landfill.[21] Rather, the LA found that the charge of abandonment does not square with the recorded fact that Elvas was being accused of misappropriation and was actually charged in court with *estafa* thereby indicating his undesirability within the work premises and the pressure for him to leave. It is more indicative of constructive dismissal rather than abandonment of work.[22] The LA then awarded Elvas

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[19] *Id.* at 95.

[20] *Id.* at 96-97.

[21] *Id.* at 98.

[22] *Id.* at 99.

with separation pay, backwages, salary differential and 13th month pay totaling to ₱162,242.099.[23]

**NLRC's Ruling**

Respondents appealed to the NLRC. Elvas filed a Motion to Dismiss Appeal and Issuance of Writ of Execution[24] on the ground that the appeal bond posted by respondents was fake. He attached to the motion, a certification from Far Eastern Surety and Insurance Co., Inc. stating that the bond issued in favor of the NLRC relative to Case No. 00-09-07571-06 is non-existent in the bonds registry of the corporation.[25] Elvas contended that since no valid appeal bond was posted, the appeal was not perfected rendering the LA's Decision final and executory. He, therefore, asked for the issuance of a writ of execution. Upon discovering that the appeal bond was spurious, respondents terminated the services of their counsel and posted a new bond from Philippine Phoenix and Insurance, Inc.[26]

The NLRC decided to relax the rule on bond requirement, ruling that with the posting of a second bond, the issue about the first bond should be put to rest in the best interest of justice.[27] It found that respondents were without knowledge of the falsity of the bond, as in fact, they immediately dismissed their counsel upon learning of the fraud.[28]

Meanwhile, disposing of the merits of the case, the NLRC reversed the ruling of the LA and opined that it was Elvas who failed to establish his case for illegal dismissal. No written notice of dismissal was presented to prove the fact of termination of his employment.[29] Elvas also neither alleged nor proved how

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[23] *Id.* at 103.

[24] *Rollo* (G.R. No. 193685), pp. 80-83.

[25] Records, p. 165.

[26] *Rollo* (G.R. No. 192369), p. 33.

[27] *Id.* at 120.

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

[29] *Id.* at 126.

his employment was terminated or who dismissed him from the service.[30]

Elvas sought reconsideration but it was denied.[31] He elevated the case to the CA with the sole issue of whether the NLRC committed grave abuse of discretion amounting to excess of/lack of jurisdiction in giving due course to respondents' appeal despite the overwhelming evidence that no appeal was perfected in the absence of an appeal bond.[32]

**CA's Ruling**

In its Decision, the CA sustained the NLRC in allowing respondents' appeal but as to the merits of the case, it reversed the latter and reinstated the LA's Decision that Elvas was illegally dismissed.

On the procedural aspect, the CA explained that respondents substantially complied with the bond requirement for perfecting an appeal when they immediately submitted a genuine bond after learning that the first bond was spurious. There was no showing that respondents purposely posted a false surety bond.[33] Therefore, to dismiss respondents' appeal would negate the interest of justice and deviate from the Labor Code of the Philippines'[34] (Labor Code) mandate to liberally construe rules of procedure.

On the substantive aspect, although Elvas did not question the NLRC's ruling on the issue of illegal dismissal, the CA deemed it appropriate to resolve the merits of the case to afford complete relief to the parties and to arrive at a just resolution of the case.[35] The CA held that Elvas was unceremoniously dismissed from work when he was directed by respondents not

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[30] *Id.* at 123.

[31] *Id.* at 128-129.

[32] *Id.* at 147.

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

[34] Presidential Decree No. 442 (1974).

[35] *Rollo* (G.R. No. 192369), p. 37.

to report for work anymore. It gave credence to Elvas' claim that he kept coming back to the work premises to continue his employment but there were already workers who replaced him. This was neither denied nor refuted by respondents who merely insisted that Elvas was guilty of misappropriation.[36] The CA agreed with the LA that respondents failed to present witnesses or credible evidence to prove the charge against Elvas.

Both parties moved for reconsideration which were denied.[37] Thereafter, Elvas and Tolentino filed separate petitions for review before us which we consolidated in our Resolution[38] dated July 21, 2010.

*G.R. No. 192369*

In her petition, Tolentino primarily faults the CA for reviewing the merits of the case considering that the issue of illegal dismissal was not assigned as an error in Elvas' petition before it. She alleges that she was denied due process of law because she was not given the opportunity to rebut the claim of termination of employment.[39] Furthermore, she submits that the issue of illegal dismissal is not closely related to or dependent on the error assigned by Elvas and it was also not argued in Elvas' petition.[40] Subsequently, even assuming that the CA can properly rule on the merits of the case, Tolentino asserts that she did not commit any act that can be construed as dismissal, actual or constructive, because Elvas has yet to show positive proof that he was dismissed.[41] The truth being that Elvas abandoned his work.[42]

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

[37] *Supra* note 3.

[38] *Rollo* (G.R. No. 192369), pp. 166-167.

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

[40] *Id.* at 21.

[41] *Id.* at 23.

[42] *Id.* at 22.

In his Comment, Elvas advances that Tolentino's petition was filed out of time because the last day of filing was June 11, 2010 yet she filed it only on July 12, 2010.[43] Nonetheless, he agreed with Tolentino that he only raised one issue with the CA, that is, whether the NLRC committed grave abuse of discretion in giving due course to Tolentino's appeal in the absence of a valid appeal bond. Other than that, he avers that he would simply adopt the arguments raised in his own petition for review as Comment to Tolentino's petition.[44]

In her Reply, Tolentino refutes that her petition was filed out of time. She cites our Resolution dated July 2, 2010, where we granted her an extension of until July 12, 2010 within which to file her petition.[45]

*G.R. No. 193685*

Elvas took issue on the CA's ruling allowing Tolentino's appeal before the NLRC. He reiterates that no appeal was perfected in the absence of an appeal bond, rendering the LA's Decision final and executory. Considering respondents' appeal to the NLRC which should not have been given due course, Elvas was allegedly deprived of the amounts awarded to him by the LA; hence, he prays that we order Tolentino to pay him damages for loss of opportunity to make use of the money judgment in an amount computed using the ordinary commercial bank's high yield interest rate.[46]

Tolentino filed a Comment, praying that Elvas' petition be dismissed outright for being filed one day late. She maintains that Elvas failed to cite a justifiable reason for the delay as he merely stated in a Manifestation that the belated filing was due to circumstances beyond his control.[47] She alleges that she did not file a spurious surety bond on purpose and that she

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[43] *Id.* at 10, 172.

[44] *Id.* at 172-173.

[45] *Id.* at 179.

[46] *Rollo* (G.R. No. 193685), p. 31.

[47] *Id.* at 257.

relied in good faith on the representation of her former counsel that the bond was genuine and valid.[48] Lastly, she argues that she should not be held liable for damages because Elvas' alleged loss of opportunities to invest the LA's judgment award in a bank is highly speculative.[49]

Elvas filed a Reply, explaining the circumstances that led to the late filing of his petition.[50]

**Issues**

1. Whether the petitions separately filed by the parties are seasonably filed;
2. Whether the CA erred in allowing respondents' appeal in the NLRC; and
3. Whether the CA erred in ruling on the question of Elvas' illegal dismissal considering that it was not raised as an issue in Elvas' petition before it.

**Our Ruling**

We deny the consolidated petitions.

*Elvas' appeal was filed out of time.*

At the outset, we address the question of timeliness for both appeals. As borne by the records, Tolentino received a copy of the Decision and Resolution of the CA on July 31, 2009 and May 28, 2010, respectively.[51] Under Rule 45 of the Revised Rules of Court (the Rules), Tolentino had 15 days from receipt of the resolution denying her motion for reconsideration or until June 12, 2010 within which to file a petition for review. Tolentino, however, asked for additional period of 30 days or until July 12, 2010 to file her petition. We granted her request in our

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[48] *Id.* at 258-259.

[49] *Id.* at 260-261.

[50] *Id.* at 276-282.

[51] *Rollo* (G.R. No. 192369), p. 9.

Resolution dated July 2, 2010.[52] On July 12, 2010, Tolentino filed her appeal. Clearly, her petition was filed on time.

Elvas received a copy of the Resolution of the CA denying his partial motion for reconsideration on May 21, 2010. He had until June 5, 2010 to file a petition for review. He sought an additional period of 30 days to file the same, which we granted in our Resolution[53] dated July 21, 2010. However, on the 30th day, or on July 5, 2010, Elvas failed to file his petition. Instead, he filed it on July 6, 2010. Evidently, Elvas' petition was filed out of time.

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[54] Elvas calls for our compassion to overlook the one day delay in the filing of his petition; however, we have ruled time and again that our kind consideration is not for the undeserving. While it is within our power to relax the rule on timeliness of appeals, the circumstances obtaining in this case do not warrant our liberality.

Elvas attempted to justify the delay but we are not persuaded. In his Reply in G.R. No. 193685, he claimed that he was able to obtain funds for printing and photocopying of the petition and its attachments only on the last day of filing the petition, or on July 5, 2010. By then, he mused that it was too late to complete the photocopying and the collation of documents for submission on the same day; as in fact, he was able to personally deliver the completed petition before us only on the following day.[55] Interestingly, however, Elvas in his Manifestation dated July 6, 2010 noted that he furnished Tolentino and the CA,

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[52] *Id.* at 8.

[53] *Id.* at 166-167.

[54] *Boardwalk Business Ventures, Inc. v. Villareal, Jr.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 470, citing *Fenequito v. Vergara, Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 117.

[55] *Rollo* (G.R. No. 193685), pp. 278, 280-281.

copies of his petition for review on July 5, 2010.[56] We find this detail inconsistent with the alibi that Elvas narrated in his Reply. Elvas claims that copies of the petition became available only on July 6, 2010, yet he was able to furnish Tolentino and the CA with copies of the same on July 5, 2010. The actuation of Elvas is suspect. It seems to us that he intended to give his petition a semblance of being filed on time when in fact it was not. It is calculated to prevent Tolentino from questioning the timeliness of Elvas' petition, an utter sign of bad faith which we cannot countenance and does not deserve our compassion.

In addition, the fact that the delay in the filing of the petition was only one day is not a legal justification for non-compliance with the rule requiring that it be filed within the reglementary period.[57] Thus, in the recent case of *Visayan Electric Company Employees Union-ALU-TUCP v. Visayan Electric Company, Inc.*,[58] we affirmed the CA's denial of a petition for *certiorari* filed 61 days instead of 60 days from notice of the judgment or resolution, *viz*:

> [W]hen the law fixes thirty days x x x, we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim and fancy should play no part in its application.[59]

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[56] *Id.* at 7.

[57] See *Visayan Electric Company Employees Union-ALU-TUCP v. Visayan Electric Company, Inc.*, G.R. No. 205575, July 22, 2015, 763 SCRA 566, 578.

[58] *Supra.*

[59] *Id.* at 578, citing *Trans International v. Court of Appeals*, G.R. No. 128421, October 12, 1998, 297 SCRA 718, 724-725, also citing *Velasco v. Ortiz*, G.R. No. 51973, April 16, 1990, 184 SCRA 303, 310, further citing *Reyes v. Court of Appeals*, 74 Phil. 235, 238 (1943).

Consequently, we deny Elvas' petition for being filed beyond the reglementary period. In any case, his petition is also unmeritorious as we shall discuss shortly.

*The NLRC and CA did not err in allowing respondents' appeal.*

Article 229 of the Labor Code mandates that appeals from the judgment of the LA which involve a monetary award may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in the amount equivalent to the monetary award in the judgment appealed from. Consequently, Sections 1, 4, 5 and 6, Rule VI of the 2011 NLRC Rules of Procedure state:

> Sec. 1. *Periods of Appeal*. - Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.
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> Sec. 4. *Requisites for Perfection of Appeal*. - (a) The appeal shall be:
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> (1) filed within the reglementary period provided in Section 1 of this Rule;
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> (2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
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> (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order;
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> (4) in three (3) legibly typewritten or printed copies; and
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> (5) accompanied by:

i) proof of payment of the required appeal fee and legal research fee;

ii) posting of a cash or surety bond as provided in Section 6 of this Rule; and

iii) proof of service upon the other parties.

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(b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

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Sec. 5. *Appeal Fee*. - The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

Sec. 6. *Bond*. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

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The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

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These statutory and regulatory provisions explicitly provide that an appeal from the LA to the NLRC must be perfected within 10 calendar days from receipt of such decisions, awards or orders of the LA. In a judgment involving a monetary award,

the appeal shall be perfected only upon (1) proof of payment of the required appeal fee; (2) posting of a cash or surety bond issued by a reputable bonding company; and (3) filing of a memorandum of appeal.[60]

The second requisite is the crux of the present controversy. Respondents seasonably filed a memorandum of appeal and posted a surety bond in an amount equivalent to the monetary award of the LA, but the bond turned out to be spurious upon verification of Elvas. Respondents immediately put up a new and genuine bond to replace the old one. The NLRC and the CA allowed the appeal.

We find no cogent reason to disturb the ruling of the courts *a quo*. While posting of an appeal bond is mandatory and jurisdictional,[61] we sanction the relaxation of the rule in certain meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[62] The first and second instances are present in this case.

As correctly found by the CA, respondents substantially complied with the rules as shown by their lack of intention to evade the requirement of appeal bond.[63] Upon being informed of the spuriousness of the bond, they dismissed their counsel

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[60] *Balite v. SS Ventures International, Inc.*, G.R. No. 195109, February 4, 2015, 749 SCRA 608, 618, citing *Colby Construction and Management Corporation v. National Labor Relations Commission*, G.R. No. 170099, November 28, 2007, 539 SCRA 159, 169-170.

[61] *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, July 23, 2008, 559 SCRA 550, 561-562.

[62] *Nicol v. Footjoy Industrial Corp.*, G.R. No. 159372, July 27, 2007, 528 SCRA 300, 318.

[63] *Rollo* (G.R. No. 192369), pp. 36-37.

of record who was allegedly responsible for its submission and hired another lawyer who submitted a genuine bond.[64] Both the NLRC and the CA found good faith on the part of respondents, stating that the filing of the alleged fake bond was without their knowledge and that they did not purposely post a spurious bond. We adhere to a strict application of Article 229 of the Labor Code when appellants do not post an appeal bond at all;[65] but here an appeal bond was actually filed. Strict application of the rules is therefore uncalled for.

Further, Article 227 of the same Code authorizes the NLRC to "use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure." In the case before us, the NLRC opined that it is in the best interest of justice that the appeal be allowed so that the case could be resolved on its merits. In this regard, we cite *Rada v. NLRC*,[66] where we ruled that the NLRC did not commit grave abuse of discretion when it entertained the employer's appeal despite the posting of the surety bond beyond the reglementary period. We explained that "[w]hile it is true that the payment of the supersedeas bond is an essential requirement in the perfection of an appeal, however, where the fee had been paid although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demands that the appeal be given due course."[67]

In *Manaban v. Sarphil Corporation/Apokon Fruits, Inc.*,[68] we affirmed the NLRC's decision to give due course to the appeal of the landowner-employer, notwithstanding that the appeal was perfected beyond the 10-day reglementary period and the posting of the appeal bond was four months delayed

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[64] *Id.* at 36.

[65] *Sara Lee Philippines, Inc. v. Macatlang,* G.R. No. 180147, June 4, 2014, 724 SCRA 552, 578.

[66] G.R. No. 96078, January 9, 1992, 205 SCRA 69.

[67] *Rada v. NLRC, supra,* at 76.

[68] G.R. No. 150915, April 11, 2005, 455 SCRA 240.

on the basis of fundamental consideration of substantial justice. *Manaban* involves the implementation of the Comprehensive Agrarian Reform Program (CARP) which the NLRC acknowledged to be more favorable to the landless farmers or in this case to the laborers/workers of the land subject of the CARP. In light of the government's policy to equally protect and respect not only the laborers' interest but also that of the employer, the NLRC allowed the landowner-employer's appeal.

All told, the NLRC and the CA did not err when they admitted respondents' appeal.

*The CA may rule upon an unassigned error to arrive at a complete and just resolution of the case.*

Tolentino laments that she was denied due process when the CA reviewed an unassigned error – the issue of Elvas' illegal dismissal. She maintains that it is not closely related to, or dependent on, the issue of perfection of appeal. To support her argument, she harps on the applicability of Section 8, Rule 51 of the Rules, which reads:

> Sec. 8. *Questions that may be decided*. - No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Rightfully so, as borne by the record and as admitted by Elvas, the only error raised in the CA is whether the NLRC committed grave abuse of discretion in giving due course to respondents' appeal. Elvas did not ask the CA to review the finding of the NLRC that he was not illegally dismissed. Yet, the CA reversed that finding and declared that Elvas was illegally terminated from service. Conscious of the fact that it was not raised as an issue, the CA explained that ruling on the merits is necessary for a complete and just resolution of the case.

We concur with the CA. Our rules recognize the broad discretionary power of an appellate court to waive the lack of

proper assignment of errors and to consider errors not assigned.[69] The CA has ample authority to review errors not raised in the following instances:

(*a*) When the question affects jurisdiction over the subject matter;

(*b*) Matters that are evidently plain or clerical errors within contemplation of law;

(*c*) Matters whose consideration is necessary in arriving at a just decision and complete resolution of the case or in serving the interests of justice or avoiding dispensing piecemeal justice;

(*d*) Matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored;

(*e*) Matters closely related to an error assigned; and

(*f*) Matters upon which the determination of a question properly assigned is dependent.[70]

Evidently, the exceptions obtain in this case. The CA effectively avoided dispensing piecemeal justice when it did not confine itself to the resolution only of the procedural aspect of the case but ruled on the merits – that is, the issue of illegal dismissal. Since the LA and the NLRC had varying views of the merits, it would best serve the interest of justice that the CA lays the issue to a definitive rest. Additionally, it cannot be gainsaid that an appeal throws the entire case open for review.[71]

Finally, we reject Tolentino's contention that she was deprived of due process by the CA because she was not able to address

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[69] *Martires v. Chua*, G.R. No. 174240, March 20, 2013, 694 SCRA 38, 54, citing *Mendoza v. Bautista,* G.R. No. 143666, March 18, 2005, 453 SCRA 691, 702-703.

[70] *Macaslang v. Zamora*, G.R. No. 156375, May 30, 2011, 649 SCRA 92, 102-103, citing *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 349; *Sumipat v. Banga*, G.R. No. 155810, August 13, 2004, 436 SCRA 521, 532-533; *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, November 14, 1996, 264 SCRA 181, 191-192.

[71] *Barcelona v. Lim*, G.R. No. 189171, June 3, 2014, 724 SCRA 433, 461.

the issue of illegal dismissal in her submissions. Suffice it to state that no new issue of fact arose, and no new evidence was presented before the CA in connection with the question of illegal dismissal. Thus, it cannot be argued that Tolentino was not given a chance to address them. The CA decided the merits of the case based on the pleadings and evidence on record. Tolentino cannot deny her active participation in the proceedings before the courts *a quo*. Thus, her cry of violation of due process is misplaced.

In fine, the CA did not err in allowing respondents' appeal and in ruling on the merits of the case.

**WHEREFORE**, the consolidated petitions are **DENIED** for lack of merit. The July 21, 2009 Decision and May 17, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 107070 are hereby **AFFIRMED**.

**SO ORDERED.**

*Peralta*,[*] *Perez*, and *Reyes, JJ.*, concur.

*Velasco, Jr.(Chairperson), J.,* on leave.

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**FIRST DIVISION**

[G.R. No. 195834. November 9, 2016]

**GUILLERMO SALVADOR, ADELA ZARAGOZA, REMEDIOS CASTRO, represented by PAZ "CHIT" CASTRO, LEONILA GUEVARRA, FELIPE MARIANO, RICARDO DE GUZMAN, VIRGILIO JIMENEZ, represented by JOSIE JIMENEZ, ASUNCION JUAMIZ, ROLANDO**

[*] Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

**BATANG, CARMENCITA SAMSON, AUGUSTO TORTOSA, represented by FERNANDO TORTOSA, SUSANA MORANTE, LUZVIMINDA BULARAN, LUZ OROZCO, JOSE SAPICO, LEONARDO PALAD, ABEL BAKING, represented by ABELINA BAKING, GRACIANO ARNALDO, represented by LUDY ARNALDO, JUDITH HIDALGO, and IGMIDIO JUSTINIANO, CIRIACO MIJARES, represented by FREDEZWINDA MIJARES, JENNIFER MORANTE, TERESITA DIALA, and ANITA P. SALAR,** *petitioners, vs.* **PATRICIA, INC.,** *respondent*. **THE CITY OF MANILA and CIRIACO C. MIJARES,** *intervenors-appellees.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION CANNOT BE PRESUMED OR IMPLIED, BUT MUST APPEAR CLEARLY FROM THE LAW OR IT WILL NOT BE HELD TO EXIST, BUT IT MAY BE CONFERRED ON A COURT OR TRIBUNAL BY NECESSARY IMPLICATION AS WELL AS BY EXPRESS TERMS.—** The power of a court to hear and decide a controversy is called its jurisdiction, which includes the power to determine whether or not it has the authority to hear and determine the controversy presented, and the right to decide whether or not the statement of facts that confer jurisdiction exists, as well as all other matters that arise in the case legitimately before the court. Jurisdiction imports the power and authority to declare the law, to expound or to apply the laws exclusive of the idea of the power to make the laws, to hear and determine issues of law and of fact, the power to hear, determine, and pronounce judgment on the issues before the court, and the power to inquire into the facts, to apply the law, and to pronounce the judgment. But judicial power is to be distinguished from jurisdiction in that the former cannot exist without the latter and must of necessity be exercised within the scope of the latter, not beyond it. Jurisdiction is a matter of substantive law because it is conferred only by law, as distinguished from venue, which is a purely procedural matter. The conferring law may be the Constitution, or the statute organizing the court or tribunal, or

the special or general statute defining the jurisdiction of an existing court or tribunal, but it must be in force at the time of the commencement of the action. Jurisdiction cannot be presumed or implied, but must appear clearly from the law or it will not be held to exist, but it may be conferred on a court or tribunal by necessary implication as well as by express terms. It cannot be conferred by the agreement of the parties; or by the court's acquiescence; or by the erroneous belief of the court that it had jurisdiction; or by the waiver of objections; or by the silence of the parties.

2. **ID.; ID.; ID.; ELEMENTS OF JURISDICTION, CITED.—** The three essential elements of jurisdiction are: *one*, that the court must have cognizance of the class of cases to which the one to be adjudged belongs; *two*, that the proper parties must be present; and, *three*, that the point decided must be, in substance and effect, within the issue. The test for determining jurisdiction is ordinarily the nature of the case as made by the complaint and the relief sought; and the primary and essential nature of the suit, not its incidental character, determines the jurisdiction of the court relative to it.

3. **ID.; ID.; ID.; ORIGINAL AND APPELLATE JURISDICTION ARE TWO CLASSES OF JURISDICTION WHICH ARE EXCLUSIVE OF EACH OTHER, HENCE, MUST BE EXPRESSLY CONFERRED BY LAW.—** Jurisdiction may be classified into original and appellate, the former being the power to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law, and the latter being the authority of a court higher in rank to re-examine the final order or judgment of a lower court that tried the case elevated for judicial review. Considering that the two classes of jurisdiction are exclusive of each other, one must be expressly conferred by law. One does not flow, nor is inferred, from the other.

4. **ID.; ID.; ID.; THE TEST OF JURISDICTION IS WHETHER OR NOT THE COURT OR TRIBUNAL HAD THE POWER TO ENTER ON THE INQUIRY, NOT WHETHER OR NOT ITS CONCLUSIONS IN THE COURSE THEREOF WERE CORRECT, FOR THE POWER TO DECIDE NECESSARILY CARRIES WITH IT THE POWER TO DECIDE WRONGLY AS WELL AS RIGHTLY.—** Jurisdiction is to be distinguished from its exercise. When there

is jurisdiction over the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. Considering that jurisdiction over the subject matter determines the power of a court or tribunal to hear and determine a particular case, its existence does not depend upon the regularity of its exercise by the court or tribunal. The test of jurisdiction is whether or not the court or tribunal had the power to enter on the inquiry, not whether or not its conclusions in the course thereof were correct, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. In a manner of speaking, the lack of the power to act at all results in a judgment that is void; while the lack of the power to render an erroneous decision results in a judgment that is valid until set aside. That the decision is erroneous does not divest the court or tribunal that rendered it of the jurisdiction conferred by law to try the case. Hence, if the court or tribunal has jurisdiction over the civil action, whatever error may be attributed to it is simply one of judgment, not of jurisdiction; appeal, not *certiorari*, lies to correct the error.

**5. ID.; BATAS PAMBANSA BLG. 129 (JUDICIARY REORGANIZATION ACT OF 1980); EXCLUSIVE AND ORIGINAL JURISDICTION OF THE REGIONAL TRIAL COURT IN CIVIL CASES; FOR PURPOSES OF DETERMINING JURISDICTION, THE TRIAL COURT MUST INTERPRET AND APPLY THE LAW ON JURISDICTION IN RELATION TO THE AVERMENTS OR ALLEGATIONS OF ULTIMATE FACTS IN THE COMPLAINT REGARDLESS OF WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO RECOVER UPON ALL OR SOME OF THE CLAIMS ASSERTED THEREIN; CASE AT BAR.—** The exclusive original jurisdiction of the RTC in civil cases is conferred and provided for in Section 19 of Batas Pambansa Blg. 129 *(Judiciary Reorganization Act of 1980), viz.:* x x x For the purpose of determining jurisdiction, the trial court must interpret and apply the law on jurisdiction in relation to the averments or allegations of ultimate facts in the complaint regardless of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Based on the foregoing provision of law, therefore, the RTC had jurisdiction over the cause of action for injunction because it was one in which the subject of the litigation was incapable of pecuniary estimation. But the same was not true in the case of

the cause of action for the quieting of title, which had the nature of a real action — that is, an action that involves the issue of ownership or possession of real property, or any interest in real property — in view of the expansion of the jurisdiction of the first level courts under Republic Act No. 7691, which amended Section 33 (3) of Batas Pambansa Blg. 129 effective on April 15, 1994, x x x As such, the determination of which trial court had the exclusive original jurisdiction over the real action is dependent on the assessed value of the property in dispute. An action to quiet title is to be brought as a special civil action under Rule 63 of the *Rules of Court.* Although Section 1 of Rule 63 specifies the forum to be "the appropriate Regional Trial Court," the specification does not override the statutory provision on jurisdiction.

**6. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF AND SIMILAR REMEDIES; AN ACTION TO QUIET TITLE IS ESSENTIALLY A COMMON LAW REMEDY GROUNDED ON EQUITY; TWO INDISPENSABLE REQUISITES, CITED.—** An action to quiet title or remove the clouds over the title is a special civil action governed by the second paragraph of Section 1, Rule 63 of the *Rules of Court*. Specifically, an action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to put things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But "for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. The action for the quieting of title is a tool specifically used to remove of any cloud upon, doubt, or uncertainty affecting title to real property; it should not be used for any other purpose. x x x To allow the boundary dispute to be litigated in the action for quieting of title would violate Section

48 of the *Property Registration Decree* by virtue of its prohibition against collateral attacks on Torrens titles. A collateral attack takes place when, in another action to obtain a different relief, the certificate of title is assailed as an incident in said action.

**7. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 1517 (PROCLAIMING URBAN LAND REFORM IN THE PHILIPPINES AND PROVIDING FOR THE IMPLEMENTING MACHINERY THEROF); THE RIGHT OF FIRST REFUSAL GRANTED TO THE OCCUPANT OF AN AREA FOR PRIORITY DEVELOPMENT (APD) IS TRUE ONLY IF AND WHEN THE OWNER OF THE PROPERTY DECIDED TO SELL THE PROPERTY.—** When an area is declared as an APD, the occupants would enjoy the benefits provided for in Presidential Decree No. 1517 *(Proclaiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof).* x x x Presidential Decree No. 1517 only granted to the occupants of APDs the right of first refusal, but such grant was true only if and when the owner of the property decided to sell the property. Only then would the right of first refusal accrue. Consequently, the right of first refusal remained contingent, and was for that reason insufficient to vest any title, legal or equitable, in the petitioners.

**APPEARANCES OF COUNSEL**

*Reynaldo R. Princesa* for petitioners.
*David B. Agoncillo* for intervenor C. Mijares.
*Felix B. Lerio* for respondent Patricia, Inc.
*Fortun Narvasa & Salazar* for respondent Patricia, Inc.

**D E C I S I O N**

**BERSAMIN, *J.*:**

Jurisdiction over a real action is determined based on the allegations in the complaint of the assessed value of the property involved. The silence of the complaint on such value is ground to dismiss the action for lack of jurisdiction because the trial court is not given the basis for making the determination.

## The Case

For review is the decision promulgated on June 25, 2010[1] and the resolution promulgated on February 16, 2011 in CA-G.R. CV No. 86735,[2] whereby the Court of Appeals (CA) dismissed the petitioners' complaint in Civil Case No. 96-81167, thereby respectively reversing and setting aside the decision rendered on May 30, 2005 by the Regional Trial Court (RTC), Branch 32, in Manila,[3] and denying their motion for reconsideration.

## Antecedents

The CA adopted the summary by the RTC of the relevant factual and procedural antecedents, as follows:

> This is an action for injunction and quieting of title to determine who owns the property occupied by the plaintiffs and intervenor, Ciriano C. Mijares.
>
> Additionally, to prevent the defendant Patricia Inc., from evicting the plaintiffs from their respective improvements along Juan Luna Street, plaintiffs applied for a preliminary injunction in their Complaint pending the quieting of title on the merits.
>
> The complaint was amended to include different branches of the Metropolitan Trial Courts of Manila. A Complaint-in-Intervention was filed by the City of Manila as owner of the land occupied by the plaintiffs. Another Complaint-in-Intervention by Ciriano Mijares was also filed alleging that he was similarly situated as the other plaintiffs.
>
> A preliminary injunction was granted and served on all the defendants.
>
> Based on the allegations of the parties involved, the main issue to be resolved is whether the improvements of the plaintiffs stand on land that belongs to Patricia Inc., or the City of Manila. *Who owns the same? Is it covered by a Certificate of Title?*

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[1] *Rollo*, pp. 67-80; penned by Associate Justice Stephen C. Cruz, and concurred in by Presiding Justice Andres B. Reyes, Jr., and Associate Justice Isaias P. Dicdican (retired).

[2] *Id.* at 99-103.

[3] *Id.* at 135-142.

All parties agreed and admitted in evidence by stipulation as to the authenticity of the following documents:

(1) *Transfer Certificate of Title No. 44247 in the name of the City of Manila*;

(2) *Transfer Certificate of Title No. 35727 in the name of Patricia Inc.*;

(3) *Approved Plan PSD-38540; and*

(4) *Approved Subdivision Plan PCS-3290 for Ricardo Manotok.*

The issue as to whether TCT 35727 should be cancelled as prayed for by the plaintiffs and intervenor, Ciriano C. Mijares is laid to rest by agreement of the parties that this particular document is genuine and duly executed. Nonetheless, the cancellation of a Transfer Certificate of Title should be in a separate action before another forum.

Since the Transfer Certificates of Title of both Patricia Inc. and the City of Manila are admitted as genuine, the question now is: Where are the boundaries based on the description in the respective titles?[4]

To resolve the question about the boundaries of the properties of the City of Manila and respondent Patricia, Inc., the RTC appointed, with the concurrence of the parties, three geodetic engineers as commissioners, namely: Engr. Rosario Mercado, Engr. Ernesto Pamular and Engr. Delfin Bumanlag.[5] These commissioners ultimately submitted their reports.

On May 30, 2005, the RTC rendered judgment in favor of the petitioners and against Patricia, Inc., permanently enjoining the latter from doing any act that would evict the former from their respective premises, and from collecting any rentals from them. The RTC deemed it more sound to side with two of the commissioners who had found that the land belonged to the City of Manila, and disposed:

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[4] *Id*. at 68-69.

[5] *Id*. at 37.

**WHEREFORE, it is hereby ORDERED**:

1. **Defendant Patricia Inc.** and other person/s claiming under it, are **PERMANENTLY ENJOINED to REFRAIN and DESIST** from any act of **EVICTION OR EJECTMENT of the PLAINTIFFS** in the premises they occupy;

2. **Defendant Patricia Inc. STOP COLLECTING** any rentals from the plaintiffs who may seek reimbursement of previous payments in a separate action subject to the ownership of the City of Manila and;

3. Attorney's fees of ₱10,000.00 to each plaintiff and intervenor, Ciriano Mijares; ₱20,000.00 to the City of Manila. (emphasis ours)

**No pronouncement as to costs.**

**SO ORDERED.**[6]

### Decision of the CA

On appeal, the CA, in CA-G.R. CV No. 86735, reversed the RTC's judgment,[7] and dismissed the complaint. The CA declared that the petitioners were without the necessary interest, either legal or equitable title, to maintain a suit for quieting of title; castigated the RTC for acting like a mere rubber stamp of the majority of the commissioners; opined that the RTC should have conducted hearings on the reports of the commissioners; ruled as highly improper the adjudication of the boundary dispute in an action for quieting of title; and decreed:

**WHEREFORE**, premises considered, We hereby **REVERSE** and **SET ASIDE** the decision dated May 30, 2005 of the Regional Trial Court of Manila, Branch 32. **Civil Case No. 96-81167 is hereby DISMISSED** for utter want of merit. Accordingly, the questioned order enjoining Patricia and all other person/s acting on its stead (sic) to refrain and desist from evicting or ejecting plaintiffs/appellees in Patricia's own land and from collecting rentals is **LIFTED** effective immediately.

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[6] *Id*. at 70.

[7] *Supra* note 1.

No costs.

**SO ORDERED.**[8]

The CA denied the motions for reconsideration of the petitioners and intervenor Mijares through the assailed resolution of February 16, 2011.[9]

Hence, this appeal by the petitioners.

**Issues**

The petitioners maintain that the CA erred in dismissing the complaint, arguing that the parties had openly raised and litigated the boundary issue in the RTC, and had thereby amended the complaint to conform to the evidence pursuant to Section 5, Rule 10 of the *Rules of Court*; that they had the sufficient interest to bring the suit for quieting of title because they had built their improvements on the property; and that the RTC correctly relied on the reports of the majority of the commissioners.

On its part, the City of Manila urges the Court to reinstate the decision of the RTC. It reprises the grounds relied upon by the petitioners, particularly the application of Section 5, Rule 10 of the *Rules of Court*.[10]

In response, Patricia, Inc. counters that the boundary dispute, which the allegations of the complaint eventually boiled down to, was not proper in the action for quieting of title under Rule 63, *Rules of Court*; and that Section 5, Rule 10 of the *Rules of Court* did not apply to vest the authority to resolve the boundary dispute in the RTCC.[11]

In other words, did the CA err in dismissing the petitioners' complaint?

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[8] *Id*. at 79.

[9] *Supra* note 2.

[10] *Rollo*, pp. 158-162.

[11] *Id*. at 168-176.

**Ruling of the Court**

The appeal lacks merit.

**1.**
**Jurisdiction over a real action depends on the assessed value of the property involved as alleged in the complaint**

The complaint was ostensibly for the separate causes of action for injunction and for quieting of title. As such, the allegations that would support both causes of action must be properly stated in the complaint. One of the important allegations would be those vesting jurisdiction in the trial court.

The power of a court to hear and decide a controversy is called its jurisdiction, which includes the power to determine whether or not it has the authority to hear and determine the controversy presented, and the right to decide whether or not the statement of facts that confer jurisdiction exists, as well as all other matters that arise in the case legitimately before the court. Jurisdiction imports the power and authority to declare the law, to expound or to apply the laws exclusive of the idea of the power to make the laws, to hear and determine issues of law and of fact, the power to hear, determine, and pronounce judgment on the issues before the court, and the power to inquire into the facts, to apply the law, and to pronounce the judgment.[12]

But judicial power is to be distinguished from jurisdiction in that the former cannot exist without the latter and must of necessity be exercised within the scope of the latter, not beyond it.[13]

Jurisdiction is a matter of substantive law because it is conferred only by law, as distinguished from venue, which is a purely procedural matter. The conferring law may be the Constitution, or the statute organizing the court or tribunal, or

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[12] 21 CJS § l5, p. 30.

[13] *Id*. at 32.

the special or general statute defining the jurisdiction of an existing court or tribunal, but it must be in force at the time of the commencement of the action.[14] Jurisdiction cannot be presumed or implied, but must appear clearly from the law or it will not be held to exist,[15] but it may be conferred on a court or tribunal by necessary implication as well as by express terms.[16] It cannot be conferred by the agreement of the parties;[17] or by the court's acquiescence;[18] or by the erroneous belief of the court that it had jurisdiction;[19] or by the waiver of objections;[20] or by the silence of the parties.[21]

The three essential elements of jurisdiction are: *one*, that the court must have cognizance of the class of cases to which the one to be adjudged belongs; *two*, that the proper parties must be present; and, *three*, that the point decided must be, in substance and effect, within the issue. The test for determining jurisdiction is ordinarily the nature of the case as made by the complaint and the relief sought; and the primary and essential

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[14] *Republic v. Court of Appeals*, G.R. No. 92326, June 24, 1992, 205 SCRA 356, 362; *Lee v. Municipal Trial Court of Legaspi*, 145 SCRA 408.

[15] *Tenorio v. Batangas Transportation Co.*, 90 Phil. 804 (1952); *Dimagiba v. Geraldez*, 102 Phil. 1016; *De Jesus, et al. v. Garcia, et al.*, No. L-26816, February 28, 1967, 19 SCRA 554, 562.

[16] 21 CJS § 29, p. 40; thus, a statute declaring that there is a remedy for every wrong cannot be relied on to confer jurisdiction on a court in a particular case, because the remedy may lie with the Legislature; also, a court has no jurisdiction over a matter that is not an action or special proceeding provided by statute or the *Rules of Court* unless the matter involves a wrong that requires judicial action, and for which there is no adequate remedy at law.

[17] *United States v. Castañares*, 18 Phil. 210, 214 (1911); unlike venue, which may be regulated by the agreement of the parties.

[18] *Molina v. De La Riva*, 6 Phil. 12, 15 (1906); *Squillantini v. Republic*, 88 Phil. 135 (1951).

[19] *Azarcon v. Sandiganbayan*, G.R. No. 116033, February 26, 1997, 268 SCRA 747; *Cruzcosa v. Concepcion*, 101 Phil. 146.

[20] *Sabulao v. De los Angeles*, 39 SCRA 94; *Vargas v. Akai Phil., Inc.*, 156 SCRA 531.

[21] *United States v. De La Santa*, 9 Phil. 22, 26 (1907).

nature of the suit, not its incidental character, determines the jurisdiction of the court relative to it.[22]

Jurisdiction may be classified into original and appellate, the former being the power to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law, and the latter being the authority of a court higher in rank to re-examine the final order or judgment of a lower court that tried the case elevated for judicial review. Considering that the two classes of jurisdiction are exclusive of each other, one must be expressly conferred by law. One does not flow, nor is inferred, from the other.[23]

Jurisdiction is to be distinguished from its exercise.[24] When there is jurisdiction over the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction.[25] Considering that jurisdiction over the subject matter determines the power of a court or tribunal to hear and determine a particular case, its existence does not depend upon the regularity of its exercise by the court or tribunal.[26] The test of jurisdiction is whether or not the court or tribunal had the power to enter on the inquiry, not whether or not its conclusions in the course thereof were correct, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. In a manner of speaking, the lack of the power to act at all results in a judgment that is void; while the lack of the power to render an erroneous decision results in a judgment that is valid until set aside.[27]

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[22] 21 CJS § 35.

[23] *Garcia v. De Jesus*, G. R. No. 88158, March 4, 1992, 206 SCRA 779.

[24] *Lim v. Pacquing*, G.R. No. 115044, September 1, 1994, 236 SCRA 211, 218; *Lamagan v. De la Cruz*, No. L-27950, July 29, 1971, 40 SCRA 101, 107.

[25] 21 CJS § 26.

[26] *Century Insurance Co., Inc. v. Fuentes*, No. L-16039, August 31, 1961, 2 SCRA 1168, 1173.

[27] 21 CJS § 27.

That the decision is erroneous does not divest the court or tribunal that rendered it of the jurisdiction conferred by law to try the case.[28] Hence, if the court or tribunal has jurisdiction over the civil action, whatever error may be attributed to it is simply one of judgment, not of jurisdiction; appeal, not *certiorari*, lies to correct the error.[29]

The exclusive original jurisdiction of the RTC in civil cases is conferred and provided for in Section 19 of Batas Pambansa Blg. 129*(Judiciary Reorganization Act of 1980), viz.*:

Sec. 19. *Jurisdiction in civil cases*. - Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

(3) In all actions in admiralty and maritime jurisdiction where he demand or claim exceeds twenty thousand pesos (₱20,000.00);

(4) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds twenty thousand pesos (₱20,000.00);

(5) In all actions involving the contract of marriage and marital relations;

(6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;

(7) In all civil actions and special proceedings falling within the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and of the Courts of Agrarian Relations as now provided by law; and

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[28] Quiason, *Philippine Courts and their Jurisdiction*, 1993 ed., p. 199.

[29] *De Castro v. Delta Motor Sales Corporation*, No. L-34971, May 21, 1974, 57 SCRA 344, 346-347.

(8) In all other cases in which the demand, exclusive of interest and costs or the value of the property in controversy, amounts to more than twenty thousand pesos (₱20,000.00).

For the purpose of determining jurisdiction, the trial court must interpret and apply the law on jurisdiction in relation to the averments or allegations of ultimate facts in the complaint regardless of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[30] Based on the foregoing provision of law, therefore, the RTC had jurisdiction over the cause of action for injunction because it was one in which the subject of the litigation was incapable of pecuniary estimation. But the same was not true in the case of the cause of action for the quieting of title, which had the nature of a real action — that is, an action that involves the issue of ownership or possession of real property, or any interest in real property[31] — in view of the expansion of the jurisdiction of the first level courts under Republic Act No. 7691, which amended Section 33(3) of Batas Pambansa Blg. 129 effective on April 15, 1994,[32] to now pertinently provide as follows:

Section 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:

x x x x x x x x x

(3) **Exclusive original jurisdiction in all civil actions which involve title to, possession of, real property, or any interest therein where the assessed value of the property or interest therein does**

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[30] *Caparros v. Court of Appeals*, G.R. No. 56803, February 28, 1989, 170 SCRA 758, 761; *Republic v. Estenzo*, No. L-35512, February 29, 1988, 158 SCRA 282, 285; *Alvir v. Vera*, No. L-39338, July 16, 1984, 130 SCRA 357, 361-362.

[31] *Heirs of Valeriano S. Concha, Sr. v. Lumocso*, G.R. No. 158121, December 12, 2007, 540 SCRA 1, 16-18.

[32] This date of effectivity — 15 days after publication in the Malaya and in the Times on March 30, 1994 — is provided for in Section 8 of Republic Act No. 7691 (see Administrative Circular No. 09-94 dated June 14, 1994).

**not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceeds (sic) Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorneys fees, litigation expenses and costs:** x x x

As such, the determination of which trial court had the exclusive original jurisdiction over the real action is dependent on the assessed value of the property in dispute.

An action to quiet title is to be brought as a special civil action under Rule 63 of the *Rules of Court*. Although Section 1 of Rule 63 specifies the forum to be "the appropriate Regional Trial Court,"[33] the specification does not override the statutory provision on jurisdiction. This the Court has pointed out in *Malana v. Tappa*,[34] to wit:

> To determine which court has jurisdiction over the actions identified in the second paragraph of Section 1, Rule 63 of the Rules of Court, said provision must be read together with those of the Judiciary Reorganization Act of 1980, as amended.
>
> It is important to note that Section 1, Rule 63 of the Rules of Court does not categorically require that an action to quiet title be filed before the RTC. It repeatedly uses the word "may"- that an action for quieting of title "may be brought under [the] Rule" on petitions for declaratory relief, and a person desiring to file a petition for declaratory relief "may x x x bring an action in the appropriate Regional Trial Court." The use of the word "may" in a statute denotes that the provision is merely permissive and indicates a mere possibility, an opportunity or an option.

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[33] Section 1. *Who may file petition*.—Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties thereunder.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (1a, R64).

[34] G.R. No. 181303, September 17, 2009, 600 SCRA 189.

In contrast, the mandatory provision of the Judiciary Reorganization Act of 1980, as amended, uses the word shall and explicitly requires the MTC to exercise **exclusive original jurisdiction** over all civil actions which involve title to or possession of real property where the assessed value does not exceed ₱20,000.00, thus:

xxxx

As found by the RTC, the assessed value of the subject property as stated in Tax Declaration No. 02-48386 is only ₱410.00; therefore, petitioners Complaint involving title to and possession of the said property is within the exclusive original jurisdiction of the MTC, not the RTC.[35]

The complaint of the petitioners did not contain any averment of the assessed value of the property. Such failure left the trial court bereft of any basis to determine which court could validly take cognizance of the cause of action for quieting of title. Thus, the RTC could not proceed with the case and render judgment for lack of jurisdiction. Although neither the parties nor the lower courts raised jurisdiction of the trial court in the proceedings, the issue did not simply vanish because the Court can hereby *motu proprio* consider and resolve it now by virtue of jurisdiction being conferred only by law, and could not be vested by any act or omission of any party.[36]

**2.**
**The joinder of the action for injunction and the action to quiet title was disallowed by the *Rules of Court***

Another noticeable area of stumble for the petitioners related to their having joined two causes of action, *i.e.*, injunction and quieting of title, despite the first being an ordinary suit and the latter a special civil action under Rule 63. Section 5, Rule 2 of the *Rules of Court* disallowed the joinder, *viz.*:

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[35] *Id.* at 200.

[36] *Flores-Cruz v. Goli-Cruz*, G.R. No. 172217, September 18, 2009, 600 SCRA 545, 553.

Section 5. *Joinder of causes of action.* — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

(a) The party joining the causes of action shall comply with the rules on joinder of parties;

(b) **The joinder shall not include special civil actions or actions governed by special rules**;

(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and

(d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

Consequently, the RTC should have severed the causes of action, either upon motion or *motu proprio*, and tried them separately, assuming it had jurisdiction over both. Such severance was pursuant to Section 6, Rule 2 of the *Rules of Court*, which expressly provides:

Section 6. *Misjoinder of causes of action.* — Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately. (n)

The refusal of the petitioners to accept the severance would have led to the dismissal of the case conformably with the mandate of Section 3, Rule 17 of the *Rules of Court*, to wit:

Section 3. *Dismissal due to fault of plaintiff.* - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of

an adjudication upon the merits, unless otherwise declared by the court. (3a)

**3.**
**The petitioners did not show that they were real parties in interest to demand either injunction or quieting of title**

Even assuming that the RTC had jurisdiction over the cause of action for quieting of title, the petitioners failed to allege and prove their interest to maintain the suit. Hence, the dismissal of this cause of action was warranted.

An action to quiet title or remove the clouds over the title is a special civil action governed by the second paragraph of Section 1, Rule 63 of the *Rules of Court*. Specifically, an action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to put things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But "for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[37]

The first requisite is based on Article 477 of the *Civil Code* which requires that the plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. Legal title denotes registered ownership,

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[37] *Mananquil v. Moico*, G.R. No. 180076, November 21, 2012, 686 SCRA 123, 129-130.

while equitable title means beneficial ownership,[38] meaning a title derived through a valid contract or relation, and based on recognized equitable principles; the right in the party, to whom it belongs, to have the legal title transferred to him.[39]

To determine whether the petitioners as plaintiffs had the requisite interest to bring the suit, a resort to the allegations of the complaint is necessary. In that regard, the complaint pertinently alleged as follows:

THE CAUSE OF ACTION

5. Plaintiffs are occupants of a parcel of land situated at Juan Luna Street, Gagalangin, Tondo (hereinafter "subject property");

6. Plaintiffs and their predecessor-in-interest have been in open and notorious possession of the subject property for more than thirty (30) years;

7. Plaintiffs have constructed in good faith their houses and other improvements on the subject property;

8. The subject property is declared an Area for Priority Development (APD) under Presidential Decree No. 1967, as amended;

9. Defendant is claiming ownership of the subject property by virtue of Transfer Certificate of Title (TCT) No. 35727 of the Registry of Deeds for the City of Manila. x x x

10. Defendant's claim of ownership over the subject property is without any legal or factual basis because, assuming but not conceding that the TCT No. 35727 covers the subject property, the parcel of land covered by and embraced in TCT No. 35727 has already been sold and conveyed by defendant and, under the law, TCT No. 35727 should have been cancelled;

11. By virtue of TCT No. 35727, defendant is evicting, is about to evict or threatening to evict the plaintiffs from the said parcel of land;

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[38] *Id*. at 124.

[39] *Heirs of Enrique Diaz v. Virata*, G.R. No. 162037, August 7, 2006, 498 SCRA 141, 161; *PVC Investment & Management Corporation v. Borcena and Ravidas*, G.R. No. 155225, September 23, 2005, 470 SCRA 685, 693.

12. Because of the prior sales and conveyances, even assuming but not conceding that the subject property is covered by and embraced in Transfer Certificate of title No. 35727, defendant cannot lawfully evict the plaintiffs from the subject property since it no longer owns the subject property;

13. Any attempted eviction of the plaintiffs from the subject property would be without legal basis and consequently, would only be acts of harassment which are contrary to morals, good customs and public policy and therefore, plaintiffs are entitled to enjoin the defendant from further harassing them;

14. Plaintiffs recently discovered that the subject property is owned by the City of Manila and covered by and embraced in Transfer Certificate of Title No. 44247, a copy of which is attached hereto as Annex "B", of the Registry of Deeds for the City of Manila;

15. TCT No. 35727 which is apparently valid and effective is in truth and in fact invalid, ineffective, voidable or unenforceable, and constitutes a cloud on the rights and interests of the plaintiffs over the subject property;

16. Plaintiffs are entitled to the removal of such cloud on their rights and interests over the subject property;

17. Even assuming, but not admitting, that defendant owns the subject property, it cannot evict the plaintiffs from the subject property because plaintiffs' right to possess the subject property is protected by Presidential Decree No. 2016.

18. Even assuming, but not admitting, that defendant owns the subject property, it cannot evict the plaintiffs from the subject property without reimbursing the plaintiffs for the cost of the improvements made upon the subject property;

19. Because of defendant's unwarranted claim of ownership over the subject property and its attempt to evict or disposses the plaintiffs from the subject property, plaintiffs experienced mental anguish, serious anxiety, social humiliation, sleepless nights and loss of appetite for which defendant should be ordered to pay each plaintiff the amount of ₱20,000.00 as moral damages;

20. Because of defendant's unwarranted claim of ownership over the subject property and its attempt to evict or disposses the plaintiffs from the subject property, plaintiffs were constrained to litigate to

protect their rights and interests, and hire services of a lawyer, for which they should each be awarded the amount of ₱10,000.00.

21. The plaintiffs and the defendants are not required to undergo conciliation proceeding before the Katarungan Pambarangay prior to the filing of this action.[40]

The petitioners did not claim ownership of the land itself, and did not show their authority or other legal basis on which they had anchored their alleged lawful occupation and superior possession of the property. On the contrary, they only contended that their continued possession of the property had been for more than 30 years; that they had built their houses in good faith; and that the area had been declared an Area for Priority Development (APD) under Presidential Decree No. 1967, as amended. Yet, none of such reasons validly clothed them with the necessary interest to maintain the action for quieting of title. For one, the authenticity of the title of the City of Manila and Patricia, Inc. was not disputed but was even admitted by them during trial. As such, they could not expect to have any right in the property other than that of occupants whose possession was only tolerated by the owners and rightful possessors. This was because land covered by a Torrens title cannot be acquired by prescription or by adverse possession.[41] Moreover, they would not be builders entitled to the protection of the *Civil Code* as builders in good faith. Worse for them, as alleged in the respondent's comments,[42] which they did not deny, they had been lessees of Patricia, Inc. Such circumstances indicated that they had no claim to possession in good faith, their occupation not being in the concept of owners.

At this juncture, the Court observes that the fact that the area was declared an area for priority development (APD) under Presidential Decree No. 1967, as amended, did not provide sufficient interest to the petitioners. When an area is declared

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[40] *Rollo,* pp. 112-115.

[41] *Ragudo v. Fabella Estate Tenants Association, Inc.*, G.R. No. 146823, August 9, 2005, 466 SCRA 136, 148.

[42] *Rollo,* p. 171; 183-185.

as an APD, the occupants would enjoy the benefits provided for in Presidential Decree No. 1517 (*Proclaiming Urban land Reform in the Philippines and Providing for the Implementing Machinery Thereof*). In *Frilles v. Yambao*,[43] the Court has summarized the salient features of Presidential Decree No. 1517, thus:

> P. D. No. 1517, which took effect on June 11, 1978, seeks to protect the rights of bona-fide tenants in urban lands by prohibiting their ejectment therefrom under certain conditions, and by according them preferential right to purchase the land occupied by them. The law covers all urban and urbanizable lands which have been proclaimed as urban land reform zones by the President of the Philippines. If a particular property is within a declared Area for Priority Development and Urban Land Reform Zone, **the qualified lessee of the said property in that area can avail of the right of first refusal to purchase the same in accordance with Section 6 of the same law. Only legitimate tenants who have resided for ten 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, **have the right not to be dispossessed therefrom and the right of first refusal to purchase the property under reasonable terms and conditions to be determined by the appropriate government agency**. [Bold emphasis supplied]

Presidential Decree No. 1517 only granted to the occupants of APDs the right of first refusal, but such grant was true only if and when the owner of the property decided to sell the property. Only then would the right of first refusal accrue. Consequently, the right of first refusal remained contingent, and was for that reason insufficient to vest any title, legal or equitable, in the petitioners.

Moreover, the CA's adverse judgment dismissing their complaint as far as the action to quiet title was concerned was correct. The main requirement for the action to be brought is that there is a deed, claim, encumbrance, or proceeding casting cloud on the plaintiffs' title that is alleged and shown to be in fact invalid or inoperative despite its *prima facie* appearance

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[43] G.R. No. 129889, July 11, 2002, 384 SCRA 353, 358.

of validity or legal efficacy, the eliminates the existence of the requirement. Their admission of the genuineness and authenticity of Patricia, Inc.'s title negated the existence of such deed, instrument, encumbrance or proceeding that was invalid, and thus the action must necessarily fail.

**4.**
**The petitioners did not have a cause of action for injunction**

The petitioners did not also make out a case for injunction in their favor.

The nature of the remedy of injunction and the requirements for the issuance of the injunctive writ have been expounded in *Philippine Economic Zone Authority v. Carantes*,[44] as follows:

> Injunction is a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment. Section 9, Rule 58 of the 1997 Rules of Civil Procedure, as amended, provides,
>
> > SEC. 9. *When final injunction granted*. If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.
>
> Two (2) requisites must concur for injunction to issue: (1) ***there must be a right to be protected*** and (2) ***the acts against which the injunction is to be directed are violative of said right***. Particularly, in actions involving realty, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action for the purpose. [Emphasis Supplied]

Accordingly, the petitioners must prove the existence of a right to be protected. The records show, however, that they did

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[44] G.R. No. 181274, June 23, 2010, 621 SCRA 569, 578-579.

not have any right to be protected because they had established only the existence of the boundary dispute between Patricia, Inc. and the City of Manila. Any violation of the boundary by Patricia, Inc., if any, would give rise to the right of action in favor of the City of Manila only. The dispute did not concern the petitioners at all.

**5.**
**Section 5, Rule 10 of the *Rules of Court* did not save the day for the petitioners**

The invocation of Section 5, Rule 10 of the *Rules of Court* in order to enable the raising of the boundary dispute was unwarranted. First of all, a boundary dispute should not be litigated in an action for the quieting of title due to the limited scope of the action. The action for the quieting of title is a tool specifically used to remove of any cloud upon, doubt, or uncertainty affecting title to real property;[45] it should not be used for any other purpose. And, secondly, the boundary dispute would essentially seek to alter or modify either the Torrens title of the City of Manila or that of Patricia, Inc., but any alteration or modification either way should be initiated only by direct proceedings, not as an issue incidentally raised by the parties herein. To allow the boundary dispute to be litigated in the action for quieting of title would violate Section 48[46] of the *Property Registration Decree* by virtue of its prohibition against collateral attacks on Torrens titles. A collateral attack takes place when, in another action to obtain a different relief, the certificate of title is assailed as an incident in said action.[47] This is exactly what the petitioners sought to do herein, seeking to modify or otherwise cancel Patricia, Inc.'s title.

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[45] *Phil-Ville Development and Housing Corporation v. Bonifacio*, G.R. No. 167391, June 8, 2011, 651 SCRA 327, 341.

[46] Section 48. *Certificate not subject to collateral attack.* A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[47] *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, G.R. No. 171209, June 27, 2012, 675 SCRA 145, 168.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on June 25, 2010 by the Court of Appeals in CA-G.R. CV No. 86735; and **ORDERS** the petitioners to pay the costs of suit.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 196596. November 9, 2016]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **DE LA SALLE UNIVERSITY, INC.,** *respondent.*

[G.R. No. 198841. November 9, 2016]

**DE LA SALLE UNIVERSITY INC.,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 198941. November 9, 2016]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **DE LA SALLE UNIVERSITY, INC.,** *respondent.*

**SYLLABUS**

**1. TAXATION; TAX EXEMPTION UNDER ARTICLE XIV, SECTION 4 (3) OF THE 1987 CONSTITUTION; REQUISITES FOR AVAILING THE TAX EXEMPTION, CITED.—** The Court x x x significantly laid down the requisites for availing the tax exemption under Article XIV, Section 4

(3), namely: (1) the taxpayer falls under the classification **non-stock, non-profit educational institution;** and (2) the **income** it seeks to be exempted from taxation is **used actually, directly and exclusively for educational purposes.** We now adopt *YMCA* as precedent and hold that: 1. The last paragraph of Section 30 of the Tax Code is without force and effect with respect to non-stock, non-profit educational institutions, *provided,* that the non-stock, non-profit educational institutions prove that its assets and revenues are used actually, directly and exclusively for educational purposes. 2. The tax-exemption constitutionally-granted to non-stock, non-profit educational institutions, is not subject to limitations imposed by law.

**2. ID.; ID.; WHEN THE NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION PROVES THAT IT USES ITS REVENUES ACTUALLY, DIRECTLY, AND EXCLUSIVELY FOR EDUCATIONAL PURPOSES, IT SHALL BE EXEMPTED FROM INCOME TAX, VAT, LBT (LOCAL BUSINESS TAX).—** We find that unlike **Article VI, Section 28 (3)** of the Constitution (pertaining to charitable institutions, churches, parsonages or convents, mosques, and non-profit cemeteries), which exempts from tax *only* the ***assets,*** *i.e.,* "all **lands, buildings, and improvements,** actually, directly, and exclusively used for religious, charitable, or educational purposes . . .," **Article XIV, Section 4 (3)** categorically states that **"[a]ll *revenues* and assets . . .** used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties." The addition and express use of the word *revenues* in Article XIV, Section 4 (3) of the Constitution is not without significance. x x x The phrase *all revenues* is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties. x x x *Revenues* consist of the amounts earned by a person or entity from the conduct of business operations. It may refer to the sale of goods, rendition of services, or the return of an investment. Revenue is a component of the tax base in income tax, VAT, and local business tax *(LBT).* x x x Thus, when a non-stock, non-profit educational institution proves that it uses its *revenues* actually, directly, and exclusively for educational purposes, it shall be exempted from income tax, VAT, and LBT. On the other hand, when it also shows that it uses its *assets* in the form of real property for educational

purposes, it shall be exempted from RPT. To be clear, proving the actual use of the taxable item will result in an exemption, but the specific tax from which the entity shall be exempted from shall depend on whether the item is an item of revenue or asset.

**3. ID.; ID.; THE TAX EXEMPTION GRANTED BY THE CONSTITUTION TO NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTIONS, UNLIKE THE EXEMPTION THAT MAY BE AVAILED OF BY PROPRIETARY EDUCATIONAL INSTITUTIONS, IS NOT SUBJECT TO LIMITATIONS IMPOSED BY LAW; CASE AT BAR.— The tax exemption granted by the Constitution to non-stock, non-profit educational institutions, unlike the exemption that may be availed of by proprietary educational institutions, is not subject to limitations imposed by law.** x x x While a non-stock, non-profit educational institution is classified as a tax-exempt entity under Section 30 *(Exemptions from Tax on Corporations)* of the Tax Code, a proprietary educational institution is covered by Section 27 *(Rates of Income Tax on Domestic Corporations).* x x x By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% corporate income tax. The reduced rate is applicable only if: (1) the proprietary educational institution is non-profit and (2) its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income. Consistent with Article XIV, Section 4 (3) of the Constitution, these limitations do not apply to non-stock, non-profit educational institutions. Thus, we declare the last paragraph of Section 30 of the Tax Code without force and effect for being contrary to the Constitution insofar as it subjects to tax the income and revenues of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purpose. We make this declaration in the exercise of and consistent with our duty to uphold the primacy of the Constitution. Finally, we stress that our holding here pertains only to non-stock, non-profit educational institutions and does not cover the other exempt organizations under Section 30 of the Tax Code. For all these reasons, we hold that the income and revenues of DLSU *proven* to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes.

**4. ID.; NATIONAL INTERNAL REVENUE CODE (TAX CODE); LETTER OF AUTHORITY (LOA); RMO 43-90 CLEARLY PROHIBITS ISSUING LOA'S COVERING AUDIT OF UNVERIFIED PRIOR YEARS, BUT, IT DOES NOT SAY THAT A LOA WHICH CONTAIN UNVERIFIED PRIOR YEARS IS VOID.—** A LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities and for the purpose of collecting the correct amount of tax, in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment. x x x The relevant provision is Section C of RMO No. 43-90, x x x What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs. Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years*, which may include documents from as far back as ten years in cases of *fraud* audit. x x x As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years 2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.

**5. ID.; COURT OF TAX APPEALS (CTA); THE LAW CREATING THE CTA SPECIFICALLY PROVIDES THAT PROCEEDINGS BEFORE IT SHALL NOT BE GOVERNED STRICTLY BY THE TECHNICAL RULES OF EVIDENCE AND THAT THE PARAMOUNT**

**CONSIDERATION REMAINS THE ASCERTAINMENT OF TRUTH.—** The CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified. x x x We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering *undisputed facts* to arrive at a just determination of a controversy. x x x If liberality is afforded to taxpayers who paid more than they should have under a statute, then with more reason that we should allow a taxpayer to prove its exemption from tax based on the Constitution. Hence, we sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, but more so because the strict application of the technical rules of evidence may defeat the intent of the Constitution.

**6. REMEDIAL LAW; APPEALS; FINDINGS OF FACT BY THE COURT OF TAX APPEALS; THESE FINDINGS OF FACTS CAN ONLY BE DISTURBED ON APPEAL IF THEY ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THERE IS A SHOWING OF GROSS ERROR OR ABUSE ON THE PART OF THE CTA.—** It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. We thus accord the *findings of fact* by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

**7. TAXATION; EQUALITY AND UNIFORMITY OF TAXATION; THE CONCEPT REQUIRES THAT ALL SUBJECTS OF TAXATION SIMILARLY SITUATED**

**SHOULD BE TREATED ALIKE AND PLACED IN EQUAL FOOTING; CASE AT BAR.—** Equality and uniformity of taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. A tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The concept requires that all subjects of taxation similarly situated should be *treated alike and placed in equal footing.* x x x DLSU can only assert that the CTA violated the rule on uniformity if it can show that, despite *proving* that it used actually, directly and exclusively for educational purposes its income and revenues, the CTA still affirmed the imposition of taxes. That the DLSU secured a different result happened because it failed to *fully* prove that it used actually, directly and exclusively for educational purposes its revenues and income. On this point, we remind DLSU that the rule on uniformity of taxation does not mean that subjects of taxation similarly situated are treated in *literally* the same way in all and every occasion. The fact that the Ateneo and DLSU are both non-stock, non-profit educational institutions, does not mean that the CTA or this Court would similarly decide every case for (or against) both universities. Success in tax litigation, like in any other litigation, depends to a large extent on the sufficiency of evidence. DLSU's evidence was wanting, thus, the CTA was correct in not fully cancelling its tax liabilities.

**8. ID.; NATIONAL INTERNAL REVENUE CODE (TAX CODE); DOCUMENTARY STAMP TAX (DST); WHENEVER ONE PARTY TO THE DOCUMENT ENJOYS EXEMPTION FROM DST, THE OTHER PARTY NOT EXEMPT FROM DST SHALL BE DIRECTLY LIABLE FOR THE TAX; CASE AT BAR.—** DST on documents, loan agreements, and papers shall be levied, collected and paid for by the person making, signing, issuing, accepting, or transferring the same. The Tax Code provides that whenever one party to the document enjoys exemption from DST, the other party not exempt from DST shall be directly liable for the tax. Thus, it is clear that DST shall be payable by *any* party to the document, such that the payment and compliance by one shall mean the full settlement of the DST due on the document. In the present case, DLSU entered into mortgage and loan agreements with banks. These agreements are subject to DST. For the purpose of showing that the DST on the loan agreement has been paid, DLSU presented its agreements bearing the imprint showing that DST

on the document has been paid by the bank, its counterparty. The imprint should be sufficient proof that DST has been paid. Thus, DLSU cannot be further assessed for deficiency DST on the said documents. Finally, it is true that educational institutions are not included in the class of taxpayers who can pay and remit DST through the *On-Line Electronic DST Imprinting Machine* under RR No. 9-2000. As correctly held by the CTA, this is irrelevant because it was not DLSU who used the *On-Line Electronic DST Imprinting Machine* but the bank that handled its mortgage and loan transactions. RR No. 9-2000 expressly includes banks in the class of taxpayers that can use the *On-Line Electronic DST Imprinting Machine.* Thus, the Court sustains the finding of the CTA that DLSU proved the payment of the assessed DST deficiency, except for the unpaid balance of **₱13,265.48.**

**LEONEN, *J., dissenting opinion*:**

**1. TAXATION; NATIONAL INTERNAL REVENUE CODE (TAX CODE); LETTER OF AUTHORITY (LOA); REVENUE AUDIT MEMORANDUM ORDER NO. 1-00 PROVIDES THAT A LETTER OF AUTHORITY AUTHORIZES OR EMPOWERS A DESIGNATED REVENUE OFFICER TO EXAMINE, VERIFY, AND SCRUTINIZE A TAXPAYER'S BOOKS AND RECORDS, IN RELATION TO INTERNAL REVENUE TAX LIABILITIES FOR A PARTICULAR PERIOD.—** An audit process to which a particular taxpayer may be subjected begins when a letter of authority is issued by the Commissioner of Internal Revenue or by the Revenue Regional Director. The letter of authority is an official document that empowers a revenue officer to examine and scrutinize a taxpayer's books of accounts and other accounting records in order to determine the taxpayer's correct internal revenue tax liabilities. In this regard, Revenue Audit Memorandum Order No. 1-00 provides that a letter of authority authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities *for a particular period.*

**2. ID.; ID.; ID.; REVENUE MEMORANDUM ORDER NO. 43-90 CLEARLY AND EXPLICITLY DECLARED THAT A**

**LETTER OF AUTHORITY SHOULD COVER ONE TAXABLE PERIOD, AND IF IT COVERS MORE THAN ONE TAXABLE PERIOD, IT MUST SPECIFY ALL THE PERIODS OR YEARS COVERED.—** Revenue Memorandum Order No. 43-90, on policy guidelines for the audit/investigation and issuance of letters of authority to audit, x x x Thus, under Revenue Memorandum Order No. 43-90, both the taxable period and the kind of tax must be specifically stated. x x x The revenue officer so authorized must not go beyond the authority given; otherwise, the assessment or examination is a nullity. Corollarily, the extent to which the authority must be exercised by the revenue officer must be clearly specified. x x x It is my view that the entire Letter of Authority No. 2794 should be struck down as void for being broad, indefinite, and uncertain, and for being in direct contravention to the policy clearly and explicitly declared in Revenue Memorandum Order No. 43-90 that: (a) a letter of authority should cover one (1) taxable period; and (b) if it covers more than one taxable period, it must specify all the periods or years covered. The prescribed procedures under Revenue Memorandum Order No. 43-90, including the requirement of definitely specifying the taxable year under investigation, were meant to achieve a proper enforcement of tax laws and to minimize, if not eradicate, taxpayers' concerns on arbitrary assessment, undue harassment from Bureau of Internal Revenue personnel, and unreasonable delay in the investigation and processing of tax cases. Inasmuch as tax investigations entail an intrusion into a taxpayer's private affairs, which are protected and guaranteed by the Constitution, the provisions of Revenue Memorandum Order No. 43-90 must be strictly followed. x x x Under the law, the Bureau of Internal Revenue has access to all relevant or material records and data of the taxpayer for the purpose of collecting the correct amount of tax. However, this authority must be exercised reasonably and under the prescribed procedure. The Commissioner and revenue officers must strictly comply with the requirements of the law and its own rules, with due regard to taxpayers' constitutional rights. Otherwise, taxpayers are placed in jeopardy of being deprived of their property without due process of law.

**3. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS; THE GENERAL RULE IS THAT FACTUAL FINDINGS OF THE COURT OF TAX APPEALS ARE ENTITLED TO THE HIGHEST RESPECT**

**AND WILL NOT BE DISTURBED ON APPEAL, EXCEPT WHEN THE TAX COURT FAILED TO NOTICE CERTAIN RELEVANT FACTS THAT, IF CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION; CASE AT BAR.—** As a rule, factual findings of the Court of Tax Appeals are entitled to the highest respect and will not be disturbed on appeal. Some exceptions that have been recognized by this Court are: (1) when a party shows that the findings are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court; (2) when the judgment is premised on a misapprehension of facts; or (3) when the tax court failed to notice certain relevant facts that, if considered, would justify a different conclusion. The third exception applies here. The Court of Tax Appeals should have considered the additional pieces of evidence, which have been duly admitted and formed part of the case records. This is a requirement of due process. The right to be heard, which includes the right to present evidence, is meaningless if the Court of Tax Appeals can simply ignore the evidence. x x x In *Ang Tibay v. Court of Industrial Relations*, this Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented."

**4. ID.; ID.; RULES OF ADMISSIBILITY; REQUIRED PROOF FOR SECONDARY EVIDENCE TO BE ADMISSIBLE, CITED.—** The Rules of Court allows the presentation of secondary evidence: x x x For secondary evidence to be admissible, there must be satisfactory proof of: (a) the execution and existence of the original; (b) the loss and destruction of the original or its non-production in court; and (c) the unavailability of the original not being due to bad faith on the part of the offeror.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for Commissioner of Internal Revenue.

*Zambrano & Gruba Law Offices* for De La Salle University, Inc.

## D E C I S I O N

**BRION, *J.*:**

Before the Court are consolidated petitions for review on *certiorari*:[1]

1. **G.R. No. 196596** filed by the Commissioner of Internal Revenue (*Commissioner*) to assail the December 10, 2010 decision and March 29, 2011 resolution of the Court of Tax Appeals (*CTA*) in *En Banc* Case No. 622;[2]
2. **G.R. No. 198841** filed by De La Salle University, Inc. (*DLSU*) to assail the June 8, 2011 decision and October 4, 2011 resolution in CTA *En Banc* Case No. 671;[3] and
3. **G.R. No. 198941** filed by the Commissioner to assail the June 8, 2011 decision and October 4, 2011 resolution in CTA *En Banc* Case No. 671.[4]

G.R. Nos. 196596, 198841 and 198941 all originated from CTA Special First Division (*CTA Division*) **Case No. 7303**. G.R. No. 196596 stemmed from **CTA *En Banc* Case No. 622** filed by the Commissioner to challenge CTA Case No. 7303. G.R. No. 198841 and 198941 both stemmed from **CTA *En Banc* Case No. 671** filed by DLSU to also challenge CTA Case No. 7303.

### The Factual Antecedents

Sometime in 2004, the Bureau of Internal Revenue (*BIR*) issued to DLSU Letter of Authority (LOA) No. 2794 authorizing its revenue officers to examine the latter's books of accounts

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[1] The petitions are filed under Rule 45 of the Rules of Court in relation to Rule 16 of the Revised CTA Rules (A.M. No. 05-11-07). On November 28, 2011, the Court resolved to consolidate the petitions to avoid conflicting decisions. *Rollo*, p. 78 (G.R. No. 198941).

[2] *Id.* at 34-70 (G.R. No. 196596).

[3] *Id.* at 14-53 (G.R. No. 198841).

[4] *Id.* at 9-43 (G.R. No. 198941).

and other accounting records for all internal revenue taxes for the period *Fiscal Year Ending 2003 and Unverified Prior Years*.[5]

On May 19, 2004, BIR issued a *Preliminary Assessment Notice* to DLSU.[6]

Subsequently on August 18, 2004, the BIR through a *Formal Letter of Demand* assessed DLSU the following deficiency taxes: (1) *income tax* on rental earnings from restaurants/canteens and bookstores operating within the campus; (2) *value-added tax* (*VAT*) on business income; and (3) *documentary stamp tax* (*DST*) on loans and lease contracts. The BIR demanded the payment of **₱17,303,001.12**, inclusive of surcharge, interest and penalty for **taxable years 2001, 2002 and 2003**.[7]

DLSU protested the assessment. The Commissioner failed to act on the protest; thus, DLSU filed on August 3, 2005 a petition for review with the CTA Division.[8]

DLSU, a *non-stock, non-profit educational institution*, principally anchored its petition on **Article XIV, Section 4 (3)** of the Constitution, which reads:

> (3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. xxx.

On January 5, 2010, the CTA Division partially granted DLSU's petition for review. The dispositive portion of the decision reads:

**WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. The DST assessment on the loan transactions of [DLSU] in the amount of ₱1,1681,774.00 is hereby **CANCELLED**. However,

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[5] *Id*. at 85. The date of the issuance of the LOA is not on record.

[6] *Id*. at 4 (G.R. No. 196596). The PAN was issued by the SIR's Special Large Taxpayers Task Force on educational institutions.

[7] *Id*. at 151-154.

[8] *Id*. at 38 and 268.

[DLSU] is **ORDERED TO PAY** deficiency income tax, VAT and DST on its lease contracts, plus 25% surcharge for the fiscal years 2001, 2002 and 2003 in the total amount of **₱18,421,363.53**...xxx.

In addition, [DLSU] is hereby held liable to pay 20% delinquency interest on the total amount due computed from September 30, 2004 until full payment thereof pursuant to Section 249(C)(3) of the [National Internal Revenue Code]. Further, the compromise penalties imposed by [the Commissioner] were excluded, there being no compromise agreement between the parties.

**SO ORDERED.**[9]

Both the Commissioner and DLSU moved for the reconsideration of the January 5, 2010 decision.[10] On April 6, 2010, the CTA Division denied the Commissioner's motion for reconsideration while it held in abeyance the resolution on DLSU's motion for reconsideration.[11]

On May 13, 2010, the Commissioner appealed to the CTA *En Banc* (CTA *En Banc* Case No. 622) arguing that DLSU's *use* of its revenues and assets for non-educational or commercial purposes removed these items from the exemption coverage under the Constitution.[12]

On May 18, 2010, DLSU formally offered to the CTA Division supplemental pieces of documentary evidence to prove that its rental income was used actually, directly and exclusively for educational purposes.[13] *The Commissioner did not promptly object to the formal offer of supplemental evidence despite notice.*[14]

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[9] *Id*. at 97-128.

[10] *Id*. at 39 and 268-269.

[11] *Id*. at 129-137.

[12] *Id*. at 185-194.

[13] *Id*. at 155-159, filed on May 18, 2010.

[14] *Id*. at 302. DLSU quoted the June 9, 2010 resolution of the CTA Division, viz.:

"For resolution is [DLSU's] 'Supplemental Formal Offer of Evidence in Relation to the [CTA Division's] Resolution Dated 06 April 2010' filed

On July 29, 2010, the CTA Division, in view of the supplemental evidence submitted, reduced the amount of DLSU's tax deficiencies. The dispositive portion of the *amended decision* reads:

> **WHEREFORE,** [DLSU]'s Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED**. [DLSU] is hereby **ORDERED TO PAY** for deficiency income tax, VAT and DST plus 25% surcharge for the fiscal years 2001, 2002 and 2003 in the total adjusted amount of **₱5,506,456.71**...xxx.
>
> In addition, [DLSU] is hereby held liable to pay 20% per annum deficiency interest on the...basic deficiency taxes...until full payment thereof pursuant to Section 249(B) of the [National Internal Revenue Code]...xxx.
>
> Further, [DLSU] is hereby held liable to pay 20% per annum delinquency interest on the deficiency taxes, surcharge and deficiency interest which have accrued...from September 30, 2004 until fully paid.[15]

Consequently, the Commissioner supplemented its petition with the CTA *En Banc* and argued that the CTA Division erred in admitting DLSU's additional evidence.[16]

Dissatisfied with the partial reduction of its tax liabilities, DLSU filed a *separate* petition for review with the CTA *En Banc* (CTA *En Banc* Case No. 671) on the following grounds: (1) the entire assessment should have been cancelled because it was based on an invalid LOA; (2) assuming the LOA was valid, the CTA Division should still have cancelled the *entire* assessment because DLSU submitted evidence similar to those submitted by Ateneo De Manila University (*Ateneo*) in a *separate* case where the CTA cancelled Ateneo's tax assessment;[17] and (3) the CTA Division erred in finding that a *portion* of DLSU's

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on April 23, 2010, **sans any Comment/Opposition from the [Commissioner] despite notice**." [emphasis and underscoring ours]

[15] *Id*. at 149-150.

[16] *Id*. at 40.

[17] *Ateneo de Manila University v. Commissioner of Internal Revenue*, CTA Case Nos. 7246 and 7293.

rental income was not proved to have been used actually, directly and exclusively for educational purposes.[18]

## The CTA *En Banc* Rulings

### *CTA En Banc Case No. 622*

The CTA *En Banc* dismissed the Commissioner's petition for review and sustained the findings of the CTA Division.[19]

*Tax on rental income*

Relying on the findings of the court-commissioned Independent Certified Public Accountant (Independent CPA), the CTA *En Banc* found that DLSU was able to prove that a *portion* of the assessed rental income was used actually, directly and exclusively for educational purposes; hence, exempt from tax.[20] The CTA *En Banc* was satisfied with DLSU's supporting evidence confirming that part of its rental income had indeed been used to pay the loan it obtained to build the university's Physical Education - *Sports Complex*.[21]

Parenthetically, DLSU's unsubstantiated claim for exemption, *i.e.*, the part of its income that was not shown by supporting documents to have been actually, directly and exclusively used for educational purposes, must be subjected to income tax and VAT.[22]

*DST on loan and mortgage transactions*

Contrary to the Commissioner's contention, DLSU *proved* its *remittance of the DST due on its loan and mortgage documents*.[23] The CTA *En Banc* found that DLSU's DST payments had been remitted to the BIR, evidenced by the stamp

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[18] *Rollo*, p. 73 (G.R. No. 198841).

[19] *Id*. at 77-96 (G.R. No. 196596), decision dated December 10, 2010.

[20] *Id*. at 82-88.

[21] *Id*. at 86.

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

[23] *Id*. at 88-90.

on the documents made by a DST imprinting machine, which is allowed under Section 200 (D) of the National Internal Revenue Code (*Tax Code*)[24] and Section 2 of Revenue Regulations (RR) No. 15-2001.[25]

*Admissibility of DLSU's supplemental evidence*

The CTA *En Banc* held that the supplemental pieces of documentary evidence were admissible even if DLSU formally offered them only when it moved for reconsideration of the CTA Division's original decision. Notably, the law creating the CTA provides that proceedings before it shall not be governed strictly by the technical rules of evidence.[26]

The Commissioner moved but failed to obtain a reconsideration of the CTA *En Banc*'s December 10, 2010 decision.[27] Thus, she came to this court for relief through a petition for review on *certiorari* (G.R. No. 196596).

***CTA En Banc Case No. 671***

The CTA *En Banc* partially granted DLSU's petition for review and further reduced its tax liabilities to **₱2,554,825.47** inclusive of surcharge.[28]

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[24] Section 200 (D) of the Tax Code provides:

(D) Exception. - In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture; or by **imprinting the stamps through a documentary stamp metering machine, on the taxable document**, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. [emphasis ours]

[25] Section 2.2 of RR No. 15-2001 provides that: "In lieu of constructive stamping, Section 200 (D) of the [Tax Code], however, allows the payment of DST ... or by **imprinting of stamps through a documentary stamp metering machine** (... or **on line electronic DST imprinting machine**)." [emphasis ours]

[26] *Rollo*, pp. 91-94 (G.R. No. 196596).

[27] *Id*. at 72-76.

[28] *Id*. at 88-90 (G.R. No. 198841).

*On the validity of the Letter of Authority*

The issue of the LOA's validity was raised during trial;[29] hence, the issue was deemed properly submitted for decision and reviewable on appeal.

Citing jurisprudence, the CTA *En Banc* held that a LOA should cover only one taxable period and that the practice of issuing a LOA covering audit of *unverified prior years* is prohibited.[30] The prohibition is consistent with Revenue Memorandum Order (RMO) No. 43-90, which provides that if the audit includes more than one taxable period, the other periods or years shall be specifically indicated in the LOA.[31]

In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. Hence, the assessments for deficiency income tax, VAT and DST for taxable years **2001 and 2002** are **void**, but the assessment for taxable year **2003** is **valid**.[32]

*On the applicability of the Ateneo case*

The CTA *En Banc* held that the *Ateneo* case is not a valid precedent because it involved different parties, factual settings, bases of assessments, sets of evidence, and defenses.[33]

*On the CTA Division's appreciation of the evidence*

The CTA *En Banc* affirmed the CTA Division's appreciation of DLSU's evidence. It held that while DLSU successfully proved that a portion of its rental income was transmitted and used to pay the loan obtained to fund the construction of the Sports Complex, the rental income from *other* sources were not shown

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[29] *Id*. at 75-79.

[30] *Id*. at 80, citing *Commissioner of Internal v. Sony Philippines, Inc.*, 649 Phil. 519 (2010).

[31] *Id*. at 80.

[32] *Id*. at 81.

[33] *Id*. at 82.

to have been actually, directly and exclusively used for educational purposes.[34]

Not pleased with the CTA *En Banc*'s ruling, both DLSU (G.R. No. 198841) and the Commissioner (G.R. No. 198941) came to this Court for relief.

**The Consolidated Petitions**

***G.R. No. 196596***

The Commissioner submits the following arguments:

*First*, DLSU's rental income is taxable regardless of how such income is derived, used or disposed of.[35] DLSU's operations of canteens and bookstores within its campus even though exclusively serving the university community do not negate income tax liability.[36]

The Commissioner contends that Article XIV, Section 4 (3) of the Constitution must be harmonized with Section 30 (H) of the Tax Code, which states among others, that the income of whatever kind and character of [a non-stock and non-profit educational institution] from any of [its] properties, real or personal, or from any of [its] activities conducted for profit *regardless of the disposition made of such income*, shall be subject to tax imposed by this Code.[37]

The Commissioner argues that the CTA *En Banc* misread and misapplied the case of ***Commissioner of Internal Revenue v. YMCA***[38] to support its conclusion that revenues however generated are covered by the constitutional exemption, provided that, the revenues will be used for educational purposes or will be held in reserve for such purposes.[39]

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[34] These pertain to rental income from Alerey Inc., Zaide Food Corp., Capri International and MTO Bookstore. *Id*. at 85.

[35] *Id*. at 43-55 (G.R. No. 196596).

[36] *Id*. at 48.

[37] *Id*. at 50.

[38] 358 Phil. 562 (1998).

[39] *Rollo*, p. 46 (G.R. No. 196596).

On the contrary, the Commissioner posits that a tax-exempt organization like DLSU is exempt only from property tax but not from income tax on the rentals earned from property.[40] Thus, DLSU's income from the leases of its real properties is not exempt from taxation even if the income would be used for educational purposes.[41]

*Second*, the Commissioner insists that DLSU did not prove the fact of DST payment[42] and that it is not qualified to use the *On-Line Electronic DST Imprinting Machine*, which is available only to certain classes of taxpayers under RR No. 9-2000.[43]

*Finally*, the Commissioner objects to the admission of DLSU's supplemental offer of evidence. The belated submission of supplemental evidence reopened the case for trial, and worse, DLSU offered the supplemental evidence only after it received the unfavorable CTA Division's original decision.[44] In any case, DLSU's submission of supplemental documentary evidence was unnecessary since its rental income was taxable regardless of its disposition.[45]

***G.R. No. 198841***

DLSU argues as that:

*First*, RMO No. 43-90 prohibits the practice of issuing a LOA with any indication of *unverified prior years*. A LOA

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[40] *Id*. at 51-55.

[41] *Id*. at 50.

[42] *Id*. at 55-56.

[43] The Commissioner cites Section 4 of RR No. 9-2000 which states that the "on-line electronic DST imprinting machine," unless expressly exempted by the Commissioner, will be used in the payment and remittance of the DST by the following class of taxpayers: a) bank, quasi-bank or non-bank financial intermediary, finance company, insurance, surety, fidelity, or annuity company; b) the Philippine Stock Exchange (in the case of shares of stock and other securities traded in the local stock exchange); c) shipping and airline companies; d) pre-need company (on sale of pre-need plans); and e) other industries as may be required by the Commissioner.

[44] *Rollo*, pp. 57-65 (G.R. No. 196596).

[45] *Id*. at 65-66.

issued contrary to RMO No. 43-90 is void, thus, an assessment issued based on such defective LOA must also be void.[46]

DLSU points out that the LOA issued to it covered the *Fiscal Year Ending 2003 and Unverified Prior Years*. On the basis of this defective LOA, the Commissioner assessed DLSU for deficiency income tax, VAT and DST for taxable years 2001, 2002 and 2003.[47] DLSU objects to the CTA *En Banc*'s conclusion that the LOA is valid for taxable year 2003. According to DLSU, when RMO No. 43-90 provides that:

> The practice of issuing [LOAs] covering audit of '*unverified prior years*' is hereby prohibited.

it refers to the LOA which has the format "*Base Year + Unverified Prior Years*." Since the LOA issued to DLSU follows this format, then any assessment arising from it must be *entirely* voided.[48]

*Second*, DLSU invokes the principle of *uniformity in taxation*, which mandates that for similarly situated parties, the *same set of evidence* should be appreciated and weighed in the same manner.[49] The CTA *En Banc* erred when it did not similarly appreciate DLSU's evidence as it did to the pieces of evidence submitted by Ateneo, also a non-stock, non-profit educational institution.[50]

***G.R. No. 198941***

The issues and arguments raised by the Commissioner in G.R. No. 198941 petition are *exactly the same* as those she raised in her: (1) petition docketed as G.R. No. 196596 and (2) comment on DLSU's petition docketed as G.R. No. 198841.[51]

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[46] *Id*. at 14-16 (G.R. No. 198841).

[47] *Id*. at 24, 30.

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

[49] *Id*. at 41-48.

[50] *Id*. at 34-48.

[51] *Id*. at 9-43 (G.R. No. 198941).

**Counter-arguments**

***DLSU's Comment on G.R. No. 196596***

*First*, DLSU questions the defective verification attached to the petition.[52]

*Second*, DLSU stresses that Article XIV, Section 4 (3) of the Constitution is clear that *all assets and revenues* of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes are exempt from taxes and duties.[53]

On this point, DLSU explains that: (1) the tax exemption of non-stock, non-profit educational institutions is *novel* to the **1987 Constitution** and that Section 30 (H) of the **1997 Tax Code** cannot amend the **1987 Constitution**;[54] (2) Section 30 of the 1997 Tax Code is almost an exact replica of Section 26 of the **1977 Tax Code** — with the addition of non-stock, non-profit educational institutions to the list of tax-exempt entities; and (3) that the **1977 Tax Code** was promulgated when the **1973 Constitution** was still in place.

DLSU elaborates that the tax exemption granted to a private educational institution under the 1973 Constitution was only for *real property tax*. Back then, the special tax treatment on *income* of private educational institutions only emanates from statute, *i.e.*, the 1977 Tax Code. Only under the 1987 Constitution that exemption from tax of all the *assets and revenues* of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes, was expressly and categorically enshrined.[55]

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[52] *Id*. at 272-276 (G.R. No. 196596). DLSU claims that the Commissioner failed to state that the allegations in the petition are true and correct of her personal knowledge or based on authentic record. The CIR also allegedly failed to state that she caused the preparation of the petition and that she has read and understood all the allegations. DLSU notes that a pleading required to be verified but lacks proper verification is treated as an unsigned pleading.

[53] *Id*. at 276-279.

[54] *Id*. at 279-285.

[55] *Id*. at 282.

DLSU thus invokes the doctrine of constitutional supremacy, which renders any subsequent law that is contrary to the Constitution void and without any force and effect.[56] Section 30 (H) of the 1997 Tax Code insofar as it subjects to tax the income of whatever kind and character of a non-stock and non-profit educational institution from any of its properties, real or personal, or from any of its activities conducted for profit *regardless of the disposition made of such income*, should be declared *without force and effect* in view of the constitutionally granted tax exemption on "all revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes."[57]

DLSU further submits that it complies with the requirements enunciated in the *YMCA* case, that for an exemption to be granted under Article XIV, Section 4 (3) of the Constitution, the taxpayer must prove that: (1) it falls under the classification non-stock, non-profit educational institution; and (2) the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes.[58] Unlike YMCA, which is *not* an educational institution, DLSU is undisputedly a non-stock, non-profit educational institution. It had also submitted evidence to prove that it actually, directly and exclusively used its income for educational purposes.[59]

DLSU also cites the deliberations of the 1986 Constitutional Commission where they recognized that the tax exemption was granted "to incentivize private educational institutions to share with the State the responsibility of educating the youth."[60]

*Third*, DLSU highlights that both the CTA *En Banc* and Division found that the bank that handled DLSU's loan and

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[56] *Id*. at 286-289.

[57] *Id*. at 287.

[58] *Id*. at 290.

[59] *Id*. at 291.

[60] *Id*. at 283.

mortgage transactions had remitted to the BIR the DST through an imprinting machine, a method allowed under RR No. 15-2001.[61] In any case, DLSU argues that it cannot be held liable for DST owing to the exemption granted under the Constitution.[62]

*Finally*, DLSU underscores that the Commissioner, despite notice, did not oppose the formal offer of supplemental evidence. Because of the Commissioner's failure to timely object, she became bound by the results of the submission of such supplemental evidence.[63]

***The CIR's Comment on G.R. No. 198841***

The Commissioner submits that DLSU is estopped from questioning the LOA's validity because it failed to raise this issue in both the administrative and judicial proceedings.[64] That it was asked on cross-examination during the trial does not make it an issue that the CTA could resolve.[65] The Commissioner also maintains that DLSU's rental income is not tax-exempt because an educational institution is only exempt from property tax but not from tax on the income earned from the property.[66]

***DLSU's Comment on G.R. No. 198941***

DLSU puts forward the same counter-arguments discussed above.[67] In addition, DLSU prays that the Court award attorney's fees in its favor because it was constrained to unnecessarily retain the services of counsel in this separate petition.[68]

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[61] *Id*. at 296-301.

[62] *Id*. at 297-298.

[63] *Id*. at 301-302.

[64] *Id*. at 192-197 (G.R. No. 198841).

[65] *Id*. at 192-193.

[66] *Id*. at 197-207.

[67] *Id*. at 82-93 (G.R. No. 198941).

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

**Issues**

Although the parties raised a number of issues, the Court shall decide only the pivotal issues, which we summarize as follows:

I. Whether DLSU's income and revenues proved to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes;

II. Whether the entire assessment should be voided because of the defective LOA;

III. Whether the CTA correctly admitted DLSU's supplemental pieces of evidence; and

IV. Whether the CTA's appreciation of the sufficiency of DLSU's evidence may be disturbed by the Court.

**Our Ruling**

As we explain in full below, we rule that:

I. The income, revenues and assets of non-stock, non-profit educational institutions proved to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes.

II. The LOA issued to DLSU is not entirely void. The assessment for taxable year 2003 is valid.

III. The CTA correctly admitted DLSU's formal offer of supplemental evidence; and

IV. The CTA's appreciation of evidence is conclusive unless the CTA is shown to have manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.

The parties failed to convince the Court that the CTA overlooked or failed to consider relevant facts. We thus sustain the CTA *En Banc*'s findings that:

a. DLSU proved that a portion of its rental income was used actually, directly and exclusively for educational purposes; and

b. DLSU proved the payment of the DST through its bank's on-line imprinting machine.

**I. The revenues and assets of non-stock, non-profit educational institutions proved to have been used actually, directly, and exclusively for educational purposes are exempt from duties and taxes.**

DLSU rests it case on Article XIV, Section 4 (3) of the 1987 Constitution, which reads:

> (3) **All revenues and assets** of ***non-stock, non-profit educational institutions*** **used actually, directly, and exclusively for educational purposes** shall be **exempt from taxes and duties**. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.
>
> ***Proprietary educational institutions***, including those cooperatively owned, **may likewise be entitled to such exemptions subject to the limitations provided by law** including restrictions on dividends and provisions for reinvestment. [underscoring and emphasis supplied]

Before fully discussing the merits of the case, we observe that:

*First*, the constitutional provision refers to two kinds of educational institutions: (1) non-stock, non-profit educational institutions and (2) proprietary educational institutions.[69]

*Second*, DLSU falls under the first category. Even the Commissioner admits the status of DLSU as a non-stock, non-profit educational institution.[70]

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[69] In *Commissioner v. St. Luke's Medical Center, Inc.*, 695 Phil. 867, 885 (2012), the Court quoted Section 27 (B) of the Tax Code and defined *proprietary educational institution* as "any private school maintained and administered by private individuals or groups" with a government permit.

[70] *Rollo*, p. 37 (G.R. No. 196596).

*Third*, while DLSU's claim for tax exemption arises from and is based on the Constitution, the Constitution, in the same provision, also imposes certain conditions to avail of the exemption. We discuss below the import of the constitutional text *vis-a-vis* the Commissioner's counter-arguments.

*Fourth*, there is a marked distinction between the treatment of non-stock, non-profit educational institutions and proprietary educational institutions. The tax exemption granted to non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. While tax exemptions may also be granted to proprietary educational institutions, these exemptions may be subject to limitations imposed by Congress.

As we explain below, the marked distinction between a non-stock, non-profit and a proprietary educational institution is crucial in determining the nature and extent of the tax exemption granted to non-stock, non-profit educational institutions.

The Commissioner opposes DLSU's claim for tax exemption on the basis of Section 30 (H) of the Tax Code. The relevant text reads:

> The following organizations **shall not be taxed under this Title** [*Tax on Income*] in respect to income received by them as such:
>
> x x x x x x x x x
>
> **(H) A non-stock and non-profit educational institution**
>
> x x x x x x x x x
>
> Notwithstanding the provisions in the preceding paragraphs, the **income of whatever kind and character** of the foregoing organizations **from any of their properties, real or personal**, or **from any of their activities conducted for profit regardless of the disposition made of such income shall be subject to tax imposed under this Code**. [underscoring and emphasis supplied]

The Commissioner posits that the 1997 Tax Code qualified the tax exemption granted to non-stock, non-profit educational institutions such that the revenues and income they derived from their assets, or from any of their activities conducted for

profit, are taxable *even if* these revenues and income are used for educational purposes.

*Did the 1997 Tax Code qualify the tax exemption constitutionally-granted to non-stock, non-profit educational institutions?*

We answer in the negative.

While the present petition appears to be a case of first impression,[71] the Court in the *YMCA* case had in fact already analyzed and explained the meaning of Article XIV, Section 4 (3) of the Constitution. The Court in that case made doctrinal pronouncements that are relevant to the present case.

The issue in *YMCA* was whether the income derived from rentals of real property owned by the YMCA, established as a "welfare, educational and charitable non-profit corporation," was subject to income tax under the Tax Code and the Constitution.[72]

The Court denied YMCA's claim for exemption on the ground that as a *charitable institution* falling under **Article VI, Section 28 (3)** of the Constitution,[73] the YMCA is not tax-exempt *per se*; "what is exempted is not the institution itself...those exempted *from real estate taxes* are lands, buildings and improvements

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[71] Previous cases construing the nature of the exemption of tax-exempt entities under Section 30 (then Section 27) of the Tax Code *vis-a-vis* the exemption granted under the Constitution pertain to non-profit foundations, churches, charitable hospitals or social welfare institutions. Some cases involved educational institutions but they tackled local or real property taxation. *See: YMCA, supra* note 37, *St. Luke's, supra* note 68; *Angeles University Foundation v. City of Angeles*, 689 Phil. 623 (2012); and *Abra Valley College, Inc. v. Aquino*, infra note 90.

[72] *Supra* note 38.

[73] Article VI, Section 28 (3) of the Constitution, provides: "Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation."

actually, directly and exclusively used for religious, charitable or educational purposes."[74]

The Court held that the exemption claimed by the YMCA is expressly disallowed by the *last paragraph* of then Section 27 (now Section 30) of the Tax Code, which mandates that the income of exempt organizations from any of their properties, real or personal, are subject to the same tax imposed by the Tax Code, *regardless of how that income is used*. The Court ruled that the last paragraph of Section 27 unequivocally subjects to tax the rent income of the YMCA from its property.[75]

In short, the YMCA is exempt only from property tax but not from income tax.

As a last ditch effort to avoid paying the taxes on its rental income, the YMCA invoked the tax privilege granted under Article XIV, Section 4 (3) of the Constitution.

The Court denied YMCA's claim that it falls under Article XIV, Section 4 (3) of the Constitution holding that the term *educational institution*, when used in laws granting tax exemptions, refers to the school system (synonymous with formal education); it includes a college or an educational establishment; it refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system.[76]

The Court then significantly laid down the requisites for availing the tax exemption under Article XIV, Section 4 (3), namely: (1) the taxpayer falls under the classification **non-stock, non-profit educational institution**; and (2) the **income** it seeks to be exempted from taxation is **used actually, directly and exclusively for educational purposes**.[77]

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[74] *Supra* note 38, at 579-580.

[75] *Id*. at 575-578.

[76] *Id*. at 581-582.

[77] *Id*. at 580-581.

We now adopt *YMCA* as precedent and hold that:

1. The last paragraph of Section 30 of the Tax Code is without force and effect with respect to non-stock, non-profit educational institutions, *provided*, that the non-stock, non-profit educational institutions prove that its assets and revenues are used actually, directly and exclusively for educational purposes.

2. The tax-exemption constitutionally-granted to non-stock, non-profit educational institutions, is not subject to limitations imposed by law.

**The tax exemption granted by the Constitution to non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their assets, revenues and income[78] for educational purposes.**

We find that unlike **Article VI, Section 28 (3)** of the Constitution (pertaining to charitable institutions, churches, parsonages or convents, mosques, and non-profit cemeteries), which exempts from tax *only* the ***assets****, i.e.*, "all **lands, buildings, and improvements**, actually, directly, and exclusively used for religious, charitable, or educational purposes...," **Article XIV, Section 4 (3)**categorically states that "**[a]ll *revenues* and assets**... used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties."

The addition and express use of the word *revenues* in Article XIV, Section 4 (3) of the Constitution is not without significance.

We find that the text demonstrates the policy of the 1987 Constitution, discernible from the records of the 1986

[78] For purposes of construing Article XIV, Section 4 (3) of the Constitution, we treat *income* and *revenues* as synonyms. *Black's Law Dictionary* (Fifth Edition, 1979) defines *revenues* as "return or yield; profit as that which returns or comes back from investment; the annual or periodical rents, profits, interest or issues of any species of property or personal..." (p. 1185) and *income* as "the return in money from one's business, labor, or capital invested; gains, profits, salary, wages, etc ..." (p. 687).

Constitutional Commission[79] to provide broader tax privilege to non-stock, non-profit educational institutions as recognition of their role in assisting the State provide a public good. The tax exemption was seen as beneficial to students who may otherwise be charged unreasonable tuition fees if not for the tax exemption extended to **all revenues and assets** of non-stock, non-profit educational institutions.[80]

Further, a plain reading of the Constitution would show that Article XIV, Section 4 (3) does not require that the revenues and income must have also been sourced from educational activities or activities related to the purposes of an educational institution. The phrase *all revenues* is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties.[81]

We find it helpful to discuss at this point the taxation of *revenues* versus the taxation of *assets*.

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[79] *See* Record of the Constitutional Commission No. 69, Volume IV, August 29, 1986.

[80] *See* IV Record 401, 402, as cited by DLSU, *Rollo*, p. 283 (G.R. No. 196596). The following comments of the Constitutional Commission members are illuminating:

MR. GASCON: ... There are many schools which are genuinely non-profit and non-stock but which may have been taxed at the expense of students. In the long run, these schools oftentimes have to increase tuition fees, which is detrimental to the interest of the students. So when we encourage non-stock, non-profit institutions be assuring them of tax exemption, we also assure the students of lower tuition fees. That is the intent.

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COMM. NOLLEDO: ... So I think, what is important here is the philosophy behind the duty on the part of the State to educate the Filipino people that duty is being shouldered by private institutions. In order to provide incentive to private institutions to share with the State the responsibility of educating the youth, I think we should grant tax exemption.

[81] As the Constitution is not primarily a lawyer's document, its language should be understood in the sense that it may have in common. Its words should be given their ordinary meaning except where technical terms are employed. *See: People v. Derilo*, 338 Phil. 350, 383 (1997).

*Revenues* consist of the amounts earned by a person or entity from the conduct of business operations.[82] It may refer to the sale of goods, rendition of services, or the return of an investment. Revenue is a component of the tax base in income tax,[83] VAT,[84] and local business tax (*LBT*).[85]

*Assets*, on the other hand, are the tangible and intangible properties owned by a person or entity.[86] It may refer to real estate, cash deposit in a bank, investment in the stocks of a corporation, inventory of goods, or any property from which the person or entity may derive income or use to generate the same. In Philippine taxation, the fair market value of real property is a component of the tax base in real property tax (*RPT*).[87] Also, the landed cost of imported goods is a component of the tax base in VAT on importation[88] and tariff duties.[89]

Thus, when a non-stock, non-profit educational institution proves that it uses its *revenues* actually, directly, and exclusively for educational purposes, it shall be exempted from income tax, VAT, and LBT. On the other hand, when it also shows

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[82] *Black's Law Dictionary, Fifth Edition*, defines "Revenues" as, "Return or yield, as of land; profit as that which returns or comes back from an investment; the annual or periodical rents, profits, interest or issues of any species of property, real or personal; income of individual, corporation, government, *etc*." (citing *Willoughby v. Willoughby*, 66 R.I. 430, 19 A.2d 857, 860)

[83] Section 32, Tax Code.

[84] Sections 106 and 108, Tax Code.

[85] Section 143 cf. Section 131(n), Local Government Code.

[86] *Black's Law Dictionary, Fifth Edition*, defines "Assets" as, "Property of all kinds, real and personal, tangible and intangible, including, *inter alia*, for certain purposes, patents and causes of action which belong to any person including a corporation and the estate of a decedent. The entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his or his debts."

[87] Section 208 cf. Sections 233 and 235, Local Government Code.

[88] Section 107, Tax Code.

[89] Section 104, PD 1464, otherwise known as the Tariff and Customs Code of the Philippines.

that it uses its *assets* in the form of real property for educational purposes, it shall be exempted from RPT.

To be clear, proving the actual use of the taxable item will result in an exemption, but the specific tax from which the entity shall be exempted from shall depend on whether the item is an item of revenue or asset.

To illustrate, if a university leases a portion of its school building to a bookstore or cafeteria, the leased portion is *not actually, directly and exclusively* used for educational purposes, even if the bookstore or canteen caters only to university students, faculty and staff.

The leased portion of the building may be subject to ***real property tax***, as held in *Abra Valley College, Inc. v. Aquino*.[90] We ruled in that case that the test of exemption from taxation is the *use of the property* for purposes mentioned in the Constitution. We also held that the exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes.

In concrete terms, the lease of a portion of a school building for commercial purposes, removes such *asset* from the ***property tax*** exemption granted under the Constitution.[91] There is no exemption because the *asset is not used actually, directly and exclusively for educational purposes*. The commercial use of the property is also *not* incidental to and reasonably necessary for the accomplishment of the main purpose of a university, which is to educate its students.

However, if the university *actually, directly and exclusively uses for educational purposes* the *revenues* earned from the lease of its school building, such revenues shall be exempt from taxes and duties. The tax exemption no longer hinges on the use of the asset from which the revenues were earned, but on *the actual, direct and exclusive use of the revenues for educational purposes*.

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[90] 245 Phil. 83 (1988).

[91] *Id*. at 91-92.

Parenthetically, income and revenues of non-stock, non-profit educational institution *not* used actually, directly and exclusively for educational purposes are not exempt from duties and taxes. To avail of the exemption, the taxpayer must ***factually prove*** that it used actually, directly and exclusively for educational purposes the revenues or income sought to be exempted.

The crucial point of inquiry then is on the ***use of the assets*** or on the ***use of the revenues***. These are two things that must be viewed and treated separately. But so long as the assets *or* revenues are *used actually, directly and exclusively for educational purposes,* they are exempt from duties and taxes.

**The tax exemption granted by the Constitution to non-stock, non-profit educational institutions, unlike the exemption that may be availed of by proprietary educational institutions, is not subject to limitations imposed by law.**

That the Constitution treats non-stock, non-profit educational institutions differently from proprietary educational institutions cannot be doubted. As discussed, the privilege granted to the former is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. In clear contrast, the tax privilege granted to the latter may be subject to limitations imposed by law.

We spell out below the difference in treatment if only to highlight the privileged status of non-stock, non-profit educational institutions compared with their proprietary counterparts.

While a non-stock, non-profit educational institution is classified as a tax-exempt entity under Section 30 (*Exemptions from Tax on Corporations*) of the Tax Code, a proprietary educational institution is covered by Section 27 (*Rates of Income Tax on Domestic Corporations*).

To be specific, Section 30 provides that exempt organizations like non-stock, non-profit educational institutions shall not be taxed on income received by them as such.

Section 27 (B), on the other hand, states that "[p]roprietary educational institutions...which are nonprofit shall pay a tax of ten percent (10%) on their taxable income...*Provided*, that if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions...[the regular corporate income tax of 30%] shall be imposed on the entire taxable income..."[92]

By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% corporate income tax. The reduced rate is applicable only if: (1) the proprietary educational institution is non- profit and (2) its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income.

Consistent with Article XIV, Section 4 (3) of the Constitution, these limitations do not apply to non-stock, non-profit educational institutions.

Thus, we declare the last paragraph of Section 30 of the Tax Code without force and effect for being contrary to the Constitution insofar as it subjects to tax the income and revenues of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purpose. We make this declaration in the exercise of and consistent with our duty[93] to uphold the primacy of the Constitution.[94]

Finally, we stress that our holding here pertains only to non-stock, non-profit educational institutions and does not cover

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[92] Section 27 (B) further provides that the term *unrelated trade, business or other activity* means any trade, business or activity, the conduct of which is not substantially related to the exercise or performance by such educational institution ... of its primary purpose of functions.

[93] CONSTITUTION, Article VIII, Section 5 (2).

[94] In *Kida, et al. v. Senate of the Philippines, et al.*, 675 Phil. 316, 365-366 (2011), we held that the primacy of the Constitution as the supreme law of the land dictates that where the Constitution has itself made a determination or given its mandate, then the matters so determined or mandated should be respected until the Constitution itself is changed by amendment or repeal through the applicable constitutional process.

the other exempt organizations under Section 30 of the Tax Code.

For all these reasons, we hold that the income and revenues of DLSU *proven* to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes.

**II. The LOA issued to DLSU is not entirely void. The assessment for taxable year 2003 is valid.**

DLSU objects to the CTA *En Banc*'s conclusion that the LOA is valid for taxable year 2003 and insists that the entire LOA should be voided for being contrary to RMO No. 43-90, which provides that if tax audit includes more than one taxable period, the other periods or years shall be specifically indicated in the LOA.

A LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities[95] and for the purpose of collecting the correct amount of tax,[96] in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. The LOA commences the audit process[97] and informs the taxpayer that it is under audit for possible deficiency tax assessment.

Given the purposes of a LOA, is there basis to completely nullify the LOA issued to DLSU, and consequently, disregard the BIR and the CTA's findings of tax deficiency for taxable year 2003?

We answer in the negative.

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[95] Revenue Audit Memorandum Order No. 2-95.

[96] *Rollo*, p. 79 (G.R. No. 198841). *See* Section 13 of the tax Code.

[97] *See* the *Taxpayers Bill of Rights* at http://www.bir.gov.ph/index.₱/taxpayer-bill-of-rights.html last accessed on June 1, 2016.

The relevant provision is Section C of RMO No. 43-90, the pertinent portion of which reads:

> 3. A Letter of Authority [LOA] should cover a taxable period not exceeding one taxable year. The practice of issuing [LOAs] covering audit of unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the [LOA].[98]

What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs.

Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years*, which may include documents from as far back as ten years in cases of *fraud* audit.[99]

In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. The LOA does not strictly comply with RMO 43-90 because it includes unverified prior years. This does not mean, however, that the entire LOA is void.

As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years

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[98] Cited in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, *supra* note 30, at 531.

[99] Section 222, Tax Code.

2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.

Lastly, the Commissioner's claim that DLSU failed to raise the issue of the LOA's validity at the CTA Division, and thus, should not have been entertained on appeal, is not accurate.

On the contrary, the CTA *En Banc* found that the issue of the LOA's validity came up during the trial.[100] DLSU then raised the issue in its *memorandum* and *motion for partial reconsideration* with the CTA Division. DLSU raised it again on appeal to the CTA *En Banc*. Thus, the CTA *En Banc* could, as it did, pass upon the validity of the LOA.[101] Besides, the Commissioner had the opportunity to argue for the validity of the LOA at the CTA *En Banc* but she chose not to file her comment and memorandum despite notice.[102]

**III. The CTA correctly admitted the supplemental evidence formally offered by DLSU.**

The Commissioner objects to the CTA Division's admission of DLSU's supplemental pieces of documentary evidence.

To recall, DLSU formally offered its supplemental evidence upon filing its motion for reconsideration with the CTA Division.[103] The CTA Division admitted the supplemental evidence, which proved that a portion of DLSU's rental income was used actually, directly and exclusively for educational purposes. Consequently, the CTA Division reduced DLSU's tax liabilities.

We uphold the CTA Division's admission of the supplemental evidence on distinct but mutually reinforcing grounds, to wit: (1) *the Commissioner failed to timely object to the formal offer*

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[100] *Rollo*, p. 78 (G.R. No. 198841).

[101] *Id.* at 75-79.

[102] *Id.* at 73-74.

[103] *Id.* at 155-159 (G.R. No. 196596).

*of supplemental evidence*; and (2) *the CTA is not governed strictly by the technical rules of evidence*.

*First*, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.[104]

The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal.[105] Because of a party's failure to timely object, the evidence offered becomes part of the evidence in the case. As a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[106]

As disclosed by DLSU, the Commissioner did not oppose the supplemental formal offer of evidence despite notice.[107] The Commissioner objected to the admission of the supplemental evidence only when the case was on appeal to the CTA *En Banc*. By the time the Commissioner raised her objection, it was too late; the ***formal offer, admission*** and ***evaluation*** of the supplemental evidence were all *fait accompli*.

We clarify that while the Commissioner's failure to promptly object had no bearing on the materiality or sufficiency of the supplemental evidence admitted, she was bound by the outcome of the CTA Division's assessment of the evidence.[108]

*Second*, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal

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[104] *Asian Construction and Development Corp. v. COMFAC Corp.*, 535 Phil. 513, 517-518 (2006) citing *Tison v. Court of Appeals*, G.R. No. 121027, July 31, 1997, 276 SCRA 582, 596-597.

[105] *Id.* citing *Arwood Industries, Inc. v. D.M Consunji, Inc.*, G.R. No. 142277, December 11, 2002, 394 SCRA 11, 18.

[106] *Id.* at 518.

[107] *Rollo*, p. 302 (G.R. No. 196596), CTA Division Resolution dated June 9, 2010, quoted by DLSU.

[108] *Supra* note 103.

offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified.

Notably, this Court had in the past admitted and considered evidence attached to the taxpayers' motion for reconsideration.

In the case of *BPI-Family Savings Bank v. Court of Appeals*,[109] the tax refund claimant attached to its motion for reconsideration with the CTA its *Final Adjustment Return*. The Commissioner, as in the present case, did not oppose the taxpayer's motion for reconsideration and the admission of the *Final Adjustment Return*.[110] We thus admitted and gave weight to the *Final Adjustment Return* although it was only submitted upon motion for reconsideration.

We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence[111] and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering *undisputed facts* to arrive at a just determination of a controversy.[112]

We applied the same reasoning in the subsequent cases of *Filinvest Development Corporation v. Commissioner of Internal Revenue*[113] and *Commissioner of Internal Revenue v. PERF Realty Corporation*,[114] where the taxpayers also submitted the supplemental supporting document only upon filing their motions for reconsideration.

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[109] 386 Phil. 719 (2000).

[110] *Id*. at 726.

[111] *See* Section 8, Republic Act No. 1125, published in *Official Gazette*, S. No. 175 / 50 OG No. 8, 3458 (August, 1954).

[112] *Supra* note 91, at 726.

[113] 556 Phil. 439 (2007).

[114] 579 Phil. 442 (2008).

Although the cited cases involved claims for *tax refunds*, we also dispense with the strict application of the technical rules of evidence in the present *tax assessment* case. If anything, the liberal application of the rules assumes greater force and significance in the case of a taxpayer who claims a constitutionally granted tax exemption. While the taxpayers in the cited cases claimed *refund* of excess tax payments based on the Tax Code,[115] DLSU is claiming *tax exemption* based on the Constitution. If liberality is afforded to taxpayers who paid more than they should have under a statute, then with more reason that we should allow a taxpayer to prove its exemption from tax based on the Constitution.

Hence, we sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, but more so because the strict application of the technical tules of evidence may defeat the intent of the Constitution.

**IV. The CTA's appreciation of evidence is generally binding on the Court unless compelling reasons justify otherwise.**

It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[116] We thus accord the *findings of fact* by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[117]

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[115] Section 76 in relation to Section 229 of the Tax Code.

[116] *Commissioner of Internal Revenue v. Asian Transmission Corporation*, 655 Phil. 186, 196 (2011).

[117] *Commissioner of Internal Revenue v. Toledo Power, Inc.*, G.R. No. 183880, January 20, 2014, 714 SCRA 276, 292, citing *Barcelon*,

*We sustain the factual findings of the CTA.*

The parties failed to raise credible basis for us to disturb the CTA's findings that DLSU had used actually, directly and exclusively for educational purposes a *portion* of its assessed income and that it had remitted the DST payments though an online imprinting machine.

*a. DLSU used actually, directly, and exclusively for educational purposes a portion of its assessed income.*

To see how the CTA arrived at its factual findings, we review the process undertaken, from which it deduced that DLSU successfully proved that it used actually, directly and exclusively for educational purposes a *portion* of its rental income.

The CTA reduced DLSU's deficiency income tax and VAT liabilities in view of the submission of the supplemental evidence, which consisted of *statement of receipts, statement of disbursement and fund balance* and *statement of fund changes*.[118]

These documents showed that DLSU borrowed ₱93.86 Million,[119] which was used to build the university's Sports Complex. Based on these pieces of evidence, the CTA found that DLSU's rental income from its concessionaires were indeed transmitted and used for the payment of this loan. The CTA held that the degree of preponderance of evidence was sufficiently met to prove actual, direct and exclusive use for educational purposes.

The CTA also found that DLSU's rental income from *other* concessionaires, which were allegedly deposited to a *fund* (*CF-CPA Account*),[120] intended for the university's capital projects, was ***not proved to have been used actually, directly and exclusively for educational purposes***. The CTA observed that

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*Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785 (2006).

[118] *Rollo*, pp. 143-144 (G.R. No. 196596).

[119] *Id*. at 144 (G.R. No. 196596), the amount is rounded-off from ₱93,860,675.40.

[120] *Id*. at 143 (G.R. No. 196596). Capital Fund - Capital Projects Account.

"[DLSU]...failed to fully account for and substantiate all the disbursements from the [fund]." Thus, the CTA "cannot ascertain whether rental income from the [other] concessionaires was indeed used for educational purposes."[121]

To stress, the CTA's factual findings were based on and supported by the report of the Independent CPA who reviewed, audited and examined the voluminous documents submitted by DLSU.

Under the CTA Revised Rules, an Independent CPA's functions include: (a) examination and verification of receipts, invoices, vouchers and other long accounts; (b) reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents; (c) preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid; (d) **making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence**; (e) submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit; (f) testifying on such formal report; and (g) performing such other functions as the CTA may direct.[122]

Based on the Independent CPA's report and on its own appreciation of the evidence, the CTA held that only the *portion* of the rental income pertaining to the *substantiated disbursements* (*i.e.*, proved by receipts, vouchers, etc.) from the CF-CPA Account was considered as used actually, directly and exclusively for educational purposes. Consequently, the unaccounted and unsubstantiated disbursements must be subjected to income tax and VAT.[123]

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[121] *Id.* at 144 (G.R. No. 196596).

[122] Rule 3, Section 2 of the Revised Rules of the CTA, A.M. No. 05-11-07-CTA, November 22, 2005.

[123] *Rollo*, pp. 86, 145 (G.R. No. 196596).

The CTA then *further reduced* DLSU's tax liabilities by cancelling the assessments for taxable years 2001 and 2002 due to the defective LOA.[124]

The Court finds that the above fact-finding process undertaken by the CTA shows that it based its ruling on the evidence on record, which we reiterate, were examined and verified by the Independent CPA. Thus, we see no persuasive reason to deviate from these factual findings.

However, while we generally respect the *factual findings* of the CTA, it does not mean that we are bound by its *conclusions*. In the present case, we do not agree with the *method* used by the CTA to arrive at DLSU's unsubstantiated rental income (*i.e.*, income not proved to have been actually, directly and exclusively used for educational purposes).

To recall, the CTA found that DLSU earned a *rental income* of **₱10,610,379.00** in taxable year 2003.[125] DLSU earned this income from leasing a portion of its premises to: 1) *MTO-Sports Complex*, 2) *La Casita*, 3) *Alarey, Inc.*, 4) *Zaide Food Corp.*, 5) *Capri International*, and 6) *MTO Bookstore*.[126]

To prove that its rental income was used for educational purposes, DLSU identified the transactions where the rental income was expended, *viz.*: 1) **₱4,007,724.00**[127] used to pay the loan obtained by DLSU to build the Sports Complex; and 2) **₱6,602,655.00** transferred to the CF-CPA Account.[128]

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[124] *Id.* at 81 (G.R. No. 198841).

[125] *Id.* at 101, page 9 of CTA Division Amended Decision.

[126] *Id.* at 98 (G.R. No. 198841).

[127] *Id.* at 87. According to the CTA, the income earned from the lease of premises to MTO-Sports Complex and La Casita amounted to ₱2,090,880.00 and ₱1,916,844.00, respectively (Total of ₱4,007,724.00). These amounts were specifically identified as part of the proceeds used by DLSU to pay an outstanding loan obligation that was previously obtained for the purpose of constructing the Sports Complex.

[128] *Id.*

DLSU also submitted documents to the Independent CPA to prove that the ₱6,602,655.00 transferred to the CF-CPA Account was used actually, directly and exclusively for educational purposes. According to the Independent CPA' findings, DLSU was able to substantiate disbursements from the CF-CPA Account amounting to **₱6,259,078.30**.

Contradicting the findings of the Independent CPA, the CTA concluded that out of the **₱10,610,379.00** rental income, **₱4,841,066.65** was *unsubstantiated*, and thus, subject to income tax and VAT.[129]

The CTA then concluded that the ratio of substantiated disbursements to the total disbursements from the CF-CPA Account for taxable year 2003 is only 26.68%.[130] The CTA held as follows:

> However, as regards petitioner's rental income from Alarey, Inc., Zaide Food Corp., Capri International and MTO Bookstore, which were transmitted to the CF-CPA Account, petitioner again failed to fully account for and substantiate all the disbursements from the CF-CPA Account; thus failing to prove that the rental income derived therein were actually, directly and exclusively used for educational purposes. Likewise, the findings of the Court-Commissioned Independent CPA show that the disbursements from the CF-CPA Account for fiscal year 2003 amounts to ₱6,259,078.30 only. Hence, this portion of the rental income, being the substantiated disbursements of the CF-CPA Account, was considered by the Special First Division as used actually, directly and exclusively for educational purposes. Since for fiscal year 2003, the total disbursements per voucher is ₱6,259,078.3 (Exhibit "LL-25-C"), and the total disbursements per subsidiary ledger amounts to ₱23,463,543.02 (Exhibit "LL-29-C"), the ratio of substantiated disbursements for fiscal year 2003 is 26.68% (₱6,259,078.30/₱23,463,543.02).Thus, the substantiated portion of CF-CPA Disbursements for fiscal year 2003, arrived at by multiplying the ratio of 26.68% with the total rent income added to and used in the CF-CPA Account in the amount of ₱6,602,655.00 ts ₱1,761,588.35.[131] (emphasis supplied)

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[129] *Id*.

[130] *Id*. at 86.

[131] *Id*. at 85-86.

For better understanding, we summarize the CTA's computation as follows:

1. The CTA subtracted the rent income used in the construction of the Sports Complex (₱4,007,724.00) from the rental income (₱10,610,379.00) earned from the abovementioned concessionaries. The difference (₱6,602,655.00) was the portion claimed to have been deposited to the CF-CPA Account.
2. The CTA then subtracted the *supposed* substantiated portion of CF-CPA disbursements (₱1,761,308.37) from the ₱6,602,655.00 to arrive at the *supposed unsubstantiated* portion of the rental income (₱4,841,066.65).[132]
3. The *substantiated* portion of CF-CPA disbursements (₱1,761,308.37)[133] was derived by multiplying the rental income claimed to have been added to the CF-CPA Account (₱6,602,655.00) by 26.68% or the ratio of *substantiated* disbursements to *total disbursements* (₱23,463,543.02).

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[132] The tax base of ₱4,841,066.65 was computed as follows:

| | |
|---|---|
| Rental income | 10,610,379.00 |
| Less: Rent income used in construction of Sports Complex | 4,007,724.00 |
| Rental income allegedly added and used in the CF-CPA Account | 6,602,655.00 |
| Less: Substantiated portion of CF-CPA disbursements | 1,761,588.35 |
| Tax base for deficiency income tax and VAT | **4,841,066.65** |

[133] The *substantiated* portion of CF-CPA disbursements amounting to ₱1,761,308.37 was computed as follows:

| | |
|---|---|
| Rental income allegedly added and used in the CF-CPA Account | 6,602,655.00 |
| Multiply by: Ratio of substantiated disbursements (*See note 134*) | 26.68% |
| Substantiated portion of CF-CPA disbursements | **1,761,588.35** |

4. The 26.68% ratio[134] was the result of dividing the substantiated disbursements from the CF-CPA Account as found by the Independent CPA (₱6,259,078.30) by the total disbursements (₱23,463,543.02) from the same account.

We find that this system of calculation is incorrect and does not truly give effect to the constitutional grant of tax exemption to non-stock, non-profit educational institutions. The CTA's reasoning is flawed because it required DLSU to substantiate an amount that is greater than the rental income deposited in the CF-CPA Account in 2003.

To reiterate, to be exempt from tax, DLSU has the burden of proving that the proceeds of its rental income (which amounted to a total of ₱10.61 million)[135] were used for educational purposes. This amount was divided into two parts: (a) the ₱4.01 million, which was used to pay the loan obtained for the construction of the Sports Complex; and (b) the ₱6.60 million,[136] which was transferred to the CF-CPA account.

For year 2003, the total disbursement from the CF-CPA account amounted to ₱23.46 million.[137] These figures, read in light of the constitutional exemption, raises the question: **does DLSU claim that the whole total CF-CPA disbursement of ₱23.46 million is tax-exempt so that it is required to prove**

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[134] The ratio of 26.68% was computed as follows:

| | |
|---|---|
| Substantiated disbursements of the CF-CPA Account, per Independent CPA | 6,259,078.30 |
| Divide by: Total disbursements made out of the CF-CPA Account | 23,463,543.02 |
| Ratio | **26.68%** |

[135] For brevity, the exact amount of ₱10,610,379.00 shall hereinafter be expressed as ₱10.61 million.

[136] For brevity, the exact amount of ₱6,602,655.00 shall hereinafter be expressed as ₱6.60 million.

[137] For brevity, the exact amount of ₱23,463,543.02 shall hereinafter be expressed as ₱23.46 million.

**that all these disbursements had been made for educational purposes?**

We answer in the negative.

The records show that DLSU never claimed that the total CF-CPA disbursements of ₱23.46 million had been for educational purposes and should thus be tax-exempt; DLSU only claimed ₱10.61 million for tax-exemption and should thus be required to prove that this amount had been used as claimed.

Of this amount, ₱4.01 had been proven to have been used for educational purposes, as confirmed by the Independent CPA. The amount in issue is therefore the balance of ₱6.60 million which was transferred to the CF-CPA which in turn made disbursements of ₱23.46 million for various general purposes, among them the ₱6.60 million transferred by DLSU.

Significantly, the Independent CPA confirmed that the CF-CPA made disbursements for educational purposes in year 2003 in the amount ₱6.26 million. Based on these given figures, the CTA concluded that the expenses for educational purposes that had been coursed through the CF-CPA should be prorated so that only the portion that ₱6.26 million bears to the total CF-CPA disbursements should be credited to DLSU for tax exemption.

This approach, in our view, is flawed given the constitutional requirement that revenues *actually and directly used* for educational purposes should be tax-exempt. As already mentioned above, DLSU is not claiming that the whole ₱23.46 million CF-CPA disbursement had been used for educational purposes; it only claims that ₱6.60 million transferred to CF-CPA had been used for educational purposes. This was what DLSU needed to prove to have actually and directly used for educational purposes.

That this fund had been first deposited into a separate fund (the CF-CPA established to fund capital projects) lends peculiarity to the facts of this case, but does not detract from the fact that the deposited funds were DLSU revenue funds that had been confirmed and proven to have been actually and

directly used for educational purposes *via* the CF-CPA. That the CF-CPA might have had other sources of funding is irrelevant because the assessment in the present case pertains only to the rental income which DLSU indisputably earned as revenue in 2003. That the proven CF-CPA funds used for educational purposes should not be prorated as part of its total CF-CPA disbursements for purposes of crediting to DLSU is also logical because no claim whatsoever had been made that the totality of the CF-CPA disbursements had been for educational purposes. No prorating is necessary; to state the obvious, exemption is based on *actual and direct use* and this DLSU has indisputably proven.

Based on these considerations, DLSU should therefore be liable only for the difference between what it claimed and what it has proven. In more concrete terms, DLSU *only* had to prove that its rental income for taxable year 2003 (₱10,610,379.00) was used for educational purposes. Hence, while the total disbursements from the CF-CPA Account amounted to ₱23,463,543.02, DLSU only had to substantiate its ₱10.6 million rental income, part of which was the ₱6,602,655.00 transferred to the CF-CPA account. Of this latter amount, ₱6.259 million was substantiated to have been used for educational purposes.

To summarize, we thus revise the tax base for deficiency income tax and VAT for taxable year 2003 as follows:

| | CTA Decision[138] | **Revised** |
|---|---|---|
| Rental income | 10,610,379.00 | 10,610,379.00 |
| Less: Rent income used in construction of the Sports Complex | 4,007,724.00 | 4,007,724.00 |
| Rental income deposited to the CF-CPA Account | 6,602,655.00 | 6,602.655.00 |
| Less: Substantiated portion of CF-CPA disbursements | 1,761,588.35 | 6,259,078.30 |

[138] *Supra* note 130.

| | | |
|---|---|---|
| **Tax base for deficiency income tax and VAT** | 4,841,066.65 | **343,576.70** |

On DLSU's argument that the CTA should have appreciated its evidence in the same way as it did with the evidence submitted by Ateneo in *another separate case*, the CTA explained that the issue in the Ateneo case was not the same as the issue in the present case.

The issue in the Ateneo case was whether or not Ateneo could be held liable to pay income taxes and VAT under certain BIR and Department of Finance issuances[139] that required the educational institution to *own and operate* the canteens, or other commercial enterprises within its campus, as condition for tax exemption. The CTA held that the Constitution does not require the educational institution to own or operate these commercial establishments to avail of the exemption.[140]

Given the lack of complete identity of the issues involved, the CTA held that it had to evaluate the separate sets of evidence differently. The CTA likewise stressed that DLSU and Ateneo gave distinct defenses and that its wisdom "cannot be equated on its decision on *two different cases with two different issues*."[141]

DLSU disagrees with the CTA and argues that the entire assessment must be cancelled because it submitted similar, if not stronger sets of evidence, as Ateneo. We reject DLSU's argument for being *non sequitur*. Its reliance on the concept of uniformity of taxation is also incorrect.

*First*, even granting that Ateneo and DLSU submitted *similar evidence*, the ***sufficiency and materiality*** of the evidence supporting their respective claims for tax exemption would necessarily differ because their attendant *issues and facts* differ.

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[139] *Rollo*, pp. 82-83 (G.R. No. 198841). Ateneo was assessed deficiency income tax and VAT under Section 2.2 of DOF Circular 137-87 and BIR Ruling No. 173-88.

[140] *Id.* at 83 (G.R. No. 198841).

[141] *Id.* at 83 (G.R. No. 198841).

To state the obvious, the amount of income received by DLSU and by Ateneo during the taxable years they were assessed ***varied***. The amount of tax assessment also *varied*. The amount of income proven to have been used for educational purposes also varied because *the amount substantiated varied*.[142] Thus, the amount of tax assessment cancelled by the CTA *varied*.

On the one hand, the BIR assessed DLSU a total tax deficiency of ***₱17,303,001.12*** for taxable years 2001, 2002 and 2003. On the other hand, the BIR assessed Ateneo a total deficiency tax of ***₱8,864,042.35*** for the same period. Notably, DLSU was assessed deficiency DST, while Ateneo was not.[143]

Thus, although both Ateneo and DLSU claimed that they used their rental income actually, directly and exclusively for educational purposes by submitting similar evidence, *e.g.*, the testimony of their employees on the use of university revenues, the report of the Independent CPA, their income summaries, financial statements, vouchers, etc., the fact remains that *DLSU failed to prove that a portion of its income and revenues had indeed been used for educational purposes*.

*The CTA significantly found that some documents that could have fully supported DLSU's claim were not produced in court.* Indeed, the Independent CPA testified that some disbursements had not been proven to have been used actually, directly and exclusively for educational purposes.[144]

The final nail on the question of evidence is DLSU's own *admission* that the original of these documents *had not in fact been produced before the CTA* although it claimed that there was no bad faith on its part.[145] To our mind, this admission is a good indicator of how the Ateneo and the DLSU cases varied,

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[142] See Ateneo case (CTA Case Nos. 7246 & 7293, March 11, 2010). *Id.* at 140-154 (G.R. No. 198841).

[143] *Id.* at 145 (G.R. No. 198841).

[144] *Id.* at 85-90 (G.R. No. 198841).

[145] *Id.* at 47 (G.R. No. 198841).

resulting in DLSU's failure to substantiate a portion of its claimed exemption.

Further, DLSU's invocation of Section 5, Rule 130 of the Revised Rules on Evidence, that the contents of the missing supporting documents were proven by its recital in some *other authentic documents* on record,[146] can no longer be entertained at this late stage of the proceeding. The CTA did not rule on this particular claim. The CTA also made no finding on DLSU's assertion of lack of bad faith. Besides, it is not our duty to go over these documents to test the truthfulness of their contents, this Court not being a trier of facts.

*Second*, DLSU misunderstands the concept of uniformity of taxation.

Equality and uniformity of taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate.[147] A tax is uniform when it operates with the same force and effect in every place where the subject of it is found.[148] The concept requires that all subjects of taxation similarly situated should be *treated alike and placed in equal footing*.[149]

In our view, the CTA placed Ateneo and DLSU in equal footing. The CTA treated them alike because their income *proved* to have been used actually, directly and exclusively for educational purposes were exempted from taxes. The CTA equally applied the requirements in the *YMCA* case to test if they indeed used their revenues for educational purposes.

DLSU can only assert that the CTA violated the rule on uniformity if it can show that, despite *proving* that it used actually, directly and exclusively for educational purposes its income

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[146] *Id*.

[147] *Churchill v. Concepcion*, 34 Phil. 969. 976 (1916); *Eastern Theatrical Co. vs. Alfonso*, 83 Phil. 852, 862 (1949); *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 130-131 (2005).

[148] *British American Tobacco v. Camacho*, 603 Phil. 38, 48-49 (2009).

[149] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1010 (1996).

and revenues, the CTA still affirmed the imposition of taxes. That the DLSU secured a different result happened because it failed to *fully* prove that it used actually, directly and exclusively for educational purposes its revenues and income.

On this point, we remind DLSU that the rule on uniformity of taxation does *not* mean that subjects of taxation similarly situated are treated in *literally* the same way in all and every occasion. The fact that the Ateneo and DLSU are both non-stock, non-profit educational institutions, does not mean that the CTA or this Court would similarly decide every case for (or against) both universities. Success in tax litigation, like in any other litigation, depends to a large extent on the sufficiency of evidence. DLSU's evidence was wanting, thus, the CTA was correct in not fully cancelling its tax liabilities.

*b. DLSU proved its payment of the DST*

The CTA affirmed DLSU's claim that the DST due on its mortgage and loan transactions were paid and remitted through its bank's *On-Line Electronic DST Imprinting Machine*. The Commissioner argues that DLSU is not allowed to use this method of payment because an educational institution is excluded from the class of taxpayers who can use the *On-Line Electronic DST Imprinting Machine*.

We sustain the findings of the CTA. The Commissioner's argument lacks basis in both the Tax Code and the relevant revenue regulations.

DST on documents, loan agreements, and papers shall be levied, collected and paid for by the person making, signing, issuing, accepting, or transferring the same.[150] The Tax Code provides that whenever one party to the document enjoys exemption from DST, the other party not exempt from DST shall be directly liable for the tax. Thus, it is clear that DST shall be payable by *any* party to the document, such that the payment and compliance by one shall mean the full settlement of the DST due on the document.

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[150] Section 173, Tax Code.

In the present case, DLSU entered into mortgage and loan agreements with banks. These agreements are subject to DST.[151] For the purpose of showing that the DST on the loan agreement has been paid, DLSU presented its agreements bearing the imprint showing that DST on the document has been paid by the bank, its counterparty. The imprint should be sufficient proof that DST has been paid. Thus, DLSU cannot be further assessed for deficiency DST on the said documents.

Finally, it is true that educational institutions are not included in the class of taxpayers who can pay and remit DST through the *On-Line Electronic DST Imprinting Machine* under RR No. 9-2000. As correctly held by the CTA, this is irrelevant because it was not DLSU who used the *On-Line Electronic DST Imprinting Machine* but the bank that handled its mortgage and loan transactions. RR No. 9-2000 expressly includes banks in the class of taxpayers that can use the *On-Line Electronic DST Imprinting Machine*.

Thus, the Court sustains the finding of the CTA that DLSU proved the payment of the assessed DST deficiency, except for the unpaid balance of **₱13,265.48**.[152]

**WHEREFORE**, premises considered, we **DENY** the petition of the Commissioner of Internal Revenue in G.R. No. 196596 and **AFFIRM** the December 10, 2010 decision and March 29, 2011 resolution of the Court of Tax Appeals *En Banc* in CTA *En Banc* Case No. 622,*except* for the total amount of deficiency tax liabilities of De La Salle University, Inc., which had been reduced.

We also **DENY** both the petition of De La Salle University, Inc. in G.R. No. 198841 and the petition of the Commissioner of Internal Revenue in G.R. No. 198941 and thus **AFFIRM** the June 8, 2011 decision and October 4, 2011 resolution of the Court of Tax Appeals *En Banc* in CTA *En Banc* Case No. 671, with the **MODIFICATION** that the base for the deficiency income tax and VAT for taxable year 2003 is **₱343,576.70**.

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[151] Sections 179 and 195, Tax Code.

[152] *Rollo*, p. 89 (G.R. No. 198841).

**SO ORDERED.**

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

*Leonen, J.*, see Dissenting Opinion.

*Mendoza, J.*, on official leave.

## DISSENTING OPINION

**LEONEN, *J.*:**

I agree with the ponencia that Article IV, Section 4(3) of the 1987 Constitution grants tax exemption on *all assets and all revenues* earned by a non-stock, non-profit educational institution, which are actually, directly, and exclusively used for educational purposes. All revenues, whether or not sourced from educational activities, are covered by the exemption. The taxpayer needs only to prove that the revenue is actually, directly, and exclusively used for educational purposes to be exempt from income tax.

I disagree, however, on two (2) points:

*First*, Letter of Authority No. 2794, which covered the "Fiscal Year Ending 2003 and Unverified Prior Years," is void in its entirety for being in contravention of Revenue Memorandum Order No. 43-90. Any assessment based on such defective letter of authority must likewise be void.

*Second*, the Court of Tax Appeals erred in finding that only a portion of the rental income derived by De La Salle University, Inc. (DLSU) from its concessionaires was used for educational purposes.

### I

An audit process to which a particular taxpayer may be subjected begins when a letter of authority is issued by the Commissioner of Internal Revenue or by the Revenue Regional Director. The letter of authority is an official document that empowers a revenue officer to examine and scrutinize a taxpayer's books of accounts and other accounting records in

order to determine the taxpayer's correct internal revenue tax liabilities.[1]

In this regard, Revenue Audit Memorandum Order No. 1-00 provides that a letter of authority authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities *for a particular period*.[2]

Revenue Memorandum Order No. 43-90, on policy guidelines for the audit/investigation and issuance of letters of authority to audit, provides:

> C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> 2. The duplicate of each *internal revenue tax which is specifically indicated in the L/A* shall be attached thereto, unless a return is not required under the Tax Code to be filed therefor or when the taxpayer has not filed a return or the Assessment Branch has certified that no return is on file therein or the same cannot be located.
>
> *3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the*

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[1] TAX CODE, Sec. 13 provides:

Section 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

[2] Revenue Audit Memorandum Order No. 1-00 (2000), VIII (C)(2.2) provides:

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

*other periods or years shall be specifically indicated in the L/A.*

. . . . . .

4. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

. . . . . .

D. Preparation and issuance of L/As.

1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).

2. *The Regional Director shall prepare and sign the L/As* for returns recommended by the RDO for assignment to the ROs, *indicating therein* the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, *the taxable period and kind of tax*; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.

3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (Emphasis supplied)

Thus, under Revenue Memorandum Order No. 43-90, both the taxable period and the kind of tax must be specifically stated.

A much earlier Revenue Memorandum Order was even more explicit:

> The Letter of Authority must be carefully prepared and erasures shall be avoided as much as possible, particularly in the name and address of the taxpayer and the assessment number. A new one should be made if material erasures appear on any Letter of Authority. *The period covered by the authority must be stated definitely. The use of such phrases as "last five years," "1962 and up," "1962 and previous years" and all others of similar import shall not be allowed.* In the preparation of the Letter of Authority the Revenue District Officer must not put the date, the same shall be surplied by the Director immediately before the release thereof by his Office.[3] (Emphasis supplied)

The revenue officer so authorized must not go beyond the authority given; otherwise, the assessment or examination is a nullity.[4] Corollarily, the extent to which the authority must be exercised by the revenue officer must be clearly specified.

Here, Letter of Authority No. 2794,[5] which was the basis of the Bureau of Internal Revenue to examine DLSU's books of account, stated that the examination covers the period *Fiscal Year Ending 2003 and Unverified Prior Years*.

It is my view that the entire Letter of Authority No. 2794 should be struck down as void for being broad, indefinite, and uncertain, and for being in direct contravention to the policy clearly and explicitly declared in Revenue Memorandum Order No. 43-90 that: (a) a letter of authority should cover one (1) taxable period; and (b) if it covers more than one taxable period, it must specify all the periods or years covered.

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[3] Revenue Memorandum Order No. 2-67 (1967), Amendment to Field Circular No. V-157 as amended by RMC No. 22-64 and RMC No. 30-65.

[4] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 530 (2010) [Per *J.* Mendoza, Second Division].

[5] Per Decision, the date of the issuance is not on record.

The prescribed procedures under Revenue Memorandum Order No. 43-90, including the requirement of definitely specifying the taxable year under investigation, were meant to achieve a proper enforcement of tax laws and to minimize, if not eradicate, taxpayers' concerns on arbitrary assessment, undue harassment from Bureau of Internal Revenue personnel, and unreasonable delay in the investigation and processing of tax cases.[6] Inasmuch as tax investigations entail an intrusion into a taxpayer's private affairs, which are protected and guaranteed by the Constitution, the provisions of Revenue Memorandum Order No. 43-90 must be strictly followed.

Letter of Authority No. 2794 effectively allowed the revenue officers to examine, verity, and scrutinize DLSU's books of account and other accounting records without limit as to the covered period. This already constituted an undue intrusion into the affairs of DLSU to its prejudice. DLSU was at the mercy of the revenue officers with no adequate protection or defense.

As early as 1933, this Court in *Sy Jong Chuy v. Reyes*[7] held that the extraordinary inquisitorial power conferred by law upon collectors of internal revenue must be strictly construed. The power should be limited to books and papers relevant to the subject of investigation, which should be mentioned with reasonable certainty. Although the case particularly referred to the use of "*subpoena duces tecum*" by internal revenue officers, its discussion is apropos:

> The foregoing discussion will disclose that there are two factors involved in the correct solution of the question before us. The first fact which must be made to appear by clear and unequivocal proof, as a condition precedent to the right of a court, and, by analogy, an internal revenue officer, to require a person to deliver up for examination by the court or an internal revenue officer his private books and papers, is their relevancy; and the second fact which must be established in the same manner is the specification of documents

[6] *See* Revenue Memorandum Circular No. 04-81, Guidelines in the Proper Enforcement of Tax Laws (July 8, 1980).

[7] 59 Phil. 244 (1933) [Per *J.* Malcolm, *En Banc*].

and an indication of them with as much precision as is fair and feasible[.]

Speaking to the fact of relevancy, there is absolutely no showing of the nature of any official investigation which is being conducted by the Bureau of Internal Revenue, and this is a prerequisite to the use of the power granted by Section 436 of the Administrative Code. Moreover, when the production under a *subpoena duces tecum* is contested on the ground of irrelevancy, it is for the movant or the internal revenue officer to show facts sufficient to enable the court to determine whether the desired documents are material to the issues. And here, all that we have to justify relevancy is the typewritten part of a mimeographed form reading: "it being necessary to use them (referring to the books) in an investigation now pending under the Income Tax and Internal Revenue Laws." This is insufficient.

But it is in the second respect that the subpoena is most fatally defective. It will be recalled that it required the production of "all the commercial books or any other papers on which are recorded your transactions showing income and expenses for the years 1925, 1926, 1927, 1928 inclusive", that these books numbered fifty-three in all, and that they are needed in the business of the corporation. In the parlance of equity, the subpoena before us savored of a fishing bill, and such bills are to be condemned. That this is so is shown by the phraseology of the subpoena which is a general command to produce all of the books of account for four years. This, it seems to us, made the subpoena unreasonably broad in scope. The internal revenue officer had it within his power to examine any or all of the books of the corporation in the offices of the corporation and then having ascertained what particular books were necessary for an official investigation had it likewise within his power to issue a *subpoena duces tecum* sufficiently explicit to be understood and sufficiently reasonable not to interfere with the ordinary course of business. But this method was not followed. Obviously, if the special deputy could in 1930 call for the production of the books of the corporation for 1925, 1926, 1927, and 1928, the officer could have called for the production of the books for the year just previous, or 1929, and for the books of the current year, and if this could be done, the intrusion into private affairs with disastrous paralyzation of business can easily be visualized.[8] (Citations omitted)

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[8] *Id*. at 257-259.

This Court held that the *subpoena duces tecum* issued by a special deputy of the Collector of Internal Revenue, which commanded a Chinese merchant to appear at the Internal Revenue Office and produce for investigation all commercial books or papers showing his transactions for four (4) years (from 1925 to 1928) was "unreasonably broad in scope." This Court further held that the subpoena was not properly issued because the Collector failed to show the relevance of the Chinese books and to specify the particular books desired, and its sweeping scope clashed with the constitutional prohibition against unreasonable search and seizure. Thus:

> Generally speaking, there are two readily understandable points of view of the question at issue. The first is the viewpoint of the tax collecting officials. Taxation is a necessity as all must agree. It is for the officials who have to enforce the revenue laws to see to it that there is no evasion of those laws and that there is an equal distribution of the tax burden. To accomplish their duty it will often be incumbent upon the internal revenue officers, for the efficient administration of the service, to inspect the books of merchants and even require the production of those books in the offices of the inspecting officials. The right of a citizen to his property becomes subservient to the public welfare. All [these] we are the first to concede. In proper cases, the officers of the Bureau of Internal Revenue should receive the support of the courts when these officers attempt to perform in a conscientious and lawful manner the duties imposed upon them by law. The trouble is that the particular subpoena under scrutiny neither shows its relevancy nor specifies with the particularity required by law the books which are to be produced.
>
> The second viewpoint is not that of the government on which is imposed the duty to collect taxes, but is the viewpoint of the merchant. A citizen goes into business, and in so doing provides himself with the necessary books of account. He cannot have government officials on a mere whim or a mere suspension taking his books from his offices to the offices of the government for inspection. To permit that would be to place a weapon in the hands of a miscellaneous number of government employees some of whom might use it improperly and others of whom might use it improperly. With an understanding of the obligations of the government to protect the citizen, the constitution and the organic law have done so by throwing around him a wall which makes his home and his private papers his

castle. It should be our constant purpose to keep a *subpoena duces tecum* from being of such a broad and sweeping character as to clash with the constitutional prohibition against unreasonable searches and seizures.

Answering the question at issue, we do so without vacillation by holding that the *subpoena duces tecum* was not properly issued in accordance with law because the showing of relevancy was not sufficient to justify enforcing the production of the Chinese books; because the *subpoena duces tecum* failed to specify the particular books desired, and because a ruling should be avoided which in any manner appears to sanction an unreasonable search and seizure. In the absence of a showing of materiality, and in the absence of all particularity in specifying what is wanted by a *subpoena duces tecum*, the refusal of a merchant to obey a subpoena, commanding him to produce his commercial books, will be sustained. The courts function to protect the individual citizen of whatever class or nationality against an unjust inquisition of his books and papers.[9]

If we were to uphold the validity of a letter of authority covering a base year plus unverified prior years, we would in essence encourage the unscrupulous practice of issuing letters of authority even without prior compliance with the procedure that the Commissioner herself prescribed. This would not help in curtailing inefficiencies and abuses among revenue officers in the discharge of their tasks. There is nothing more devious than the scenario where government ignores as much its own rules as the taxpayer's constitutional right against the unreasonable examination of its books and papers.

In *Viduya v. Berdiago*:[10]

It is not for this Court to do less than it can to implement and enforce the mandates of the customs and revenue laws. The evils associated with tax evasion must be stamped out - *without any disregard, it is to be affirmed, of any constitutional right*.[11] (Emphasis supplied)

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[9] *Id*. at 259-260.

[10] 165 Phil. 533 (1976) [Per *J*. Fernando, Second Division).

[11] *Id*. at 542.

The inevitability and indispensability of taxation is conceded. Under the law, the Bureau of Internal Revenue has access to all relevant or material records and data of the taxpayer for the purpose of collecting the correct amount of tax.[12] However, this authority must be exercised reasonably and under the prescribed procedure.[13] The Commissioner and revenue officers must strictly comply with the requirements of the law and its own rules,[14] with due regard to taxpayers' constitutional rights. Otherwise, taxpayers are placed in jeopardy of being deprived of their property without due process of law.

There is nothing in the law—nor do I see any great difficulty—that could have prevented the Commissioner from cancelling Letter of Authority No. 2794 and replacing it with a valid Letter of Authority. Thus, with the nullity of Letter of Authority No. 2794, the assessment against DLSU should be set aside.

**II**

DLSU is not liable for deficiency income tax and value-added tax.

The following facts were established:

(1) DLSU derived its income from its lease contracts for canteen and bookstore services with the following concessionaires:

   i. Alarey, Inc.

   ii. Capri International, Inc.

   iii. Zaide Food Corporation

   iv. La Casita Roja

   v. MTO International Product Mobilizer, Inc.

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[12] TAX CODE, Sec. 5; *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306 (2005) [Per *J.* Callejo, Sr., Second Division].

[13] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 353 (2014) [Per *J.* Peralta, Third Division].

[14] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 184 (2010) [Per *J.* Mendoza, Second Division].

(2) The rental income from the concessionaires was added to the Depository Fund - PE Sports Complex Fund and to the Physical Plant Fund (PPF), and, this income was spent on the Current Fund-Capital Projects Account (CF-CPA).

(3) DLSU's rental income from MTO- PE Sports Complex and La Casita, which was transmitted and used for the payment of the loan from Philippine Trust Company for the construction of the PE Sports Complex, was actually, directly, and exclusively used for educational purposes.[15]

(4) DLSU's rental income from Alarey, Inc., Zaide Food Corporation, Capri International, and MTO - Bookstore were transmitted to the CF-CPA Account.[16]

These facts were supported by the findings of the Court-commissioned independent CPA (ICPA), Atty. Raymund S. Gallardo of Punongbayan & Araullo:

> From the journal vouchers/official receipts, we have traced that the income received from Alarey, Capri, MTO-Bookstore and Zaide were temporarily booked under the Revenue account with the following codes: 001000506, 001000507, 001000513 and 001000514. At the end of the year, said temporary account were closed to PPF account (*Exhibits LL-3-A, LL-3-B and LL-3-C*).
>
> On the other hand, we have traced that the rental income received from MTO-PE Sports and La Casita [was] temporarily booked under the Revenue Account code 001000515 and 001000516 upon receipt in the fiscal year May 31, 2001. At the end of fiscal year 2001, the said temporary accounts were closed to the DF-PE Sports. However, starting fiscal year 2002, the rental income from the said lessees was directly recorded under the DF-PE Sports account (*Exhibits LL-4-A, LL-4-B, and LL-4-C*).[17] (Emphasis in the original)

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[15] *Rollo* (G.R. No. 196596), pp. 143-144, CTA *En Banc* Decision dated July 29, 2010.

[16] *Id*. at 144.

[17] *Id*. at 119, CTA Decision dated January 5, 2010.

With regard to the disbursements from the CF-CPA Fund, the ICPA examined DLSU's disbursement vouchers as well as subsidiary and general ledgers. It made the following findings:

| **Nature of Expenditure** | **2001** | **2002** | **2003** |
|---|---|---|---|
| Building Improvement | ₱ 9,612,347.74 | 13,445,828.40 | 16,763,378.06 |
| Furniture, Fixtures & Equipment | 2,329,566.54 | 1,931,392.20 | 4,714,171.44 |
| Air conditioner | 2,216,797.20 | 1,748,813.16 | 1,758,278.00 |
| Computer Equipment | — | — | 227,715.52 |
| **Total per subsidiary ledger** | **₱ 14,158,711.48** | **₱ 17,126,033.76** | **₱ 23,463,543.02** |
| Building Improvement | 3,539,356.37 | 6,534,658.19 | 5,660,433.30 |
| Furniture, Fixtures & Equipment | 1,654,196.14 | 767,864.00 | 71,785.00 |
| Air conditioner | 2,111,552.20 | 1,444,594.21 | 340,300.00 |
| Computer Equipment | — | — | 186,560.00 |
| **Total per disbursement vouchers** | **₱ 7,305,104.71** | **₱ 8,747,116.40** | **₱ 6,259,078.30** |
| **Difference** | **₱ 6,853,606.77** | **₱ 8,378,917.36** | **₱ 17,204,464.72**[18] |

Based on the subsidiary ledger (Exhibits "LL-29-A, LL-29-B and LL-29-C"), total expenses under the CF-CPA amounted to ₱14,158,711.48 in 2001, ₱17,126,033.76 in 2002 and ₱23,463,543.02 in 2003. Of the said amounts, ₱6,853,606.77, 8,378,917.36, ₱17,204,464.72 in 2001, 2002 and 2003 respectively, were not validated since the disbursement vouchers were not available. It was represented by the management that such amounts were strictly spent for renovation. However, due to the migration of accounts to the new accounting software to be used by the University sometime in 2011, some supporting documents which were used in the migration were inadvertently misplaced.[19]

Hence, in its Decision dated January 5, 2010, the Court of Tax Appeals First Division upheld the Commissioner's assessment of deficiency income tax "for petitioner's failure to fully account for and substantiate all the disbursements from the CF-CPA."[20] According to the Court of Tax Appeals, "it cannot ascertain whether rent income from MTO-Bookstore,

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[18] *Id*. at 122.

[19] *Rollo* (G.R. No. 198841), p. 46.

[20] *Id*. at 132.

Alarey, Zaide and Capri were indeed used for educational purposes."[21]

DLSU moved for reconsideration. Subsequently, it formally offered to the Court of Tax Appeals First Division, among others,[22] the following supplemental pieces of documentary evidence:

1) Summary Schedule to Support Misplaced Vouchers for the Period of 3 Years from School Year June 1, 2001 to May 31, 2003 (Exh. XX);[23] and

2) Schedule of Disbursement Vouchers Examined (Unlocated Documents) for the Fiscal Years Ended May 31, 2001 (Exh. YY[24]), May 31, 2002 (Exh. ZZ[25]) and May 31, 2003 (Exh. AAA[26]).

These pieces of evidence were admitted by the Court of Tax Appeals in its Resolution dated June 9, 2010.[27]

DLSU's controller, Francisco C. De La Cruz, Jr. testified:

Q9: Please tell us the relevance of Exhibit "XX".
A9: Exhibit "XX" provides an overview of what accounts do those inadvertently misplaced documents pertain to. As will be shown by the other exhibits, the details of these accounts are all entered, recorded and existing in the accounting software of Petitioner.

Q10: Please tell us the relevance of Exhibits "YY", "ZZ" and "AAA".

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[21] *Id*.

[22] *Rollo* (G.R. No. 196596), pp. 140, 142-144. The other documents offered were: Statement of Receipts, Disbursement & Fund Balance for the Period June 1, 1999 to May 31, 2000 (Exhibit "VV"); and Statement of Fund Changes as of May 31, 2000 (Exhibit "WW").

[23] *Id*. at 166.

[24] *Id*. at 167-169.

[25] *Id*. at 170-172.

[26] *Id*. at 174-179.

[27] *Id*. at 140.

A10: These are the details of the accounts pertaining to the inadvertently misplaced documents. Before the documents were inadvertently misplaced, these have been entered in the accounting software of Petitioner. Details were downloaded from Petitioner's accounting software.

These details include the Charge Account, the Classification of Expense per Chart Account of the University, the Cost Center per Chart of Account of the University, the Supplier Name, the Disbursement Voucher Number, the Disbursement Voucher Date, the Check Number, the Check Date, the Cost, and the Description per Disbursement Voucher.

The specifics which accompany the entries were all taken from the documents before these were inadvertently misplaced.

Exhibit "YY" pertains to the details of the accounts for Fiscal Year 2001, Exhibit "ZZ" for Fiscal Year 2002, and Exhibit "AAA" for Fiscal Year 2003.[28]

Samples of the information provided in these pieces of evidence are as follows:

a. For Fiscal Year Ended May 31,2001 (Exhibit YY)

| Charge Account | Classification of Expense per Chart of Account of the University | Cost Center per Chart of Accounts of the University | Supplier Name | Disbursement Voucher No. | Disbursment Voucher Date | Check No. | Check Date | Cost | Description per Disbursement Voucher |
|---|---|---|---|---|---|---|---|---|---|
| 100-213-940 | Furniture, Fixture and Equipment | PFO Capital Projects | BARILEA WOOD WORKS | 2001050105 | 5/30/2001 | 180403 | 3-May-01 | 89,234.04 | TABLE, A 1.20 x .60[29] |

b. For Fiscal Year Ended May 31, 2002 (Exhibit ZZ)

| Charge Account | Classification of Expense per Chart of Account of the University | Cost Center per Chart of Accounts of the University | Supplier Name | Disbursement Voucher No. | Disbursement Voucher Date | Check No. | Check Date | Cost | Description per Disbursement Voucher |
|---|---|---|---|---|---|---|---|---|---|
| 100-213-943 | Airconditioner | PFO Capital Projects | RCC MARKETING CORPORATION | 2001081468 | 15-Aug-01 | 0000188442 | 16-Aug-01 | 63,249.95 | AIRCON WIN TYPE 3TR 2HP SPLIT TYPE[30] |

[28] *Id*. at 183, Judicial Affidavit of witness Francisco C. De La Cruz, Jr. dated 15 April 2010.

[29] *Id*. at 169.

[30] *Id*. at 172.

c. For Fiscal Year Ended May 31, 2003 (Exhibit AAA)

| Charge Account | Classification of Expense per Chart of Account of the University | Cost Center per Chart of Accounts of the University | Supplier Name | Disbursement Voucher No. | Disbursment Voucher Date | Check No. | Check Date | Cost | Description per Disbursement Voucher |
|---|---|---|---|---|---|---|---|---|---|
| 100-026-950 | COMPUTER PRINTER | VC Academics | SILICON VALLEY COMPUTER CENTRE | 2002102047 | 10/18/2002 | 218124 | 26-Oct-2002 | 12,350.00 | PRINTER HP DESKJET 960C[31] |

However, the Court of Tax Appeals First Division was unconvinced. It simply stated that DLSU failed to sufficiently account for the unsubstantiated disbursements. Although it considered the other additional documentary evidence (Exhibits "VV" and "WW") formally offered by DLSU, Exhibits "XX," "YY," "ZZ," and "AAA" were brushed aside without citing any reason or discussing the probative value or weight of these additional pieces of evidence.[32] Thus:

> With regard the unsubstantiated disbursements from the CF-CPA, Petitioner alleged that the supporting documents were inadvertently misplaced due to migration of accounts to its new accounting software used sometime in 2001. In lieu thereof, petitioner submitted downloaded copies of the Schedule of Disbursement Vouchers from its accounting software.
>
> The Court is not convinced.
>
> According to ICPA's findings, the petitioner was able to show only the disbursements from the CF-CPA amounting to ₱7,305,104.71, ₱8,747,116.40 and ₱6,259,078.30 for the fiscal years 2001, 2002 and 2003, respectively.[33]
>
> The Court of Tax Appeals First Division concluded that only the portion of the rental income pertaining to the substantiated disbursements of the CF-CPA would be considered as actually, directly, and exclusively used for educational purposes.[34] This portion was computed by multiplying the ratio of substantiated disbursements to

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[31] *Id*. at 179.

[32] *Id*. at 145.

[33] *Id*.

[34] *Id*.

the total disbursements per subsidiary ledgers to the total rental income, thus:

> Using the amounts determined for the Fiscal Year 2003,
>
> $$\frac{₱6,259,078.30}{₱23,463,543.02} = 26.68\% \times ₱6,602,655.00 = ₱1,761,588.35$$

Hence, for 2003, the portion of the rental income that was not sufficiently proven to have been used for educational purposes amounted to ₱4,841,066.65. This amount was used as base for computing the deficiency income tax and value-added tax.

On appeal, the Court of Tax Appeals En Banc simply ruled that "petitioner again failed to fully account for and substantiate all the disbursements from the CF-CPA Account."[35] The Court of Tax Appeals En Banc heavily relied on the findings of the ICPA that "the [substantiated] disbursements from the CF-CPA Account for fiscal year 2003 amounts to ₱6,259,078.30."[36] However, these findings of the ICPA were made when Exhibits "XX," "YY," "ZZ," and "AAA" had not yet been submitted. The additional exhibits were offered by DLSU to address the findings of the ICPA with regard to the unsubstantiated disbursements. Unfortunately, nowhere in the Decision of the Court of Tax Appeals En Banc was there a discussion on the probative value or weight of these additional exhibits.

As a rule, factual findings of the Court of Tax Appeals are entitled to the highest respect and will not be disturbed on appeal. Some exceptions that have been recognized by this Court are: (1) when a party shows that the findings are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court;[37] (2) when the judgment is premised

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[35] *Rollo* (G.R. No. 198841), p. 86.

[36] *Id*.

[37] *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.*, 260 Phil. 224, 235 (1990) [Per *J*. Regalado, Second Division];*Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 185 (2010) [Per *J*. Mendoza, Second Division].

on a misapprehension of facts;[38] or (3) when the tax court failed to notice certain relevant facts that, if considered, would justify a different conclusion.[39] The third exception applies here.

The Court of Tax Appeals should have considered the additional pieces of evidence, which have been duly admitted and formed part of the case records. This is a requirement of due process.[40] The right to be heard, which includes the right to present evidence, is meaningless if the Court of Tax Appeals can simply ignore the evidence.

In *Edwards v. McCoy*:[41]

> [T]he object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.[42]

In *Ang Tibay v. Court of Industrial Relations*,[43] this Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented."[44]

The Rules of Court allows the presentation of secondary evidence:

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[38] *Miguel J. Ossorio Pension Foundation, Inc. v. Court of Appeals*, 635 Phil. 573, 585 (2010) [Per J. Carpio, Second Division].

[39] *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719, 727 (2000) [Per J. Panganiban, Third Division].

[40] *See Ginete v. Court of Appeals*, 351 Phil. 36, 56 (1998) [Per J. Romero, Third Division].

[41] 22 Phil. 598 (1912) [Per J. Moreland, First Division].

[42] *Id.* at 600-601.

[43] 69 Phil. 635 (1940) [Per J. Laurel, *En Banc*].

[44] *Id.* at 642.

RULE 130
Rules of Admissibility

....

Section 5. *When original document is unavailable*. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

For secondary evidence to be admissible, there must be satisfactory proof of: (a) the execution and existence of the original; (b) the loss and destruction of the original or its non-production in court; and (c) the unavailability of the original not being due to bad faith on the part of the offeror. The admission by the Court of Tax Appeals First Division—which the En Banc affirmed—of these pieces of evidence presupposes that all three prerequisites have been established by DLSU, that is, that DLSU had sufficiently explained its non-production of the disbursement vouchers, and the cause of unavailability is without bad faith on its part.

There can be no just determination of the present action if we ignore Exhibits "XX," "YY," "ZZ," and "AAA," which were submitted before the Court of Tax Appeals and which supposedly contained the same information embodied in the unlocated disbursement vouchers. Exhibits "YY," "ZZ," and "AAA" were the downloaded copies of the Schedule of Disbursement Vouchers from DLSU's accounting software. The Commissioner did not dispute the veracity or correctness of the detailed entries in these documents.[45] Her objection to the additional pieces of evidence was based on the ground that "DLSU was indirectly reopening the trial of the case" and the additional exhibits were "not newly discovered evidence."[46] An examination of these

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[45] *Rollo* (G.R. No. 196596), p. 91.

[46] *Id*.

exhibits shows that the disbursements from the CF-CPA Account were used for educational purposes.

These additional pieces of evidence, taken together with the findings of the ICPA, corroborate the findings of the Court of Tax Appeals in its January 5, 2010 Decision that DLSU uses "fund accounting" to ensure that the utilization of an income (i.e., rental income) is restricted to a specified purpose (educational purpose):

> Petitioner's Controller, Mr. Francisco De La Cruz, stated the following in his judicial affidavit:
>
> Q: You mentioned that one of your functions as Controller is to ensure that [petitioner]'s utilization of income from all sources is consistent with existing policies. What are some of [petitioner]'s policies regarding utilization of its income from all sources?
>
> A: Of particular importance are the following:
>
> 1. [Petitioner] has a long-standing policy to obtain funding for all disbursements for educational purposes primarily from rental income earned from its lease contracts, present and future;
> 2. In funding all disbursements for educational purposes, [petitioner] first exhausts its rental income earned from its lease contracts before it utilizes income from other sources; and
> 3. [Petitioner] extends regular financial assistance by way of grants, donations, dole-outs, loans and the like to St. Yon for the latter's pursuit of its purely educational purposes stated in its AOI.
>
> The evaluation of petitioner's audited financial statements for the years 2001, 2002, and 2003 shows that it uses fund accounting. The Notes to Financial Statements disclose:
>
> 2.6 *Fund Accounting*
>
> To ensure observance of limitations and restrictions placed on the use of resources available to the [Petitioner], the accounts of the [Petitioner] are maintained in accordance with the principle of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and financial reporting purposes into funds that are in accordance with specified activities and objectives. Separate accounts are maintained for each fund; however, in the accompanying financial statements, funds that

have similar characteristics have been combined into fund groups. Accordingly, all financial transactions have been recorded and reported by fund group.[47]

**ACCORDINGLY**, I vote to **GRANT** the Petition of De La Salle University, Inc. and to **SET ASIDE** the deficiency assessments issued against it.

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**THIRD DIVISION**

[G.R. No. 200726. November 9, 2016]

**REPUBLIC OF THE PHILIPPINES**, *petitioner, vs.* **MATEO LAO**, *respondent.*

**SYLLABUS**

**1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); REQUIREMENTS WHICH AN APPLICANT FOR REGISTRATION OF TITLE OVER A PARCEL OF LAND MUST ESTABLISH UNDER SECTION 14 (1) OF P.D. NO. 1529, CITED; NOT PRESENT IN CASE AT BAR.—** Under Section 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a bona fide claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (2) that the property sought to be registered is already declared alienable and disposable at the time of the application. x x x It is settled that the applicant must present proof of specific acts of ownership to substantiate the claim and cannot just offer general statements, which are mere conclusions of law rather than factual evidence of possession. "Actual possession consists

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[47] *Rollo* (G.R. No. 198841), pp. 127-128.

in the manifestation of acts of dominion over it of such a nature as a party would actually exercise over his own property." x x x Clearly, the totality of evidence presented by Lao failed to establish that he and his predecessors-in-interest have been in peaceful, open, continuous, exclusive, and notorious possession and occupation of the same in the concept of owners since June 12, 1945 or earlier. Lao's claim of ownership of the subject properties based on the tax declarations he presented will not prosper. It is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.

**2. ID.; ID.; THE APPLICANT FOR LAND REGISTRATION MUST PROVE THAT THE DENR (DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES) SECRETARY HAD APPROVED THE LAND CLASSIFICATION AND RELEASED THE LAND OF THE PUBLIC DOMAIN AS ALIENABLE AND DISPOSABLE, AND THAT THE LAND SUBJECT OF APPLICATION FOR REGISTRATION FALLS WITHIN THAT APPROVED AREA.—** The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the Provincial Environment and Natural Resources Office (PENRO) or Community Environment and Natural Resources Office (CENRO). In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. x x x It bears stressing that a notation in a survey plan indicating that a parcel of land is inside the alienable and disposable land of the public domain does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Mario Jay Mayol* for respondent.

## RESOLUTION

**REYES, *J.*:**

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated February 1, 2012 issued by the Court of Appeals (CA) in CA-G.R. CEB-CV No. 81180.

### Facts

On November 16, 2000, Mateo Lao (Lao) filed with the Municipal Circuit Trial Court (MCTC) of Liloan-Compostela, Cebu an Application for Original Registration of Title of two parcels of land situated in Barangay Estaca, Compostela, Cebu. The subjects of the Application are Lot Nos. 206 and 208 covered by Compostela Subdivision AP-072218-001228 containing a total area of 8,800 square meters.[3] Lao alleged in his Application that he acquired the subject properties by purchase and that he and his predecessors-in-interest have been in peaceful, open, continuous, exclusive, and notorious possession and occupation of the same in the concept of owners prior to June 12, 1945.[4] Lao attached in his application the following documents: (1) tracing cloth plan; (2) white print of plan; (3) technical description of the subject properties; (4) Geodetic Engineer's Certificate; and (5) Certificate of Assessment.[5]

The case was set for initial hearing by the MCTC on January 11, 2002; Lao's counsel offered evidence to establish the jurisdictional facts of the case. After marking the jurisdictional requirements, the case was called three times for the benefit of

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[1] *Rollo*, pp. 18-40.

[2] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes concurring; *id*. at 42-50.

[3] *Id*. at 20.

[4] *Id*. at 43.

[5] *Id*. at 46.

any oppositors to the application. There being no oppositors, the MCTC issued an Order of General Default, except as against the State.[6] Lao testified that he acquired the subject properties in 1990 from Vicente Calo (Vicente), as evidenced by a Deed of Absolute Sale. He claimed that he possessed the subject properties through his caretaker Zacarias Castro (Zacarias), who planted the same with different kinds of fruit-bearing trees.[7]

Zacarias, testifying in behalf of Lao, alleged that he is familiar with the subject properties since he is the owner of a lot adjacent thereto. He averred that the subject properties were initially owned by his father Casimiro Castro (Casimiro). After his father's death, the subject properties were possessed by Perpetua Calo (Perpetua), and later by Vicente who sold the same to Lao in 1990. Zacarias claimed that he has been the caretaker of the subject properties from the time the same were owned by Perpetua in the 1950s up to the present.[8]

On July 26, 2002, the MCTC rendered a Decision granting Lao's application. The case was later re-opened after the MCTC received the Opposition filed by the Republic of the Philippines (petitioner) on August 8, 2002.[9] Trial on the merits of Lao's application ensued thereafter.

Consequently, however, the MCTC rendered a Decision dated November 28, 2002, granting Lao's application. Thus, the MCTC directed the issuance of Original Certificate of Title over the subject properties. The petitioner appealed the Decision dated November 28, 2002 of the MCTC to the CA, maintaining that Lao has failed to establish that he and his supposed predecessors-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the subject properties under a claim of ownership since June 12, 1945.[10]

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[6] *Id*.

[7] *Id*. at 23.

[8] *Id*.

[9] *Id*. at 46.

[10] *Id*. at 47.

On February 1, 2012, the CA rendered the herein assailed Decision,[11] affirming the MCTC ruling. The CA opined that the evidence presented by Lao reflects the twin requirements of ownership and possession over the subject properties for at least 30 years. The CA further held that Lao and his predecessors-in-interest have been religiously paying taxes on the subject properties, which is good indicium of possession in the concept of an owner.[12]

In this petition for review on *certiorari*, the petitioner maintains that the requirement of open, continuous, exclusive and notorious possession and occupation of the subject properties under a bona fide claim of ownership since June 12, 1945 had not been complied with.[13] Further, the petitioner claims that the lower courts erred in granting Lao's application since there was no proof that the subject properties had been classified as within the alienable and disposable land of the public domain.[14]

On the other hand, Lao avers that the subject properties form part of the alienable and disposable lands of the public domain; he explains that the Land Management Bureau of the Department of Environment and Natural Resources (DENR) would not have approved the tracing cloth plan of the subject properties if the same are not alienable and disposable.[15] He further claims that the lower courts' findings as regards the nature of his and his predecessors-in-interest's possession and occupation of the subject properties are findings of fact, which is conclusive upon this Court.[16]

**Issue**

Essentially, the issue for the Court's resolution is whether Lao's application for original registration of the subject properties should be granted.

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[11] *Id*. at 42-50.

[12] *Id*. at 48.

[13] *Id*. at 31.

[14] *Id*. at 27.

[15] *Id*. at 76.

[16] *Id*. at 77.

**Ruling of the Court**

The petition is granted.

Section 14 of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree, enumerates those who may apply for original registration of title to land, *viz.*:

> Sec. 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.
>
> x x x x

A perusal of Lao's application shows that he applied for original registration of the subject properties under Section 14(1) of P.D. No. 1529, claiming that he and his predecessors-in-interest have been in peaceful, open, continuous, exclusive, and notorious possession and occupation of the same in the concept of owners prior to June 12, 1945.[17]

Under Section 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a bona fide claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and

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[17] *Id*. at 21.

(2) that the property sought to be registered is already declared alienable and disposable at the time of the application.[18]

The lower courts erred in ruling that Lao was able to establish that he and his predecessors-in-interest have been in peaceful, open, continuous, exclusive, and notorious possession and occupation of the same in the concept of owners prior to June 12, 1945. It is settled that the applicant must present proof of specific acts of ownership to substantiate the claim and cannot just offer general statements, which are mere conclusions of law rather than factual evidence of possession.[19] "Actual possession consists in the manifestation of acts of dominion over it of such a nature as a party would actually exercise over his own property."[20]

The CA, in concluding that Lao met the required possession and occupation of the subject properties for original registration, opined that:

> It bears stressing that [Lao] and his [predecessors-in-interest] have been religiously paying taxes thereon. In *Rosalina Clado-Reyes[,] et al. v. Spouses Limpe*, the Supreme Court reiterated that tax declarations or realty tax receipts are not conclusive evidence of ownership. Nevertheless, they are good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. Here, the payment of the taxes on the subject land by [Lao] and his [predecessors-in-interest] adequately established the fact of their successive possession over the lot.
>
> Moreover, contrary to the allegations of [the petitioner], [Lao] and his [predecessors-in-interest], particularly [Vicente], had in fact performed acts of possession over the subject land. [Vicente] had cultivated the land through [Zacarias], its caretaker, as supported by the tax declarations showing that the land was planted with fruit

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[18] *See Heirs of Mario Malabanan v. Republic of the Philippines*, 605 Phil. 244, 262 (2009).

[19] *See Republic of the Philippines v. Carrasco*, 539 Phil. 205, 216 (2006).

[20] *Republic of the Philippines v. Candy Maker, Inc.*, 525 Phil. 358, 376-377 (2006).

bearing trees. This jibes with [Zacarias'] assertion that at the time that he worked on the land of [Vicente], he was asked to appropriate the land's income for the payment of real estate taxes as the latter was already living abroad. This proves that [Vicente] actually exercised acts of ownership and dominion over the subject land and that his possession thereof was not mere fiction. That he appointed a caretaker over the land shows [Vicente's] vigilance in protecting his interest over his property. The same actuations can be readily gleaned from [Lao] who also engaged the services of [Zacarias] to care for and guard the land that he bought from [Vicente].[21]

The Court does not agree.

Lao's testimony only established that he exercised possession over the subject properties, through Zacarias, when he acquired the same in 1990. On the other hand, Zacarias' testimony only showed that he was the caretaker of the subject properties since the 1950s when the same were still owned by Perpetua.

Further, Lao only mentioned the various transfers of the subject properties from the original owner, Casimiro, to Perpetua; from Perpetua to Vicente; and from Vicente to him. He failed to establish the specific period covering the alleged possession of each of the purported predecessors-in-interest. Furthermore, Lao's allegation as regards the supposed ownership of the subject properties by his predecessors-in-interest is bereft of any documentary proof.

Moreover, as pointed out by the petitioner, Lao failed to offer a reasonable explanation as to why the subject properties were declared for taxation purposes in the name of a certain Ambrocio Calo who, however, was not even identified by Lao as one of his predecessors-in-interest. Clearly, the totality of evidence presented by Lao failed to establish that he and his predecessors-in-interest have been in peaceful, open, continuous, exclusive, and notorious possession and occupation of the same in the concept of owners since June 12, 1945 or earlier.

Lao's claim of ownership of the subject properties based on the tax declarations he presented will not prosper. It is

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[21] *Rollo,* pp. 48-49.

only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.[22] As already stated, Lao failed to prove that he and his predecessors-in-interest actually possessed the subject properties since June 12, 1945 or earlier.

The lower courts likewise failed to consider that Lao has not even presented a scintilla of proof that the subject properties form part of the alienable and disposable lands of the public domain. "The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant."[23]

The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the Provincial Environment and Natural Resources Office (PENRO) or Community Environment and Natural Resources Office (CENRO). In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.[24]

Lao failed to present any evidence showing that the DENR Secretary had indeed approved a land classification and released the land of the public domain as alienable and disposable, and that the subject properties fall within the approved area per verification through survey by the PENRO or CENRO. Lao merely presented a tracing cloth plan, supposedly approved by the Land Management Bureau of the DENR, which allegedly

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[22] *See Cequeña v. Bolante*, 386 Phil. 419, 422 (2000).

[23] *Rep. of the Phils. v. T.A.N. Properties, Inc.*, 578 Phil. 441, 450 (2008).

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

showed that the subject properties indeed form part of the alienable and disposable lands of the public domain.

It bears stressing that a notation in a survey plan indicating that a parcel of land is inside the alienable and disposable land of the public domain does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain.[25]

**WHEREFORE**, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated February 1, 2012 issued by the Court of Appeals in CA-G.R. CEB-CV No. 81180 is hereby **REVERSED and SET ASIDE**. Mateo Lao's Application for Original Registration of Title of Lot Nos. 206 and 208, GSS-1272, under Compostela Subdivision AP-072218-001228, is **DENIED** for lack of merit.

**SO ORDERED**.

*Peralta (Acting Chairperson),*[*] *del Castillo,*[**] and *Perez, JJ.,* concur.

*Velasco, Jr., J.,* on official leave.

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**THIRD DIVISION**

[G.R. No. 202114. November 9, 2016]

**ELMER A. APINES,** *petitioner, vs.* **ELBURG SHIPMANAGEMENT PHILIPPINES, INC., and/or DANILO F. VENIDA,** *respondents.*

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[25] *See Menguito v. Republic*, 401 Phil. 274, 287-288 (2000).

[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[**] Additional Member per Raffle dated January 5, 2015 vice Associate Justice Francis H. Jardeleza.

**SYLLABUS**

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY QUESTION OF LAW, NOT QUESTION OF FACT MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI* BEFORE THE SUPREME COURT, EXCEPT WHEN THERE ARE DIVERGENCE IN THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE COURT OF APPEALS ON ONE HAND, AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ON THE OTHER.—** "As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45." The Court is, thus, generally bound by the CA's factual findings. There are, however, exceptions to the foregoing, among which is when the CA's findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated. The instant petition falls under the aforementioned exception in view of the divergent factual findings of the LA and the CA, on one hand, and the NLRC, on the other.

2. **LABOR AND SOCIAL LEGISLATION; 2000 POEA-STANDARD EMPLOYMENT CONTRACT (2000 POEA-SEC); FAILURE TO COMPLY WITH THE 72-HOUR REPORTORIAL REQUIREMENT FOR THE CONDUCT OF A POST-EMPLOYMENT MEDICAL EXAMINATION UNDER THE SECOND PARAGRAPH OF SECTION 20 (B) (3) OF THE 2000 POEA-SEC CANNOT RESULT IN THE AUTOMATIC FORFEITURE OF THE SEAFARER'S DISABILITY BENEFITS; CASE AT BAR.—** In *Interorient Maritime Enterprises, Inc., et al. v. Remo,* the Court emphatically ruled that *"the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of petitioners."* Considering the above, the Court finds that Apines' failure to comply with the 72-hour reportorial requirement for the conduct of a post-employment medical examination under the 2nd paragraph of Section 20 (B) (3) of the 2000 POEA-SEC cannot result in the automatic forfeiture of his disability benefits. *Island Overseas Transport Corporation/*

*Pine Crest Shipping Corporation/Capt. Emmanuel L. Regio v. Armando M. Beja,* on the other hand, is instructive anent when a seafarer may be exempt from compliance with the procedure laid down in the 3rd paragraph of Section 20 (B) (3) on the requirement of consultation with a third doctor, x x x In the case at bar, ESPI's records relative to the occurrence of the injury and the events leading to and following Apines' repatriation are *conspicuously scarce.* Apines claims that he was outrightly denied medical assistance on the pretext that the doctors abroad had found him fit to work. There was unfortunately no document to establish that denial. Similarly, no convincing paper trail exists to prove that there was in fact a referral to a company-designated doctor either for assessment or treatment. *Sans* referral to a company-designated doctor, no post-employment medical examination can be performed on Apines by ESPI. No written fit to work or disability grading certificate was also issued. Without the assessment of the company-designated doctor, there was nothing for Apines' own physicians to contest rendering consultation with a third doctor agreed upon by the parties as superfluous. Perforce, compliance with the requirements of the 3rd paragraph of Section 20 (B) (3) on obtaining the assessment of a third doctor in case of divergent opinions of the company-designated doctor, on one hand, and the seafarer's own physician, on the other, cannot be imposed upon Apines.

**3. ID.; ID.; DUE TO THE EMPLOYER'S FAILURE TO ISSUE A DISABILITY RATING WITHIN THE 120-DAY PERIOD, THE PRESUMPTION IS THAT THE SEAFARER IS ENTITLED TO TOTAL AND PERMANENT DISABILITY; CASE AT BAR.—** Having sustained an accidental injury on board the vessel, Apines is entitled to disability benefits. x x x At the outset, it bears noting that Apines filed his Complaint before the NLRC on June 6, 2008, 121 days from his repatriation. Before that date, no disability rating of any kind had been issued by the respondents. In *Beja,* the Court clarified that: [I]f the maritime compensation complaint was filed **prior to October 6, 2008, the rule on the 120-day period,** during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad,* x x x In the instant case, Apines filed his Complaint on June 6, 2008. Hence, the 120-day period rule stands. x x x Due to ESPI's failure or refusal to issue a medical rating within 120 days from repatriation, in

legal contemplation, Apines' disability is conclusively presumed to be total and permanent. Besides, in the Court's mind, it is enough that Apines obtained medical certificates and copies of hospital records whenever he consulted with his doctors and underwent medical procedures. The Court cannot impose upon him the burden of knowing what the labor laws require relative to the matters which should be explicitly stated in the medical certificates. The lack of express disability ratings even shows that Apines did not premeditate the filing of his Complaint and that he only procured legal services after his medical treatment. In disability compensation claims, *"what is important is that [the seafarer] was unable to perform his customary work for more than 120 days which constitutes permanent total disability," since "an award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work."*

**APPEARANCES OF COUNSEL**

*Linsangan Linsangan & Linsangan Law Office* for petitioner.
*Del Rosario & Del Rosario* for respondents.

**D E C I S I O N**

**REYES, *J.*:**

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Elmer A. Apines (Apines) to assail the Decision[2] rendered on January 26, 2012 and Resolution[3] issued on May 30, 2012 by the Court of Appeals (CA) in CA-G.R. SP No. 114221. The dispositive portion of the assailed decision reads:

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[1] *Rollo*, pp. 15-39.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Normandie B. Pizarro and Fiorito S. Macalino concurring; CA *rollo*, pp. 332-343.

[3] *Id*. at 366-367.

***WHEREFORE,*** the instant petition is hereby ***GRANTED*** and the NLRC Decision dated December 14, 2009 and Resolution dated April 14, 2010 are ***SET ASIDE***. The Complaint for total and permanent disability benefits, reimbursement of medical, hospital and transportation expenses, moral and exemplary damages, sickwage allowance, attorney's fees and legal interest is hereby ***DISMISSED***. In view of the payment made to [Apines] by petitioners Elburg Shipmanagement Philippines, Inc. and Danilo F. Venida in satisfaction of NLRC Decision dated December 14, 2009 and Resolution dated April 14, 2010, [Apines] is hereby directed to return to petitioners Elburg Shipmanagement Philippines, Inc. and Danilo F. Venida the amount of Three Million Twenty[-]Nine Thousand Eighty[-]Eight Pesos [and] 92/100 (₱3,029,088.92).

***SO ORDERED.***[4]

The assailed Resolution[5] dated May 30, 2012 denied Apines' motion for reconsideration.[6]

**Antecedent Facts**

Elburg Shipmanagement Philippines, Inc. (ESPI) is a local manning agency, with Danilo F. Venida as representative (collectively, the respondents). Emirates Trading Agency LLC (ETAL) is among ESPI's foreign principals.[7]

On September 11, 2007, Apines boarded ETAL's ship, M/V Bandar TBN Trans Gulf, for an eight-month engagement as bosun.[8]

Apines claimed that sometime in the third week of September, a British surveyor was on board the ship to inspect the cargo hold. Captain Glicerio Castañares (Capt. Castañares) and Chief Mate Edgardo Llevares instructed Apines to put an apparatus

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[4] *Id*. at 11.

[5] *Id*. at 366-367.

[6] *Id*. at 347-356.

[7] *Id*. at 7.

[8] *See* Contract of Employment, *id*. at 65; *see* also Exit Interview report, *id*. at 93-94; A bosun or boatswain is defined as "a naval warrant officer in charge of the hull and all related equipment. <http://www.merriam-webster.com/dictionary/boatswain> visited October 26, 2016.

on the top tank of the cargo hold to check for possible leaks. Apines promptly complied with the order. On his way up from the cargo hold, he accidentally stepped on scattered iron ore pellets causing his left knee to strongly hit the steel railings of the ladder, and for him to slip and fall.[9]

According to Apines, despite a sprain and swollen ankle, he was able to stand up and walk. When the pain eventually became intolerable, Apines informed Capt. Castañares about his condition. Apines was given analgesics. However, his request to be brought to the nearest port for medical attention remained unheeded since the ship was still on voyage. Further, whenever the ship reached a port, Apines was assigned as a crane driver.[10]

On November 10, 2007, Apines consulted with an orthopedic surgeon named Dr. Abraham George (Dr. George) when the ship reached the Port of Bahrain. Dr. George's Medical Report[11] reads:

Symptoms: PAIN ON THE LEFT KNEE (SWELLING)

When did the sym[p]toms start: 1 MONTH+

Diagnosis: LATERAL COLLATERAL LIGAMENT SPRN
**? MEDIAL MENISCAL INJU**

| | | | |
|---|---|---|---|
| Is declared: | FIT | (Yes) | No |
| | UNFIT | Yes | No |

1) The patient must attend the Doctor again on: WITH MRI REPORT

2) The seaman must go to Hospital for MRI SCAN-LEFT KNEE

3) Special Remarks: **MEDICATIONS AND HINGED KNEE BRACE GIVEN**

x x x x

Present History

**[P]ain Left Knee since 45 days after a fall on ship at work. Now has pain on climbing at work**

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[9] *Rollo*, p. 19; CA *rollo*, pp. 93, 333.

[10] *Rollo*, p. 19; CA *rollo*, p. 333.

[11] CA *rollo*, pp. 120-121.

Management Plan
**Ref to Ortho consult**
Bland diet/
**Advised MRI scan of the left knee**

Diagnosis
5355 GASTRITIS. MAIN*
844 **SPRAIN OF KNEE**^ LEG*, MAIN,*
Left?? OA
8440 SPRAIN LATERAL COLL LIG, MAIN,*
LEFT KNEE
7171 DERANG **ANT MED MENISCUS**,zClinical,*
**LEFT KNEE**
Orders

x x x x

**Elmetacin solution 50 ml.**[12] Qty = 1, Verified
**Celebrex 200 Mg. Cap,**[13] Qty = 20, Verified

x x x x[14] (Emphasis ours)

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[12] **INDICATIONS**

For the local relief of pain, inflammation and swelling associated with

- degenerative disorders of the joints (osteoarthritis of the knee and smaller joints)
- periarticular rheumatic disorders (tendonitis, tenovaginitis, synovitis, painful shoulder stiffness)
- sports and **accidental injuries** (sprains, strains and contusions)

<http://home.intekom.com/pharm/litha/elmeta_s.html> (visited October 26, 2016). (Emphasis ours)

[13] Celebrex (celecoxib) is a **nonsteroidal anti-inflammatory drug** (NSAID). Celecoxib works by reducing hormones that cause inflammation and pain in the body.

Celebrex is used to treat pain or inflammation caused by many conditions such as **arthritis, ankylosing spondylitis**, and **menstrual pain**. Celebrex is used to treat juvenile rheumatoid arthritis in children who are at least 2 years old.

Celebrex is also used in the treatment of hereditary polyps in the colon. <https://www.drugs.com/celebrex.html> (visited October 26, 2016). (Emphasis ours)

[14] CA *rollo*, pp. 120-121.

In February of 2008, Apines once again complained of pain in his left knee and requested for a medical check-up when the ship reached Jubail, Saudi Arabia.[15] Dr. Vicar Hussain's (Dr. Hussain) Medical Report[16] dated February 5, 2008 indicates the following:

> Sym[p]toms: PAIN ON THE LEFT KNEE **(M.R.I. SCAN - LEFT KNEE RECOMMEND)**.
>
> When did the sym[p]toms start: **Pain & swells 14 [left] knee - 4 mth**
>
> Diagnosis: O.A. 14 [left] knee x x x
>
> Is declared: FIT (Yes) No **but Pt needs rest for couple of days**
>
> UNFIT Yes No
>
> 1) The patient must attend the Doctor again on: **after 7 days**
>
> 2) The seaman must go to Hospital for **[MRI SCAN - LEFT KNEE]**
>
> 3) Special Remarks: **Medical & Pt needs MRI 14 [left] knee. Pt needs medication for long time**
>
> x x x x[17] (Emphasis ours)

Apines claimed that since the pain in his left knee even worsened, he requested for immediate repatriation.[18]

In Capt. Castañares' e-mail message[19] sent to ESPI and Capt. Nicolo Terrei on February 5, 2008, it was stated that for a week already, Apines had been unable to work due to severe pain on his left knee. Per request, Apines had a medical check up in Jubail, Saudi Arabia. The doctor diagnosed Apines to be suffering from arthritis. Apines insisted that it was not merely arthritis, but the doctor was not able to determine any other ailment.

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[15] *See* the respondents' Memorandum, *id*. at 294.

[16] *Id*. at 122.

[17] *Id*.

[18] *See* Apines' Memorandum, *id*. at 261.

[19] *Id*. at 91.

Consequently, the doctor assessed Apines to be fit for sea duty. However, due to the worsening pain and inability to work, Apines requested to be promptly sent home to be able to consult with a doctor on his own account. Thus, Capt. Castañares sought Apines' repatriation to be arranged even if there was still no reliever to take the latter's place.

ESPI, however, denied that Apines had an accidental injury while on board the ship. In the Affidavit[20] dated May 4, 2008 and e-mail message[21] sent to ESPI on November 4, 2008, Capt. Castañares stated that in the duration of Apines' stay in the ship from September 15, 2007 to February 6, 2008, there was no report that the latter had figured in an accident or had sustained an injury.[22]

Apines disembarked from the ship on February 7, 2008. The next day, Apines reported to ESPI's office.[23] Teresa Mendoza (Mendoza) conducted an exit interview, and her report is partly quoted below:

> Accdg. to crew:
>
> - [D]uring an inspection on[ ]board, [he] had an accident when he slid and his knee had a strong contact against [the] steel railing of the ladder. He had a sprain and his ankle went swollen for four days (Sept.) His knee started to be painful on November. However, he can perform job on[ ]board but he [cannot] fully work and he is already moving slowly. [He] [f]inds [it] difficult to climb on cranes due to pain in the ankle.
>
> - attached report (No report was given by the master regarding the incident, no evidence from Master's logbook)
>
> x x x x
>
> - was given pain reliever by the doctor (for arthritis and paracetamol)

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[20] *Id*. at 90.

[21] *Id*. at 92.

[22] *Id*. at 90.

[23] *Id*. at 48, 93.

- and was recommended to see doctor again after seven days but he [was] repatriated after x x x a day.

- was reported FIT TO WORK by the doctor.[24]

The Crew De-briefing Checklist[25] signed by Apines also indicated that his disembarkation was "for medical grounds (on his own request)."

ESPI claimed that it referred Apines to a company-designated doctor, but the latter consulted his own physicians instead.[26]

On the other hand, Apines alleged that when he reported to ESPI's office right after his repatriation, Mendoza and Angela Padre (Padre) informed him that since he was declared fit to work, no assistance can be offered to him. Moreover, his unpaid salaries shall be offset against the cost of his airfare ticket in returning to Manila. Apines, thus, explained that he sought repatriation to undergo Magnetic Resonance Imaging (MRI) and obtain medical treatment pursuant to the recommendations of the doctors in Bahrain and Saudi Arabia. ESPI, however, stood its ground in denying to provide Apines with assistance.[27]

Apines felt aggrieved by ESPI's lack of support, but his primary concern then was to obtain prompt medical attention. Upon his inquiry, ESPI referred him to Metropolitan Hospital, which at that time had no MRI machine. Apines thereafter proceeded to Chinese General Hospital (CGH), where he underwent MRI scanning under the supervision of Dr. Celestina L. Cejoco (Dr. Cejoco).[28] Dr. Cejoco's Consultation Report,[29] dated February 14, 2008, included the following impressions: (1) "*no acute bony trabecular injury or fracture*"; (2) "*oblique inferior surface tear involving the posterior horn of the medial*

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[24] *Id*. at 93.

[25] *Id*. at 94.

[26] *Id*. at 294.

[27] *Id*. at 166.

[28] *Id*.

[29] *Id*. at 95.

*meniscus*"; (3) "*small to moderate amount of joint effusion*"; and (4) "*findings are consistent with osteoarthritis*."

On February 20, 2008, Apines also consulted Dr. Patrick O. Leh (Dr. Leh), an orthopedic surgeon in CGH. The Medical Certificate[30] issued by Dr. Leh indicated that Apines had "*degenerative osteoarthritis*" and "*medial meniscal tear*" in his left knee. Dr. Leh assessed that Apines "*may return to work after 30 [to] 45 days*," but "*needs continued medical treatment for osteoarthritis*." Apines was likewise advised to undergo meniscectomy[31] and to consult with a company-accredited orthopedic surgeon.[32]

On June 6, 2008, Apines filed before the National Labor Relations Commission (NLRC) a Complaint[33] for total and permanent disability benefits, reimbursement of medical, hospital and transportation expenses, moral and exemplary damages, sickness allowance, attorney's fees and legal interest.

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[30] *Id*. at 96.

[31] **Meniscectomy is the surgical removal of all or part of a torn meniscus.** A meniscus tear is a common knee joint injury. <http://www.webmd.com/a-to-z-guides/meniscectomy-for-a-meniscus-tear> (visited October 26, 2016).

Like a lot of knee injuries, a **meniscus tear can be painful and debilitating**. x x x In fact, a meniscal tear is one of the most frequently occurring cartilage injuries of the knee.

x x x [A meniscus] is a piece of cartilage in your knee that cushions and stabilizes the joint. It protects the bones from wear and tear. x x x **[A]ll it takes is a good twist of the knee to tear the meniscus.** In some cases, a piece of the shredded cartilage breaks loose and catches in the knee joint, causing it to lock up.

Meniscus tears are common in contact sports like football as well as noncontact sports requiring jumping and cutting such as volleyball and soccer. **They can happen when a person changes direction suddenly while running, and often occur at the same time as other knee injuries, like an anterior cruciate ligament (ACL) injury.** x x x. <http://www.webmd.com/fitness-exercise/meniscustear#1> (visited October 26, 2016).

[32] CA *rollo*, p. 168.

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

On June 17, 2008, Apines was admitted at the Philippine General Hospital (PGH) and underwent arthroscopic meniscectomy on July 1, 2008. He was confined for 17 days and was finally discharged on July 4, 2008.[34]

The Clinical Abstract[35] and Discharge Summary[36] signed by Dr. Patrick M. Dizon (Dr. Dizon) stated that Apines had Medial Meniscal Tear. Apines complained of pain in his left knee and difficulty in ambulation. Apines had informed the doctors that about nine or ten months before, he had slipped and twisted his left knee while walking or going down the stairs. Thereafter, he had persistent pain in his left knee, with associated locking symptoms. He only took Alaxan which gave him mere partial relief. The symptoms, however, progressed. Apines then underwent x-ray and MRI scans, and consulted with doctors at the CGH, before having been referred to the PGH for further management. After Apines' arthroscopic meniscectomy, he was still advised to continue with his rehabilitation, and was prescribed to take Cephalexin for seven days.

In their Position Paper[37] filed before the NLRC, the respondents contended that Apines was not entitled to total and permanent disability benefits based on the following grounds: (1) Apines did not suffer any accident or injury while on board the ship as proven by Capt. Castañares' affidavit and the e-mail exchanges between the latter and Mendoza; (2) the medical reports issued abroad showed that Apines was fit to work; (3) Apines disembarked from the ship on his own accord as indicated in the Exit Interview Report and Crew De-briefing Checklist; (4) Apines failed to submit himself for post-employment medical examination and treatment by company-designated doctors; and (5) Apines' own physician, Dr. Leh, assessed that the former may return to work after 30 to 45 days.

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[34] *See* Operation and Anesthesia Record, *id*. at 127; Medical Certificate dated July 7, 2008, *id*. at 128.

[35] *Id*. at 125.

[36] *Id*. at 129-131.

[37] *Id*. at 68-87.

Several conferences were held, but the parties failed to arrive at any settlement.[38]

**Rulings of the Labor Arbiter and NLRC**

In the Decision[39] dated April 21, 2009, the Labor Arbiter (LA) dismissed Apines' complaint citing the following as reasons:

> It is not enough for [Apines] to allege and prove that his injury was work-related.
>
> He must likewise allege and prove compliance with the mandatory reporting requirement.
>
> [Apines] never alleged, in his position paper, that he observed the mandatory reporting requirement. He simply states that, upon his repatriation, he reported to [ESPI] and was informed by [Padre] and [Mendoza] that he cannot be offered of [sic] an assistance as he was declared fit to work.
>
> There is nothing in the position paper and further papers of [Apines] indicating compliance with the post-employment medical examination [under the 2nd and 3rd paragraphs of Section 20(8)(3)[40] of the 2000

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[38] *Id*. at 168.

[39] Rendered by Labor Arbiter Gaudencio P. Demaisip, Jr.; *id*. at 165-170.

[40] SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels].[41]

Apines appealed the foregoing before the NLRC.[42]

On December 14, 2009, the NLRC promulgated a Decision,[43] the *fallo* of which is quoted below:

> **WHEREFORE,** premises considered, judgment is hereby rendered finding the appeal impressed with merit. [The respondents] are hereby directed to pay [Apines] US$62,800.00 [as] total and permanent disability compensation and sickness allowance or its peso equivalent at the prevailing exchange rate at the time of payment plus ten percent (10%) of such aggregate amount representing attorney's fees (US$6,280.00). Accordingly, the decision of the [LA] dated April [21], 2009 is hereby VACATED and SET ASIDE.
>
> **SO ORDERED.**[44]

In holding Apines to be entitled to total and permanent disability benefits and sickness allowance, the NLRC ratiocinated that:

> [Apines] was operated upon on July 1, 2008 at the PGH x x x. Since his repatriation on February 2008 until such date, he has not been able to return to work and x x x more than 120 days [had elapsed]. x x x
>
> We do not subscribe to [the respondents'] assertions that [Apines] has to prove that he suffered an accident while on board and that the repatriation was of his own accord[,] which bars his entitlement. x x x:
>
> x x x x

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If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[41] CA *rollo*, p. 169.

[42] *Id*. at 171-194.

[43] Penned by Presiding Commissioner Benedicta R. Palacol, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro concurring; *id*. at 47-54.

[44] *Id*. at 53-54.

It does not state in [Section 20(B)(3) of the 2000 Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels] that repatriation be upon the employer's instructions, [but] it merely mentions that it be for medical reasons. There is also no requirement of proof of occurrence of an accident to be made by the employee for disability to attach. What is required is that he suffered injury or illness and in this case[,] there is [a] concrete showing that [Apines] was complaining of pain in his knee[,] and that he made it known to his employers for which he was brought to 2 doctors for assessment on November 2007 and February 2008.

It is noteworthy that these doctors recommended that he undergo MRI x x x[,] but it appears that these recommendations were unheeded. It is apparent from the records that the [respondents] chose to ignore the complaints of the seafarer [about] the pain he was suffering [from] and the doctors' recommendations[,] and decided not to order his medical repatriation presumably in order to avoid paying disability compensation to him.

While it may be true that there was no compliance with the procedural requirements under [Section 20(B)(3) of the 2000 Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels], this is not of [Apines'] own doing. x x x He was informed that he will not be accorded any medical assistance as he [was] declared fit to work. Thus, he was constrained to consult with other doctors [who assessed Apines] to be suffering from a meniscal tear on his knee and required menis[c]ectomy x x x. [Apines'] assertions [sic] that he was denied medical assistance [has] credence because it is illogical that he will seek treatment from other doctors immediately after his disembarkation when he [can] avail of the services of the company[-]designated physician. He arrived on February 8, 2008 and he consulted with 2 doctors for medical treatment on February 14 and 20, 2008. The proximity of such dates further proves that he was indeed denied of medical assistance despite his suffering and even when the [respondents] knew that he sought repatriation to seek medical treatment x x x.

Having suffered the injury/illness during the term of his contract, [Apines] is also entitled to his sickness allowance and to be reimbursed [for] the expenses incurred for his treatment. In this case, [Apines] failed to present receipts or other proof[s] of his medical expenses[, hence,] we cannot grant the same. Thus[,] he is entitled only to his

sickness allowance of US$700.00/per month for four (4) months or US$2,800.00 in addition to his permanent and total disability compensation of US$60,000.00.[45]

In the Resolution[46] dated April 14, 2010, the NLRC denied the motion for reconsideration[47] of the respondents.

**The Proceedings before the CA**

The respondents filed a Petition for *Certiorari*[48] before the CA. During its pendency, Apines sought the execution of the NLRC Decision and Resolution, dated December 14, 2009 and April 14, 2010, respectively. On August 10, 2010, the respondents, with the intent of preventing further execution proceedings, paid Apines the sum of Three Million Twenty-Nine Thousand Eighty-Eight Pesos and 92/100 (₱3,029,088.92) as full and complete satisfaction of the NLRC's judgment award. The payment was subject to the condition that in case of reversal or modification of the NLRC decision and resolution by the CA, Apines shall return to the respondents whatever amount may be due and owing.[49]

Subsequently, the CA, through the herein assailed decision and resolution, reversed the NLRC ruling. The CA explained that:

**[Apines] was unable to establish his allegation that he suffered an injury on board [ETAL's] vessel by reason of an accident.** x x x [I]t was clear that other persons were present at the time the alleged incident transpired and who should have witnessed the same. x x x [H]e neither reported the alleged incident to the officers on board the vessel for documentation purposes nor did he present any other evidence to substantiate his allegation. Not even the evaluation of the doctors who examined [Apines] corroborated his claim that

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[45] *Id*. at 51-53.

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

[47] *Id*. at 205-214.

[48] *Id*. at 3-45.

[49] Please *see* Satisfaction of Judgment, *id*. at 324-326; Affidavit of Claimant, *id*. at 327-328; Receipt of Payment, *id*. at 329.

his condition was an injury caused by an accidental fall. [Apines] himself declared that Dr. Hussain gave him medicine for pain allegedly caused by arthritis. His own doctor seemed to agree with Dr. Hussain's findings when he categorically pronounced [Apines'] diagnosis to be "Degenerative osteoarthritis." Moreover, contrary to Apines' claim, his doctor did not recommend his "immediate operation." In fact, Dr. Leh suggested that [Apines] consult with [a] company-accredited orthopedic surgeon for opinion. In other words, a perusal of the medical certificates submitted by [Apines] will tend to support a finding that Apines was suffering from arthritis rather than a conclusion that his medical condition was brought about by an accident as to qualify as work-related injury compensable under the POEA-SEC.

x x x x

**[Apines] affirms that [the respondents] "referred him to Metropolitan Hospital.** He proceeded there immediately but upon inquiry, they do not conduct MRI test, instead he was referred to [CGH]." It appears that [Apines] conveniently subjected himself to medical assistance of his own choice solely because Metropolitan Hospital was unable to conduct the MRI. Noticeably, there is nothing on record to show that he intended to submit himself to a medical evaluation by the company-designated physician. [Apines] clearly has not complied with the post-employment reporting requirements under the POEA-SEC.

x x x **[Apines] failed to present any justification [for] his inability to submit himself to a post-employment medical examination by a company-designated physician.** Glaringly, despite claiming that his doctor recommended his immediate operation when he went for consultation on February 20, 2008, it was only on June 17, 2008 that [Apines] was admitted for confinement at the PGH and the operation done on July 1, 2008. x x x

x x x x

x x x [I]n between his consultation with his doctor on February 20, 2008 and his confinement for medical attention on June 17, 2008, **[Apines] found time to file the instant case before the [LA]** on June 5, 2008. x x x [Apines] appeared well enough to consult his own doctors, file a case x x x and undergo medical attention more than three (3) months from his repatriation but was unjustifiably unable to submit himself for examination by a company-designated physician.

x x x x

x x x **[Apines] has not presented any disability grading even from his own doctors who examined and operated on him.** It seems to this Court then that [Apines] basically aims to capitalize on his employer's failure to assess his disability grade when, as a matter of fact, he has never submitted himself to the examination of the company-designated physician before or after his operation. Plainly, there is no disability grading by any doctor in this case. x x x.[50] (Citations omitted and emphasis ours)

**Issues**

Aggrieved, Apines now presents before the Court the issues of whether or not the CA erred in:

(1) holding that failure to comply with the 72-hour reporting requirement is fatal and shall automatically result in the forfeiture of disability benefits;[51]

(2) denying to grant Apines total and permanent disability benefits despite his clear inability to resume performance of active sea duties within 120 days from repatriation;[52] and

(3) negating Apines' entitlement to moral and exemplary damages, as well as attorney's fees.[53]

In support thereof, Apines reiterates his claims offered in prior proceedings. He emphasizes that the respondents cannot feign ignorance about his ailment, which started while he was on board the ship. He insists that there should be no automatic forfeiture of disability benefits even *sans* compliance with the 72-hour reportorial requirement in cases when the seafarer has been rendered incapable of pursuing his customary shipboard employment. Anent the respondents' persistent stance that the company-designated doctor must examine the seafarer's medical condition, Apines avers that such assessment must be done within a 120-day period from repatriation, otherwise, the injury or

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[50] *Id*. at 337-341.

[51] *Id*. at 23.

[52] *Id*. at 25, 30.

[53] *Id*. at 36.

illness shall be deemed to be total and permanent. He also laments the respondents' utter refusal to render any medical assistance and pay their contractual obligations. Accordingly, the respondents should be liable for moral and exemplary damages, plus attorney's fees. Apines manifests, too, that he currently remains jobless and unfit to render sea duties.

In the respondents' Comment,[54] they contend that the 72-hour reportorial requirement is mandatory, and Apines' failure to comply therewith bars the filing of his claims for disability benefits.

**Ruling of the Court**

"As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45."[55] The Court is, thus, generally bound by the CA's factual findings. There are, however, exceptions to the foregoing, among which is when the CA's findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.[56] The instant petition falls under the aforementioned exception in view of the divergent factual findings of the LA and the CA, on one hand, and the NLRC, on the other.

*After a thorough re-examination of the parties' evidence, the Court finds merit in the instant petition warranting the reinstatement of the NLRC's decision.*

The issues, being inter-related, will be discussed jointly.

**Review of the Facts**

To properly dispose of the issues raised herein, the Court should resolve the conflicting factual assertions of the parties

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[54] *Id.* at 74-85.

[55] *Antiquina v. Magsaysay Maritime Corporation and/or Masterbulk, PTE., Ltd.*; 664 Phil. 88, 99 (2011).

[56] *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 454 (2009); *see* also *Interorient Maritime Enterprises, Inc., et al. v. Remo*, 636 Phil. 240, 249 (2010).

anent the following: (1) occurrence of the accident, which Apines claimed had caused his injury; (2) cause of and circumstances surrounding Apines' repatriation; (3) conclusiveness of the medical findings of the two doctors whom Apines had consulted in Bahrain and Saudi Arabia; (4) referral of Apines to company-designated doctors; (5) failure of Apines to comply with the 72-hour reportorial requirement; (6) necessity, reason and timeliness of the medical treatment rendered by Apines' own doctors; and (7) lack of disability rating made by both the company-designated doctors and those consulted by Apines on his own accord.

**Occurrence of the accidental injury on board the ship**

The respondents insist that Apines had not sustained any injury while on board ETAL's ship. As proof thereof, Capt. Castañares' affidavit and e-mail message negating the occurrence of an accident involving Apines were submitted. The respondents also point out that Apines had not offered any corroborating statements anent the incident from his colleagues who were then on board the ship. Hence, the respondents conclude that since no documentary evidence from ESPI and its staff support Apines' factual claim of having sustained an injury while on board the ship, then, no accident actually happened.[57]

*The evidence point to the contrary.*

While no record of the injury was reflected in the ship's logbook and other documents, the following constitute as substantial evidence to support the conclusion that Apines, in fact, figured in an accident while he was on board.

*First*. In the Medical Report[58] dated November 10, 2007, Dr. George declared Apines to be fit to work. It is, however, clear from the same report that Apines complained of pain and swelling in his left knee, which started after a fall while he was at work about 45 days before such consultation. Dr. George

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[57] CA *rollo*, p. 334.

[58] *Id*. at 120-121.

also made a *conditional diagnosis of Medial Meniscal Injury*, prescribed two pain relief medications, and gave Apines a hinged knee brace. Dr. George further advised the conduct of MRI scanning and consultation with an orthopedic doctor.

In February of 2008, Apines requested for a medical check-up.[59] Dr. Hussain indicated in his report that Apines had pain and swelling for four months prior to the consultation. Dr. Hussain once again recommended MRI scanning, rest for a couple of days, and medications for a long time. Nonetheless, he assessed that Apines was fit to work.[60]

In Bahrain and Saudi Arabia, Apines was consistent in informing the doctors about when and how he sustained his injury. On the other hand, despite rendering fit-to-work assessments, Dr. George and Dr. Hussain's similar recommendations for MRI scanning were *implied admissions that Apines had a medical condition, albeit still undefined.* Without MRI, Dr. George and Dr. Hussain cannot make conclusive assessments of what really ailed Apines. Note that despite the doctors' recommendations in November of 2007 and February of 2008, no MRI scan was conducted and paid for abroad by the respondents.

*Second*. The day after Apines' repatriation, he reported to ESPI's office. In the Exit Interview[61] conducted by Mendoza, Apines once again claimed that while on board the ship, his knee hit the steel railings of the ladder. His ankle swelled in September of 2007 and by November of 2007, the pain had worsened, making it difficult for him to move and climb cranes.

Further, the Crew De-briefing Checklist[62] signed by Apines likewise indicated that his disembarkation was "*for medical grounds (on his own request)*." Whether the repatriation was

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[59] *Id*. at 334.

[60] *Id*. at 122.

[61] *Id*. at 93.

[62] *Id*. at 94.

upon Apines' own initiative or not, the unalterable fact remains that he had a medical condition, which required treatment.

*Third*. In the Discharge Summary[63] dated July 5, 2008, Dr. Dizon stated that according to Apines, he slipped and twisted his left knee about nine months before meniscectomy. Dr. Dizon confirmed the prior diagnosis of Dr. George, Dr. Cejoco and Dr. Leh that Apines had Medial Meniscal Tear in the latter's left knee.

*In precis*, Apines' consistent claims about what occurred while he was on board the ship, and the medical records showing that he had Medial Meniscal Tear substantially lend credence to the factual assertion that indeed, he sustained an accidental injury prior to his repatriation. Capt. Castañares' mere statements pale in comparison to the foregoing.

**Fit-to-work assessments, reporting after repatriation, consultations with doctors, surgery, and compliance with the requirements of the 2nd and 3rd paragraphs of Section 20(B)(3) of the 2000 Philippine Overseas Employment Agency's Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (2000 POEA-SEC)**

The Court shall now proceed to discuss the bearing of Dr. George and Dr. Hussain's uniform assessment that Apines was fit to work.

As mentioned above, Dr. George and Dr. Hussain both recommended MRI scanning of Apines' left knee. Note that Dr. George made a conditional diagnosis that Apines had osteoarthritis, albeit entertained the possibility of Medial Meniscal Tear. Hence, Capt. Castañares' declaration that the

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[63] *Id*. at 129-131.

doctors did not find any other ailment in Apines apart from osteoarthritis deserves short shrift. The *fit-to-work assessment* made by Dr. George and Dr. Hussain remained *inconclusive* pending the conduct of the MRI scan. Unfortunately, the same fit-to-work assessment was used by the respondents against Apines in denying the latter's plea for medical assistance after his repatriation. Later, the MRl scanning was performed only after repatriation about five months from the time Apines had sustained the accidental injury. Apines himself even paid for the scan.

Within three days from repatriation, Apines reported to ESPI's office. Mendoza conducted an Exit Interview and made Apines sign the Crew De-briefing Checklist. The parties now disagree as to what transpired after.

Apines claims that Mendoza and Padre informed him that since he was declared fit to work by the doctors abroad, ESPI cannot offer him any assistance. Further, his unpaid salaries shall be offset against the cost of his airfare ticket in going back to Manila. Apines insisted that he sought repatriation due to the recommendations of the doctors abroad for him to undergo MRI scanning and obtain medical treatment. ESPI, however, stood its ground in denying to provide Apines with assistance.[64]

The respondents, on their part, allege that they referred Apines to a company-designated doctor. However, Apines consulted his own physicians instead.[65] Ann Suzette B. Ong Pe (Ong Pe), Senior Patient Processor at the Marine Medical Services, executed an affidavit attesting to the foregoing.[66]

In the herein assailed decision, the CA declared that Apines "*conveniently subjected himself to medical assistance of his own choice solely because Metropolitan Hospital was unable to conduct the MRI*."[67] The CA also stated that "*there is nothing*

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[64] *Id*. at 261.

[65] *Id*. at 294.

[66] *Id*. at 136.

[67] *Id*. at 339.

*on record to show that [Apines] intended to submit himself to a medical evaluation by the company-designated physician."*[68]

*The Court disagrees.*

It bears stressing that nowhere in the pleadings did the respondents specifically name the company-designated doctor to whom Apines was referred to. Moreover, apart from Ong Pe's affidavit, the respondents did not present any other document to establish that Apines was actually and specifically instructed to report for a post-employment medical examination. Apines vaguely admitted having been referred to Metropolitan Hospital, but it was upon his insistence for medical assistance. What remains unrefuted is that back then, the said hospital did not have MRI machines. Consequently, Apines proceeded to the CGH, underwent MRI scanning and consulted Dr. Cejoco and Dr. Leh. Apines paid for the medical services with his own money.

Indeed, the records do not show that Apines consulted a company-designated doctor either for a post-employment medical assessment or treatment. However, there is likewise *no substantial evidence conclusively, proving that Apines was in fact referred to a company-designated physician*. Besides, after suffering for about five months with an untreated injury on board ETAL's ship, securing the services of CGH for the MRI scanning was not a matter of convenience, but of necessity. Apines merely wanted to obtain prompt medical attention, but was repeatedly given the runaround by the respondents even after repatriation. As aptly observed by the NLRC, "*it is illogical that [Apines] will seek treatment from other doctors immediately after his disembarkation when he [can] avail of the services of the company[-]designated physician*" and "*the proximity of [the dates of repatriation and consultations with Dr. Cejoco and Dr. Leh] further proves that he was indeed denied of medical assistance*."[69]

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[68] *Id*.

[69] *Id*. at 53.

As indicated in the Exit Interview and Crew De-briefing Checklist, Apines promptly reported to ESPI's office within 72-hours from repatriation. He was informed that the cost of his fare going home shall be offset against his unpaid salaries, and that no medical assistance can be offered to him as he was declared fit to work by the doctors abroad. Admittedly, Apines failed to offer documentary proofs of the respondents' denial to assist him in his medical needs. However, *Apines cannot be faulted for the said lack since the custody of the documents, if there were any at all, pertains more to the respondents*. It would be illogical to impose upon Apines the burden to prove with documentary evidence the negative fact that he was not referred to a company-designated doctor.

In *Interorient Maritime Enterprises, Inc., et al. v. Remo,*[70] the Court emphatically ruled that "*the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of petitioners*."[71]

Considering the above, the Court finds that Apines' failure to comply with the 72-hour reportorial requirement for the conduct of a post-employment medical examination under the 2nd paragraph of Section 20(B)(3) of the 2000 POEA-SEC cannot result in the automatic forfeiture of his disability benefits.

*Island Overseas Transport Corporation/Pine Crest Shipping Corporation/Capt. Emmanuel L. Regio v. Armando M. Beja*,[72] on the other hand, is instructive anent when a seafarer may be exempt from compliance with the procedure laid down in the 3rd paragraph of Section 20(B)(3) on the requirement of consultation with a third doctor, *viz*.

A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to

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[70] 636 Phil. 240 (2010).

[71] *Id*. at 250-251.

[72] G.R. No. 203115, December 7, 2015.

his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, **absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent**.[73] (Emphasis ours)

In the case at bar, ESPI's records relative to the occurrence of the injury and the events leading to and following Apines' repatriation are *conspicuously scarce*. Apines claims that he was outrightly denied medical assistance on the pretext that the doctors abroad had found him fit to work. There was unfortunately no document to establish that denial. Similarly, no convincing paper trail exists to prove that there was in fact a referral to a company-designated doctor either for assessment or treatment. *Sans* referral to a company-designated doctor, no post-employment medical examination can be performed on Apines by ESPI. No written fit to work or disability grading certificate was also issued. Without the assessment of the company-designated doctor, there was nothing for Apines' own physicians to contest rendering consultation with a third doctor agreed upon by the parties as superfluous.

Perforce, compliance with the requirements of the 3rd paragraph of Section 20(B)(3) on obtaining the assessment of a third doctor in case of divergent opinions of the company-designated doctor, on one hand, and the seafarer's own physician, on the other, cannot be imposed upon Apines.

**Entitlement to total and permanent disability benefits arising from a conclusive presumption**

Having sustained an accidental injury on board the vessel, Apines is entitled to disability benefits. To what extent, the Court shall discuss below.

At the outset, it bears noting that Apines filed his Complaint before the NLRC on June 6, 2008, 121 days from his repatriation. Before that date, no disability rating of any kind had been issued by the respondents.

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[73] *Id*.

In *Beja*,[74] the Court clarified that:

> [I]f the maritime compensation complaint was filed **prior to October 6, 2008, the rule on the 120-day period**, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*, that is, the doctrine then prevailing before the promulgation of *Vergara* on October 6, 2008, stands; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies.[75] (Citation omitted and emphasis ours)

In the instant case, Apines filed his Complaint on June 6, 2008. Hence, the 120-day period rule stands. Due to ESPI's failure to issue a disability rating within the 120-day period, the presumption of Apines' entitlement to total and permanent disability benefits arose.

The Court shall, nonetheless, tackle the necessity and timeliness of the medical services rendered by Apines' three doctors.

After repatriation, Apines consulted Dr. Cejoco and Dr. Leh in February of 2008. Later, Apines underwent meniscectomy at the PGH under the care of Dr. Dizon.

The respondents point out that Dr. Leh indicated in the Medical Certificate, which he issued, that Apines can return to work after 30 to 45 days. According to the respondents, this should cast doubt upon Apines' claim for total and permanent disability benefits. Moreover, none of Apines' own doctors issued a disability rating.

In the herein assailed decision, the CA, relying on the medical certificates issued by the doctors, found that Apines was merely suffering from osteoarthritis, and not from the effects of an accidental injury. The CA likewise concluded that Apines "*aims to capitalize on his employers failure to assess his disability grade when, as a matter of fact, he has never submitted himself to the examination of the company-designated physician before*

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[74] *Id*.

[75] *Id*.

*or after his operation*."[76] The CA also noted that Apines consulted Dr. Leh on February 20, 2008, but it was only on July 1, 2008 when the meniscectomy was performed. In the intervening period, Apines did not consult with the company-designated doctor, but found the time to see his own physicians and file his Complaint before the NLRC.[77]

In Dr. Cejoco's Consultation Report[78] dated February 14, 2008, it was stated that Apines had "*no acute bony trabecular injury or fracture*," but diagnosed the latter to be suffering from "*Osteoarthritis*," "*oblique inferior surface tear involving the posterior horn of the medial meniscus*," and "*small to moderate amount of joint effusion*." Dr. Leh confinned Dr. Cejoco's impressions, and suggested meniscectomy, with further consultation with a company-accredited orthopedic surgeon.[79] Dr. Dizon's final diagnosis was Medial Meniscal Tear of the left knee, which required arthroscopic meniscectomy.[80]

A meniscus, which is a cartilage disk found in the knee, functions as a shock absorber or cushion to minimize the stress on the articular cartilage. The articular cartilage coats the ends of the bones, so it is present at the bottom of the femur and on top of the shinbone or the tibia. There are two menisci. *If they are not present or torn, the articular cartilage sees an increase in stress and can trigger the onset of osteoarthritis.* That is by no means the only cause of osteoarthritis. However, it is certainly a significant contributor.[81]

Likewise useful are the distinctions between acute, sub-acute and stress fractures. An **acute fracture** "*will often include an emergency room visit the day the trauma occurred and are*

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[76] CA *rollo*, p. 341.

[77] *Id*. at 339-340.

[78] *Id*. at 95.

[79] *Id*. at 96.

[80] *Id*. at 129-131.

[81] <http://www.howardluksmd.com/sports-medicine/meniscus-tears-why-surgery-isnt-always-necessary/> (visited October 26, 2016).

*clearly evident on an x-ray*." On the other hand, "*a* ***sub-acute fracture*** *usually means that the patient had pain for some time*," and "*the fracture occurred weeks or months prior but now is in the healing stage*." There are also **stress fractures**, which occur mainly in the lower extremities due to impact activity or repetitive activities. Stress fractures and healing fractures become painful with weight bearing.[82]

The Court, thus, concludes that no real incompatibility exists between the doctors' findings of osteoarthritis and absence of acute trabecular injury, on one hand, with Apines' having sustained an accidental Medial Meniscal Injury in his left knee while aboard the ship, on the other. Dr. Cejoco's impression that an acute trabecular injury was absent did not rule out the possibility of a sub-acute or stress fracture. Further, a torn meniscus can trigger the onset of osteoarthritis.

In Apines' case, his Medial Meniscus Tear was left undiagnosed and untreated for almost five months from the time he had sustained an accidental injury. It took another five months from his repatriation before he underwent arthroscopic meniscectomy. Apines cannot be faulted for the delay. The Court takes judicial notice of the long queues in governmental hospitals.[83] The Court also finds it logical that without any financial assistance for medical expenses lent by ESPI, it took Apines sometime to save up for what the surgical procedure required.

Further, the possibility that Apines' Medial Meniscal Tear triggered the onset of osteoarthritis cannot be discounted. Under Section 32-A(16)(b) of the 2000 POEA-SEC, for osteoarthritis to be considered as an *occupational disease*, the same must

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[82] <http://www.sacramentoinjuryattorneysblog.com/2015/03/acute-fractures-subacute-fracture-stress-fracture.html> (visited October 26, 2016).

[83] Rule 129 — What Need Not Be Proved

**Section 2.** *Judicial notice, when discretionary*. - A court may take judicial notice of matters which are of **public knowledge**, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (Emphasis ours)

have been contracted in any occupation *involving minor or major injuries to the joint*. Apines' case falls within the qualification.

Relative to Dr. Leh's assessment that Apines can return to work after 30 to 45 days, the Court finds the same as premature. Dr. Leh suggested meniscectomy and further consultation with an orthopedic surgeon. Without having gone through the surgery yet, Apines' fitness to return to work cannot be ascertained.

The Court likewise finds specious the CA's ruling that the lack of disability rating issued by Apines' doctors negates his disability claims.

Due to ESPI's failure or refusal to issue a medical rating within 120 days from repatriation, in legal contemplation, Apines' disability is conclusively presumed to be total and permanent. Besides, in the Court's mind, it is enough that Apines obtained medical certificates and copies of hospital records whenever he consulted with his doctors and underwent medical procedures. The Court cannot impose upon him the burden of knowing what the labor laws require relative to the matters which should be explicitly stated in the medical certificates. The lack of express disability ratings even shows that Apines did not premeditate the filing of his Complaint and that he only procured legal services after his medical treatment.

In disability compensation claims, "*what is important is that [the seafarer] was unable to perform his customary work for more than 120 days which constitutes permanent total disability*," since "*an award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work*."[84]

Apines underwent meniscectomy on July 1, 2008. Upon his discharge from the PGH on July 4, 2008, Dr. Dizon prescribed home medications and recommended his continued rehabilitation.

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[84] *Island Overseas Transport Corporation/Pine Crest Shipping Corporation/Capt. Emmanuel L. Regio v. Armando M. Beja*, supra note 72, citing *Crystal Shipping, Inc. v. Natividad*, 510 Phil. 332, 341 (2005).

Clearly, more than 120 days from repatriation, Apines' medical condition remained unresolved, and he cannot yet perform, without serious discomfort and inconvenience, the customary duties of a crane operator, to wit:

> Arranging; attaching; carrying; checking (ground condition and that crane is level on the outriggers before attempting to lift and place a load; air, water and fuel gauges); cleaning; climbing; connecting; controlling; converting; depressing (pedals); driving (to work sites); ensuring (the setting and securing of the crane); following (directions of signal men); inserting; inspecting; lifting; loading and unloading; locating; lowering; lubricating (cables, pulleys, etc.); maintaining; moving (loads); observing; operating; placing (the correct equipment under the outrigger pads of the crane); planning; positioning; pulling and pushing; raising; repairing; replacing; rotating; securing x x x; stacking; starting; supplying; transferring; verifying (correctness of load)[85]

Generally, in every complaint, "*opposing parties would stand poles apart and proffer allegations as different as chalk and cheese*;" hence, it is "*incumbent upon the Court to determine whether the party on whom the burden to prove lies was able to hurdle the same*."[86]

Apines hurdled the burden. The medical records, consistency of his claims, and the circumstances before and after his repatriation overshadow the respondents' averments anent the non-occurrence of the accidental injury and alleged unjustified non-compliance with the 72-hour and third-doctor requirements.

In sum, the Court finds favor in Apines' claims for total and permanent disability benefits, sickness allowance and attorney's fees. The NLRC's judgment award to Apines in the total amount of US$69,080.00,[87] which the respondents' had conditionally satisfied, is in order. The Court further agrees with the NLRC,

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[85] <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/pub1ication/wcms_192399.pdf> (visited October 26, 2016).

[86] *Javier v. Fly Ace Corporation, et al.*, 682 Phil. 359, 372 (2012).

[87] CA *rollo*, p. 54.

which found no ample basis to grant Apines' claims for moral and exemplary damages.

**WHEREFORE,** the instant petition is **GRANTED**. The Decision and Resolution dated January 26, 2012 and May 30, 2012, respectively, of the Court of Appeals in CA-G.R. SP No. 114221, which dismissed Elmer A. Apines' complaint for disability benefits and damages, are **SET ASIDE**. The Decision rendered by the National Labor Relations Commission on December 14, 2009 in NLRC LAC No. 06-000338-09, which awarded Elmer A. Apines the total amount of US$69,080.00 as total and permanent disability benefits, sickness allowance and attorney's fees, is **REINSTATED**. Legal interest is no longer imposed on the award of US$69,080.00 in view of the satisfaction of the amount already made on August 10, 2010.

**SO ORDERED.**

*Peralta* (*Acting Chairperson*),[*] *Perez*, and *Jardeleza, JJ.*, concur.

*Velasco, Jr., J.*, on official leave.

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**SECOND DIVISION**

[G.R. No. 202639. November 9, 2016]

**FEDERATED LPG DEALERS ASSOCIATION,** *petitioner, vs.* **MA. CRISTINA L. DEL ROSARIO, CELSO E. ESCOBIDO II, SHIELA M. ESCOBIDO, and RESTY P. CAPILI,** *respondents.*

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[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

**SYLLABUS**

**1. CRIMINAL LAW; *BATAS PAMBANSA BLG.* 33 (AN ACT DEFINING AND PENALIZING CERTAIN PROHIBITED ACTS INIMICAL TO THE PUBLIC INTEREST AND NATIONAL SECURITY INVOLVING PETROLEUM AND/OR PETROLEUM PRODUCTS, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES, AS AMENDED BY PD 1865); A MEMBER OF THE BOARD OF DIRECTORS OF A CORPORATION, WHO IS NOT THE PRESIDENT, GENERAL MANAGER OR MANAGING PARTNER, CANNOT, BY MERE REASON OF SUCH MEMBERSHIP, BE HELD LIABLE FOR THE CORPORATION'S PROBABLE VIOLATION OF BP 33; CASE AT BAR.—** As clearly enunciated in [*Ty v. NBI Supervising Agent De Jemil*], a member of the Board of Directors of a corporation, cannot, by mere reason of such membership, be held liable for the corporation's probable violation of BP 33. If one is not the President, General Manager or Managing Partner, it is imperative that it first be shown that he/she falls under the catch-all "such other officer charged with the management of the business affairs," before he/she can be prosecuted. However, it must be stressed, that the matter of being an officer charged with the management of the business affairs is a factual issue which must be alleged and supported by evidence. Here, there is no dispute that neither of the respondents was the President, General Manager, or Managing Partner of ACCS. Hence, it becomes incumbent upon petitioner to show that respondents were officers charged with the management of the business affairs. However, the Complaint-Affidavit attached to the records merely states that respondents were members of the Board of Directors based on the AOI of ACCS. There is no allegation whatsoever that they were in-charge of the management of the corporation's business affairs. x x x Clearly, therefore, it is only Antonio, who undisputedly was the General Manager – a position among those expressly mentioned as criminally liable under paragraph 4, Section 3 of BP 33, as amended – can be prosecuted for ACCS' perceived violations of the said law. Respondents who were mere members of the Board of Directors and not shown to be charged with the management of the business affairs were thus correctly dropped as respondents in the complaints.

**2. ID.; ID.; PROHIBITED ACTS; THE OFFENSES OF ILLEGAL TRADING THROUGH UNAUTHORIZED REFILLING AND UNDERFILLING OF PETROLEUM PRODUCTS ARE SEPARATE AND DISTINCT OFFENSES; CASE AT BAR.—** Illegal trading and underfilling are among the eight acts prohibited under Section 2 of BP 33, as amended. By definition, the acts penalized by both offenses are essentially different. Under paragraph 1(c) of Section 3 of the said law, illegal trading in petroleum and/or petroleum products is committed by refilling LPG cylinders without authority from the Bureau of Energy Utilization, or refilling of another company's or firm's cylinder without such company's or firm's written authorization. Underfilling or underdelivery, on the other hand, under paragraph 3 of the same section refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually below the quantity indicated or registered on the metering device of a container. While it may be said that an act could be common to both of them, the act of refilling does not in itself constitute illegal trading through unauthorized refilling or that of underfilling. The concurrence of an additional requisite different in each one is necessary to constitute each offense. Thus, aside from the act of refilling, the offender must have no authority to refill from the concerned government agency or the company or firm owning the LPG cylinder refilled for the act to be considered illegal trading through unauthorized refilling. Whereas in underfilling, it is necessary that apart from the act of refilling, the offender must have refilled the LPG cylinder below the authorized limits in the sale of petroleum products. Moreover, the offense of underfilling is not limited to the act of refilling below the authorized limits. Possession of an underfilled LPG cylinder is another way of committing the offense. As therefore correctly argued by petitioner, the offenses of illegal trading through unauthorized refilling and underfilling are separate and distinct offenses. x x x All told, the Court so holds that aside from illegal trading through unauthorized refilling, the State Prosecutor should have also taken cognizance of the complaint for underfilling.

**APPEARANCES OF COUNSEL**

*Adarlo Caoile & Associates* for petitioner.
*Celso O. Escobido and David Paul G. Garingo* for respondents.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certiorari* assails the April 27, 2012 Decision[1] and July 6, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 115750, which respectively dismissed the Petition for *Certiorari* filed therewith by petitioner Federated LPG Dealers Association and denied the motion for reconsideration thereto.

***Factual Antecedents***

On June 1, 2006, petitioner, through counsel Atty. Genesis M. Adarlo (Atty. Adarlo) of Joaquin Adarlo and Caoile, sought assistance from the Criminal Investigation and Detection Group, Anti-Fraud and Commercial Crimes Division (CIDG-AFCCD) of the Philippine National Police[3] in the surveillance, investigation, apprehension, and prosecution of certain persons and establishments within Metro Manila reportedly committing acts violative of *Batas Pambansa Blg.* 33 (BP 33),[4] as amended by Presidential Decree No. 1865 (PD 1865),[5] to wit: (1) refilling

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[1] CA *rollo*, pp. 454-467; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas Peralta and Mario V. Lopez.

[2] *Id.* at 483-484.

[3] *Id.* at 72-73.

[4] An Act Defining and Penalizing Certain Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties Therefor and for Other Purposes.

[5] Amending Batas Pambansa Blg. 33, entitled "An Act Defining and Penalizing Certain Prohibited Acts Inimical to the Public Interests and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties

of Liquefied Petroleum Gas (LPG) cylinders branded as Shellane, Petron Gasul, Caltex, Totalgaz and Superkalan Gaz without any written authorization from the companies which own the said brands in violation of Section 2(a),[6] in relation to Sections 3[7] and 4;[8] (2) underfilling of LPG products or possession of

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Therefor and for Other Purposes", by Including Short-Selling and Adulteration of Petroleum and Petroleum Products and Other Acts in the Definition of Prohibited Acts, Increasing the Penalties therein, and For Other Purposes."

[6] Sec. 2. Prohibited Acts. – The following acts are prohibited and penalized:

(a) Illegal trading in petroleum and/or petroleum products;

x x x x

[7] Sec. 3. Definition of terms. – For the purpose of this Act, the following shall be construed to mean:

Illegal trading in petroleum and/or petroleum products –

x x x x

(c) Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;

x x x x

[8] Sec. 4. Penalties. – Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than TWENTY thousand pesos (₱20,000.00) but not more than FIFTY thousand pesos (₱50,000.00) or imprisonment of at least TWO (2) YEARS but not more than FIVE (5) YEARS, or both, in the discretion of the court. In cases of second and subsequent conviction under this act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing or misuse, shall be forfeited in favor of the Government: Provided, that if the petroleum and/or petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retails outlet, or hauler, the cancellation of his license.

Trial of case arising under this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer

underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange or barter in violation of Section 2(c),[9] in relation to Sections 3[10] and 4; and, (3) refilling LPG cylinders without giving any receipt therefor, or giving out receipts without indicating the brand name, tare weight, gross weight and/or price thereof, among others, again in violation of Section 2(a) in relation to Sections 3(b)[11] and 4.

A few days later or on June 8, 2006, Atty. Adarlo again wrote the CIDG-AFCCD informing the latter of its confirmation

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charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable. In case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office.

[9] Sec. 2. Prohibited Acts. – The following acts are prohibited and penalized:

x x x x

(c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

x x x x

[10] Sec. 3. Definition of terms. – For the purpose of this Act, the following shall be construed to mean:

x x x x

Underfilling or Underdelivery – Refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually beyond authorized limits than the quantity indicated or registered on the metering device of container. This refers, among others, to the quantity of petroleum retail outlets or to liquefied petroleum gas in cylinder or to lube oils in packages.

[11] Sec. 3. Definition of terms. – For the purpose of this Act, the following shall be construed to mean:

Illegal trading in petroleum and/or petroleum products –

x x x x

(b) Non-issuance of receipts by licensed [traders] oil companies, marketers, distributors, dealers, subdealers and other retail outlets, to final consumers; provided: That such receipts, in the case of gas cylinders, shall indicate therein the brand name, tare weight, gross weight, and price thereof;

x x x x

that ACCS Ideal Gas Corporation (ACCS), which allegedly has been refilling branded LPG cylinders in its refilling plant at 882 G. Araneta Avenue, Quezon City, has no authority to refill per certifications from gas companies owning the branded LPG cylinders.[12]

Acting on the same, a group composed of P/Supt. Francisco M. Esguerra (P/Supt. Esguerra) and PO2 Joseph R. Faeldonia (PO2 Faeldonia), both of the CIDG-AFCCD, and a team of paralegal investigators having extensive training and experience in LPG matters led by Bernabe C. Alajar (Alajar), mapped out a plan for the surveillance and investigation of ACCS.[13] After a series of surveillance, the group observed that various vehicles and individuals carrying branded LPG cylinders have been going in and out of ACCS refilling plant. Hence, on July 15, 2006, they conducted a test-buy operation, the details of which were uniformly narrated by P/Supt. Esguerra, PO2 Faeldonia, and Alajar as follows:

> x x x On 15 July 2006, using an investigation pre-text, we went undercover and executed our test-buy operations. In order for us to successfully execute our test-buy operation and avoid suspicion, we decided to separately and successively bring FOUR (4) empty branded LPG cylinders to the ACCS Refilling Plant.
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> x x x It is worthy to emphasize that while we were bringing with us the FOUR (4) empty branded LPG cylinders, we observed that other individuals were simultaneously bringing in for refilling various empty unbranded and branded LPG cylinders, including Shellane, Petron Gasul, Totalgaz, and Superkalan Gaz LPG cylinders.
>
> x x x In particular, we were able to conduct our test-buy operation in the following manner:
>
> (a) We first brought one (1) empty Petron Gasul 11 kg. LPG cylinder and one (1) empty Shellane 11 kg. LPG cylinder for refilling. An employee of the ACCS Refilling Plant got our empty branded LPG cylinders, brought them to the refilling platform

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[12] CA *rollo*, pp. 95-99.

[13] See respective Affidavits of P/Supt. Esguerra, *id*. at 128-130; PO2 Joseph Faeldonia, *id*. at 134-136; and Alajar, *id*. at 131-133.

> inside, and refilled them. From our location, we witnessed the actual refilling of our empty branded LPG cylinders. We were thereafter required to pay the total amount of NINE HUNDERED FIFTY-FOUR PESOS (Php954.00) for the refilled branded LPG cylinders. We made the necessary payment and, in turn, we were issued ACCS Control Receipt No. 12119 dated 15 July 2006 x x x.
>
> (b) Lastly, we brought one (1) empty Totalgaz 11 kg. LPG cylinder and one (1) Superkalan Gaz 2.7 kg. LPG cylinder for refilling. An employee of the ACCS Refilling Plant got our empty branded LPG Cylinders, brought them to the refilling platform inside, and refilled them. Again, from our location, we witnessed the actual refilling of our empty branded LPG cylinders. We were thereafter required to pay the amount of FIVE HUNDRED NINETY PESOS (Php590.00). We made the necessary payment, and in turn, we were issued ACCS Control No. 12120 dated 15 July 2006 x x x
>
> x x x Thereafter, we left the premises of ACCS Refilling Plant and brought with us the abovementioned refilled branded LPG Cylinders, which all did not have any LPG valve seals. Immediately, we proceeded to the CIDG-AFCCD Headquarters and made the proper identification markings on the branded LPG cylinders, such as the name of ACCS Refilling Plant where they were refilled and the date when they were refilled. x x x[14]

Inspection and evaluation of the refilled LPG cylinders further revealed that they were underfilled by 0.4 kg to 1.3 kg.[15]

Having reasonable grounds to believe that ACCS was in violation of BP 33, P/Supt. Esguerra filed with the Regional Trial Court (RTC) of Manila applications for search warrant against the officers of ACCS, to wit: Antonio G. Del Rosario (Antonio) and, respondents Ma. Cristina L. Del Rosario, Celso E. Escobido II, and Shiela M. Escobido. Pursuant to search warrants[16] accordingly issued by the said court on August 1,

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[14] *Id*. at 129-130.

[15] See Inspection/Evalution Reports, *id*. at 114-117.

[16] One for alleged violation of Section 2(a), in relation to Sections 3 (c) and 4 of BP 33 as amended, *id*. at 150-154, and another for alleged violation of Section 2(c), in relation to Sections 3 and 4 of the same law, *id*. at 155-159.

2006, a search and seizure operation was conducted on August 3, 2006 at No. 882 G. Araneta Avenue, Quezon City. This resulted in the seizure of an electric motor, a hose with filling head, scales, v-belt, vapor compressor, booklets of various receipts, and 73 LPG cylinders of various brands and sizes, four of which were filled, *i.e.*, two Superkalan 3.7 kg. LPG cylinders, one Shellane 11 kg. LPG cylinder, and one Totalgaz 11 kg. cylinder.[17] Inspection and evaluation of the said filled LPG cylinders showed that they were underfilled by 0.5 kg. to 0.9 kg.[18]

On December 14, 2006, P/Supt Esguerra filed with the Department of Justice (DOJ) Complaints-Affidavits against Antonio and respondents for illegal trading of petroleum products and for underfilling of LPG cylinders under Section 2(a) and 2(c), respectively, of BP 33, as amended.[19]

In his Counter-Affidavit,[20] Antonio admitted that he was the General Manager of ACCS but denied that the company was engaged in illegal trading and underfilling. He claimed that ACCS was merely a dealer of LPG products to various retailers in Quezon City and that the alleged refilling plant in G. Araneta Avenue, Quezon City was only being used by ACCS as storage of LPG products intended for distribution. He also denied that ACCS has anything to do with the persons allegedly in-charge of refilling activities in the said compound since they were not its employees. Likewise, the properties seized during the search and seizure operation were not owned by ACCS but by third parties who were bringing in LPG tanks for refilling with which, as mentioned, ACCS has nothing to do. Antonio likewise asserted that the herein respondents were merely incorporators of ACCS who have no active participation in the operation of the business of the corporation.

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[17] See Receipt of Property Seized, *id*. at 160.

[18] As alleged in the Complaint-Affidavit for Underfilling, *id*. at 169-173.

[19] Docketed as I.S. No. 2006-1173 and I.S. No. 2006-1174. However, only a copy of the Complaint-Affidavit in I.S. No. 2206-1173 (for underfilling) is found in the records, *id*.

[20] *Id*. at 210-211.

Respondents, for their part, filed a Joint Counter-Affidavit[21] corroborating the statements of Antonio that they were merely incorporators/stockholders of ACCS who have no active participation in the operation, management, and control of the business; that ACCS was only engaged in the distribution of LPG products and not in the refilling of LPG cylinders; and, that ACCS did not commit any violation of BP 33 as amended.

P/Supt. Esguerra filed a Reply-Affidavit[22] wherein he pointed out that during the test-buy operation, his team was issued ACCS Control Receipts. To him, this negated the claim of Antonio and respondents that ACCS was not engaged in the refilling of cylinder tanks and that the persons in-charge thereof were not ACCS' employees. P/Supt. Esguerra likewise stressed that pursuant to Section 4 of BP 33, the President, General Manager, Managing Partner, or such other officer charged with the management of the business affairs of the corporation, or the employee responsible for the violation shall be criminally liable. Thus, Antonio, being the General Manager, is criminally liable. Anent the respondents, P/Supt. Esguerra averred that the Articles of Incorporation (AOI) of ACCS provides that there shall be five incorporators who shall also serve as the directors. Considering that respondents were listed in the AOI as incorporators, they are thus deemed as the directors of ACCS. And since the By-Laws of ACCS provides that all business shall be conducted and all property of the corporation controlled and held by the Board of Directors, and also pursuant to Section 23[23] of the Corporation Code, respondents are likewise criminally liable.

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[21] *Id*. at 214.

[22] *Id*. at 216-225.

[23] 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.

In their Joint Rejoinder-Affidavit,[24] Antonio and respondents reiterated that ACCS was only a dealer and distributor of petroleum products and not engaged in refilling activities. They also stressed, among others, that respondents cannot be held liable under BP 33 as amended since the AOI of ACCS did not state that they were the President, General Manager, Managing Partner, or such other officer charged with the management of business affairs. What the AOI plainly indicated was that they were the incorporating stockholders of the corporation and nothing more.

However, P/Supt. Esguerra in his Sur-Rejoinder Affidavit[25] insisted that ACCS committed illegal trading of petroleum products and underfilling and that Antonio and respondents are criminally liable for the same.

***Ruling of the Department of Justice***

In a Joint Resolution[26] dated June 25, 2008, Chief State Prosecutor Jovencito R. Zuño approved the finding of probable cause by Senior State Prosecutor Edwin S. Dayog, albeit only against Antonio and only for the charge of illegal trading, *viz.*:

> The pieces of documentary evidence on record, notably the receipts issued to the operatives of the PNP, CIDG, who conducted the 'test buy' operations on 15 July 2006, and the inventory of the items they seized pursuant to the search warrant issued by the Regional Trial Court of Manila, tend to suggest that ACCS Ideal Gas Corporation did engage in refilling LPG cylinders bearing the brands Shellane, Petron Gasul, Totalgaz, and Superkalan Gas. There is no dispute that ACCS Ideal Gas was not duly authorized by Pilipinas Shell, Petron, and Total (Philippines) Inc. to refill their respective LPG cylinders with LPG. Consequently, the act of ACCS Ideal Gas in refilling the LPG cylinders constitutes 'illegal trading in petroleum and/or petroleum products' under Section 2(a) of Batas Pambansa Bilang 33 as amended by Presidential Decree No. 1986, for which respondent Antonio G. Del Rosario, the general manager of ACCS

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[24] CA *rollo*, pp. 236-240.

[25] *Id*. at 241-251.

[26] *Id*. at 252-255.

Ideal Gas Corporation, should be prosecuted. The offense of underfilling of LPG cylinders under Section 2(c) may not be considered a distinct offense, the very same act being involved. We hold that underfilling of LPG cylinders under Section 2(c) presupposes that the person or entity who committed it is duly authorized to refill LPG cylinders.

The other respondents may not be prosecuted for the offense. The law specifies the persons to be charged in case where violations of B.P. Blg. 33 are committed by a corporation, to wit, the president, general manager, officer charged with the management of the business affairs thereof, or employee responsible therefor (Section 4, B.P. Blg. 33). The record fails to disclose who among the respondents was the president, officer charged with the management of the business affairs of ACCS Ideal Gas, or the employee responsible for the commission of the offense. It is simply improper to charge all respondents for the offense based solely on the fact that they were the directors of ACCS Ideal Gas at the time the alleged violation was committed. A member of the board of directors of a corporation is not necessarily an 'officer charged with the management of the business affairs thereof.'

WHEREFORE, it is respectfully recommended that Antonio G. Del Rosario be charged with illegal refilling of LPG cylinders penalized under Section 2(a) of Batas Pambansa Bilang 33 as amended by Presidential Decree No. 1865 and that the complaints as against Ma. Cristina L. Del Rosario, Celso E. Escobido II, Sheila M. Escobido, and Resty P. Capili be dismissed.

SO RESOLVED.[27]

The respective motions for reconsideration of P/Supt. Esguerra and Antonio were denied in another Joint Resolution[28] dated November 11, 2008.

P/Supt. Esguerra, now joined by petitioner, filed a Petition for Review[29] before the Secretary of Justice assailing the aforementioned Joint Resolutions. The Secretary of Justice, however, upheld the said issuances and dismissed the Petition

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[27] *Id*. at 253-254.

[28] *Id*. at 274-275.

[29] *Id*. at 277-308.

in a Resolution[30] dated September 4, 2009. The Motion for Reconsideration[31] thereto was likewise denied in a Resolution[32] dated June 23, 2010.

***Ruling of the Court of Appeals***

P/Supt. Esguerra and petitioner elevated the matter to the CA through a *certiorari* petition. They contended that the Secretary of Justice acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in affirming the dropping of respondents from the complaints and the ruling out of the offense of underfilling.

The CA, however, sustained the Secretary of Justice and on April 27, 2012 rendered a Decision,[33] the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the petition. The assailed Resolutions are hereby AFFIRMED. No costs.
>
> SO ORDERED.[34]

The Motion for Reconsideration[35] thereto having been denied in a Resolution[36] dated July 6, 2012, petitioner comes to this Court through this Petition for Review on *Certiorari*.

**Issues**

Essentially at fore in this Petition are the following questions:

1. Can respondents, as members of the Board of Directors of ACCS, be criminally prosecuted for the latter's alleged violation/s of BP 33 as amended?

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[30] *Id*. at 48-49; signed by Undersecretary Ernesto L. Pineda for the Secretary of Justice.

[31] *Id*. at 53-71.

[32] *Id*. at 50-51; signed by Acting Secretary Alberto C. Agra.

[33] *Id*. at 454-467.

[34] *Id*. at 466.

[35] *Id*. at 468-480.

[36] *Id*. at 483-484.

2. Are the offenses of illegal trading of petroleum products under Section 2(a) and underfilling under Section 2(c), both of BP 33 as amended, distinct offenses?

**Our Ruling**

There is partial merit in the Petition.

*Respondents cannot be prosecuted for ACCS' alleged violations of BP 33. They were thus correctly dropped as respondents in the complaints.*

The CA ratiocinated that by the election or designation of Antonio as General Manager of ACCS, the daily business operations of the corporation were vested in his hands and had ceased to be the responsibility of respondents as members of the Board of Directors. Respondents, therefore, were not officers charged with the management of the business affairs who could be held liable pursuant to paragraph 3, Section 4 of BP 33, as amended, which states that:

> When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable. x x x

Petitioner, on the other hand, insists that the Board of Directors, by law, is responsible for the general management of the business affairs of a corporation. Conversely, respondents as members of the Board of Directors of ACCS fall under the classification of officers charged with the management of business affairs.

The Court finds no need to belabor this point as it has already made a definite pronouncement on an identical issue in *Ty v. NBI Supervising Agent De Jemil*.[37]

In the said case, therein petitioners were members of the Board of Directors of Omni Gas Corporation (Omni), which was found by operatives of the National Bureau of Investigation

[37] 653 Phil. 356 (2010).

(NBI) as allegedly engaged in illegal trading of LPG and underfilling of LPG cylinders. While the State Prosecutor found probable cause against therein petitioners, the Secretary of Justice, however, reversed and set aside the said finding. On *certiorari* petition by the Office of the Solicitor General, the CA granted the same and consequently reinstated the finding of probable cause of the State Prosecutor. Naturally, petitioners brought the matter to this Court through a Petition for Review on *Certiorari* where one of the core issues raised was whether therein petitioners could be held liable for the corporation's alleged violations of BP 33. In resolving the same, the Court ratiocinated, *viz.*:

> Sec. 4 of BP 33, as amended, provides for x x x persons who are criminally liable, thus:
>
> x x x x
>
> > When the offender is a **corporation**, partnership, or other juridical person, the **president**, the **general manager**, **managing partner**, or such other **officer charged with the management of the business affairs thereof**, or **employee responsible for the violation** shall be criminally liable; x x x
>
> x x x x
>
> Relying on the x x x above statutory proviso, petitioners argue that they cannot be held liable for any perceived violations of BP 33, as amended, since they are mere directors of Omni who are not in charge of the management of its business affairs. Reasoning that criminal liability is personal, liability attaches to a person from his personal act or omission but not from the criminal act or negligence of another. Since Sec. 4 of BP 33, as amended, clearly provides and enumerates who are criminally liable, which do not include members of the board of directors of a corporation, petitioners, as mere members of the board of directors who are not in charge of Omni's business affairs, maintain that they cannot be held liable for any perceived violations of BP 33, as amended. To bolster their position, they attest to being full-time employees of various firms as shown by the Certificates of Employment they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable [therefor,

they] not being in any way connected with the commission of the alleged violations, and, consequently, the criminal complaints filed against them based solely on their being members of the board of directors as per the [General Information Sheet (GIS)] submitted by Omni to SEC are grossly discriminatory.

On this point, we agree with petitioners except as to petitioner Arnel U. Ty who is undisputably the President of Omni.

It may be noted that Sec. 4 above enumerates the persons who may be held liable for violations of the law, *viz*[.]: (1) the president, (2) general manager, (3) managing partner, (4) such other officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

It is undisputed that petitioners are members of the board of directors of Omni at the time pertinent. There can be no quibble that the enumeration of persons who may be held liable for corporate violators of BP 33, as amended, excludes the members of the board of directors. This stands to reason for the board of directors of a corporation is generally a policy making body. Even if the corporate powers of a corporation are reposed in the board of directors under the first paragraph of Sec. 23 of the Corporation Code, it is of common knowledge and practice that the board of directors is not directly engaged or charged with the running of the recurring business affairs of the corporation. Depending on the powers granted to them by the Articles of Incorporation, the members of the board generally do not concern themselves with the day-to-day affairs of the corporation, except those corporate officers who are charged with running the business of the corporation and are concomitantly members of the board, like the President. Section 25 of the Corporation Code requires the president of a corporation to be also a member of the board of directors.

Thus, the application of the legal maxim *expressio unius est exclusio alterius*, which means the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. The fourth officer in the enumerated list is the catch-all 'such other officer charged

with the management of the business affairs' of the corporation or juridical entity which is a factual issue which must be alleged and supported by evidence.

A scrutiny of the GIS reveals that among the petitioners who are members of the board of directors are the following who are likewise elected as corporate officers of Omni: (1) Petitioner Arnel U. Ty (Arnel) as President; (2) petitioner Mari Antonette Ty as Treasurer; and (3) petitioner Jason Ong as Corporate Secretary. Sec. 4 of BP 33, as amended, clearly indicated firstly the president of a corporation or juridical entity to be criminally liable for violations of BP 33, as amended.

Evidently, petitioner Arnel, as President, who manages the business affairs of Omni, can be held liable for probable violations by Omni of BP 33, as amended. The fact that petitioner Arnel is ostensibly the operations manager of Multi-Gas Corporation, a family owned business, does not deter him from managing Omni as well. It is well-settled that where the language of the law is clear and unequivocal, it must be taken to mean exactly what it says. As to the other petitioners, unless otherwise shown that they are situated under the catch-all 'such other officer charged with the management of the business affairs' they may not be held liable under BP 33, as amended, for probable violations. Consequently, with the exception of petitioner Arnel, the charges against other petitioners must perforce be dismissed or dropped.[38]

As clearly enunciated in *Ty*, a member of the Board of Directors of a corporation, cannot, by mere reason of such membership, be held liable for the corporation's probable violation of BP 33. If one is not the President, General Manager or Managing Partner, it is imperative that it first be shown that he/she falls under the catch-all "such other officer charged with the management of the business affairs," before he/she can be prosecuted. However, it must be stressed, that the matter of being an officer charged with the management of the business affairs is a factual issue which must be alleged and supported by evidence. Here, there is no dispute that neither of the respondents was the President, General Manager, or Managing Partner of ACCS. Hence, it becomes incumbent upon petitioner

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[38] *Id*. at 381-385; emphases and italics in the original; citations omitted.

to show that respondents were officers charged with the management of the business affairs. However, the Complaint-Affidavit[39] attached to the records merely states that respondents were members of the Board of Directors based on the AOI of ACCS. There is no allegation whatsoever that they were in-charge of the management of the corporation's business affairs.

At any rate, the Court has gone through the By-Laws of ACCS and found nothing therein which would suggest that respondents were directly involved in the day-to-day operations of the corporation. True, Section 1[40] of Article III thereof contains a general statement that the corporate powers of ACCS shall be exercised, all business conducted, and all property of the corporation controlled and held by the Board of Directors. Notably, however, the same provision likewise significantly vests the Board with specific powers that were generally concerned with policy making from which it can reasonably be deduced that the Board only concerns itself in the business affairs by setting administrative and operational policies. It is actually the President under Section 2,[41] Article IV of the said by-laws who is vested with wide latitude in controlling the business operations of the corporation. Among others, the President is specifically empowered to supervise and manage the business affairs of the corporation, to implement the administrative and operational policies of the corporation under his supervision and control, to appoint, remove, suspend or discipline employees of the corporation, prescribe their duties, and determine their salaries. With these functions, the President appears to be the officer charged with the management of the business affairs of ACCS. But since there is no allegation or showing that any of the respondents was the President of ACCS, none of them, therefore, can be considered as an officer charged

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[39] For Violation of Section 2(c) , in relation to Sections 3 and 4, of BP 33 as amended.

[40] CA *rollo*, pp. 88-89.

[41] *Id*. at 90-91.

with the management of the business affairs even in so far as the By-Laws of the subject corporation is concerned.

Clearly, therefore, it is only Antonio, who undisputedly was the General Manager – a position among those expressly mentioned as criminally liable under paragraph 4, Section 3 of BP 33, as amended – can be prosecuted for ACCS' perceived violations of the said law. Respondents who were mere members of the Board of Directors and not shown to be charged with the management of the business affairs were thus correctly dropped as respondents in the complaints.

*The offenses of illegal trading under Section 2(a) and underfilling under Section 2(c) both under BP 33, as amended, are distinct offenses.*

The State Prosecutor held that the offense of illegal trading by means of unauthorized refilling is not distinct from the offense of underfilling since these two offenses involve the very same act of refilling. He likewise held that the offender in the latter offense must be an entity duly authorized to refill LPG cylinders. And in view of his finding that ACCS probably committed illegal trading by refilling "without authority", the State Prosecutor impliedly held that the charge of underfilling could not prosper in this case.

Petitioner, however, argues otherwise. It asserts that illegal trading of LPG products is committed when an entity not authorized to refill a specified brand of LPG cylinder refills the same, regardless of whether or not the LPG cylinder is underfilled. Underfilling, on the other hand, is committed when an entity refills an LPG cylinder below the required quantity, regardless of whether or not such entity is authorized to refill. Hence, the two offenses are separate and distinct.

The Court agrees with petitioner.

Illegal trading and underfilling are among the eight acts prohibited under Section 2 of BP 33, as amended.

By definition, the acts penalized by both offenses are essentially different. Under paragraph 1(c) of Section 3 of the said law, illegal trading in petroleum and/or petroleum products is committed by refilling LPG cylinders without authority from the Bureau of Energy Utilization, or refilling of another company's or firm's cylinder without such company's or firm's written authorization. Underfilling or underdelivery, on the other hand, under paragraph 3 of the same section refers to a sale, transfer, delivery or filling of petroleum products of a quantity that is actually below the quantity indicated or registered on the metering device of a container. While it may be said that an act could be common to both of them, the act of refilling does not in itself constitute illegal trading through unauthorized refilling or that of underfilling. The concurrence of an additional requisite different in each one is necessary to constitute each offense. Thus, aside from the act of refilling, the offender must have no authority to refill from the concerned government agency or the company or firm owning the LPG cylinder refilled for the act to be considered illegal trading through unauthorized refilling. Whereas in underfilling, it is necessary that apart from the act of refilling, the offender must have refilled the LPG cylinder below the authorized limits in the sale of petroleum products. Moreover, the offense of underfilling is not limited to the act of refilling below the authorized limits. Possession of an underfilled LPG cylinder is another way of committing the offense. As therefore correctly argued by petitioner, the offenses of illegal trading through unauthorized refilling and underfilling are separate and distinct offenses.

Besides, it is not accurate to say that in this case the charges of illegal trading and underfilling were based on the same act of refilling committed by ACCS during the test-buy operation. While it appears from the records that the charge of illegal trading was principally based on ACCS' act of refilling the four branded LPG cylinders without authority during the test buy, the Complaint-Affidavit for underfilling would show that it was not solely based on the same. Aside from the four branded LPG cylinders caused to be refilled by police operatives in the test buy which were later found to be underfilled by 0.5 kg to

1.3 kg, the said complaint was likewise anchored on the other four branded LPG cylinders seized during the search and seizure operation which were also found to be underfilled, this time by 0.5 kg. to 0.9 kg. It is thus apparent that with respect to the last four underfilled cylinders, the basis for the charge is not the act of refilling but ACCS's possession of the same since as already mentioned, the offense of underfilling is not limited to the act of refilling an LPG cylinder below authorized limits but also contemplates possession of underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange or barter.

In any event, the Court in *Ty* had impliedly upheld the filing of separate Informations for illegal trading through unauthorized refilling and for underfilling even if the charges emanated from the same act of refilling. There, the charge of underfilling was based on the fact that one of the eight LPG cylinders illegally refilled during a test-buy operation turned out to be underfilled. Notably, the same eight LPG cylinders illegally refilled, including the one underfilled, also formed part of the bases for the charge of illegal trading.

Further, the Court finds without legal basis the conclusion of the State Prosecutor that the offense of underfilling presupposes that the offender is a duly authorized refiller. Section 4 of BP 33, as amended, clearly provides that any of the acts prohibited by the said law can be committed by *any person* and not only by a duly authorized refiller. And while the same provision lays down an additional penalty of cancellation of license in case the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer, other retail outlets, or hauler, it cannot be deduced therefrom that only a duly-licensed refiller can be held liable for underfilling. Verily, it can also be committed by an authorized marketer, distributor, dealer, sub-dealer or hauler which so happened to have a license to do business in such capacity but nevertheless commits underfilling. Plainly, the law does not limit the commission of the offense of underfilling to offenders who/which are duly authorized to refill. "It is [a] well recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non*

*distinguit nec nos distinguere debemos*. The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated."[42]

All told, the Court so holds that aside from illegal trading through unauthorized refilling, the State Prosecutor should have also taken cognizance of the complaint for underfilling. Consequently, the CA erred when it affirmed in full the Resolutions of the Secretary of Justice sustaining the ruling of the State Prosecutor.

**WHEREFORE**, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The assailed April 27, 2012 Decision and July 6, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 115750 are **AFFIRMED with MODIFICATION** that the State Prosecutor is **ORDERED** to take cognizance of the Complaint-Affidavit for Underfilling under Section 2(c), BP 33, as amended, docketed as I.S. No. 2006-1173, but only insofar as Antonio G. Del Rosario is concerned.

**SO ORDERED**.

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

*Mendoza, J.,* on official leave.

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[42] *Philippine British Assurance Co., Inc. v. Intermediate Appellate Court,* 234 Phil. 512, 519 (1987); italics and underscoring in the original.

**SECOND DIVISION**

[G.R. No. 204280. November 9, 2016]

**EVELYN V. RUIZ,** *petitioner, vs.* **BERNARDO F. DIMAILIG,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE DETERMINATION OF THE PRESENCE OR ABSENCE OF GOOD FAITH, AND OF NEGLIGENCE ARE FACTUAL MATTERS, WHICH ARE OUTSIDE THE SCOPE OF A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTION.—** As a rule, the issue of whether a person is a mortgagee in good faith is not within the ambit of a Rule 45 Petition. The determination of presence or absence of good faith, and of negligence are factual matters, which are outside the scope of a petition for review on *certiorari*. Nevertheless, this rule allows certain exceptions including cases where the RTC and the CA arrived at different or conflicting factual findings, as in the case at bench. As such, the Court deems it necessary to re-examine and re-evaluate the factual findings of the CA as they differ with those of the RTC.

**2. CIVIL LAW; CONTRACTS; MORTGAGE; BY WAY OF EXCEPTION, A MORTGAGEE CAN INVOKE THAT HE OR SHE DERIVED TITLE EVEN IF THE MORTGAGOR'S TITLE IS DEFECTIVE, IF HE OR SHE ACTED IN GOOD FAITH; NOT PRESENT IN CASE AT BAR.—** No valid mortgage will arise unless the mortgagor has a valid title or ownership over the mortgaged property. By way of exception, a mortgagee can invoke that he or she derived title even if the mortgagor's title on the property is defective, if he or she acted in good faith. In such instance, the mortgagee must prove that no circumstance that should have aroused her suspicion on the veracity of the mortgagor's title on the property was disregarded. Such doctrine of mortgagee in good faith presupposes "that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his name and that, after obtaining the said title, he

succeeds in mortgaging the property to another who relies on what appears on the said title." In short, the doctrine of mortgagee in good faith assumes that the title to the subject property had already been transferred or registered in the name of the impostor who thereafter transacts with a mortgagee who acted in good faith. In the case at bench, it must be emphasized that the title remained to be registered in the name of Bernardo, the rightful and real owner, and not in the name of the impostor. x x x In other words, in order for a mortgagee to invoke the doctrine of mortgagee in good faith, the impostor must have succeeded in obtaining a Torrens title in his name and thereafter in mortgaging the property. Where the mortgagor is an impostor who only pretended to be the registered owner, and acting on such pretense, mortgaged the property to another, the mortgagor evidently did not succeed in having the property titled in his or her name, and the mortgagee cannot rely on such pretense as what appears on the title is not the impostor's name but that of the registered owner.

**3. ID.; ID.; ID.; THE BURDEN OF PROOF THAT ONE IS A MORTGAGEE IN GOOD FAITH AND FOR VALUE LIES WITH THE PERSON WHO CLAIM SUCH STATUS.—** The burden of proof that one is a mortgagee in good faith and for value lies with the person who claims such status. A mortgagee cannot simply ignore facts that should have put a reasonable person on guard, and thereafter claim that he or she acted in good faith under the belief that the mortgagor's title is not defective. And, such good faith entails an honest intention to refrain from taking unconscientious advantage of another.

**APPEARANCES OF COUNSEL**

*Sikat Villacorte- Agbunag* for petitioner.
*Pacaldo and Belleza Law Offices* for respondent.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certiorari* assails the October 22, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 95046 which reversed and set aside the November 26, 2009 Decision[2] and the March 19, 2010 Order[3] of the Regional Trial Court (RTC) of Cavite City, Branch 16 in Civil Case No. N-7573. The CA declared void the Real Estate Mortgage (REM) constituted on the property covered by Transfer Certificate of Title (TCT) No. T-361747.

### *Factual Antecedents*

Respondent Bernardo F. Dimailig (Bernardo) was the registered owner of a parcel of land covered by TCT No. T-361747 located in Alapan, Imus, Cavite.[4] In October 1997, he entrusted the owner's copy of the said TCT to his brother, Jovannie,[5] who in turn gave the title to Editha Sanggalang (Editha), a broker, for its intended sale. However, in January 1998, the property was mortgaged to Evelyn V. Ruiz (Evelyn) as evidenced by a Deed of REM[6] without Bernardo's knowledge and consent. Hence, Bernardo instituted this suit for annulment of the Deed of REM.[7]

In her Answer,[8] Evelyn contended that she met Jovannie when she inspected the subject property and assured her that Bernardo

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[1] CA *rollo*, pp. 70-81; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios.

[2] Records, pp. 124-133; penned by Judge Manuel A. Mayo.

[3] *Id*. at 144.

[4] *Id*. at 6.

[5] Spelled in some parts of the records as Giovannie, Giovani, Jiovannie or Jovanie.

[6] Records, pp. 8-9.

[7] *Id*. at 1-5.

[8] *Id*. at 16-19.

owned the property and his title thereto was genuine. She further claimed that Jovannie mortgaged the property to her. She also insisted that as a mortgagee in good faith and for value, the REM cannot be annulled and that she had the right to keep the owner's copy of TCT No. T-361747 until the loan was fully paid to her.

During pre-trial, the parties arrived at the following stipulations:[9]

1. That x x x it was not [Bernardo] who signed as mortgagor in the subject Deed of Real Estate Mortgage.
2. That there was a demand letter sent to [Evelyn] x x x to cause a release of mortgage on the subject property.
3. The x x x controversy [was referred] to the Barangay for conciliation and mediation.

[4.] That Jovannie x x x is the brother of [Bernardo].

Thereafter, trial on the merits ensued.

Bernardo testified that when he went abroad on October 19, 1997, he left the owner's copy of the TCT of the subject property to Jovannie as they intended to sell the subject property.[10] However, on January 26, 1998, a REM was executed on the subject property. Bernardo argued that his alleged signature appearing therein was merely forged[11] as he was still abroad at that time. When he learned in September or November 1998 that Editha mortgaged the subject property, he personally told Evelyn that the REM was fake and demanded the return of his title. Not heeding his request, he filed a complaint for estafa through falsification of public document against Editha and Evelyn. The criminal case against Evelyn was dismissed[12] while Editha was found guilty as charged.[13]

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

[10] TSN, January 9, 2006, pp. 17, 20-A.

[11] *Id*. at 25.

[12] *Id*. at 30-31, 33-35, 37-39.

[13] TSN, July 3, 2007, p. 5.

Jovannie also took the witness stand. He testified that sometime in December 1997, Editha convinced him to surrender the owner's copy of TCT No. T-361747 which she would show her buyer.[14] Subsequently, however, Editha informed him that she misplaced the title. Hence, he executed in August 1998[15] an affidavit of loss and registered it with the Register of Deeds (RD).[16] In September 1998, Editha finally admitted that the title was not lost but was in Evelyn's possession because of the REM.[17] Upon learning this, Jovannie inquired from Evelyn if Editha mortgaged Bernardo's property to her. Purportedly, Evelyn confirmed said mortgage and told him that she would not return the owner's copy of TCT No. T-361747 unless Editha pay the loan.[18] Jovannie also alleged that he told Evelyn that Bernardo's alleged signature in the REM was not genuine since he was abroad at the time of its execution.[19]

On the other hand, Evelyn maintained that she was a mortgagee in good faith. She testified that sales agents – Editha, Corazon Encarnacion, and a certain Parani, – and a person introducing himself as "Bernardo" mortgaged the subject property to her for ₱300,000.00 payable within a period of three months.[20] She asserted that even after the expiration of said period, "Bernardo" failed to pay the loan.[21]

Evelyn narrated that before accepting the mortgage of the subject property, she, the sales agents, her aunt, and "Bernardo," visited the property. She pointed out that her companions inspected it while she stayed in the vehicle as she was still

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[14] TSN, August 15, 2005, p. 18.

[15] TSN, October 3, 2005, p. 36.

[16] TSN, August 15, 2005, pp. 22-25.

[17] *Id*. at 25.

[18] TSN, October 3, 3005, pp. 13, 29.

[19] TSN, August 15, 2005, pp. 12-16.

[20] TSN, December 4, 2006, pp. 11-13.

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

recuperating from an operation.[22] She admitted that she neither verified from the neighborhood the owner of the property nor approached the occupant thereof.[23]

Moreover, Evelyn asserted that when the Deed of REM was executed, the person who introduced himself as Bernardo presented a community tax certificate and his picture as proof of identity.[24] She admitted that she did not ask for any identification card from "Bernardo."[25]

Contrary to the allegation in her Answer that Jovannie mortgaged the property, Evelyn clarified that she met Jovannie for the first time when he went to her house and told her that Bernardo could not have mortgaged the property to her as he was abroad.[26]

Corazon Abella Ruiz (Corazon), the sister-in-law of Evelyn, was presented to corroborate her testimony. Corazon averred that in January 1998, she accompanied Evelyn and several others in inspecting the subject property.[27] The day after the inspection, Evelyn and "Bernardo" executed the Deed of REM in the office of a certain Atty. Ignacio; Evelyn handed ₱300,000.00 to Editha, not to "Bernardo";[28] in turn, Editha handed to Evelyn the owner's copy of TCT No. T-361747.[29]

***Ruling of the Regional Trial Court***

On November 26, 2009, the RTC dismissed the Complaint. It held that while Bernardo was the registered owner of the subject property, Evelyn was a mortgagee in good faith because

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[22] *Id*. at 15-18.

[23] *Id*. at 56-59.

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

[25] *Id*. at 59.

[26] *Id*. at 60-64.

[27] TSN, February 16, 2009, pp. 5-6.

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

[29] *Id*. at 17.

she was unaware that the person who represented himself as Bernardo was an impostor. It noted that Evelyn caused the verification of the title of the property with the RD and found the same to be free from any lien or encumbrance. Evelyn also inspected the property and met Jovannie during such inspection. Finally, the RTC declared that there was no showing of any circumstance that would cause Evelyn to doubt the validity of the title or the property covered by it. In fine, Evelyn did all that was necessary before parting with her money and entering into the REM.

On March 19, 2010, the RTC denied Bernardo's Motion for Reconsideration. Thus, he appealed to the CA.

***Ruling of the Court of Appeals***

On October 22, 2012, the CA rendered the assailed Decision reversing and setting aside the RTC Decision. The decretal portion of the CA Decision reads:

> WHEREFORE, the appeal is GRANTED. The assailed dispositions of the RTC are REVERSED and SET ASIDE. The complaint of Bernardo F. Dimailig is GRANTED. The Deed of Real Estate Mortgage constituted on the real property covered by TCT No. T-361747 of the Registry of Deeds for the Province of Cavite, registered in his name, is DECLARED null and void. Evelyn V. Ruiz is ORDERED to reconvey or return to him the owner's duplicate copy of the said title. His claims for the payment of attorney's fees and costs of suits are DENIED. Costs against Evelyn V. Ruiz.
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> SO ORDERED.[30]

The CA held that the "innocent purchaser (mortgagor in this case) for value protected by law is one who purchases a titled land by virtue of a deed executed by the registered owner himself, not by a forged deed."[31] Since the Deed of REM was forged, and the title to the subject property is still in the name of the rightful owner, and the mortgagor is a different person who only pretended to be the owner, then Evelyn cannot seek

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[30] CA *rollo*, p. 80.

[31] *Id*. at 77.

protection from the cloak of the principle of mortgagee in good faith. The CA held that in this case, "the registered owner will not personally lose his title."[32]

The CA further decreed that Evelyn's claim of good faith cannot stand as she failed to verify the real identity of the person introduced by Editha as Bernardo. It noted that the impostor did not even exhibit any identification card to prove his identity; and, by Evelyn's admission, she merely relied on the representation of Editha relative to the identity of "Bernardo." It also held that Evelyn transacted only with Editha despite the fact that the purported owner was present during the inspection of the property, and during the execution of the REM.

In sum, the CA ruled that for being a forged instrument, the Deed of REM was a nullity, and the owner's copy of TCT No. T-361747 must be returned to its rightful owner, Bernardo.

**Issue**

Hence, Evelyn filed this Petition raising the sole assignment of error as follows:

> [T]he Court of Appeals erred in holding that petitioner is not a mortgagee in good faith despite the presence of substantial evidence to support such conclusion of fact.[33]

***Petitioner's Arguments***

Petitioner insists that she is a mortgagee in good faith. She claims that she was totally unaware of the fraudulent acts employed by Editha, Jovannie, and the impostor to obtain a loan from her. She stresses that a person dealing with a property covered by a certificate of title is not required to look beyond what appears on the face of the title.

***Respondent's Arguments***

Bernardo, on his end, contends that since the person who mortgaged the property was a mere impostor, then Evelyn cannot

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[32] *Id.* at 78.

[33] *Rollo,* p. 8.

claim that she was a mortgagee in good faith. This is because a mortgage is void where the mortgagor has no title at all to the property subject of such mortgage.

Bernardo asserts that there were circumstances that should have aroused suspicion on the part of Evelyn relative to the mortgagor's title over the property. He specifies that throughout the negotiation of the mortgage, Evelyn transacted only with Editha, not with "Bernardo," despite the fact that Editha and the other real estate agents who assisted Evelyn in the mortgage transaction were not armed with a power of attorney.

Bernardo likewise stresses that although Evelyn caused the inspection of the subject property, she herself admitted that she did not alight from the vehicle during the inspection, and she failed to verify the actual occupant of the property.

**Our Ruling**

The Petition is without merit.

As a rule, the issue of whether a person is a mortgagee in good faith is not within the ambit of a Rule 45 Petition. The determination of presence or absence of good faith, and of negligence are factual matters, which are outside the scope of a petition for review on *certiorari*.[34] Nevertheless, this rule allows certain exceptions including cases where the RTC and the CA arrived at different or conflicting factual findings,[35] as in the case at bench. As such, the Court deems it necessary to re-examine and re-evaluate the factual findings of the CA as they differ with those of the RTC.

No valid mortgage will arise unless the mortgagor has a valid title or ownership over the mortgaged property. By way of exception, a mortgagee can invoke that he or she derived title even if the mortgagor's title on the property is defective, if he or she acted in good faith. In such instance, the mortgagee must prove that no circumstance that should have aroused her suspicion

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[34] *Claudio v. Spouses Saraza*, G.R. No. 213286, August 26, 2015.

[35] *Ligtas v. People*, G.R. No. 200571, August 17, 2015, 767 SCRA 1, 15.

on the veracity of the mortgagor's title on the property was disregarded.[36]

Such doctrine of mortgagee in good faith presupposes "that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the said title."[37] In short, the doctrine of mortgagee in good faith assumes that the title to the subject property had already been transferred or registered in the name of the impostor who thereafter transacts with a mortgagee who acted in good faith. In the case at bench, it must be emphasized that the title remained to be registered in the name of Bernardo, the rightful and real owner, and not in the name of the impostor.

The burden of proof that one is a mortgagee in good faith and for value lies with the person who claims such status. A mortgagee cannot simply ignore facts that should have put a reasonable person on guard, and thereafter claim that he or she acted in good faith under the belief that the mortgagor's title is not defective.[38] And, such good faith entails an honest intention to refrain from taking unconscientious advantage of another.[39]

In other words, in order for a mortgagee to invoke the doctrine of mortgagee in good faith, the impostor must have succeeded in obtaining a Torrens title in his name and thereafter in mortgaging the property. Where the mortgagor is an impostor who only pretended to be the registered owner, and acting on such pretense, mortgaged the property to another, the mortgagor evidently did not succeed in having the property titled in his or her name, and the mortgagee cannot rely on such pretense

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[36] *Heirs of Gregorio Lopez v. Development Bank of the Philippines*, G.R. 193551, November 19, 2014, 741 SCRA 153, 166-167.

[37] *Claudio v. Spouses Saraza*, *supra* note 34; bold-facing omitted.

[38] *Republic v. Spouses de Guzman*, 383 Phil. 151, 162 (2000).

[39] *Claudio v. Spouses Saraza*, *supra* note 34.

as what appears on the title is not the impostor's name but that of the registered owner.[40]

In this case, Evelyn insists that she is a mortgagee in good faith and for value. Thus, she has the burden to prove such claim and must provide necessary evidence to support the same. Unfortunately, Evelyn failed to discharge her burden.

First, the Deed of REM was established to be a forged instrument. As aptly discussed by the CA, Bernardo did not and could not have executed it as he was abroad at the time of its execution, to wit:

> Verily, Bernardo could not have affixed his signature on the said deed on January 26, 1998 for he left the Philippines on October 19, 1997, x x x and only returned to the Philippines on March 21, 1998. Not only that, his signature on his Seafarer's Identification and Record Book is remarkably different from the signature on the assailed mortgage contract. The variance is obvious even to the untrained eye. This is further bolstered by Evelyn's admission that Bernardo was not the one who represented himself as the registered owner of the subject property and was not the one who signed the questioned contract. Thus, there can be no denying the fact that the signature on the Deed of Real Estate Mortgage was not affixed or signed by the same person.[41]

In fact, during pre-trial, both parties agreed that it was not Bernardo who signed as the mortgagor in the Deed of REM. It was only an impostor – representing himself as Bernardo – who mortgaged the property. This impostor is not only without rightful ownership on the mortgaged property, he also has no Torrens title in his own name involving said property.

Simply put, for being a forged instrument, the Deed of REM is a nullity and conveys no title.[42]

Second, Evelyn cannot invoke the protection given to a mortgagee in good faith. As discussed, the title to the subject

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[40] See *Ereña v. Querrer-Kauffman*, 525 Phil. 381, 400 (2006).

[41] CA *rollo*, p. 76.

[42] *Claudio v. Spouses Saraza, supra* note 34.

property remained registered in the name of Bernardo. It was not transferred to the impostor's name when Evelyn transacted with the latter. Hence, the principle of mortgagee in good faith finds no application; correspondingly, Evelyn cannot not seek refuge therefrom.

Third, even assuming that the impostor has caused the property to be titled in his name as if he had rightful ownership thereof, Evelyn would still not be deemed a mortgagee in good faith. This is because Evelyn did not take the necessary steps to determine any defect in the title of the alleged owner of the mortgaged property. She deliberately ignored pertinent facts that should have aroused suspicion on the veracity of the title of the mortgagor "Bernardo."[43]

One, while "Bernardo" introduced himself to Evelyn as the owner of the property, he did not present any proof of identification. To recall, he only exhibited his community tax certificate and a picture when he introduced himself to Evelyn. "Bernardo's" failure to sufficiently establish his identity should have aroused suspicion on the part of Evelyn whether the person she was transacting with is the real Bernardo or a mere impostor. She should have investigated further and verified the identity of "Bernardo" but she failed to do so. She even admitted that she did not at all ask for any identification card from "Bernardo."

Two, Evelyn also ignored the fact that "Bernardo" did not participate in the negotiations/transactions leading to the execution of the Deed of REM. Notably, no power of attorney was given to Editha who supposedly transacted in behalf of Bernardo. Despite "Bernardo's" presence during the ocular inspection of the property and execution of the mortgage contract, it was Editha who transacted with Evelyn. As gathered from the testimony of Corazon, after the execution of the deed, Evelyn handed the loan amount of ₱300,000.00 to Editha, not to "Bernardo," and it was Editha who handed to Evelyn the owner's copy of TCT No. T-361747.

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[43] *Id*.

Three, Evelyn likewise failed to ascertain the supposed title of "Bernardo" over the property. Evelyn admitted that during the ocular inspection, she remained in the vehicle. She did not inquire from the subject property's occupant or from the occupants of the surrounding properties if they knew "Bernardo" and whether or not he owned the subject property.

Notably, the RTC misapprehended certain facts when it held that Evelyn inspected the property and met Jovannie during the inspection. By her own account, Evelyn clarified that she met Jovannie for the first time only when the latter visited her house to inform her that an impostor mortgaged Bernardo's property to her.

Four, the Court observes that Evelyn hastily granted the loan and entered into the mortgage contract. As also testified by Corazon, a day after the supposed ocular inspection on the property, Evelyn and "Bernardo" executed the Deed of REM even without Evelyn verifying the identity of the property's occupant as well as the right of the mortgagor, if any, over the same. Indeed, where the mortgagee acted with haste in granting the loan, without first determining the ownership of the property being mortgaged, the mortgagee cannot be considered as an innocent mortgagee in good faith.[44]

Thus, considering that the mortgage contract was forged as it was entered into by Evelyn with an impostor, the registered owner of the property, Bernardo, correspondingly did not lose his title thereon, and Evelyn did not acquire any right or title on the property and cannot invoke that she is a mortgagee in good faith and for value.[45]

**WHEREFORE**, the Petition is **DENIED**. Accordingly, the October 22, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 95046 is **AFFIRMED**.

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[44] See *Land Bank of the Philippines v. Poblete*, 704 Phil. 610, 623-624 (2013).

[45] *Ereña v. Querrer-Kauffman*, supra note 40 at 403.

**SO ORDERED**.

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

*Mendoza, J.,* on official leave.

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**FIRST DIVISION**

[G.R. No. 205972. November 9, 2016]

**CATERPILLAR, INC.,** *petitioner, vs.* **MANOLO P. SAMSON,** *respondent.*

[G.R. No. 164352. November 9, 2016]

**CATERPILLAR, INC.,** *petitioner, vs.* **MANOLO P. SAMSON,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; DEFINED AND EXPLAINED; ELEMENTS.—** A prejudicial question is that which arises in a civil case the resolution of which is a logical antecedent of the issues to be determined in the criminal case. It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action will necessarily be determinative of the criminal case. As stated in *Librodo v. Judge Coscolluela, Jr.*: x x x **It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of**

**the accused in the criminal case.** x x x The elements of a prejudicial question are provided in Section 7 of Rule 111, *Rules of Court*, to wit: (a) a previously instituted civil action involves an issue similar to or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

**2. ID.; ID.; ID.; A CIVIL ACTION FOR DAMAGES AND CANCELLATION OF TRADEMARK CANNOT BE CONSIDERED A PREJUDICIAL QUESTION BY WHICH TO SUSPEND THE PROCEEDINGS IN THE CRIMINAL CASES FOR UNFAIR COMPETITION; SUIT FOR CANCELLATION OF TRADEMARK AND ACTION FOR UNFAIR COMPETITION, DISTINGUISHED.—** We note, to begin with, that Civil Case No. Q-00-41446, the civil case filed by Caterpillar in the RTC in Quezon City, was for unfair competition, damages and cancellation of trademark, while Criminal Cases Nos. Q-02-108043-44 were the criminal prosecution of Samson for unfair competition. A common element for all such cases for unfair competition – civil and criminal – was *fraud*. Under Article 33 of the *Civil Code*, a civil action entirely separate and distinct from the criminal action may be brought by the injured party in cases of fraud, and such civil action shall proceed independently of the criminal prosecution. In view of its being an independent civil action, Civil Case No. Q-00-41446 did not operate as a prejudicial question that justified the suspension of the proceedings in Criminal Cases Nos. Q-02-108043-44. x x x An examination of the nature of the two kinds of cases involved is necessary to determine whether a prejudicial question existed. An action for the cancellation of trademark like Civil Case No. Q-00-41446 is a remedy available to a person who believes that he is or will be damaged by the registration of a mark. On the other hand, the criminal actions for unfair competition (Criminal Cases Nos. Q-02-108043-44) involved the determination of whether or not Samson had given his goods the general appearance of the goods of Caterpillar, with the intent to deceive the public or defraud Caterpillar as his competitor. In the suit for the cancellation of trademark, the issue of lawful registration should necessarily be determined, but registration was not a

consideration necessary in unfair competition. Indeed, unfair competition is committed if the effect of the act is "*to pass off to the public the goods of one man as the goods of another*"; it is independent of registration. As fittingly put in *R.F. & Alexander & Co. v. Ang*, "*one may be declared unfair competitor even if his competing trade-mark is registered.*" Clearly, the determination of the lawful ownership of the trademark in the civil action was not determinative of whether or not the criminal actions for unfair competition shall proceed against Samson.

**3. ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; FINDINGS OF PROBABLE CAUSE BY THE SECRETARY OF JUSTICE CANNOT BE ASSAILED THROUGH A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 43; THE COURT MAY INTERVENE ONLY THROUGH A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 UPON A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION; PETITIONER DID NOT DEMONSTRATE GRAVE ABUSE OF DISCRETION ON THE PART OF THE SECRETARY OF JUSTICE.—** Caterpillar assailed the resolution of the Secretary of Justice by filing a petition for review under Rule 43 of the *Rules of Court*. Such resort to the petition for review under Rule 43 was erroneous, and the egregious error warranted the denial of the appeal. The petition for review under Rule 43 applied to all appeals to the CA from quasi-judicial agencies or bodies, particularly those listed in Section 1 of Rule 43. However, the Secretary of Justice, in the review of the findings of probable cause by the investigating public prosecutor, was not exercising a quasi-judicial function, but performing an executive function. Moreover, the courts could intervene in the determination of probable cause only through the special civil action for *certiorari* under Rule 65 of the *Rules of Court*, not by appeal through the petition for review under Rule 43. Thus, the CA could not reverse or undo the findings and conclusions on probable cause by the Secretary of Justice except upon clear demonstration of grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Secretary of Justice. x x x [*G*]*rave abuse of discretion* means such capricious or whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must

be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction. Herein, Caterpillar did not show the grave abuse of discretion on the part of the Secretary of Justice.

**4. ID.; ID.; ID.; ID.; PROBABLE CAUSE, EXPLAINED; THE PUBLIC PROSECUTOR HAS THE FULL DISCRETIONARY AUTHORITY TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE.—** Probable cause for the purpose of filing an information in court consists in such facts and circumstances as would engender a well-founded belief that a crime has been committed and the accused may probably be guilty thereof. The determination of probable cause lies solely within the sound discretion of the investigating public prosecutor after the conduct of a preliminary investigation. It is a sound judicial policy to refrain from interfering with the determination of what constitutes sufficient and convincing evidence to establish probable cause for the prosecution of the accused. Thus, it is imperative that by the nature of his office, the public prosecutor cannot be compelled to file a criminal information in court if he is not convinced of the sufficiency of the evidence adduced for a finding of probable cause. Neither can he be precluded from filing an information if he is convinced of the merits of the case. In not finding probable cause to indict Samson for unfair competition, State Prosecutor Abad as the investigating public prosecutor discharged the discretion given to him by the law. x x x We reiterate that the full discretionary authority to determine the existence of probable cause is lodged in the Executive Branch of the Government, through the public prosecutor, in the first instance, and the Secretary of Justice, on review. Such authority is exclusive, and the courts are prohibited from encroaching on the executive function, unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public prosecutor or the Secretary of Justice.

**APPEARANCES OF COUNSEL**

*Quisumbing Torres* for petitioner in G.R. No. 205972.
*Poblador Bautista & Reyes* for petitioner in G.R. No. 164352.
*Law Firm of De Guzman Leynes Rivera and Partners* for respondent.

**D E C I S I O N**

**BERSAMIN, *J.*:**

The determination of probable cause to charge a person in court for a criminal offense is exclusively lodged in the Executive Branch of the Government, through the Department of Justice. Initially, the determination is done by the investigating public prosecutor, and on review by the Secretary of Justice or his duly authorized subordinate. The courts will respect the determination, unless the same shall be shown to have been made in grave abuse of discretion amounting to lack or excess of jurisdiction.

**The Cases**

Before us are the consolidated cases of G.R. No. 205972[1] and G.R. No. 164352.[2]

G.R. No. 164352 involves the appeal by petition for review on *certiorari* of Caterpillar, Inc. (Caterpillar) to reverse the decision promulgated on January 21, 2004[3] by the Court of Appeals (CA) in CA-G.R. SP No. 75526, and the resolution promulgated on June 30, 2004 denying the motion for reconsideration thereof.[4]

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[1] *Rollo* (G.R. No. 205972), pp. 61-104.

[2] *Rollo* (G.R. No. 164352), pp. 16-61.

[3] *Id*. at 73-76; penned by Associate Justice Jose L. Sabio, Jr., with Associate Justice Delilah Vidallon-Magtolis and Associate Justice Hakim S. Abdulwahid concurring.

[4] *Id*. at. 88.

G.R. No. 205972 relates to the appeal brought by Caterpillar to assail the decision and resolution promulgated in CA-G.R. SP No. 102316 respectively on May 8, 2012[5] and February 12, 2013,[6] whereby the CA affirmed the resolutions of the Department of Justice (DOJ) finding that there was no probable cause to indict Manolo P. Samson (Samson) for unfair competition.

**Antecedents**

Caterpillar is a foreign corporation engaged in the manufacture and distribution of footwear, clothing and related items, among others. Its products are known for six core trademarks, namely, "CATERPILLAR", "CAT", "CATERPILLAR & DESIGN", "CAT AND DESIGN", "WALKING MACHINES" and "TRACK-TYPE TRACTOR & DESIGN (Core Marks)[7] all of which are alleged as internationally known. On the other hand, Samson, doing business under the names and styles of Itti Shoes Corporation, Kolm's Manufacturing Corporation and Caterpillar Boutique and General Merchandise, is the proprietor of various retail outlets in the Philippines selling footwear, bags, clothing, and related items under the trademark "CATERPILLAR", registered in 1997 under Trademark Registration No. 64705 issued by the Intellectual Property Office (IPO).[8]

**G.R. No. 164352**

On July 26, 2000, upon application of the National Bureau of Investigation (NBI), the Regional Trial Court (RTC), Branch 56, in Makati City issued Search Warrants Nos. 00-022 to 00-032, inclusive, all for unfair competition,[9] to search the

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[5] *Rollo* (G.R. No. 205972), pp. 112-117; penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Manuel M. Barrios concurring.

[6] *Id*. at 120-122.

[7] *Rollo* (G.R. No. 164352), p. 19.

[8] *Id*. at. 477.

[9] *Id*. at 121-128.

establishments owned, controlled and operated by Samson. The implementation of the search warrants on July 27, 2000 led to the seizure of various products bearing Caterpillar's Core Marks.

Caterpillar filed against Samson several criminal complaints for unfair competition in the Department of Justice (DOJ), docketed as I.S. Nos. 2000-1354 to 2000-1364, inclusive.

Additionally, on July 31, 2000, Caterpillar commenced a civil action against Samson and his business entities, with the IPO as a nominal party[10] – for *Unfair Competition, Damages and Cancellation of Trademark with Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction* – docketed as Civil Case No. Q-00-41446 of the RTC in Quezon City. In said civil action, the RTC denied Caterpillar's application for the issuance of the TRO on August 17, 2000.

The DOJ, through Senior State Prosecutor Jude R. Romano, issued a joint resolution dated November 15, 2001[11] recommending that Samson be criminally charged with unfair competition under Section 168.3 (a),[12] in relation to Section

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[10] *Id*. at 129-144.

[11] *Id*. at 172-197.

[12] 168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

123.1(e),[13] Section 131.1[14] and Section 170,[15] all of Republic Act No. 8293, or the *Intellectual Property Code of the Philippines* (IP Code).

However, because Samson and his affiliate companies allegedly continued to sell and distribute products clothed with the general appearance of its own products, Caterpillar again applied for another set of search warrants against Samson and his businesses. The RTC, Branch 172, in Valenzuela City issued Search Warrants Nos. 12-V-00,[16] 13-V-00,[17] 20-V-00[18] and 29-V-00[19] upon application of the NBI, by virtue of the implementation of which several goods were seized and confiscated by the NBI agents.

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[13] 123.1. A mark cannot be registered if it:

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

[14] 131.1. An application for registration of a mark filed in the Philippines by a person referred to in Section 3, and who previously duly filed an application for registration of the same mark in one of those countries, shall be considered as filed as of the day the application was first filed in the foreign country.

[15] Section 170. *Penalties*. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos (₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

[16] *Rollo* (G.R. No. 164352), pp. 148-153.

[17] *Id*. at 154-159.

[18] *Id*. at 160-165.

[19] *Id*. at 166-171.

As a consequence, Caterpillar filed 26 criminal complaints for unfair competition on January 31, 2001, docketed as I.S. Nos. 2001-42 to 2001-67, against Samson and/or the occupants of his affiliate entities before the DOJ.[20] In due course, the DOJ, through State Prosecutor Zenaida M. Lim, issued a joint resolution dated September 28, 2001[21] recommending the filing of criminal complaints for unfair competition under Section 168.3(a), in relation to Section 123.1, Section 131.1 and Section 170 of the IP Code. Accordingly, six criminal complaints were filed in the RTC, Branch 256, in Muntinlupa City, presided by Judge Alberto L. Lerma, docketed as Criminal Cases Nos. 02-238 to 02-243.

On January 17 and 22, 2002, Samson filed a petitions for review with the Office of the Secretary of Justice to appeal the joint resolutions in I.S. Nos. 2000-1354 to 2000-1364[22] and I.S. Nos. 2001-042 to 2001-067.[23]

On May 30, 2002, Samson filed a *Motion to Suspend Arraignment* in Criminal Cases Nos. 02-238 to 243,[24] citing the following as grounds:[25]

I.

THERE EXISTS PREJUDICIAL QUESTIONS PENDING LITIGATION BEFORE THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 90, IN CIVIL CASE NO. Q-00-41446 ENTITLED: "CATERPILLAR, INC., ET AL. VS. ITTI SHOES CORPORATION, ET AL.," THE FINAL RESOLUTIONS OF WHICH WILL DETERMINE THE OUTCOME OF THE INSTANT CRIMINAL CASES.

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[20] *Id*. at 29.

[21] *Id*. at 199-227.

[22] *Id*. at 262-276.

[23] *Id*. at 242-259.

[24] *Id*. at 278-285.

[25] *Id*. at 278.

II.

ACCUSED HAS FILED PETITIONS FOR REVIEW WITH THE DEPARTMENT OF JUSTICE ASSAILING THE RESOLUTIONS OF THE CHIEF STATE PROSECUTOR WHO CAUSED THE FILING OF THE INSTANT CASES AND ARE STILL PENDING THEREIN UP TO THE PRESENT.

In the meanwhile, on July 10, 2002, the DOJ, through Secretary Hernando B. Perez, issued a resolution[26] denying Samson's petition for review in I.S. Nos. 2000-1354 to 2000-1364. Samson's motion for reconsideration was likewise denied on May 26, 2003.

On September 23, 2002, Presiding Judge Lerma of the RTC granted Samson's *Motion to Suspend Arraignment*, and suspended the arraignment and all other proceedings in Criminal Cases Nos. 02-240 to 02-243 until Civil Case No. Q-00-41446 was finally resolved,[27] holding:

> After a careful scrutiny of the case, this Court finds that private complainant, in Civil Case No. Q-00-41446, seeks for the cancellation of the trademark "CATERPILLAR" which is registered in the name of the accused and to prevent the latter from using the said trademark ("CATERPILLAR"), while the issue in the instant case is the alleged unlawful use by the accused of the trademark "CATERPILLAR" which is claimed to be owned by the private complainant. From the foregoing, this Court believes that there exists a prejudicial question since the determination of who is really the lawful or registered user of the trademark "CATERPILLAR" will ultimately determine whether or not the instant criminal action shall proceed. Clearly, the issues raised in Civil Case No. Q-00-41446 is similar or intimately related to the issue in the case at bar for if the civil case will be resolved sustaining the trademark registration of the accused for the trademark CATERPILLAR, then the latter would have all the authority to continue the use of the said trademark as a consequence of a valid registration, and by reason of which there may be no more basis to proceed with the instant criminal action.[28]

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[26] *Id*. at 329-330.

[27] *Id*. at 345-346.

[28] *Id*. at 345.

After the RTC denied its motion for reconsideration[29] on December 5, 2002,[30] Caterpillar elevated the matter to the CA by petition for *certiorari* on February 14, 2003,[31] docketed as C.A.-G.R. SP No. 75526 entitled *Caterpillar, Inc. v. Hon. Alberto L. Lerma, in his capacity as Presiding Judge of Branch 256 of the Regional Trial Court, Muntinlupa City, and Manalo P. Samson,* alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in suspending the arraignment and other proceedings in Criminal Cases Nos. 02-238 to 02-243 on the ground of the existence of an alleged prejudicial question in Civil Case No. Q-00-41446 then pending in the RTC in Quezon City whose resolution would determine the outcome of the criminal cases.

Meanwhile, on January 13, 2003, Acting Justice Secretary Ma. Merceditas N. Gutierrez reversed and set aside the resolution issued by State Prosecutor Lim in I.S. No. 2001-042 to 2001-067, and directed the Chief State Prosecutor to cause the withdrawal of the criminal informations filed against Samson in court,[32] disposing as follows:

> **ACCORDINGLY,** the assailed joint resolution is hereby **REVERSED** and **SET ASIDE.** The Chief State Prosecutor is directed to forthwith cause the withdrawal of the informations filed in court against respondent Manolo P. Samson and to report action taken hereon within ten (10) days from receipts hereof.[33]

Acting Justice Secretary Gutierrez based her resolution on the order dated June 26, 2001, whereby the RTC of Valenzuela City, Branch 172, had quashed the 26 search warrants upon motion of Samson.[34] Consequently, the goods seized and

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[29] *Id*. at 347-352.

[30] *Id*. at 362-363.

[31] *Id*. at 364-399.

[32] *Id*. at 537-542.

[33] *Id*. at 542.

[34] *Id*. at 539.

confiscated by virtue of the quashed search warrants could no longer be admitted in evidence.

Correspondingly, Presiding Judge Lerma of the RTC ordered the withdrawal of Criminal Cases Nos. 02-240 to 02-243 on February 4, 2003.[35]

Aggrieved, Caterpillar assailed the order of Judge Lerma for the withdrawal of Criminal Cases Nos. 02-240 to 02-2432003 by petition for *certiorari* in the CA on October 16, 2003, docketed as CA-G.R. SP No. 79937,[36] and the CA ultimately granted the petition for *certiorari*,[37] setting aside the assailed January 13, 2003 resolution of the Acting Justice Secretary and directing the re-filing of the withdrawn informations against Samson. The Court ultimately affirmed the CA's decision through the resolution promulgated on October 17, 2005 in G.R. No. 169199, and ruling that probable cause existed for the re-filing of the criminal charges for unfair competition under the IP Code.[38]

In the assailed January 21, 2004 decision,[39] the CA dismissed Caterpillar's petition for *certiorari* in CA-G.R. SP No. 75526, *viz.:*

> Petition has no merit.
>
> The mere fact that public respondent denied petitioner's motion for reconsideration does not justify this petition on the ground of abuse of discretion. Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and it must be so patent and gross as to amount to an evasion of

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[35] *Id*. at 543.

[36] *Id*. at 31.

[37] *Id*. at 578-585.

[38] *Rollo* (G.R. No. 205972), pp. 653-654; reference to this affirmance was also made in *Samson v. Caterpillar, Inc.*, G.R. No. 169882, September 12, 2007, 533 SCRA 88, 95.

[39] *Supra* note 3.

positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (Benito *vs*. Comelec, 349 SCRA 705).

Petitioner in this case failed to overcome the burden of showing how public respondent acted with grave abuse of discretion in granting private respondent's motion and denying his own motion for reconsideration. What is clear is that public respondent court acted judiciously. A petition for certiorari under Rule 65 of the Rules of Court will prosper only if there is showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of respondent tribunal (Garcia *vs*. HRET, 312 SCRA 353).

Granting arguendo that public respondent court erred in its ruling, still a petition for certiorari under Rule 65 cannot be justified. Where the court has jurisdiction over the subject matter, the orders or decision upon all questions pertaining to the cause are orders or decisions within its jurisdiction and however erroneous they may be, they cannot be corrected by certiorari (De Baron *vs*. Court of Appeals, 368 SCRA 407).

WHEREFORE, foregoing premises considered, the Petition having no merit in fact and in law is hereby DENIED DUE COURSE and ordered DISMISSED. With costs to Petitioners.

SO ORDERED.[40]

Caterpillar sought the reconsideration of the dismissal, but the CA denied the motion on June 30, 2004.[41]

Hence, Caterpillar appealed the CA's decision in C.A.-G.R. SP No. 75526 (G.R. No. 164352).

**G.R.No. 205972**

In the meanwhile, in August 2002, upon receiving the information that Samson and his affiliate entities continuously sold and distributed products bearing Caterpillar's Core Marks without Caterpillar's consent, the latter requested the assistance of the Regional Intelligence and Investigation Division of the

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[40] *Id*. at 75.

[41] *Rollo* (G.R. No. 164352), p. 78.

National Region Public Police (RIID-NCRPO) for the conduct of an investigation. Subsequently, after the investigation, the RIID-NCRPO applied for and was granted 16 search warrants against various outlets owned or operated by Samson in Mandaluyong, Quezon City, Manila, Caloocan, Makati, Parañaque, Las Piñas, Pampanga and Cavite. The warrants were served on August 27, 2002,[42] and as the result products bearing Caterpillar's Core Marks were seized and confiscated. Consequently, on the basis of the search warrants issued by the various courts, Caterpillar again instituted criminal complaints in the DOJ for violation of Section 168.3(a), in relation to Sections 131.3, 123.1(e) and 170 of the IP Code against Samson, docketed as I.S. Nos. 2002-995 to 2002-997; 2002-999 to 2002-1010; and 2002-1036.

After the conduct of the preliminary investigation, the DOJ, through State Prosecutor Melvin J. Abad, issued a joint resolution dated August 21, 2003 dismissing the complaint upon finding that there was no probable cause to charge Samson with unfair competition.[43]

Caterpillar moved for the reconsideration of the dismissal, but State Prosecutor Abad denied the motion on June 18, 2004.[44]

The Secretary of Justice affirmed the dismissal of the complaint through the resolution issued on September 19, 2005,[45] and denied Caterpillar's motion for reconsideration on December 20, 2007.

Accordingly, Caterpillar appealed to the CA through a petition for review under Rule 43, *Rules of Court* (C.A.-G.R. SP No. 102316).[46]

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[42] *Rollo* (G.R. No. 205972), p. 71.

[43] *Id*. at 216-236.

[44] *Id*. at 214.

[45] *Id*. at 71.

[46] *Id*. at 72.

On May 8, 2012,[47] however, the CA denied due course to Caterpillar's petition for review, *viz.:*

**WHEREFORE,** premises considered, the petition is **DENIED DUE COURSE,** and accordingly, **DISMISSED.**

**SO ORDERED.**[48]

The CA opined that an appeal under Rule 43 to assail the resolution by the Secretary of Justice determining the existence or non-existence of probable cause was an improper remedy; and that while it could treat an appeal as a special civil action for *certiorari* under Rule 65, it could not do so therein because the allegations of the petition did not sufficiently show grave abuse of discretion on the part of the Secretary of Justice in issuing the assailed resolutions.

Caterpillar filed a motion for reconsideration, but the CA denied the motion for its lack of merit on February 12, 2013.[49]

Hence, Caterpillar commenced G.R. No. 205972.

**Issues**

Caterpillar submits that the CA erred as follows:

**G.R. No. 164352**

A.

THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN DENYING DUE COURSE TO CATERPILLAR INC.'S PETITION FOR CERTIORARI.

B.

THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN NOT HOLDING THAT THE ORDER SUSPENDING PROCEEDINGS IN CRIMINAL CASES NOS. 02-238 TO 02-243, ON THE BASIS OF AN ALLEGED PREJUDICIAL QUESTION,

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[47] *Id*. at 112-117.

[48] *Id*. at 117.

[49] *Id*. at 120-122.

WAS CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE.

C.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN NOT HOLDING THAT A CRIMINAL COMPLAINT FOR UNFAIR COMPETITION CAN PROCEED INDEPENDENTLY OF, AND SIMULTANEOUS WITH, THE CIVIL CASE FOR THE SAME.[50]

Caterpillar posits that the suspension of proceedings in Criminal Cases Nos. 02-238 to 02-243 was contrary to Rule 111 of the *Rules of Court*, Article 33 of the *Civil Code* on independent civil actions, and Section 170 of the IP Code, which specifically provides that the criminal penalties for unfair competition were independent of the civil and administrative sanctions imposed by law; that the determination of the lawful owner of the "CATERPILLAR" trademark in Civil Case No. Q-00-41446 would not be decisive of the guilt of Samson for unfair competition in Criminal Cases Nos. 02-238 to 02-243 because registration was not an element of the crime of unfair competition; that the civil case sought to enforce Samson's civil liability arising from the IP Code while the criminal cases would enforce Samson's liability arising from the crime of unfair competition; and that the Court already ruled in *Samson v. Daway*[51] that Civil Case No. Q-00-41446 was an independent civil action under Article 33 of the *Civil Code* and, as such, could proceed independently of the criminal actions.

In his comment,[52] Samson counters that the issues of the lawful and registered owner of the trademark, the true owner of the goodwill, and whether "CATERPILLAR" was an internationally well-known mark are intimately related to the issue of guilt in the criminal actions, the resolution of which

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[50] *Rollo* (G.R. No. 164352), pp. 39-40.

[51] G.R. Nos. 160054-55, July 21, 2004, 434 SCRA 612, 620.

[52] *Rollo* (G.R. No. 164352), pp. 475-500.

should determine whether or not the criminal actions for unfair competition could proceed.

**G.R. No. 205972**

In this appeal, the petitioner interposes that:

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITIONER'S PETITION FOR REVIEW SOLELY ON THE GROUND OF AN ALLEGED WRONG REMEDY, DESPITE PETITIONERS HAVING CLEARLY ESTABLISHED THAT THE SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING THE RESOLUTIONS DATED 19 SEPTEMBER 2005 AND 20 DECEMBER 2007, AFFIRMING THE FINDINGS OF THE INVESTIGATING PROSECUTOR THAT NO PROBABLE CAUSE EXISTS TO CHARGE THE RESPONDENT OF THE CRIME OF UNFAIR COMPETITION.[53]

Caterpillar seeks the liberal interpretation of procedural rules in order to serve the higher interest of substantial justice following the denial by the CA of its petition for being an incorrect remedy; and insists that it presented substantial evidence to warrant a finding of probable cause for unfair competition against Samson.

In sum, the issues to be resolved in these consolidated cases are: *firstly*, whether or not the CA committed a reversible error in ruling that the trial court *a quo* did not commit grave abuse of discretion in suspending the criminal proceedings on account of a prejudicial question; and, *secondly*, whether or not the CA committed reversible error in upholding the decision of the Secretary of Justice finding that there was no probable cause to charge Samson with unfair competition.

**Rulings of the Court**

**G.R. No. 164352**

The appeal in G.R. No. 164352 is meritorious.

We note, to begin with, that Civil Case No. Q-00-41446, the civil case filed by Caterpillar in the RTC in Quezon City,

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[53] *Rollo* (G.R. No. 205972), p. 73.

was for unfair competition, damages and cancellation of trademark, while Criminal Cases Nos. Q-02-108043-44 were the criminal prosecution of Samson for unfair competition. A common element of all such cases for unfair competition – civil and criminal – was *fraud.* Under Article 33 of the *Civil Code*, a civil action entirely separate and distinct from the criminal action may be brought by the injured party in cases of fraud, and such civil action shall proceed independently of the criminal prosecution. In view of its being an independent civil action, Civil Case No. Q-00-41446 did not operate as a prejudicial question that justified the suspension of the proceedings in Criminal Cases Nos. Q-02-108043-44.

In fact, this issue has already been raised in relation to the suspension of the arraignment of Samson in Criminal Cases Nos. Q-02-108043-44 in *Samson v. Daway*,[54] and the Court resolved it against Samson and in favor of Caterpillar thusly:

> Anent the second issue, petitioner failed to substantiate his claim that there was a prejudicial question. In his petition, he prayed for the reversal of the March 26, 2003 order which sustained the denial of his motion to suspend arraignment and other proceedings in Criminal Case Nos. Q-02-108043-44. For unknown reasons, however, he made no discussion in support of said prayer in his petition and reply to comment. Neither did he attach a copy of the complaint in Civil Case No. Q-00-41446 nor quote the pertinent portion thereof to prove the existence of a prejudicial question.
>
> At any rate, there is no prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other. Under Rule 111, Section 3 of the Revised Rules on Criminal Procedure, in the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence.

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[54] G.R. Nos. 160054-55, July 21, 2004, 434 SCRA 612 (Samson moved in the RTC for the suspension of the arraignment and other proceedings in Criminal Cases Nos. Q-02-108043-44 on the ground that a prejudicial question that was the logical antecedent in the criminal actions existed in Civil Case No. Q-00-41446 that warranted the suspension of the proceedings in the criminal cases).

In the case at bar, the common element in the acts constituting unfair competition under Section 168 of R.A. No. 8293 is fraud. Pursuant to Article 33 of the Civil Code, in cases of defamation, *fraud*, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. **Hence, Civil Case No. Q-00-41446, which as admitted by private respondent also relate to unfair competition, is an independent civil action under Article 33 of the Civil Code. As such, it will not operate as a prejudicial question that will justify the suspension of the criminal cases at bar.**[55] (Bold emphasis supplied)

Secondly, a civil action for damages and cancellation of trademark cannot be considered a prejudicial question by which to suspend the proceedings in the criminal cases for unfair competition. A prejudicial question is that which arises in a civil case the resolution of which is a logical antecedent of the issues to be determined in the criminal case. It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action will necessarily be determinative of the criminal case.[56] As stated in *Librodo v. Judge Coscolluela, Jr.:*[57]

A prejudicial question is one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.**It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the**

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[55] *Id*. at 620-621.

[56] *Ras v. Rasul*, Nos. 50441-42, September 18, 1980, 100 SCRA 125, 129-130; *Benitez v. Concepcion, Jr.*, No. L-14646, May 30, 1961, 2 SCRA 178, 181; *De Leon v. Mabanag*, 70 Phil. 202 (1940).

[57] No. 56995, August 30, 1982, 116 SCRA 303.

**issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.**[58] (Bold underscoring supplied for emphasis)

The elements of a prejudicial question are provided in Section 7 of Rule 111, *Rules of Court*, to wit: (a) a previously instituted civil action involves an issue similar to or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.[59]

An examination of the nature of the two kinds of cases involved is necessary to determine whether a prejudicial question existed.

An action for the cancellation of trademark like Civil Case No. Q-00-41446 is a remedy available to a person who believes that he is or will be damaged by the registration of a mark.[60] On the other hand, the criminal actions for unfair competition (Criminal Cases Nos. Q-02-108043-44) involved the determination of whether or not Samson had given his goods the general appearance of the goods of Caterpillar, with the intent to deceive the public or defraud Caterpillar as his competitor.[61] In the suit for the cancellation of trademark, the issue of lawful registration should necessarily be determined, but registration was not a consideration necessary in unfair competition.[62] Indeed, unfair competition is committed if the effect of the act is *"to pass off to the public the goods of one man as the goods of another;"*[63] it is independent of registration.

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[58] *Id*. at 309-310.

[59] See *San Miguel Properties, Inc. v. Perez*, G.R. No. 166836, September 4, 2013, 705 SCRA 38, 55.

[60] Section 151.1 (b), IP Code.

[61] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 44.

[62] *Mighty Corp. v. E. & J Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473, 493.

[63] *Id*.

As fittingly put in *R.F. & Alexander & Co. v. Ang,*[64] "*one may be declared unfair competitor even if his competing trade-mark is registered.*"

Clearly, the determination of the lawful ownership of the trademark in the civil action was not determinative of whether or not the criminal actions for unfair competition shall proceed against Samson.

**G.R. No. 205972**

The petition for review on *certiorari* in G.R. No. 205972 is denied for being bereft of merit.

Firstly, Caterpillar assailed the resolution of the Secretary of Justice by filing a petition for review under Rule 43 of the *Rules of Court.* Such resort to the petition for review under Rule 43 was erroneous,[65] and the egregious error warranted the denial of the appeal. The petition for review under Rule 43 applied to all appeals to the CA from quasi-judicial agencies or bodies, particularly those listed in Section 1 of Rule 43. However, the Secretary of Justice, in the review of the findings of probable cause by the investigating public prosecutor, was not exercising a quasi-judicial function, but performing an executive function.[66]

Moreover, the courts could intervene in the determination of probable cause only through the special civil action for *certiorari* under Rule 65 of the *Rules of Court,* not by appeal through the petition for review under Rule 43. Thus, the CA could not reverse or undo the findings and conclusions on probable cause by the Secretary of Justice except upon clear demonstration of grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Secretary of Justice.[67] Caterpillar did not so demonstrate.

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[64] 97 Phil. 157, 162.

[65] *Callo-Claridad v. Esteban,* G.R. No. 191567, March 20, 2013, 694 SCRA 185, 196; *Levi Strauss (Phils.), Inc. vs. Lim, supra,* note 61, at 38-39.

[66] *Callo-Claridad v. Esteban,* at 196-197.

[67] *Id.* at 197.

And, secondly, even discounting the technicalities as to consider Caterpillar's petition for review as one brought under Rule 65, the recourse must still fail.

Probable cause for the purpose of filing an information in court consists in such facts and circumstances as would engender a well-founded belief that a crime has been committed and the accused may probably be guilty thereof.[68] The determination of probable cause lies solely within the sound discretion of the investigating public prosecutor after the conduct of a preliminary investigation. It is a sound judicial policy to refrain from interfering with the determination of what constitutes sufficient and convincing evidence to establish probable cause for the prosecution of the accused.[69] Thus, it is imperative that by the nature of his office, the public prosecutor cannot be compelled to file a criminal information in court if he is not convinced of the sufficiency of the evidence adduced for a finding of probable cause.[70] Neither can he be precluded from filing an information if he is convinced of the merits of the case.

In not finding probable cause to indict Samson for unfair competition, State Prosecutor Abad as the investigating public prosecutor discharged the discretion given to him by the law. Specifically, he resolved as follows:

> It appears from the records that respondent started marketing his (class 25) products bearing the trademark Caterpillar as early as 1992. In 1994, respondent caused the registration of the trademark "Caterpillar With A Triangle Device Beneath The Letter [A]" with the Intellectual Property Office. Sometime on June 16, 1997, the IPO issued Certificate of Registration No. 64705 which appears to be valid for twenty (20) years, or up to June 16, 2017. Upon the strength of this registration, respondent continued with his business of marketing shoes, slippers, sandals, boots and similar Class 25 items bearing his registered trademark "Caterpillar". Under the law, respondent's operative act of registering his Caterpillar trademark

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[68] *Id*. at 199.

[69] *Id*.

[70] *Supra* note 55, at 40.

and the concomitant approval/issuance by the governmental entity concerned, conferred upon him the exclusive right to use said trademark unless otherwise declared illegal. There being no evidence to controvert the fact that respondent's Certificate of Registration No. 64705 covering Caterpillar trademark was fraudulently or illegally obtained, it necessarily follows that its subsequent use and/or being passed on to the public militates malice or fraudulent intent on the part of respondent. Otherwise stated and from the facts obtaining, presumption of regularity lies, both from the standpoint of registration and use/ passing on of the assailed Caterpillar products.

Complainant's argument that respondent may still be held liable for unfair competition by reason of his having passed on five (5) other Caterpillar products like "Cat", "Caterpillar", "Cat and Design", "Walking Machines" and "Track-Type Tractor Design" is equally difficult to sustain. As may be gleaned from the records, respondent has been engaged in the sale and distribution of Caterpillar products since 1992 leading to the establishment of numerous marketing outlets. As such, it would be difficult to assail the presumption that respondent has already established goodwill insofar as his registered Caterpillar products are concerned. On the other hand, complainant's registration of the other Caterpillar products appears to have been caused only in 1995. In this premise, respondent may be considered as prior user, while the latter, a subsequent one. Jurisprudence dictates that prior user of the trademark by one, will controvert the claim by a subsequent one.[71]

We reiterate that the full discretionary authority to determine the existence of probable cause is lodged in the Executive Branch of the Government, through the public prosecutor, in the first instance, and the Secretary of Justice, on review. Such authority is exclusive, and the courts are prohibited from encroaching on the executive function, unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public prosecutor or the Secretary of Justice. As declared in *Callo-Claridad v. Esteban:*[72]

A public prosecutor alone determines the sufficiency of evidence that establishes the probable cause justifying the filing of a criminal

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[71] *Rollo* (G.R. No. 205972), pp. 234-235.

[72] *Supra* note 65, at 199-200.

information against the respondent because the determination of existence of a probable cause is the function of the public prosecutor. Generally, the public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. Consequently, it is a sound judicial policy to refrain from interfering in the conduct of preliminary investigations, and to just leave to the Department of Justice the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. By way of exception, however, judicial review is permitted where the respondent in the preliminary investigation clearly establishes that the public prosecutor committed grave abuse of discretion, that is, when the public prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law. Moreover, the trial court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. Although policy considerations call for the widest latitude of deference to the public prosecutor's findings, the courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the public prosecutor's findings are supported by the facts, and by the law.

Relevantly, *grave abuse of discretion* means such capricious or whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[73] Herein, Caterpillar did not show the grave abuse of discretion on the part of the Secretary of Justice.

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[73] *Julie's Franchise Corporation v. Ruiz*, G.R. No. 180988, August 28, 2009, 597 SCRA 463, 471.

**WHEREFORE,** the Court **GRANTS** the petition for review in G.R. No. 164352; **SETS ASIDE** the decision promulgated on January 21,2004 in CA-G.R. SP No. 75526; **DIRECTS** the Regional Trial Court in Muntinlupa City to reinstate Criminal Cases Nos. Q-02-108043-44 and forthwith try and decide them without undue delay; **DENIES** the petition for review on *certiorari* in G.R. No. 205972; and **ORDERS** respondent Manolo P. Samson to pay the costs of suit.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 208090. November 9, 2016]

**FERDINAND V. TOMAS,** *petitioner, vs.* **CRIMINAL INVESTIGATION AND DETECTION GROUP (*CIDG*) - ANTI-ORGANIZED CRIME DIVISION (*AOCD*) (CIDG-AOCD) and MYRNA UY TOMAS,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING, NOT A CASE OF; WHEN PETITIONER INFORMED THE COURT OF APPEALS OF THE EXISTENCE OF THE SAME PETITION FILED IN THE SAME COURT BUT SAID COURT RULED THAT THERE WAS FORUM SHOPPING ONLY AFTER THE FIRST PETITION HAS BEEN DECIDED AND ATTAINED FINALITY, THERE WAS NO WILLFUL VIOLATION OF THE RULE AGAINST FORUM SHOPPING.—** [P]etitioner filed a Petition for *Certiorari* with the CA docketed as CA-G.R. SP No. 104029 questioning the Orders dated April 16,

2008 and January 11, 2008 of the RTC, and on August 16, 2011, the CA Sixth Division granted the said petition and the assailed Orders dated April 16, 2008 and January 11, 2008 of the RTC were reversed and set aside and Search Warrants Nos. A07-12100 to A07-12103 were quashed. Petitioner likewise filed a Petition for Review under Rule 43 of the Rules of Court before the CA and docketed as CA-G.R. SP No. 114479 questioning the Joint Resolution dated July 24, 2009 of the Secretary of Justice, finding probable cause against petitioner. Needless to say, both cases delve on the issue of the validity of the search warrants. However, upon consideration of the arguments presented by both parties, this Court finds that petitioner did not willfully violate the rule against forum shopping. When petitioner filed its second petition with the CA assailing the Joint Resolution of the Secretary of Justice finding probable cause against him, he was able to notify the CA through the certification on non-forum shopping of the pendency of the first petition docketed as CA-G.R. SP No. 104029. x x x With such information provided by petitioner, the CA could have dismissed the second petition outrightly if it found that petitioner violated the rule against forum shopping. Instead, the CA only ruled that there was forum shopping after the first petition had already been decided and eventually attained finality. To reverse the earlier decision would then cause injustice on the part of the petitioner.

**2. ID.; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT, EXPLAINED; WHILE A DECISION HAS ATTAINED FINALITY, THE PRINCIPLE LAID DOWN THEREIN SHOULD NOT BE FOLLOWED WHEN IT IS INCONSISTENT WITH LAW.—** The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. The reason for the rule is that if, on the application of one party, the court could change its judgment to the prejudice of the other, it could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely. The equity of a particular case must yield to the overmastering need of certainty and inalterability of judicial pronouncements. x x x As a caveat, although the Decision dated August 16, 2011 has attained finality,

it does not mean that the principle it laid down should still be followed. The said decision basically rules that every application for search warrant shall be personally endorsed by the heads of such agencies as enumerated in Section 12, Chapter V of A.M. No. 03-8-02-SC. This Court, however, finds that nothing in A.M. No. 03-8-02-SC prohibits the heads of the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF) from delegating their ministerial duty of endorsing the application for search warrant to their assistant heads. This has already been clarified by this Court in *Spouses Marimla v. People*, when it ruled that under Section 31, Chapter 6, Book IV of the Administrative Code of 1987, an assistant head or other subordinate in every bureau may perform such duties as may be specified by their superior or head, as long as it is not inconsistent with law[.]

**3. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; THE SEARCH WARRANTS SUBJECT OF THIS CASE SHOULD NOT HAVE BEEN QUASHED; THE COURT'S FINDING OF PROBABLE CAUSE IN THE ISSUANCE OF SEARCH WARRANTS SHOULD BE GIVEN MORE CONSIDERATION AND IMPORTANCE OVER A MERE DEFECT IN THE APPLICATION THEREOF.—** A.M. No. 03-8-02-SC and A.M. No. 99-10-09-SC substantially contain the same provisions, except that the former involves applications for search warrants for violations of the Intellectual Property Code and the latter involves applications for search warrants for the commission of heinous crimes, illegal gambling, dangerous drugs and illegal possession of firearms. Nevertheless, without this Court issuing A.M. No. 99-10-09-SC clarifying the guidelines in the application and enforceability of search warrants, the search warrants subject of this case should still not have been quashed because before the issuance thereof, the court had already found probable cause to issue those search warrants and whatever defects that the applications had are minor and technical, hence, the court could have merely ordered its correction. The finding of the court of probable cause in the issuance of search warrants should be given more consideration and importance over a mere defect in the application of the same search warrants. Incidentally, the CA Fourth Division correctly ruled that the absence of the personal endorsement of the Chief of the PNP is of no moment and may

cause only the possible administrative liability of the concerned police officers but in no way affect the validity of the search warrants in question[.]

**4. ID.; ID.; ID.; REQUISITES FOR ISSUANCE OF SEARCH WARRANT; ASIDE FROM ABSENCE OF ONE OR SOME OF THE REQUISITES, A SEARCH WARRANT MAY ALSO BE QUASHED BASED ON GROUNDS EXTRINSIC OF THE SEARCH WARRANT.—** [I]t must be remembered that the requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. These requisites are taken from the provisions of Section 2, Article III of the Constitution[.]x x x Consequently, a motion to quash a search warrant may be based on grounds extrinsic of the search warrant, such as (1) the place searched or the property seized are not those specified or described in the search warrant; and (2) there is no probable cause for the issuance of the search warrant. Thus, a search warrant is valid as long as it has all the elements set forth by the Constitution and may only be quashed if it lacks one or some of the said elements, or on those two grounds mentioned earlier.

## APPEARANCES OF COUNSEL

*Villasis Sontillano Villasis Law Office* for petitioner.

*Roxas Roxas & Associates Law Offices* for respondent Myrna U. Tomas.

## D E C I S I O N

**PERALTA**, ***J.*:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated August 28, 2013, of petitioner Ferdinand V. Tomas that seeks to reverse and set aside the

Court of Appeals (*CA*) Decision[1] and Resolution,[2] dated March 25, 2013 and July 5, 2013, respectively, the latter court affirming the Joint Resolution dated July 24, 2009 of the Secretary of Justice, through the Chief State Prosecutor, finding probable cause against petitioner for trademark infringement and unfair competition as defined and penalized under Sections 155 and 168, respectively, in relation to Section 170 of Republic Act (*R.A.*) No. 8293 otherwise known as the *Intellectual Property Code of the Philippines*.

The facts follow.

Private respondent Myrna Uy Tomas filed four (4) complaints for violation of Sections 155 and 168 in relation to Section 170 of R.A. No. 8293. The first two (2) complaints, docketed respectively as I.S. Nos. 2007-926 and 2007-927, were against petitioner Ferdinand V. Tomas, Federico Ladines, Jr. and Ryan T. Valdez. The third and fourth ones, docketed as I.S. Nos. 2007-940 and 2007-941, were against Ferdinand V. Tomas.

The Philippine National Police (*PNP*) Criminal Investigation and Detection Group (*CIDG)-Anti-Organized Crime Division* (*AOCD*), on October 24, 2007, presented four (4) applications for issuance of search warrants before the Regional Trial Court (*RTC*) of Manila. The applications were signed by P/Chief Inspector Helsin B. Walin and approved by Police Director Edgardo M. Doromal, Chief of the CIDG.

Executive Judge Reynaldo G. Ros, Presiding Judge of the RTC of Manila, Branch 33, issued four (4) search warrants (Search Warrant Nos. A07-12100 to A07-12103) which the members of the PNP CIDG-AOCD used in conducting a search on the premises of FMT Merchandising, located at Alexander St., Urdaneta City, Pangasinan and at 394 Cayambanan, Urdaneta City, Pangasinan. The search at the FMT Merchandising premises resulted to the seizure and confiscation of one (1) piece of

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring; *rollo*, pp. 38-52.

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

Pedrollo JSWm/8H 0.75 water pump, while the search conducted at Brgy. Cayambanan yielded the following items: (1) three hundred forty-two (342) empty boxes of Pedrollo; (2) nineteen (19) pieces of Pedrollo terminal box cover; (3) thirty-one (31) pieces of Pedrollo electric water pump; (4) three (3) pieces of unserviceable Pedrollo water pump; and (5) twenty-one (21) pieces of Pedrollo gauge.

Petitioner filed with the RTC a Motion to Quash the Search Warrants and/or to Suppress Evidence Obtained thereby assailing the applications for search warrant for being in violation of SC Administrative Matter No. 03-8-02-SC. He claimed that the application for search warrant, which may be filed by the following agencies, namely, NBI, PNP and ACTAF, should be personally endorsed by the heads of said agencies. According to petitioner, the quashal of the warrants was warranted because the four (4) applications for issuance of the search warrants were merely endorsed and/or approved by P/Director Edgardo M. Doromal, Head of the CIDG, when at the time, the Chief of the PNP was Director General Avelino Razon.

The RTC, on January 11, 2008, partially granted petitioner's Motion to Quash, thus:

WHEREFORE, the Motion to Quash is partly granted. Search Warrant Nos. [A07-12100] and A07-12103 are ordered QUASHED.[3]

On April 16, 2008, the RTC, on Motion for partial reconsideration of respondents, reconsidered its earlier Order and ruled as follows:

WHEREFORE, the Motions filed by the respondent are DENIED for lack of merit. The Motion for Reconsideration filed by the private complainant is GRANTED. The Order of this Court dated January 11, 2008 quashing Search Warrant Nos. A07-12102 and A07-12103 is reconsidered and set aside.[4]

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[3] *Rollo*, p. 129.

[4] *Id*. at 132.

Petitioner filed a Petition for *Certiorari* with the CA which was docketed as CA-G.R. SP No. 104029 questioning the Orders dated April 16, 2008 and January 11, 2008 of the RTC. On August 16, 2011, the CA Sixth Division rendered a Decision[5] which granted the petition, reversed and set aside the assailed Orders dated April 16, 2008 and January 11, 2008 of the RTC, and quashed Search Warrant Nos. A07-12100 to A07-12103. The CA, thus, ruled:

> At the time of the filing of the applications of subject warrants on 26 October 2007, Section 12, Chapter V of A.M. No. 03-8-02-SC, entitled "Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties," dictates that -
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> > SEC. 12. Issuance of search warrants in special criminal cases by the Regional Trial Courts of Manila and Quezon City. – The Executive Judges and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges of the RTCs of Manila and Quezon City shall have authority to act on applications filed by the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF), for search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court.
> >
> > The applications shall be personally endorsed by the heads of such agencies and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The Executive Judges and Vice-Executive Judges concerned shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts.

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[5] Penned by Associate Justice Florito S. Macalino, with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr., concurring; *id*. at 178-186.

> The Executive Judges and the authorized Judges shall keep a special docket book listing names of Judges to whom the applications are assigned, the details of the applications and the results of the searches and seizures made pursuant to the warrants issued.
>
> This Section shall be an exception to Section 2 of Rule 126 of the Rules of Court.

From the foregoing, it is very clear that every application for search warrant shall be personally endorsed by the heads of such agencies. If an application for the issuance of a search warrant is being made by the PNP, then it must be personally endorsed by the Chief of the PNP. In the case at bench, the applications for search warrants made by Police Chief Inspector Helson B. Walin were not personally endorsed by the then PNP Chief, Police Director General Avelino Razon. Evidently, the applications for search warrants were defective, thus, respondent Judge should have denied the applications for being violative of Section 12, Chapter V of A.M. No. 03-8-02-SC.

In fact, in A.M. No. 08-4-4-SC dated 7 July 2009, wherein the High Court addressed the letter of the then Police Director General Jesus A. Verzosa asking for clarification regarding the construction on the duration or effectivity of the High Court's Resolution dated 15 April 2008, which granted the request of then Police Director General Avelino I. Razon to delegate the authority to endorse the applications for search warrant to be filed in the RTCs of Manila and Quezon City to the Director of the Directorate for Investigation and Detective Management ("DIDM," for brevity) of the PNP in connection with Section 12, Chapter V of A.M. No. 03-8-02-SC, it held that:

> From a cursory reading of the aforementioned provision of A.M. No. 03-8-02-SC, it is crystal that applications for search warrant to be filed before the RTCs of Manila and Quezon City must be essentially approved in person by the heads of the following agencies: the PNP, NBI, and ACTAF of the AFP. Accordingly, in the incident recounted in the 25 November 2008 letter of P/Dir. Gen. Verzosa, Judge Ros correctly denied the application for search warrant of the PNP for being defective. The authority granted by the Court to P/Dir. Gen. Razon to delegate to the Director of DIDM, PNP, the endorsement of applications for search warrant to be filed before the RTCs of

Manila and Quezon City, was personal to P/Dir. Gen. Razon. It cannot be invoked by P/Dir. Gen. Razon's successor.

Glaringly, applications for search warrants made by the PNP should have been denied for being defective as it were without the personal endorsement of the head of the PNP, which is a requirement at the time that the subject applications were made. The High Court's Resolution dated 15 April 2008 granting the request of then Police Director General Avelino I. Razon to delegate the authority to endorse the applications for search warrant to be filed in the RTCs of Manila and Quezon City to the Director of the Directorate for Investigation and Detective Management ("DIDM," for brevity) of the PNP is not applicable to the present case as Police Director General Avelino I. Razon's permission to delegate his authority to endorse was only granted on 15 April 2008 and the application was made on 26 October 2007.

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Thus, the Court finds that respondent Judge committed grave abuse of discretion in granting the subject applications for search warrants despite being defective and violative of Section 12, Chapter V of A.M. No. 03-8-02, the rule applicable at that time.

Furthermore, this Court likewise finds respondent Judge in grave error in denying to suppress the evidence obtained from the illegal search and in denying to quash Search Warrant Nos. A07-12102 and A07-12103.

x x x x

WHEREFORE, premises considered, the present Petition is GRANTED. The assailed Orders dated 16 April 2008 and 11 January 2008 of public respondent Judge of the Regional Trial Court of Manila, Branch 33 are hereby REVERSED and SET ASIDE. Search Warrant Nos. A07-12100 to A07-12103 are hereby QUASHED.

SO ORDERED.[6]

The CA, likewise, on December 12, 2011, denied therein respondent People's motion for reconsideration. Private complainant and herein private respondent Myrna Tomas filed

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[6] *Id.* at 181-186. (Emphases omitted)

a petition for review on c*ertiorari* with this Court and on March 5, 2012, this Court, in a Resolution, denied the petition for failure to sufficiently show any reversible error in the judgment of the CA. The said decision became final and executory and recorded in the Book of Entries of Judgments on August 16, 2012.

Meanwhile, the Secretary of Justice, on July 24, 2009, issued a Joint Resolution finding probable cause against petitioner in which the dispositive portion of the resolution reads:

> WHEREFORE, the undersigned respectfully recommends the (1) dismissal of the complaints against respondents Ryan T. Valdez and Federico N. Ladines, Jr., and (2) filing of the appropriate Informations against respondent Ferdinand V. Tomas for trademark infringement and unfair competition as defined and penalized under [Sections] 155 and 168, respectively, in relation to Section 170 of Republic Act 8293.[7]

After petitioner's motion for reconsideration was denied by the Secretary of Justice, petitioner filed a Petition for Review under Rule 43 of the Rules of Court before the CA and docketed as CA-G.R. SP No. 114479.

The CA Fourth Division, on March 25, 2013, denied the petition, thus:

> WHEREFORE, in view of the foregoing, the Joint Resolution issued on July 24, 2009 by the Secretary of Justice, through the Chief State Prosecutor, is hereby AFFIRMED.
>
> SO ORDERED.[8]

On July 5, 2013, the CA also denied petitioner's motion for reconsideration. Hence, the present petition.

Petitioner raises the following issues:

I. WHETHER THE COURT OF APPEALS' (4TH DIVISION) DECISION DATED 25 MARCH 2013 VIOLATED THE

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[7] *Id*. at 143.

[8] *Id*. at 52.

FUNDAMENTAL RULE ON IMMUTABILITY OF A FINAL JUDGMENT WHEN IT DECLARED THAT SEARCH WARRANT NOS. A07-12100 TO A07-12103 WERE VALIDLY ISSUED.

II. WHETHER THE COURT OF APPEALS THRU THE FOURTH DIVISION CAN VALIDLY DISMISS THE CASE CA-G.R. SP NO. 104029 AFTER SAID COURT HAD RENDERED JUDGMENT THEREIN (THRU THE SIXTH DIVISION) AND WHICH JUDGMENT BECAME FINAL AND HAD ALREADY BEEN EXECUTED.

III. WHETHER THE FINAL JUDGMENT IN CA-G.R. SP NO. 104029 AND AFFIRMED BY THE SUPREME COURT IN G.R. NO. 199699, INCLUDING THE ISSUE OF FORUM SHOPPING, IS CONCLUSIVE AND THE SAME CANNOT BE REOPENED OR SUPERSEDED WITHOUT VIOLATING THE FUNDAMENTAL RULE ON IMMUTABILITY OF A FINAL JUDGMENT.[9]

According to petitioner, the Sixth Division of the CA had already declared in its Decision dated August 16, 2011 that the issuance of Search Warrant Nos. A07-12100 to A07-12103 was violative of Section 12, Chapter V of A.M. No. 03-8-02-SC, and that subsequently, respondent Myrna Tomas, without authority from the Office of the Solicitor General, filed a petition for *certiorari* with this Court that was later on denied in this Court's Resolution dated March 5, 2012 and affirmed in the Resolution dated June 27, 2012. Thus, petitioner insists that the questioned decision of the Fourth Division of the CA, in effect, modifies, alters and amends a final and executory decision of the Sixth Division of the CA.

Petitioner further claims that there is no forum shopping in this case, contrary to the ruling of the CA. Petitioner avers that the two cases filed with the CA had no identity of parties, no identity of causes of action and no identity of reliefs prayed for. He also insists that he informed the CA's Fourth Division on all the incidents relative to the case under the CA's Sixth Division.

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[9] *Id*. at 19-20.

Private respondent Myrna Tomas, in her Comment dated December 2, 2013 argues that a case may be re-tried in the interest of justice despite that *res judicata* had already set in. She also claims that the questioned decision of the Fourth Division of the CA is sound and based on the facts and the law. Lastly, she insists that petitioner is guilty of forum shopping.

This Court finds the petition partly meritorious.

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.[10]

As this Court ruled in *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66, et al.*,[11] there are certain exceptions, thus:

> But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. The early case of *City of Butuan vs. Ortiz* is one where the Court held as follows:
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> > Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (Section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire

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[10] *Mendoza v. Fil-Homes Realty Development Corporation*, 681 Phil. 621, 627 (2012).

[11] 659 Phil. 117 (2011).

> which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts (Molina vs. De la Riva, 8 Phil. 569; Behn, Meyer & Co. vs. McMicking, 11 Phil. 276; Warner, Barnes & Co. vs. Jaucian, 13 Phil. 4; Espiritu vs. Crossfield and Guash, 14 Phil. 588; Flor Mata vs. Lichauco and Salinas, 36 Phil. 809). In the instant case, the respondent Cleofas alleged that subsequent to the judgment obtained by Sto. Domingo, they entered into an agreement which showed that he was no longer indebted in the amount claimed of ₱995, but in a lesser amount. Sto. Domingo had no right to an execution for the amount claimed by him. (De la Costa vs. Cleofas, 67 Phil. 686-693).

Shortly after *City of Butuan v. Ortiz*, the case of *Candelario v. Cañizares* was promulgated, where it was written that:

> After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend execution thereof and grant relief as the new facts and circumstances warrant. We, therefore, find that the ruling of the court declaring that the order for the payment of ₱40,000.00 is final and may not be reversed, is erroneous as above explained.

These rulings were reiterated in the cases of *Abellana v. Dosdos*, *The City of Cebu vs. Mendoza and PCI Leasing and Finance, Inc. v. Antonio Milan*. In these cases, there were compelling circumstances which clearly warranted the exercise of the Court's equity jurisdiction.[12]

The Decision dated August 16, 2011 of the CA Sixth Division declaring that Search Warrant No. A07-12100 to A07-12103 was violative of Section 12, Chapter V of A.M. No. 03-8-02-SC has already attained finality and this Court finds no compelling reason to rule against its immutability.

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[12] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66, supra,* at 123-124. (Citations omitted)

The CA Fourth Division, in its Decision dated March 25, 2013 ruled, in effect, that the Decision of the CA Sixth Division should be amended, if not abandoned, thus:

> In view of the foregoing, the Court upholds the validity of the Search Warrants for petitioner's house issued by Judge Ros, and any items seized as a result of the search conducted by virtue thereof, may be presented as evidence against petitioner.
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> Further, the fact that the application for search warrants were not personally endorsed by the Chief of the Philippine National Police but only by the Chief of the CIDG in violation of Section 12 of Administrative Matter No. 03-8-02-SC issued by the Supreme Court, is of no moment. If indeed there was such violation, such violation may jeopardize only the concerned police officers to incur administrative liability but would certainly not render nugatory the effect of the assailed search warrants.
>
> We do not subscribe to petitioner's motion for the dismissal of the present petition on the ground that the search warrants in question have been quashed by the Decision dated August 16, 2011 rendered by the Sixth Division of this Court in CA-G.R. SP No. 104029.[13]

The above conclusion of the CA Fourth Division is also grounded on its finding that petitioner violated the basic rule that prohibits forum shopping. As ruled by the CA:

> Verily, the Petition for *Certiorari* by herein petitioner in CA-G.R. SP No. 104029 violates the basic rule prohibiting forum shopping. While said petition was pending before the Sixth Division of this Court, herein petitioner did not, or failed to, inform the Court that he filed the present Petition for Review before this Court. This is a glaring violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides:
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> Sec. 5. *Certification against forum shopping*. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed

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[13] *Rollo*, pp. 49-50.

> therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion or after hearing. The submission of a false certification or noncompliance with any undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

By wittingly or unwittingly failing to inform this Court when he filed his Petition for *Certiorari* in CA-G.R. SP No. 104029 assailing the twin orders issued by the Regional Trial Court of Manila, Branch 33 regarding the filing of the present Petition for Review appealing from the Joint Resolution issued by the Secretary of Justice in I.S. Nos. 2007-926 and 2007-927, petitioner thereby infringed on Section 5 (c), Rule 7 of the 1997 Rules of Civil Procedure, which states that "if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

It has been settled in our jurisprudence that "forum shopping" exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court.

The elements of forum shopping are: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the relief being founded on the same set of facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

There was confluence of the foregoing elements in the instant case. First, there exists an identity of parties in that the concerned parties in CA-G.R. SP No. 104029 are practically the same or identical to the present case. Second, there is an identity of rights asserted and reliefs sought inasmuch both in the CA-G.R. SP No. 104029 and the instant case petitioner asserts his constitutional right against unreasonable searches and seizure and seeks the quashal of the search warrants issued by the trial court. Finally, the identity of the elements, such that any judgment rendered in, CA-G.R. SP No. 104029 regardless of which party is successful, would amount to *res judicata* in the instant case inasmuch a ruling to quash the subject search warrants in the former Petition for *Certiorari* would, in effect, be a bar to the present action.

Indeed, failure to comply fully with the requirements of certification of non-forum shopping is cause for dismissal of the case in CA-G.R. SP No. 104029.[14]

To recapitulate, petitioner filed a Petition for *Certiorari* with the CA docketed as CA-G.R. SP No. 104029 questioning the Orders dated April 16, 2008 and January 11, 2008 of the RTC, and on August 16, 2011, the CA Sixth Division granted the said petition and the assailed Orders dated April 16, 2008 and January 11, 2008 of the RTC were reversed and set aside and Search Warrants Nos. A07-12100 to A07-12103 were quashed. Petitioner likewise filed a Petition for Review under Rule 43 of the Rules of Court before the CA and docketed as CA-G.R. SP No. 114479 questioning the Joint Resolution dated July 24, 2009 of the Secretary of Justice, finding probable cause against petitioner. Needless to say, both cases delve on the issue of the validity of the search warrants. However, upon consideration

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[14] *Id*. at 50-52. (Citations omitted)

of the arguments presented by both parties, this Court finds that petitioner did not willfully violate the rule against forum shopping.

When petitioner filed its second petition with the CA assailing the Joint Resolution of the Secretary of Justice finding probable cause against him, he was able to notify the CA through the certification on non-forum shopping of the pendency of the first petition docketed as CA-G.R. SP No. 104029. The pertinent portion of the said certification reads:

> 2. I have not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency except the preliminary investigation conducted by DOJ in I.S. No. 2007940-941 and I.S. No. 2007926-927; and to the best of my knowledge no such other action or claim is pending therein; and should I learn that the same or a similar action has been filed or is pending, I hereby undertake to report such fact within five (5) days therefrom to the Court.[15]

Through the above certification, petitioner was able to inform the CA of the existence of the first petition filed in the same court. In fact, private complainant and herein respondent Myrna Tomas, in her Opposition (to the Motion for Leave and to the Attached Reply) dated January 10, 2014 admitted that petitioner did inform the CA of the first petition he filed, thus:

> Respondent Myrna humbly corrects herself in having stated that petitioner failed to inform the CA Fourth Division in CA-G.R. SP No. 114479 of the existence of his prior petition with the Sixth Division in CA-G.R. SP No. 104029 which was the result of an honest oversight due to a heavy burden of work and due to the confusion brought about by the existence of the two CA Petitions and Decisions.[16]

With such information provided by petitioner, the CA could have dismissed the second petition outrightly if it found that petitioner violated the rule against forum shopping. Instead,

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[15] *Id*. at 323.

[16] *Id*. at 289.

the CA only ruled that there was forum shopping after the first petition had already been decided and eventually attained finality. To reverse the earlier decision would then cause injustice on the part of the petitioner.

The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law.[17] The reason for the rule is that if, on the application of one party, the court could change its judgment to the prejudice of the other, it could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely.[18] The equity of a particular case must yield to the overmastering need of certainty and inalterability of judicial pronouncements.[19]

Furthermore, petitioner, upon receipt of the Decision of the CA Sixth Division, filed a "Notice of Judgment (Re CA Sixth Division's Decision dated 16 August 2011) quashing Search Warrant Nos. A07-12100 to A07-12103 as against Petitioner"[20] in CA-G.R. SP No. 114479 or the latter case, and had constantly informed the CA of the developments of the first case when it was elevated to this Court.[21] Hence, the CA cannot later on claim that it was not informed of the existence of the first decided case.

As a caveat, although the Decision dated August 16, 2011 has attained finality, it does not mean that the principle it laid down should still be followed. The said decision basically rules

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[17] *Spouses Florentino and Consolacion Tabalno v. Paulino T. Dingal, Sr., et al.*, G.R. No. 191526, October 5, 2015.

[18] *Kline v. Murray*, 257 P. 465, 79 Mont. 530.

[19] *Flores v. Court of Appeals*, 328 Phil. 992, 995 (1996).

[20] *Rollo*, pp. 156-158.

[21] Manifestation dated January 4, 2012, *id*. at 160-164; Manifestation dated April 10, 2012, *id*. at 165-168; Motion in the Premises dated August 16, 2012, *id*. at 171-175.

that every application for search warrant shall be personally endorsed by the heads of such agencies as enumerated in Section 12, Chapter V of A.M. No. 03-8-02-SC. This Court, however, finds that nothing in A.M. No. 03-8-02-SC prohibits the heads of the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF) from delegating their ministerial duty of endorsing the application for search warrant to their assistant heads. This has already been clarified by this Court in *Spouses Marimla v. People*,[22] when it ruled that under Section 31, Chapter 6, Book IV of the Administrative Code of 1987, an assistant head or other subordinate in every bureau may perform such duties as may be specified by their superior or head, as long as it is not inconsistent with law, thus:

> Petitioners contend that the application for search warrant was defective. They aver that the application for search warrant filed by SI Lagasca was not personally endorsed by the NBI Head, Director Wycoco, but instead endorsed only by Deputy Director Nasol and that while SI Lagasca declared that Deputy Director Nasol was commissioned to sign the authorization letter in behalf of Director Wycoco, the same was not duly substantiated. Petitioners conclude that the absence of the signature of Director Wycoco was a fatal defect that rendered the application on the questioned search warrant void per se, and the issued search warrant null and void "because the spring cannot rise above its source.
>
> We disagree. Nothing in A.M. No. 99-10-09-SC[23] prohibits the heads of the PNP, NBI, PAOC-TF and REACT-TF from delegating their ministerial duty of endorsing the application for search warrant to their assistant heads. Under Section 31, Chapter 6, Book IV of the Administrative Code of 1987, an assistant head or other subordinate in every bureau may perform such duties as may be specified by their superior or head, as long as it is not inconsistent with law. The said provision reads:

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[22] 619 Phil. 56 (2009).

[23] *RESOLUTION CLARIFYING THE GUIDELINES ON THE APPLICATION FOR AND ENFORCEABILITY OF SEARCH WARRANTS.*

Chapter 6 – POWERS AND DUTIES OF HEADS OF BUREAUS AND OFFICES

Sec. 31. Duties of Assistant Heads and Subordinates. — (1) Assistant heads and other subordinates in every bureau or office shall perform such duties as may be required by law or regulations, or as may be specified by their superiors not otherwise inconsistent with law.

(2) The head of bureau or office may, in the interest of economy, designate the assistant head to act as chief of any division or unit within the organization, in addition to his duties, without additional compensation, and

(3) In the absence of special restriction prescribed by law, nothing shall prevent a subordinate officer or employee from being assigned additional duties by proper authority, when not inconsistent with the performance of the duties imposed by law.

Director Wycoco's act of delegating his task of endorsing the application for search warrant to Deputy Director Nasol is allowed by the above quoted provision of law unless it is shown to be inconsistent with any law. Thus, Deputy Director Nasol's endorsement had the same force and effect as an endorsement issued by Director Wycoco himself. The finding of the RTC in the questioned Orders that Deputy Director Nasol possessed the authority to sign for and in behalf of Director Wycoco is unassailable.[24]

A.M. No. 03-8-02-SC and A.M. No. 99-10-09-SC substantially contain the same provisions, except that the former involves applications for search warrants for violations of the Intellectual Property Code and the latter involves applications for search warrants for the commission of heinous crimes, illegal gambling, dangerous drugs and illegal possession of firearms. Nevertheless, without this Court issuing A.M. No. 99-10-09-SC clarifying the guidelines in the application and enforceability of search warrants, the search warrants subject of this case should still not have been quashed because before the issuance thereof, the court had already found probable cause to issue those search warrants and whatever defects that the applications had are minor

[24] *Spouses Marimla v. People, supra,* at 69.

and technical, hence, the court could have merely ordered its correction. The finding of the court of probable cause in the issuance of search warrants should be given more consideration and importance over a mere defect in the application of the same search warrants. Incidentally, the CA Fourth Division correctly ruled that the absence of the personal endorsement of the Chief of the PNP is of no moment and may cause only the possible administrative liability of the concerned police officers but in no way affect the validity of the search warrants in question, thus:

> Further, the fact that the application for search warrants were not personally endorsed by the Chief of the Philippine National Police but only by the Chief of the CIDG in violation of Section 12 of Administrative Matter No. 03-8-02-SC issued by the Supreme Court, is of no moment. If indeed there was such violation, such violation may jeopardize only the concerned police officers to incur administrative liability but would certainly not render nugatory the effect of the assailed search warrants.[25]

Furthermore, it must be remembered that the requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[26] These requisites are taken from the provisions of Section 2, Article III of the Constitution, thus:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he

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[25] *Rollo*, p. 49.

[26] *People v. Francisco*, 436 Phil. 383, 390 (2002).

may produce, and particularly describing the place to be searched and the persons or things to be seized.

Consequently, a motion to quash a search warrant may be based on grounds extrinsic of the search warrant, such as (1) the place searched or the property seized are not those specified or described in the search warrant; and (2) there is no probable cause for the issuance of the search warrant.[27]

Thus, a search warrant is valid as long as it has all the elements set forth by the Constitution and may only be quashed if it lacks one or some of the said elements, or on those two grounds mentioned earlier. In this case, it was an error to quash the search warrant simply because the application thereof was without the personal endorsement of the Chief of the PNP.

Unfortunately, as discussed earlier, the Decision of the CA Sixth Division quashing Search Warrant Nos. A07-12100 to A07-12103 has already attained finality.

The Department of Justice, however, is not barred from filing an information against petitioner for trademark infringement and unfair competition if it still finds probable cause despite the absence of the materials confiscated by virtue of the defective search warrants through other pieces of evidence it has in its arsenal. This court has adopted a deferential attitude towards review of the executive's finding of probable cause.[28] This is based "not only upon the respect for the investigatory and [prosecutorial] powers granted by the Constitution to the executive department but upon practicality as well."[29]

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[27] *Abuan v. People of the Philippines*, 536 Phil. 672, 692 (2006), citing *Franks v. State of Delaware*, 438 US 154, 98 S.Ct. 2674 (1978); *US v. Leon*, 468 US 897, 104 S.Ct. 3405 (1984); *US v. Mittelman*, 999 F.2d 440 (1993); *US v. Lee*, 540 F.2d 1205 (1976).

[28] *ABS-CBN Corporation v. Gozon*, March 11, 2015, 753 SCRA 1, 30, citing *Punzalan v. Plata*, 717 Phil. 21, 32 (2013), [Per *J*. Mendoza, Third Division], citing *Paredes v. Calilung*, 546 Phil. 198, 224 (2007) [Per *J*. Chico-Nazario, Third Division].

[29] *Id.* at 30-31, citing *Punzalan v. Plata, id.* at 33, citing *Buan v. Matugas*, 556 Phil. 110, 119 (2007). [Per *J*. Garcia, First Division].

**WHEREFEORE**, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated August 28, 2013, of petitioner Ferdinand V. Tomas is **PARTLY GRANTED**. The Court of Appeals Decision and Resolution, dated March 25, 2013 and July 5, 2013, respectively, are **REVERSED** and **SET ASIDE** only insofar as they uphold the validity of Search Warrant Nos. A07-12100 to A07-12103.

**SO ORDERED.**

*Perez, Reyes,* and *Jardeleza, JJ.*, concur.

*Velasco, Jr., J. (Chairperson),* on official leave.

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**THIRD DIVISION**

[G.R. No. 213221. November 9, 2016]

**PEOPLE OF THE PHILIPPINES**, *plaintiff-appellee, vs.* **BIYAN MOHAMMAD *y* ASDORI a.k.a. "BONG BIYAN" and MINA LADJAHASAN *y* TOMBREO,** *accused,* **MINA LADJAHASAN *y* TOMBREO,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF SHABU, ESTABLISHED IN CASE AT BAR.—** Contrary to the position of Ladjahasan, there is proof directly linking her in the illegal sale of shabu. We are in full accord with the factual findings of the lower courts. The RTC held: The said testimony of PO1 Santiago also illustrates the participation of accused Mina Ladjahasan in selling of Shabu. She was the one who opened the door and this must be her role in their drug trafficking operation – answer the knock on the door and verify the intention

of [the one] knocking. x x x circumstances when put together warrant an inescapable conclusion that both accused Mohammad and Ladjahasan were animated by a common purpose of engaging in drug trafficking.

**2. ID.; ID.; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE THEREWITH IS NOT REQUIRED WHERE THE PROSECUTION WAS ABLE TO PROVE WITH MORAL CERTAINTY THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS SEIZED FROM THE ACCUSED.—** [I]t has been consistently held that strict compliance on the chain of custody rule is not required and that the arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Art. II of RA No. 9165 and its Implementing Rules and Regulations. The most important factor in the determination of the guilt or innocence of the accused is the preservation of the integrity and evidentiary value of the seized items. Here, the prosecution was able to establish with moral certainty and prove to the court beyond reasonable doubt that the illegal drugs (and drug paraphernalia) presented to the trial court as evidence are the same items confiscated from the accused, tested and found to be positive for dangerous substance.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**PERALTA, *J.*[*]:**

Before Us is an appeal from the April 30, 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01131,

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[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[1] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edward B. Contreras and Rafael Antonio M. Santos concurring (*Rollo*, pp. 3-21; CA *rollo*, pp. 94-112).

which affirmed the October 16, 2012 Decision[2] of the Regional Trial Court (*RTC*) of Zamboanga City, Branch 13, finding accused-appellant Mina Ladjahasan *y* Tombreo (*Ladjahasan*) guilty beyond reasonable doubt of violating Sections 5 (Illegal Sale of Dangerous Drugs) and 12 (Illegal Possession of Drug Paraphernalia), Article II of Republic Act (*R.A.*) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002."

Biyan Mohammad *y* Asdori (*Mohammad*) and Ladjahasan were the defendants in Criminal Case Nos. 21787-21789 for violation of R.A. No. 9165. The three cases were jointly tried considering that their indictment arose from the same police operation and the contending parties would utilize the same set of witnesses and evidence. Presented as witnesses for the prosecution were PO1 Albert Santiago, PO1 Rowen Bais, PO3 Daniel Taub, and PSI Melvin Manuel. Only Mohammad and Ladjahasan testified for the defense.

The prosecution established that around 9:30 a.m. on June 23, 2005, a male civilian informant appeared at the Office of Zamboanga City Mobile Group — Philippine National Police in Sta. Barbara, Zamboanga City. He reported to SPO3 Ireneo Bunac that a certain "*Bong Biyan,*" later identified as Mohammad, of Fish Pond, Rio Hondo, Zamboanga City, was selling shabu at ASY Pension House in Canelar Street, San Jose Road, Claret Drive, Zamboanga City. Immediately, SPO3 Bunac informed their Group Director, P/C Insp. Jomarie Albarico. A briefing for a buy-bust operation was then conducted in the presence of SPO3 Bunac, PO1 Santiago, PO1 Bais, PO1 Dominguez, PO1 Julpakkal Indanan, PO1 Roderick Agcopra, and the civilian informant. PO1 Santiago was designated as the poseur-buyer and was given two (2) ₱100 peso bills as marked money while SPO3 Bunac, PO1 Bais, PO1 Indanan, and PO1 Agcopra were tasked as back-up arresting officers. The group also agreed on the pre-arranged signal. Afterwards, PO1 Santiago with the civilian informant, PO1 Bais with SPO3 Bunac, PO1 Indanan with PO1 Agcopra, and PO1 Dominguez with another

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[2] CA *rollo,* pp. 31-46.

one, riding in tandem their respective motorcycles, proceeded to the target area at Room 103 of ASY Pension House.

Upon arrival at the area, the members of the buy-bust team stood for a while at a *sari-sari* store, which was about 10 meters away from the pension house. After another briefing was held, PO1 Santiago and the civilian informant went to Room 103. They were followed by some members of the team, while others posted themselves at the store. When they reached the room, PO1 Santiago knocked at the door. Ladjahasan slightly opened it and asked what their intention was. PO1 Santiago replied that he wanted to buy shabu worth ₱200.00. Ladjahasan then closed the door and, few seconds later, Mohammad opened it and asked for the payment. PO1 Santiago gave the buy-bust money, and, in turn, Mohammad handed to him one (1) sachet of suspected shabu. After the door was closed, PO1 Santiago immediately executed the pre-arranged signal. PO1 Bais rushed towards PO1 Santiago and the civilian informant and, together with other team members, helped them to forcibly open the door. PO1 Bais arrested Mohammad and, after frisking him, seized the marked money and six (6) other pieces of heat-sealed plastic sachet of suspected shabu. On the other hand, PO1 Santiago arrested Ladjahasan and informed her of their constitutional rights. In the course of the arrest, he noticed a medium-sized lady's denim shoulder bag placed on top of a small table inside the room. Upon searching its contents, drug paraphernalia were found, consisting of an improvised water pipe tooter, a rolled tissue paper, a rolled aluminum foil, and a lighter.

Mohammad and Ladjahasan were brought to the Zamboanga City Police Office. At the police station, PO1 Santiago marked the sachet of suspected shabu sold to him and the drug paraphernalia, while PO1 Bais did the same with regard to the six pieces of plastic sachet of suspected shabu and the two ₱100 peso bills. Aside from the living persons of Mohammad and Ladjahasan, PO3 Taub, the case investigator, also received the following: a sachet of suspected shabu sold to PO1 Santiago; six pieces of sachet of suspected shabu seized by PO1 Bais from Mohammad; buy-bust money; a shoulder bag; an

improvised tooter; a rolled tissue paper; a rolled aluminum foil; and a lighter. On the same day, he made a request for laboratory examination of the suspected drugs and turned them over to PSI Manuel of the PNP Regional Crime Laboratory Office. PSI Manuel then tested the specimens and found that the same were positive for Methamphetamine Hydrochloride.

By way of defense, Mohammad and Ladjahasan vehemently denied that they were engaged in illegal sale of *shabu* and were in possession of drug paraphernalia.

Mohammad, a *pedicab* driver, testified that at about 8:00 a.m. on June 19, 2005, he checked in at the pension house with Ladjahasan, his girlfriend. By 8:00 a.m. the following day, he checked out to go home, while Ladjahasan remained. He returned at about 2:00 a.m. on June 21, 2005 and did not leave the pension house since then. On June 23, 2005, around 11:00 a.m., he was lying on the bed, while Ladjahasan was taking a shower in the bathroom when the room door, which was then closed, was kicked open and eight (8) armed men in civilian clothing entered. They pulled Ladjahasan out of the bathroom and made her sit on the floor. They pointed their guns at them, demanded to bring out their money, and asked him if he was selling shabu (as to which he replied in the negative). He was shown something that looked like salt placed in a pack that was sold at ₱100.00 each. A gold necklace worth ₱14,000.00 given by his mother was taken away from him. When they told them that they had no money, they were brought outside to a white mobile vehicle, where he met Survin Basa (one of the accused in another criminal case) who was already handcuffed and with eyes bleeding. Together, they were brought to and detained at the METRODISCOM Office in Sta. Barbara. From there, they were brought to the Hall of Justice. After they signed a waiver, they were transferred to the Zamboanga City Police detention cell along with Hadji Ragish Omar, who was the co-accused of Basa.

On her part, Ladjahasan substantially corroborated the testimony of Mohammad. In addition, she declared that she was jobless from January to June 2005 and, using the money sent by her mother who was working in Malaysia, she stayed

at the pension house from June 19, 2005 up to June 23, 2005 (except in June 22 when she got clothes in Rio Hondo). While taking a bath around 11:00 a.m. on June 23, 2005, she heard a noise so she went out of the bathroom with only a towel wrapped around her body. There, she saw eight armed men in civilian attire who instructed her to sit on the floor. She asked what was their fault, but was directed to stop talking. They did not also say anything to Mohammad, who was already handcuffed. The armed men then scattered and searched all their beddings and found money worth ₱40,000.00 underneath a pillow. The money was sent by her mother when she (Ladjahasan) was deported from Malaysia. She asked them to return her money, but they replied that it would be used as evidence against her. They were brought to METRODISCOM handcuffed and without her clothes on, and it was only in Sta. Barbara that she was allowed to wear her clothes but without a bra.

The RTC convicted Mohammad and Ladjahasan of the crimes charged. The dispositive portion of the RTC Decision reads:

> WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING, this Court finds:
>
> (1) In Criminal Case No. 5811 (21787), accused **BIYAN MOHAMMAD Y ASDORI and MINA LADJAHASAN Y TOMBREO guilty** beyond reasonable doubt for violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) and sentences him *(sic)* to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) without subsidiary imprisonment in case of insolvency;
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> (2) In Criminal Case No. 5812 (21788), accused **BIYAN MOHAMMAD Y ASDORI and MINA LADJAHASAN Y TOMBREO guilty** beyond reasonable doubt for violating Section 12, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) and sentences him *(sic)* to suffer the penalty of SIX MONTHS AND ONE DAY TO ONE YEAR AND TWO MNTHS *(sic)* OF IMPRISONMENT and pay a fine of TEN THOUSAND PESOS (₱10,000.00) without subsidiary imprisonment in case of insolvency; and,

> (3) In Criminal Case No. 5813 (21789), accused **BIYAN MOHAMMAD Y ASDORI guilty** beyond reasonable doubt for violating Section 11, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) and sentences him to suffer the penalty of 12 YEARS AND 1 DAY TO 14 YEARS OF IMPRISONMENT and pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00) without subsidiary imprisonment in case of insolvency.[3]

Only Ladjahasan elevated the case before the CA, which affirmed the RTC Decision; hence, this appeal.

In lieu of a Supplemental Brief, Ladjahasan adopts the Appellant's Brief she filed before the CA.[4] She stresses that the testimony of PO1 Santiago does not show her involvement in the alleged sale of shabu because he did not state that she informed Mohammad that there is a buyer outside. The only shallow evidence including her in the crime scene was when she allegedly opened the door slightly when PO1 Santiago knocked. Further, the prosecution failed to prove that the integrity and evidentiary value of the confiscated drugs had been preserved. It was not shown where the alleged marking was placed, how the confiscated items were handled and preserved while the police operatives were transporting the accused to the police station, how the team leader held and preserved the suspected items turned over by PO1 Santiago, and why the representatives of the media, the Department of Justice, and any elected public official were not present to witness the buy-bust operation. Worse, the prosecution never offered a single explanation or justification for the arresting team's non-compliance with Paragraph 1, Section 21, Article II of R.A. 9165.

The appeal is unmeritorious.

Contrary to the position of Ladjahasan, there is proof directly linking her in the illegal sale of shabu. We are in full accord with the factual findings of the lower courts. The RTC held:

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[3] CA *rollo,* pp. 45-46.

[4] *Rollo,* pp. 43-44.

The said testimony of PO1 Santiago also illustrates the participation of accused Mina Ladjahasan in selling of Shabu. She was the one who opened the door and this must be her role in their drug trafficking operation – answer the knock on the door and verify the intention of [the one] knocking.

In this case, when she learned that PO1 Santiago, acting as poseur-buyer, intended to buy Shabu, she went back inside the room. Thereafter, it was accused Mohammad that emerged and transacted with PO1 Santiago. Clearly, when accused Ladjahasan went back inside the room, she relayed to Mohammad the intention of PO1 Santiago, then, Mohammad took over by transacting with Santiago who was a prospective buyer of Shabu.

If Ladjahasan was not part of the operation, she would have turned away PO1 Santiago as he would only be intruding into their intimate space, instead, she just went in as if it was a normal occurrence in the usual course of their business. When inside, she informed Mohammad that there is a buyer outside. These circumstances when put together warrant an inescapable conclusion that both accused Mohammad and Ladjahasan were animated by a common purpose of engaging in drug trafficking.[5]

On the other hand, the CA opined:

Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a point purpose and design, concerted action, and community of interests. It is clear from the testimony of PO1 Santiago that Ladjahasan and Mohammad were of one mind in selling shabu to him as shown by their series of overt acts during the transaction, to wit: (1) when PO1 Santiago knocked on the door of the room occupied by the accused, it was Ladjahasan who responded by slightly opening the door; (2) after opening the door, Ladjahasan then asked PO1 Santiago of their intention, to which the latter replied that he wanted to buy ₱200.00 worth of *shabu*; (3) after hearing the intention of PO1 Santiago, Ladjahasan closed the door; (4) a few seconds later, Mohammad came at the door, got the money from PO1 Santiago and handed to the latter the *shabu*. No other logical conclusion would follow from the concerted action of both Mohammad and Ladjahasan except that they had a common

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[5] CA *rollo,* p. 42.

purpose and community of interest. Their *modus operandi* was for Ladjahasan to screen the buyer while Mohammad does the actual sale. Conspiracy having been established, Ladjahasan is liable as co-principal regardless of her participation.[6]

As to the contention that the buy-bust team failed to observe the chain of custody rule, this Court similarly discharged in *People v. Ros*:[7]

> The appellants cannot be allowed to belatedly question the police officers' alleged noncompliance with Section 21 for the first time on appeal. The issue on the chain of custody was neither raised nor mentioned with specificity during the trial. In no instance did the appellants manifest or at least intimate before the trial court that there were lapses in the handling and safekeeping of the seized marijuana that might affect its admissibility, integrity and evidentiary value. This omission is fatal to the case of the defense. Whatever "justifiable ground" that may excuse the prosecution from complying with the statutory requirements on chain of custody will remain unknown in light of the apparent failure of the appellants to challenge the custody and safekeeping or the issue of disposition and preservation of the subject drugs before the RTC. This Court cannot now dwell on the matter because to do so would be against the tenets of fair play and equity. As We stressed in *People v. Sta. Maria*:
>
> > The law excuses noncompliance under justifiable grounds. However, whatever justifiable grounds that may excuse the police officers involved in the buy-bust operation x x x from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must

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[6] *Id.* at 108.

[7] G.R. No. 201146, April 15, 2015, 755 SCRA 518.

so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

The appellants could have also moved for the quashal of the Information at the first instance, but they did not. Hence, they are deemed to have waived any objection on the matter.[8]

Moreover, it has been consistently held that strict compliance on the chain of custody rule is not required and that the arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Art. II of RA No. 9165 and its Implementing Rules and Regulations. The most important factor in the determination of the guilt or innocence of the accused is the preservation of the integrity and evidentiary value of the seized items.[9] Here, the prosecution was able to establish with moral certainty and prove to the court beyond reasonable doubt that the illegal drugs (and drug paraphernalia) presented to the trial court as evidence are the same items confiscated from the accused, tested and found to be positive for dangerous substance.

**WHEREFORE**, the instant appeal is **DISMISSED**. The April 30, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01131, which affirmed the October 16, 2012 Decision of the Regional Trial Court of Zamboanga City, Branch 13, finding accused-appellant Mina Ladjahasan *y* Tombreo guilty beyond reasonable doubt of violating Sections 5 and 12, Article II of Republic Act No. 9165, is **AFFIRMED**. Costs against accused-appellant.

**SO ORDERED**.

*Carpio*[**]*, Perez,* and *Reyes, JJ.,* concur.

*Velasco, Jr., J. (Chairperson),* on official leave.

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[8] *People v. Ros, supra,* at 539-540.

[9] See *Amado I. Saraum v. People,* G.R. No. 205472, January 25, 2016, citing *Zalameda v. People*, 614 Phil. 710, 741 (2009) and *Ambre v. People*, 692 Phil. 681 (2012).

[**] Designated Additional Member in lieu of Association Justice Francis H. Jardeleza, per Raffle dated October 20, 2014.

**THIRD DIVISION**

[G.R. No. 213934. November 9, 2016]

**MARY ANN G. VENZON, EDDIE D. GUTIERREZ, JOSE M. GUTIERREZ, JR. and MONA LIZA L. CABAL,** *petitioners, vs.* **ZAMECO II ELECTRIC COOPERATIVE, INC. and ENGR. FIDEL S. CORREA, GENERAL MANAGER,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; A LAWFUL DISMISSAL MUST BE FOR A JUST OR AUTHORIZED CAUSE AND MUST COMPLY WITH THE RUDIMENTARY DUE PROCESS OF NOTICE AND HEARING.—** The right to security of tenure states that no employee shall be dismissed unless there are just or authorized causes and only after compliance with procedural and substantive due process. Article 279 of the Labor Code provides for this right x x x. [A] lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing. Article 282 of the Labor Code provides the just causes for dismissing an employee x x x.

**2. ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; DULY ESTABLISHED IN CASE AT BAR.—** Serious misconduct by the employee justifies the employer in terminating his or her employment. x x x Petitioners obviously aligned themselves with the former Board of Directors led by Dominguez in trying to wrest control of the management of ZAMECO II. In deciding to get involved in the power play, petitioners relinquished their duties as employees. They defied the instructions and directives of the Interim Board of Directors as well as that of the General Manager. Instead, they followed the instructions of the Board of Directors and officers designated by the CDA. They even filed a civil action against Farrales and the Interim Board of Directors. Petitioners did not participate in the proceedings before the IAC because they did not recognize its authority. It was the officers designated by the CDA whom

they recognize. Their acts definitely undermined the existence of the cooperative. Under these factual premises, We cannot help but consider the petitioners' misconduct to be of grave and aggravated character so that the cooperative was justified in imposing the highest penalty available — dismissal. x x x We considered the balancing between petitioners' tenurial rights and ZAMECO II's interests. Unfortunately for the petitioners, in this balancing under the circumstances of the case, we have to rule against their tenurial rights in favor of the employer's management rights.

3. **ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; TO BE A VALID CAUSE FOR DISMISSAL, IT MUST BE WORK RELATED AND MUST BE BASED ON A WILLFUL BREACH OF TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS.—** Article 296(c) states that loss of trust and confidence in the employee is a just cause for dismissal. But it will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.

4. **ID.; ID.; ID.; ID.; ID.; DOES NOT REQUIRE PROOF BEYOND REASONABLE DOUBT, FOR IT IS SUFFICIENT THAT THERE IS SOME BASIS TO BELIEVE THAT THE EMPLOYEE CONCERNED IS RESPONSIBLE FOR THE MISCONDUCT AND THAT THE NATURE OF THE EMPLOYEE'S PARTICIPATION THEREIN RENDERED HIM UNWORTHY OF TRUST AND CONFIDENCE DEMANDED BY HIS POSITION.—** While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, it being sufficient

that there is some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him unworthy of trust and confidence demanded by his position. x x x It is undisputed that at the time of their dismissal, the petitioners Gutierrez, Jr. and Venson were holding managerial positions and greater fidelity and trust were expected of them. x x x Their positions were unmistakably imbued with trust and confidence as they were charged with the delicate task of overseeing the operations of their divisions. As managers, a high degree of honesty and responsibility, as compared with ordinary rank-and-file employees, were required and expected of them. It need not be stressed that the nature or extent of the penalty imposed on an erring employee must be commensurate to the gravity of the offense as weighed against the degree of responsibility and trust expected of the employee's position. Petitioners Gutierrez, Jr. and Venson are not just charged with a misdeed, but with loss of trust and confidence, a cause premised on the fact that petitioners Gutierrez, Jr. and Venzon hold positions whose functions may only be performed by someone who enjoys the trust and confidence of the management. Needless to say, such an employee bears a greater burden of trustworthiness than ordinary workers, and the betrayal of the trust reposed is the essence of the loss of trust and confidence which is a ground for the employee's dismissal.

**5. ID.; ID.; ID.; ID.; ID.; CLASSES OF POSITIONS OF TRUST.—** There are two classes of positions of trust. First, are the managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. The second class consists of the fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

**6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; IN LABOR CASES, IT IS LIMITED TO REVIEWING WHETHER THE COURT OF APPEALS**

**CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION AND IN DECIDING OTHER JURISDICTIONAL ERRORS OF THE NATIONAL LABOR RELATIONS COMMISSION; GRAVE ABUSE OF DISCRETION, DEFINED.—** [I]n labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC. In this case, the CA is correct in ruling that the NLRC cannot be faulted for grave abuse of discretion amounting to excess or lack of jurisdiction in concluding that, indeed, petitioners were validly dismissed from their employment. After all, grave abuse of discretion implies a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law. Such is not present in this case.

**APPEARANCES OF COUNSEL**

*Maria Rosario S. Cesa* for petitioners.
*Isagani M. Jungco* for respondent.

**D E C I S I O N**

**PERALTA**,[*] ***J.*:**

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks the reversal of the Resolution[2] dated July 31, 2014 of the Court of Appeals (*CA*) in CA-G.R. SP No. 125798. The CA affirmed the Decision[3] of the National Labor Relations Commission (*NLRC*), Special Third

[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[1] *Rollo,* pp. 9-33.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Manuel M. Barrios and Samuel H. Gaerlan, concurring; *id.* at 35-37.

[3] Penned by Commissioner Pablo C. Espiritu, Jr., with Commissioners Raul T. Aquino and Numeriano D. Villena, concurring; *id.* at 69-79.

Division, in NLRC Case No. RAB-III-10-15467-09 reversing, on reconsideration, the Decision[4] of the NLRC Third Division which held that, while there was illegal dismissal of petitioners contrary to the Decision[5] of the Labor Arbiter (*LA*), the case has been mooted due to the reinstatement of petitioners.

Petitioners were regular employees of ZAMECO II Electric Cooperative, Inc. (*ZAMECO II*) occupying managerial and rank-and-file positions. They filed a case for illegal dismissal from employment claiming that they were mere victims of a power struggle between the two (2) factions fighting to control the management of ZAMECO II.

The Factual Antecedents relating to ZAMECO II:

On November 21, 2002, Castillejos Consumers Associations, Inc. (*CASCONA*), an organization of electric consumers from the Municipality of Castillejos, Zambales under the coverage area of ZAMECO II and represented by Engr. Dominador Gallardo, filed a letter-complaint with the National Electrification Administration (*NEA*). The complaint sought to remove the Board of Directors of ZAMECO II headed by the Board President, Jose S. Dominguez, for mismanagement of funds and expiration of their term of office.[6]

On November 24, 2004, the NEA issued a Resolution removing from office all the members of the Board of Directors of ZAMECO II with perpetual disqualification to run for the same position in any future district elections of the cooperative, and ordered the immediate conduct of district elections. On December 21, 2004, the NEA issued an Office Order designating Engr. Paulino T. Lopez as Project Supervisor of ZAMECO II who

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[4] Penned by Commissioner Gregorio O. Bilog III, with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espirito, Jr., concurring; *id.* at 52-68.

[5] *Rollo,* pp. 38-51.

[6] *Id.* at 55; *CASCONA v. Dominguez,* G.R. No. 189949, March 25, 2015, 754 SCRA 385.

was tasked to perform his duty until such time that a new set of Board of Directors shall have been constituted.[7]

The Board of Directors headed by Dominguez appealed to the CA on the ground that Republic Act (*R.A.*) No. 9136, or the *Electric Power Industry Reform Act* (*EPIRA*), abrogated the regulatory and disciplinary power of the NEA over electric cooperatives.[8]

On February 7, 2005, the CA issued a Temporary Restraining Order (*TRO*) valid for sixty (60) days enjoining the NEA and CASCONA from enforcing or implementing the aforementioned NEA Resolution and Office Order. On April 5, 2005, a Writ of Preliminary Injunction was issued by the CA. On October 4, 2006, the CA upheld the authority of the NEA in the supervision of electric cooperatives such as ZAMECO II, and the power to undertake preventive and/or disciplinary measures against the board of directors, officers and employees of electric cooperatives.[9]

On March 22, 2007, the Board of Directors of ZAMECO II headed by Dominguez appealed the CA Decision with this Court. They manifested that they had registered ZAMECO II as a cooperative under the Cooperative Development Authority (*CDA*), and, thus, it was the CDA which had regulatory powers over ZAMECO II.[10]

Meanwhile, by virtue of the aforesaid NEA Resolution dated November 24, 2004, NEA installed an Interim Board of Directors led by Gallardo as Interim President to function within an un-extendible period of 100 days beginning November 10, 2008 until February 18, 2009.[11]

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[7] *Id.; ZAMECO II, et al. v. CASCONA, et al.*, G.R. Nos. 176935-36, October 20, 2014.

[8] *Id.*; *CASCONA v. Jose S. Dominguez, et al.*, *supra* note 6.

[9] *Rollo,* p. 55.

[10] *CASCONA v. Dominguez, supra* note 6.

[11] *Rollo,* p. 56.

On March 13, 2009, this Court promulgated its Decision (G.R. No. 176935-36)[12] which held that the passage of the EPIRA did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives.[13] This Court further ruled that there was substantial evidence to justify the penalty of removal from office imposed by NEA against the incumbent Board of Directors of ZAMECO II.[14]

With respect to the issue of ZAMECO II being under the regulatory powers of the CDA in view of its registration, this Court declared that the matter could not then be adjudicated yet. This Court stated that the EPIRA provides that an electric cooperative must first convert into either a stock cooperative or stock corporation before it could register under the CDA. This Court further stated that whether ZAMECO II complied with the provisions particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, was a question of fact which this Court could not then review. The evidence on record did not afford this Court sufficient basis to make a ruling on the matter. Thus, this Court remanded the case to the CA. The dispositive portion of the Decision reads:

> WHEREFORE, the instant case is hereby *REMANDED* to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

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[12] *ZAMECO II Board of Directors v. CASCONA*, 600 Phil. 365 (2009).

[13] *Id.* at 376.

[14] *CASCONA v. Dominguez, supra* note 6, at 388.

SO ORDERED.[15]

On March 22, 2009, Republic Act No. 9520 otherwise known as the Philippine Cooperative Code of 2008 took effect.[16]

On April 28, 2009, NEA issued a Resolution reappointing the members of the Interim Board of Directors for 180 days or until the regular Board of Directors of ZAMECO II have been elected and qualified.[17]

On June 22, 2009, the CDA through a Board Resolution, issued a confirmation as to the registration of ZAMECO II. A Task Force for ZAMECO II was created headed by Atty. Fulgencio A. Vigare, Jr., who was the CDA Administrator for Luzon and the Oversight Administrator for Electric Cooperatives.[18] The Task Force was created primarily to reinstate the duly-recognized incumbent members of the board of directors who should perform their functions until such time as elections were conducted, and their successors should have been elected and qualified.[19]

On August 27, 2009, the NEA Administrator recalled the designation of Engr. Lopez as Project Supervisor of ZAMECO II effective September 1, 2009.[20]

On September 1, 2009, Vigare issued a Memorandum stating that the CDA should assume jurisdiction over ZAMECO II. It also stated that in the August 26, 2009 hearing of the House of Representatives Committee on Cooperative Development (*August 26, 2009 House Committee Hearing*), the NEA readily acceded

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[15] *Rollo,* p. 56; *ZAMECO II Board of Directors v. CASCONA, supra* note 12, at 385.

[16] *Rollo,* p. 56.

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

[18] *Id.* at 57.

[19] *CASCONA v. Dominguez, supra* note 6, at 390.

[20] *Rollo,* p. 57.

that the CDA should assume jurisdiction over ZAMECO II.[21] It recognized the incumbent Board of Directors of ZAMECO II headed by Dominguez and the Management Staff headed by General Manager Fidel S. Correa.[22]

On September 19, 2009, a Special Annual General Membership Assembly was called and conducted by the Interim Board of Directors headed by Gallardo.

In a letter dated October 12, 2009, NEA informed the Interim Board of Directors that their previous reappointment for 180 days had expired on the said date.[23]

On October 19, 2009, pursuant to the said Memorandum issued by Vigare, the CDA issued a Resolution which created a team composed of the officers of the CDA. The team was mandated to meet with the ZAMECO II management who was then headed by Gallardo to talk about some issues and concerns; to pave the way for the conduct of the election of officers; and to seek the opinion of the Department of Justice (*DOJ*) about the jurisdiction of the CDA over electric cooperatives. The said Resolution was implemented through a Special Order issued on October 20, 2009.[24]

According to CASCONA, on October 22, 2009, Correa, who was installed by the CDA as General Manager, and his companions entered the ZAMECO II premises and refused to leave. Come night fall, members of the Philippine National Police (*PNP*) and security guards assembled outside the gates of ZAMECO II but were not allowed inside the premises.[25]

The next day, on October 23, 2009, the PNP members asked Gallardo, the Interim President of the Board of Directors of ZAMECO II, for a discussion. When the latter opened the gates,

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[21] *CASCONA v. Dominguez, supra* note 6, at 390.

[22] *Rollo,* p. 57.

[23] *Id*.

[24] *CASCONA v. Jose S. Dominguez, et al., supra* note 6.

[25] *Id.*

the PNP members and security guards forcefully entered the grounds of ZAMECO II. The Interim Board of Directors did not surrender the management of ZAMECO II to the group of Correa.[26]

On October 24, 2009, Dominguez, who was installed as President of the Board by the CDA, and two other former board members arrived at the ZAMECO II premises. Tensions only de-escalated when the PNP members left the scene through the intervention of Governor Amor Deloso.[27]

On October 30, 2009, petitioners Mary Ann Venzon, Eddie Gutierrez, Jose Gutierrez, Jr., Correa and another employee filed a complaint for damages with the Regional Trial Court (*RTC*) of Olongapo City with an application for a TRO and a writ of preliminary injunction against the Interim Board of Directors and General Manager Engr. Alvin Farrales. On November 24, 2009, a Preliminary Injunction was granted by the RTC[28] and ordered the Interim Board of Directors and General Manager Engr. Alvin Farrales to vacate their positions, and prevented them from interfering in the performance of the functions of General Manager Fidel S. Correa who was designated by the CDA.

On November 27, 2009, the CA annulled the aforesaid NEA Resolution dated April 28, 2009.

On February 15, 2010, the RTC of Olongapo City, set aside the Writ of Injunction it had previously issued. The RTC took into consideration the Resolutions that were passed on October 30, 2008 which were affirmed in the Annual General Assembly held on September 19, 2009, to wit: (1) Resolution removing Engr. Fidel S. Correa as OIC General Manager of ZAMECO II and appointed Engr. Alvin Farrales as the Interim OIC General Manager; (2) Resolution withdrawing and cancelling ZAMECO II's registration with the CDA and recognizing the NEA as the

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[26] *Id.*

[27] *Id.*

[28] *Rollo,* p. 58.

regulatory agency; (3) Resolution recognizing the present members of the Interim Board of Directors as legitimate and ratifying their continuance in office until the next regular election.[29] The dispositive portion of the RTC Order states:

> WHEREFORE, in order to avoid the provocative effect in the catalytic change of the General Manager and Members of the Board of Directors of Zameco II by the resolution of the Cooperative Development Authority, the powers of which as alleged by the defendants' counsel are not clearly defined by law insofar as appointment and removal of the General Manager and Members of the Board of Directors are concerned, the Court finds merit in the motion for reconsideration of the order dated November 19, 2009 and the writ of injunction issued on November 24, 2009 pursuant to the said order is hereby set aside.
>
> Consequently, and there being no legal and factual basis for the issuance of the writ of injunction dated November 24, 2009, defendant Engr. Alvin Farrales and the other defendants are hereby reinstated to their positions as General Manager and Members of the Interim Board of Directors of Zameco II, respectively. x x x.
>
> x x x. Ineluctably, plaintiff Fidel S. Correa is hereby ordered to vacate his position as Manager of Zameco II and the other plaintiffs to desist from performing their duties and functions as designated by the Cooperative Development Authority.[30]

On June 16, 2010, this Court issued a Resolution in G.R. No. 176935-36, thus:

> The Court NOTES the Report dated 25 March 2010 submitted by Associate Justice Romeo F. Barza of the Court of Appeals, Manila, in compliance with the Decision dated 13 March 2009 (which remanded these cases to the Court of Appeals for further proceedings to determine whether the proceedings outlined in Republic Act No. 9136 (Electric Power Industry Reform Act of 2001 or EPIRA) and its Implementing Rules for the conversion of an electric cooperative under the Cooperative Development Authority had been complied with), stating that in the hearing conducted by the appellate court on October 20,

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[29] *Id.* at 84.

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

2009, it was aptly observed by respondents CASCONA and NEA that counsel for petitioners categorically admitted that none of the requirements such as conduct of a referendum and obtainment of a simple majority vote of its members to determine whether they agree to convert into a stock cooperative or stock corporation were complied with, and that given the said admissions, the appellate court cannot but conclude that petitioners failed to prove compliance with the procedure outline[d] in the EPIRA and its Implementing Rules for the conversion of an electric cooperative into a stock certificate under the CDA.[31]

On September 24, 2010, the RTC of Olongapo City denied the motion of ZAMECO II to declare the Order of February 15, 2010 immediately executory in view of the motion for reconsideration filed by petitioners and Correa.[32]

On October 20, 2014, this Court issued a Decision in G.R. Nos. 176935-36[33] stating that the NEA's power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative. This Court ruled:

x x x. This only means that even assuming arguendo that the petitioners validly registered ZAMECO II with the CDA in 2007, the NEA is not completely ousted of its supervisory jurisdiction over electric cooperatives under the R.A. No. 10531. This law may be considered as curative statute that is intended to address the impact of a restructured electric power industry under the EPIRA on electric cooperatives, which has not been fully addressed by the Philippine Cooperative Code of 2008.

The Facts of the Case:

Petitioner Jose M. Gutierrez, Jr. was the Manager of Administrative and Personnel Department of ZAMECO II and was hired on June 1, 2003. Petitioner Mary Ann Venzon was the Manager of Member Service Department and had been with

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[31] *Id.* at 58.

[32] *Id.* at 90.

[33] *ZAMECO II, et al. v. CASCONA, et al., supra* note 7.

ZAMECO II since January 21, 1996. Petitioner Eddie Gutierrez was a member of the Operation and Disconnection Team and was hired on April 29, 2002. Petitioner Monaliza L. Cabal was an accounting staff and started working at ZAMECO II on August 1, 2001.[34]

In a Memorandum dated September 2, 2009, OIC-General Manager Engr. Alvin Farrales designated petitioner Gutierrez, Jr. as Officer-in-Charge of the cooperative during his official travel to Manila on September 3, 2009.[35]

On September, 3, 2009, the CDA authorities arrived in ZAMECO II to assume management of the cooperative. This was opposed by the existing management of ZAMECO II.[36] The following day, September 4, 2009, Petitioner Gutierrez, Jr. issued a Memorandum for and in behalf of Farrales directing the employees to proceed to the main office in compliance with the directive of the CDA appointed officers. Thus, a meeting was held on the same date at ZAMECO II's office in San Antonio led by CDA representatives. Petitioners Gutierrez, Jr., Venzon and Gutierrez participated in the said meeting.[37] Also, several meetings were held which were attended by employees and officers of ZAMECO II who allegedly defected to the side of CDA appointed officers.[38]

Likewise, on September 4, 2009, petitioners Venzon, Gutierrez and Gutierrez, Jr. were given separate memoranda by Engr. Farrales directing them to explain why no disciplinary action should be taken against them for failure to report for work on the said date and for violating the Company Code of Ethics and Discipline and the Employees Code of Conduct.[39] The

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[34] *Rollo,* p. 59.

[35] *Id.* at 43 and 59.

[36] *Id.* at 43-44.

[37] *Id.* at 59.

[38] *Id.* at 43-44.

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

charges against them were: (a) attending unauthorized meetings, gatherings or assembly of employees; (b) abandonment of work or of assigned duties; (c) misrepresentation or usurpation of functions; (d) giving unlawful orders that create confusion and disorder; (e) rumor mongering or gossiping with intent to destroy the reputation of the company or its officers and employees; and/or (f) any act conduct or behavior not included in the above but which is prejudicial or detrimental to the company or its employees and/or contrary to good order or discipline.[40]

Incidentally, petitioner Gutierrez, Jr. had undergone medical treatment from September 8 to September 28, 2009. He submitted medical certificates but did not file any application for sick leave.[41] He, together with petitioner Gutierrez, did not submit any explanation with regard to the above charges.

On September 11, 2009, petitioner Venzon answered the above charges. She explained that effective September 3, 2009 when CDA had assumed jurisdiction over ZAMECO II, after a serious discernment, she recognized only the officers appointed by the CDA, who were the ones dismissed by the NEA, and Fidel Correa as the General Manager. She further averred:

> 2. Nevertheless, allow us to state our position on the issues you raised:
>
> a. Unauthorized meeting/gathering or assembly of employees at sub-offices. The meeting was called by the CDA representatives who have the mandate to conduct information dissemination under the CDA Memorandum dated September 1, 2009 and we had no other choice but to follow a lawful order.
>
> b. Abandonment of work or assigned duties – Since the interim board (which has no legal authority or power whatsoever) has virtually driven out of ZAMECO II's office premises the legally-recognized management of the cooperative, we decided to report for work and undertake our respective duties at their designated [workplace]. x x x

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

[41] *Id.* at 60.

> c. Misrepresentation or usurpation of functions –xxx. It is the illegally-constituted interim board that is usurping the functions of the CDA-recognized Board of Directors. In addition, you are the one usurping the functions of General Manager Fidel S. Correa, while the other cooperative staff you designated in our stead are the ones usurping our own functions as Department Managers.
>
> d. Giving unlawful orders that create confusion and disorder - xxx; It is you and the interim board that are giving unlawful orders on account of your lack of legal basis to continue performing such functions, regrettably.
>
> e. Rumor mongering or gossiping with intent to destroy the reputation of the company or its officers and employees - xxx. Openly discussing the more than P17M net losses of the cooperative incurred for only the six-month period January to June 2009 that were registered under the watch of the interim board and yourself, and talking about the true state of validity of the registration of Zameco II with CDA are legitimate issues.
>
> f. Any act, conduct or behavior not included in the above but which is prejudicial or detrimental to the company or its employees and/or contrary to good order or discipline, etc. – Your inclusion of this "offense" among those that we need to explain merely exposes your lack of knowledge and competence on general management. x x x[42]

Petitioner Cabal stopped reporting for work starting September 13, 2009.

On September 18, 2009, Farrales issued a Memorandum to the security personnel to deny entry to petitioners Gutierrez, Jr., Gutierrez and Venzon and four other persons including Engr. Correa, and to not allow them to report for work.[43]

On September 22, 2009, Farrales issued several memoranda: a) for petitioner Venzon to return the laptop computer and other equipment entrusted to her; b) for petitioner Gutierrez to answer the charges against him; c) for petitioners Venzon, Jose Gutierrez,

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

[43] *Id.* at 62.

Jr., and Gutierrez placing them under preventive suspension pending investigation by the Investigation and Appeals Committee (*IAC*).[44]

Also, on September 22, 2009, a Memorandum was sent to petitioner Cabal to explain in writing why no disciplinary action should be taken against her for violating the Company Code of Ethics and Discipline particularly on the unauthorized and unexcused absence from work which exceeded six (6) consecutive days.[45] On September 24, 2009, she was directed to appear before the IAC but she stated that she was banned from entering the premises. She submitted a Memorandum claiming that she had not abandoned her work, and that she believed that she had not incurred any unauthorized and unexcused absences from work exceeding six consecutive days on the basis of what she believed was "right and legal".[46] She was again required to appear, for the last time, on September 29, 2009 but she replied through a letter that she couldn't do so because of the existing ban for her from entering the main office of ZAMECO II.[47] On October 1, 2009, she made a written manifestation to Engr. John Regadio that she did not recognize the authority of the IAC, and that the Interim Board of Directors was not clothed with any authority, such that, their actions were illegal.[48]

On October 27, 2009, upon the recommendation of the IAC in a meeting on October 22, 2009, petitioners were dismissed from employment. The order of dismissal was served to them on November 20, 2009 but they refused to receive the same.[49]

On November 23, 2009, petitioners Venzon and Gutierrez jointly filed a complaint for illegal dismissal, illegal suspension,

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[44] *Id.*

[45] *Id.* at 42.

[46] *Id.* at 61.

[47] *Id.* at 62.

[48] *Id.* at 42.

[49] *Id.* at 41-42; 63.

non-payment of 13th month pay, damages and payment of allowances. On January 5, 2010, petitioners Gutierrez, Jr. and Cabal jointly filed the same complaint.

During the mandatory conference, a Manifestation and Motion was filed by Correa stating that petitioners were already reinstated to their respective positions by him as the CDA-recognized and recently reinstated General Manager of ZAMECO II commencing on October 20, 2009 with Board Resolution dated November 14, 2009, and that the Interim Board Members and the OIC General Manager were prohibited from meddling with the operations of ZAMECO II by virtue of the writ of preliminary injunction issued by the RTC of Olongapo City. Various checks issued in the names of petitioners dated January 2010 and February 2010, signed by Dominguez as President and by Correa as General Manager of ZAMECO II, were presented.

On the other hand, Farrales submitted his Comment stating that the action of the CDA in assuming jurisdiction over ZAMECO II was a unilateral act on the part of Vigare; and that, Farrales' appointment as General Manager was still subsisting and recognized by the Board of Directors of ZAMECO II.[50]

On August 11, 2009, an Order was issued by LA Leandro M. Jose suspending the resolution of the incident.[51]

On January 21, 2011, the LA issued a Decision declaring petitioners to have been illegally dismissed from employment. The LA held that though the evidence may, at first glance, shows compliance with the notice requirement of procedural due process, the same failed to show that petitioners were indeed guilty of violations of the cooperative's Code of Ethics and Discipline. According to the LA, the Investigation Reports and Recommendations were noticeably undated which gave rise to a suspicion that it was conveniently intercalated to give basis to the memorandum of dismissal, and that, the supporting documents were not attached to the said reports.

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[50] *Id.* at 63-64.

[51] *Id.* at 64.

Thereafter, respondents elevated the case before the NLRC Third Division. On September 30, 2011, the NLRC ruled that the termination of petitioners from employment was valid, but in view of their reinstatement, it dismissed the case for being moot and academic, thus:

> We rule that the said Manifestation and Motion has rendered this case moot and academic. Notably, when complainants were suspended on September 23, 2009 and dismissed on October 27, 2009 by OIC-General Manager Farrales, he appears to have the authority to do so. This is because at that point in time, the CDA has already assumed jurisdiction over ZAMECO II and has recognized the incumbent Board of Directors headed by Jose S. Dominguez and the management staff under General Manager Correa. The NEA has (sic) apparently gave way to CDA as shown by its recall order of Engr. Lopez as Project Supervisor of ZAMECO II effective 1 September 2009 and its letter stating that the reappointment/appointment of the interim board headed by Gallardo has expired on October 12, 2009. Besides, on April 28, 2009, the NEA Board of Administrators' Resolution (reappointing as members of Interim Board of Directors for 180 days or sooner when the regular Board of Directors of ZAMECO II has been duly elected and qualified) was annulled and set aside by the Court of Appeals' Special Sixteenth Division in its Decision dated November 27, 2009 in CA-G.R. SP No. 108553. The records of this case is bereft of any showing that said Decision was assailed before the Supreme Court.
>
> x x x. Unless the issue as to which of the Board of Directors and/or management have authority to control the affairs of ZAMECO II is legally settled with clarity and finality, we uphold the right of the complainants to remain in their employment with ZAMECO II and accordingly, receive their salaries and benefits. The grounds (serious misconduct, breach of trust, willful disobedience, etc.) relied upon by Engr. Farrales for suspending and dismissing the complainants are essentially anchored on his and the Interim Board's authority, which authority the complainants believe they do not possess. And, we have no jurisdiction to rule on the same.[52]

Respondent ZAMECO II filed a Motion for Reconsideration. On March 26, 2012, the NLRC Special Third Division held

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[52] *Id.* at 66-67.

that there was no valid reinstatement of petitioners hence the case has not been mooted:

> It is thus clear that as of February 15, 2010, Engr. Alvin Farrales and no longer Fidel S. Correa was the General Manager of herein respondent-appellant Zameco II and therefore Fidel S. Correa's Manifestion and Motion filed on February 18, 2010 which sought the dismissal of these consolidated cases since herein complainants-appellees were allegedly reinstated earlier should not have made these cases moot and academic since as of February 15, 2010, he already lost his standing and authority to do anything in connection with these cases.
>
> We therefore reconsider and set aside Our having, thus, dismissed these cases and proceed to resolve the issue in this case.[53]

The NLRC Special Third Division[54] ruled, however, that there was valid dismissal of petitioners because, instead of playing neutral, they embroiled themselves in the ongoing corporate dispute. Hence, it set aside its Decision dated September 30, 2011 and dismissed case the case for lack of merit. The decretal portion of the Decision states:

> WHEREFORE, the Motion for Reconsideration of respondents-appellants is hereby GRANTED. Our Decision dated September 30, 2011 is hereby reconsidered and SET ASIDE and a new one entered dismissing the case *a quo* for lack of merit.
>
> SO ORDERED.[55]

Aggrieved, petitioners filed a petition for certiorari before the CA. In a Decision dated July 31, 2014, the CA affirmed the Decision of the NLRC. It held that the petitioners failed to

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[53] *Id.* at 76.

[54] NLRC Chairman Gerardo C. Nograles issued Administrative Order No. 02-28 (Series of 2012) creating a Special Third Division to resolve the Motion for Reconsideration in view of the inhibition of Commissioner Gregorio O. Bilog III and Presiding Commissioner Alex A. Lopez; *id.* at 69.

[55] *Rollo,* p. 79.

substantiate their claim, or point to a specific act on the part of the NLRC that can be construed as amounting to grave abuse of discretion.

Hence, the instant Petition, wherein petitioners make the following assignment of errors:

1. THE COURT OF APPEALS ERRED IN DISMISSING PETITIONERS' PETITION FOR REVIEW ON CERTIORARI ON THE GROUND THAT THEY FAILED TO SUBSTANTIATE THEIR CLAIM THAT THE NLRC ACTED ARBITRARILY IN CONCLUDING THAT THEIR TERMINATION FROM EMPLOYMENT WAS IN ACCORDANCE WITH LAW CONTRARY TO LAW AND JURISPRUDENCE; [and]
2. THE COURT OF APPEALS FAILED TO CONSIDER AS AN ACT OF ABUSE OF DISCRETION THE GRANTING OF PRIVATE RESPONDENTS' MOTION FOR RECONSIDERATION BY THE NLRC WHEN SUCH MOTION WAS BASED ON THE MISLEADING AND INCOMPLETE INFORMATION GIVEN BY THE PRIVATE RESPONDENTS.[56]

Petitioners argued in their petition that the NLRC acted with grave abuse of discretion when it treated the Order dated February 15, 2010 of RTC Olongapo City as final and executory. Petitioners cited the fact that there is a pending appeal before this Court as to the execution of the said Order in GR No. 199828. They alleged that without any finality on who has the control of ZAMECO II because of the pending cases with this Court, they could not be faulted for following orders of the other faction.

In their Comment,[57] respondents alleged that the petition should not be given due course because it raises questions of fact which is not allowed under Rule 45 of the Rules of Court. They also showed the dismissal of the case before the RTC

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

[57] *Id.* at 99-104.

Olongapo City upon the initiative of both parties.[58] And that, the dismissal of the case settled the issue of injunction.

Our Ruling

There are two issues that have to be resolved in this case, to wit: a) whether or not Engr. Farrales of the Interim Board of Directors of ZAMECO II had the authority to suspend and dismiss petitioners from employment; and, b) whether petitioners where validly terminated from employment.

To resolve the first issue, We need to determine who between the two factions – the NEA appointed General Manager Engr. Farrales or the CDA installed General Manager Engr. Correa – had the authority to manage the affairs of ZAMECO II for the period from September 4, 2009, when the first memorandum was issued to petitioners, until October 27, 2009, when petitioners were dismissed from employment.

We have clarified this in our Decision in *CASCONA v. Dominguez*,[59] thus:

> In the case at bench, the respondents committed several acts which constituted indirect contempt. **The CDA issued the September 1, 2009 Memorandum stating that it had jurisdiction over ZAMECO II and could reinstate the former members of the Board of Directors. The CDA officials also issued Resolution No. 262, S-2009 and Special Order 2009-304 to interfere with the management and control of ZAMECO II. Armed with these issuances, the other respondents even tried to physically takeover ZAMECO II on October 22, 2009. These acts were evidently against the March 13, 2009 decision of this Court** and, thus, constituted indirect contempt against the Court. These contemptuous acts are criminal in nature because these obstruct the administration of justice and tend to bring the court into disrepute or disrespect. x x x.
>
> x x x x
>
> x x x. [T]he March 13, 2009 decision should not be taken in isolation. A perusal of the said decision shows that there were several

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[58] Annex "1" to the Comment filed by respondents; *id.* at 104.

[59] *Supra* note 6.

pronouncements which must be respected and obeyed, to wit: *first*, the CA shall make a factual determination as to the propriety of ZAMECO II's registration with the CDA; *second*, the continuing jurisdiction of the Court, as the case is not yet final and executory; and *lastly*, **that there is substantial evidence to justify the removal from office of respondents Dominguez, et al.**

Precisely, the Court remanded the case to the CA to determine whether ZAMECO II was properly registered as a stock cooperative under the CDA**. Until the CA properly had ascertained such fact, the Court could not determine conclusively that the CDA had supervisory powers over ZAMECO II. The parties were then expected to maintain *status quo* and refrain from doing any act that would pre-empt the final decision of the Court.** Hence, the Court continued to exercise its jurisdiction in G.R. Nos. 176935-36 until a final decision was promulgated. **The respondents, however, unreasonably interfered with the proper procedure mandated by the Court when they decided for themselves that the CDA had jurisdiction over ZAMECO II.** This constituted a contemptuous act because it unlawfully interfered with the processes or proceedings of a court.

**Worse, the respondent-officials of the CDA, fully aware of the Court's pronouncement, attempted to reinstate respondents Dominguez, et al. despite the existence of substantial evidence that warrant the latter's removal from office**. Glaringly, this grave allegation was never refuted by the respondents. Dominguez, et al. were found unfit to hold office yet the respondents relentlessly endeavored to return them to the seat of power in ZAMECO II. **This blatant disregard of the March 13, 2009 decision of the Court is an improper conduct that impedes, obstructs, or degrades the administration of justice**.

The respondents justify their acts by stating that in the August 26, 2009 House Committee Hearing, the NEA acceded to the jurisdiction of the CDA over ZAMECO II. This contention, however, is completely unsubstantiated. Notably, respondents Esguerra and Apalisok admitted that the creation of a task force to take over ZAMECO II would place dire consequences against the CDA. Even CDA Regional Director Manuel A. Mar doubted that the NEA consented to the authority of the CDA over ZAMECO II.

**Indeed, the October 20, 2014 decision of the Court in G.R. Nos. 176935-36 conclusively settled that it is NEA, and not the**

**CDA, that has jurisdiction and disciplinary authority over ZAMECO II.** The substantial issues of the case have now been laid to rest. The Court, however, cannot turn a blind eye to the contemptuous acts of the respondents during the pendency of the case. If the Court condones these acts of interference and improper conduct, it would set a dangerous precedent to future litigants in disregarding the interlocutory orders and processes of the Court.[60]

Clearly, from the above pronouncement, during the period material to this case, the Interim Board of Directors of ZAMECO appointed by the NEA had the jurisdiction and disciplinary authority over ZAMECO II. Thus, Engr. Farrales, as General Manager, had the authority to suspend and dismiss petitioners.

We go now to the second issue as to whether the petitioners were validly dismissed from employment. The right to security of tenure states that no employee shall be dismissed unless there are just or authorized causes and only after compliance with procedural and substantive due process. Article 279 of the Labor Code provides for this right, thus:

> Art. 279. *Security of tenure*. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause of when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Hence, a lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing. Article 282 of the Labor Code provides the just causes for dismissing an employee, to wit:

> ART. 282. TERMINATION BY EMPLOYER
>
> An employer may terminate an employment for any of the following causes:

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[60] *Id.* at 395-397.

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;

(e) Other causes analogous to the foregoing.

Serious misconduct by the employee justifies the employer in terminating his or her employment.

*Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, i.e., of such grave and aggravated character and not merely trivial or unimportant.*

*Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent.*[61]

In the case at bar, General Manager Farrales, himself, designated petitioner Gutierrez, Jr. as Officer-in-Charge of the cooperative during his official travel to Manila on September 3, 2009. But when the CDA authorities arrived in ZAMECO II to assume management of the cooperative which was opposed by the existing management of ZAMECO II, petitioner Gutierrez, Jr. issued a Memorandum, allegedly signed on behalf of Farrales, directing the employees to proceed to the main office in compliance with the directive of the CDA appointed officers.

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[61] *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 187, 196-197.

Hence, a meeting was held on the same date at the cooperative's office in San Antonio led by CDA representatives. Petitioners Gutierrez, Jr., Venzon and Gutierrez participated in the said meeting.

Petitioners obviously aligned themselves with the former Board of Directors led by Dominguez in trying to wrest control of the management of ZAMECO II. In deciding to get involved in the power play, petitioners relinquished their duties as employees. They defied the instructions and directives of the Interim Board of Directors as well as that of the General Manager. Instead, they followed the instructions of the Board of Directors and officers designated by the CDA. They even filed a civil action against Farrales and the Interim Board of Directors.

Petitioners did not participate in the proceedings before the IAC because they did not recognize its authority. It was the officers designated by the CDA whom they recognize. Their acts definitely undermined the existence of the cooperative.

Under these factual premises, We cannot help but consider the petitioners' misconduct to be of grave and aggravated character so that the cooperative was justified in imposing the highest penalty available — dismissal. In ruling as We do now, We considered the balancing between petitioners' tenurial rights and ZAMECO II's interests. Unfortunately for the petitioners, in this balancing under the circumstances of the case, we have to rule against their tenurial rights in favor of the employer's management rights.[62]

As correctly held by the NLRC Special Third Division, thus:

> What is important, as shown by the records, is that complainants-appellees Venzon, Jose Gutierrez, Jr. and Eddie Gutierrez burned their bridges when they not only sided with the group of Fidel S. Correa but also fought with them as actual complainants-appellees in their effort at wrestling control over ZAMECO II and its interim board headed by Engr. Alvin Farrales.

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[62] *Imasen Philippine Manufacturing Corporation v. Alcon*, *supra*, at 200.

This is shown by the fact that instead of playing neutral, they, along with Correa, instituted Civil Case No. 163-0-2009 with the Regional Trial Court of Olongapo City against Farrales to remove him as the rightful General Manager of Zameco II. Complainants-appellees embroiled themselves in the ongoing corporate dispute instead of being neutral.[63]

Furthermore, Article 296(c) states that loss of trust and confidence in the employee is a just cause for dismissal. But it will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[64]

Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[65]

While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, it being sufficient that there is some basis to believe that the employee concerned is responsible for the misconduct and that the nature of the employee's participation therein rendered him unworthy of trust and confidence demanded by his position.[66]

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[63] *Rollo,* p. 77.

[64] *Alvarez v. Golden Tri Bloc, Inc., et al.*, 718 Phil. 415, 425 (2013).

[65] *Bluer Than Blue Joint Ventures Company/Mary Ann Dela Vega v. Esteban*, G.R. No. 192582, April 7, 2014, 720 SCRA 765, 775.

[66] *P.J. Lhuillier, Inc. v. Velayo,* G.R. No. 198620, November 12, 2014, 740 SCRA 147, 162.

There are two classes of positions of trust. First, are the managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. The second class consists of the fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[67]

It is undisputed that at the time of their dismissal, the petitioners Gutierrez, Jr. and Venson were holding managerial positions and greater fidelity and trust were expected of them.[68] Farrales even designated petitioner Gutierrez, Jr. as Officer-in-Charge of ZAMECO II during his official travel to Manila. Their positions were unmistakably imbued with trust and confidence as they were charged with the delicate task of overseeing the operations of their divisions. As managers, a high degree of honesty and responsibility, as compared with ordinary rank-and-file employees, were required and expected of them.

It need not be stressed that the nature or extent of the penalty imposed on an erring employee must be commensurate to the gravity of the offense as weighed against the degree of responsibility and trust expected of the employee's position. Petitioners Gutierrez, Jr. and Venson are not just charged with a misdeed, but with loss of trust and confidence, a cause premised on the fact that petitioners Gutierrez, Jr. and Venzon hold positions whose functions may only be performed by someone who enjoys the trust and confidence of the management. Needless to say, such an employee bears a greater burden of trustworthiness than ordinary workers, and the betrayal of the trust reposed is

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[67] *Alvarez v. Golden Tri Bloc, Inc., et al., supra* note 64.

[68] *Torres v. Rural Bank of San Juan, Inc.*, 706 Phil. 355, 370 (2013).

the essence of the loss of trust and confidence which is a ground for the employee's dismissal.[69]

As to the standards of procedural due process, the same were likewise observed in effecting the petitioner's dismissal. Petitioners were given written memorandum to inform them of the charges against them as well as notices of termination in accordance with Section 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.

In protecting the rights of the workers, the law, however, does not authorize the oppression or self-destruction of the employer. The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor. The constitutional and legal protection equally recognizes the employer's right and prerogative to manage its operation according to reasonable standards and norms of fair play.[70]

Finally, in labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC. In this case, the CA is correct in ruling that the NLRC cannot be faulted for grave abuse of discretion amounting to excess or lack of jurisdiction in concluding that, indeed, petitioners were validly dismissed from their employment. After all, grave abuse of discretion implies a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law.[71] Such is not present in this case.

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[69] *P.J. Lhuillier, Inc. v. Velayo, supra* note 66, at 159.

[70] *Imasen Philippine Manufacturing Corporation v. Alcon, supra* note 61, at 195.

[71] *Machica v. Roosevelt Services Center, Inc. and/or Dizon*, 523 Phil. 199, 212 (2006).

**WHEREFORE,** the Petition for Review on *Certiorari* is hereby **DENIED.** The assailed Decision of the Court of Appeals in CA-G.R. SP No. 125798, dated July 31, 2014, is hereby **AFFIRMED.**

**SO ORDERED.**

*Perez, Reyes,* and *Jardeleza, JJ.,* concur.

*Velasco, Jr. (Chairperson),* on official leave.

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**THIRD DIVISION**

[G.R. No. 215198. November 9, 2016]

**THE PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JHUN VILLALON *y* ORDONO,** *accused-appellant.*

**SYLLABUS**

1. **REMEDIAL LAW; EVIDENCE; THERE IS NO STANDARD FORM OF REACTION FOR A WOMAN, MUCH MORE A MINOR, WHEN CONFRONTED WITH A HORRIFYING EXPERIENCE SUCH AS A SEXUAL ASSAULT.—** Even if AAA did not shout for help, such could not and would not diminish her credibility. It must be emphasized that there is no standard form of reaction for a woman, much more a minor, when confronted with a horrifying experience such as sexual assault. The actions of children who have undergone traumatic experience should not be judged by the norms of behavior expected from adults when placed under similar circumstances. People react differently to emotional stress and rape victims are no different from them.

2. **ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY; PERTAINS TO THE DISTANCE BETWEEN THE PLACE WHERE THE ACCUSED WAS DURING THE COMMISSION OF**

**THE CRIME AND THE PLACE WHERE THE CRIME WAS ACTUALLY COMMITTED, AS WELL AS THE FACILITY OF ACCESS BETWEEN THE TWO PLACES.—** Villalon's alibi must necessarily fall. Physical impossibility pertains to the distance between the place where the accused was during the commission of the crime and the place where the crime was actually committed, as well as the facility of access between the two places. Here, Villalon resided some twenty (20) meters away from AAA's house, which was about two to three (2-3) kilometers away from the place where the incident transpired. Thus, there was no physical impossibility for Villalon's presence at the scene of the crime. His allegation that he was just at home on April 17, 2010 with his wife is, likewise, self-serving and remains uncorroborated by any evidence. His wife did not even testify to support said claim.

3. **ID.; ID.; AFFIDAVIT OF DESISTANCE; VIEWED WITH SUSPICION AND RESERVATION, FOR IT CAN BE EASILY SECURED FROM A POOR AND IGNORANT WITNESS, USUALLY THROUGH INTIMIDATION OR FOR MONETARY CONSIDERATION, AND ATTAINS NO PROBATIVE VALUE IN THE LIGHT OF THE AFFIANT'S TESTIMONY TO THE CONTRARY.—** [T]he affidavit of desistance, it must be stressed that, as a rule, it is viewed with suspicion and reservation. It has been regarded as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration, and attains no probative value in light of the alleged affiant's testimony to the contrary. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable. BBB has explained that they were merely forced by their relatives into signing the affidavit and that she had not fully understood the effects of signing said affidavit, until the secretary of the prosecutor finally explained to her its contents, which were all written in English. Thus, they chose to leave and decided to pursue the case.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON WILL NOT BE DISTURBED ON APPEAL UNLESS SOME FACTS OR CIRCUMSTANCES OF WEIGHT HAVE BEEN OVERLOOKED, MISAPPREHENDED, OR**

**MISINTERPRETED SO AS TO MATERIALLY AFFECT THE DISPOSITION OF THE CASE.—** AAA testified in a candid, vivid, and straightforward manner, and remained firm and unswerving even on cross-examination. It has been consistently held that when it comes to credibility of witnesses, the findings of a trial court on such matter will not be disturbed unless the lower court had clearly misinterpreted certain facts. The credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted so as to materially affect the disposition of the case. Also, where there is no evidence that the witnesses of the prosecution were influenced by ill motive, as in this case, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**PERALTA, *J.*[*]:**

This case seeks to reverse and set aside the Court of Appeals (*CA*) Decision[1] dated June 30, 2014 in CA-G.R. CR-H.C. No. 05471. The CA upheld the Decision[2] of the Regional Trial Court

[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz; concurring; *rollo*, pp. 2-13.

[2] Penned by Judge Jennifer A. Pilar; CA *rollo*, pp. 12-18.

(*RTC*) of Agoo, La Union, Branch 32, dated February 29, 2012 in Family Court Case No. A-1021, which found accused-appellant Jhun Villalon *y* Ordono guilty beyond reasonable doubt of the crime of rape.

An Information was filed charging Villalon of raping AAA,[3] which reads:

> That on or about the 17th day of April 2010, in the Municipality of Aringay, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his cousin AAA, a minor child 14 years of age, against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW.[4]

Upon arraignment on June 14, 2011, Villalon pleaded not guilty to the crime charged. Thus, trial on the merits ensued.

The factual and procedural antecedents of the case are as follows:

Jhun Villalon was charged with raping his cousin, AAA. AAA testified that she was born on February 2, 1996 and that her cousin (their mothers are sisters) raped her on April 17, 2010 when she was merely 14 years old. At 7:30 a.m. of that date, Villalon went to AAA's house in San Benito Norte, Aringay, La Union. He invited AAA to gather mangoes in the mountain, which was 2-3 kilometers away. AAA then left with Villalon with her mother's knowledge. After harvesting mangoes, Villalon

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[3] In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703, 709 (2006), citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real names of the rape victims will not be disclosed. The Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

[4] Records, p. 1.

asked AAA to go to the higher part of the mountain. Thereafter, Villalon invited his cousin to have sexual intercourse with him so she could experience it. AAA then felt like crying because she could not understand why her cousin would say that. She became nervous and wanted to leave but Villalon held her hands and removed her lower garments. She struggled to free herself, but Villalon overpowered her. He laid her down on the ground and started kissing her. AAA tried to avoid Villalon's kisses and to wriggle out of his embrace, but he placed himself on top of her and was able to fulfill his bestial desires. He then threatened AAA not to tell anybody.

AAA tried to hide the incident but after a month, she could no longer contain the nightmares caused by the abuse so she told her mother, BBB. Hence, BBB accompanied her daughter to the *barangay* captain to report the incident. When confronted, Villalon became angry and refused to cooperate, so BBB and AAA went to the police station. The physician who examined the victim found multiple healed hymenal lacerations and an infection which could have been caused by sexual intercourse.

When the case was already in court, Villalon's mother and wife allegedly brought AAA and BBB to the office of the defense counsel to sign an affidavit of desistance. AAA refused to sign the affidavit so she ran and hid at the market. When their relatives found her, they brought her back to the office to sign the affidavit. After signing, BBB was instructed to submit it to the Prosecutor's office, where she learned that the consequence of the affidavit would be the dismissal of the case. BBB then changed her mind and left with the affidavit.

For his part, Villalon asserted that it was on April 10, 2010 that he invited AAA's brother to gather mangoes in the mountain but AAA volunteered to go with him. When they finished at 9:00 a.m., they immediately proceeded to Caba to sell the fruits. On April 17, 2010, however, when the rape was supposedly committed, he just stayed at home all day with his wife. He was shocked when three (3) weeks later, he learned that he was being charged with rape. He, likewise, refused to settle at the *barangay* because he did nothing wrong.

On February 29, 2012, the RTC convicted Villalon in Family Court Case No. A-1021 and sentenced him to suffer the penalty of *reclusion perpetua*, and to pay AAA ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, thus:

> **WHEREFORE**, the Court finds accused Jhun Villalon y Ordono **GUILTY** beyond reasonable doubt of the crime of rape, and hereby [sentences] him to suffer the penalty of *reclusion perpetua* and to pay [AAA] the amount of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages.
>
> **SO ORDERED**.[5]

Therefore, Villalon elevated the case to the CA. On June 30, 2014, the CA affirmed the RTC Decision, to wit:

> **WHEREFORE**, the appealed decision is hereby **AFFIRMED**.
>
> **SO ORDERED**.[6]

Villalon now comes before the Court, insisting that the prosecution failed to prove his guilt beyond reasonable doubt. He presents the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH FORCE, VIOLENCE, THREAT AND INTIMIDATION AS ELEMENTS OF RAPE.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PRIVATE COMPLAINANT'S LACK OF CREDIBILITY.

The appeal is devoid of merit.

The Court finds that the prosecution has successfully proved Villalon's guilt beyond reasonable doubt. Even if AAA did

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[5] CA *rollo*, p. 18. (Emphasis in the original).

[6] *Rollo*, p. 12. (Emphasis in the original).

not shout for help, such could not and would not diminish her credibility. It must be emphasized that there is no standard form of reaction for a woman, much more a minor, when confronted with a horrifying experience such as sexual assault. The actions of children who have undergone traumatic experience should not be judged by the norms of behavior expected from adults when placed under similar circumstances. People react differently to emotional stress and rape victims are no different from them.[7]

Also, Villalon's alibi must necessarily fall. Physical impossibility pertains to the distance between the place where the accused was during the commission of the crime and the place where the crime was actually committed, as well as the facility of access between the two places.[8] Here, Villalon resided some twenty (20) meters away from AAA's house, which was about two to three (2-3) kilometers away from the place where the incident transpired. Thus, there was no physical impossibility for Villalon's presence at the scene of the crime. His allegation that he was just at home on April 17, 2010 with his wife is, likewise, self-serving and remains uncorroborated by any evidence. His wife did not even testify to support said claim.

Regarding the affidavit of desistance, it must be stressed that, as a rule, it is viewed with suspicion and reservation. It has been regarded as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration, and attains no probative value in light of the alleged affiant's testimony to the contrary. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.[9] BBB has explained that they were merely forced by their relatives into signing the affidavit and that she had not fully understood the effects of signing said affidavit, until the secretary of the prosecutor finally explained to her its

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[7] *People v. Lomaque*, 710 Phil. 338, 352 (2013).

[8] *Escamilla v. People*, 705 Phil. 188, 199 (2013).

[9] *People v. Estibal*, G.R. No. 208749, November 26, 2014, 743 SCRA 214, 233.

contents, which were all written in English. Thus, they chose to leave and decided to pursue the case.

Indeed, AAA testified in a candid, vivid, and straightforward manner, and remained firm and unswerving even on cross-examination. It has been consistently held that when it comes to credibility of witnesses, the findings of a trial court on such matter will not be disturbed unless the lower court had clearly misinterpreted certain facts. The credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted so as to materially affect the disposition of the case. Also, where there is no evidence that the witnesses of the prosecution were influenced by ill motive, as in this case, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.[10] As to the amount of damages, however, the accused should be ordered to pay another ₱75,000.00 as exemplary damages based on recent jurisprudence.[11]

**WHEREFORE, PREMISES CONSIDERED**, the Court **DENIES** the petition and **AFFIRMS with MODIFICATION** the Decision dated June 30, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05471 finding accused-appellant Jhun Villalon y Ordono guilty beyond reasonable doubt of the crime of Rape. The Court sentences Villalon to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of ₱75,000.00

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[10] *People v. Dadao*, 725 Phil. 298, 310-311 (2014).

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

as civil indemnity, ₱75,000.00 as moral damages, and another ₱75,000.00 as exemplary damages, all with interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

**SO ORDERED.**

*Sereno,*[**] *C.J., Perez,* and *Reyes, JJ.,* concur.

*Velasco, Jr., J.,* on official leave.

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**THIRD DIVISION**

[G.R. No. 215937. November 9, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **GENER VILLAR *y* POJA,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PENALTY.—** In prosecutions involving illegal sale of dangerous drugs, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto. The prosecution has duly established the identity of PO1 Santillan, as the poseur-buyer and appellant, as the seller. The object of the transaction was a plastic sachet containing *shabu*, weighing 0.06 gram. The consideration was the ₱500.00 marked money. PO1 Santillan testified that he approached appellant to buy ₱500.00 worth of *shabu*. He handed the ₱500.00 bill to appellant. In turn, appellant gave him one plastic sachet

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[**] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated December 1, 2014.

of *shabu* which consummated the sale. x x x [I]t has been established by proof beyond reasonable doubt that appellant sold *shabu*. Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Thus, the trial court correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 in Criminal Case No. 04-26973.

**2. ID.; ID.; ILLEGAL POSSESSION OF EQUIPMENT, INSTRUMENT, APPARATUS, AND OTHER PARAPHERNALIA FOR DANGEROUS DRUGS; ELEMENTS; PENALTY.—** The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. These elements are also present in this case. The prosecution has convincingly established that appellant was in possession of drug paraphernalia such as three (3) empty plastic sachets, one (1) improvised tooter and one (1) orange plastic straw, all of which were found positive for traces of *shabu*, Appellant did not present any proof that he is authorized to possess the same. x x x Section 12, Article II of R.A. No. 9165 imposes the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten Thousand Pesos (₱10,000.00) to Fifty Thousand Pesos (₱50,000.00) upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming, administering, injecting, or introducing any dangerous drug into the body. In this case, the trial court failed to impose a fine, on top of the penalty of imprisonment, as mandated by law. We, therefore, impose a fine of ₱25,000.00 in Criminal Case No. 04-26974.

**3. ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED AND SEIZED DANGEROUS DRUGS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREON DOES NOT RENDER THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS VOID UPON PROOF THAT THE NON-COMPLIANCE WAS DUE TO JUSTIFIABLE GROUNDS AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** Appellant questions the non-compliance with Section 21 of R.A. No. 9165, particularly the failure to conduct the buy-bust operation in the presence of a *barangay* official and members of media. Moreover, appellant asserts that when the items were submitted for examination, there was no indication of date, time and signature of the officer who made the markings. x x x First, there is nothing in the Rules which require the police officer who marked the seized items to indicate the date, time and signature on the specimen to be submitted for examination. Second, it is clear that noncompliance with the enumerated requirements in Section 21 does not automatically exonerate the accused. Upon proof that noncompliance was due to justifiable grounds and that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, the seizure and custody over said items are not, by the noncompliance, rendered void. This is the "chain of custody" rule.

**4. ID.; ID.; ID.; CHAIN OF CUSTODY; LINKS TO BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST SITUATION.—** The following are the links that must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending office; *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 plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## D E C I S I O N

**PEREZ, *J.*:**

The subject of this appeal is the 24 January 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00476, affirming the 20 December 2005 Decision[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 47, finding appellant Gener Villar *y* Poja guilty beyond reasonable doubt of violation of Sections 5 and 12, Article II of Republic Act (R.A.) No. 9165.

Appellant was charged with the crimes of violation of Sections 5 and 12, Article II of R.A. No. 9165, in two (2) Informations, both dated 1 September 2004, which respectively read as follows:

Criminal Case No. 04-26973

That on or about the 26th day of August 2004, in the City of Talisay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there, willfully, unlawfully and feloniously sell, deliver, give away to a police confidential asset in a buy-bust operation a pack of *methamphetamine hydrochloride (shabu*) weighing 0.06 gram, a dangerous drug, in exchange for a price of ₱500 in marked money bill with serial number KJ464115, in violation of the aforementioned law.[3]

Criminal Case No. 04-26974

That on or about the 26th day of August 2004, in the City of Talisay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess equipment, instrument, apparatus and other paraphernalia for dangerous drugs, did then and there, willfully, unlawfully and feloniously have in his possession and under his custody

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[1] *Rollo*, pp. 4-19; Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring.

[2] Records, Vol. I, pp. 96-117. Presided by Judge Edgar G. Garvilles.

[3] *Id.* at 1.

and control *three (3) empty plastic packets, one (1) improvised tooter, one (1) orange plastic straw all containing traces of white crystalline substance (shabu), one (1) piece colored red "kahita" and one disposable lighter fit or intended for smoking, consuming, ingesting, or introducing* methamphetamine hydrochloride or shabu, a dangerous drug, into the body, in violation of the aforementioned law.[4]

Upon arraignment, appellant pleaded not guilty to both charges.

Trial ensued.

The version of the prosecution is summarized as follows:

Based on a tip from a confidential asset that there was a rampant sale of *shabu* at Purok Kalubihan, Zone 15 in Talisay City by a certain alias Gener, Police Chief Inspector Jerry Bartolome (C/Insp. Bartolome) of the Talisay City Police Station formed a buy-bust team composed of Police Officer (PO) 1 Loreto Santillan (PO1 Santillan), as the poseur-buyer, Chief Intelligence Officer PO2 Jovencio Venus (PO2 Venus) and PO1 Panes. C/Insp. Bartolome produced a ₱500.00 bill to be used as buy-bust money. It was marked with "JCV" representing the initial of PO2 Venus. The group proceeded to Purok Kalubihan on board a tricycle, while PO1 Santillan rode in his bicycle. Thereat, the asset pinpointed three persons, later identified as appellant, Jude Alyn Bawi-in (Bawi-in) and an alias Turko. PO1 Santillan approached the trio and asked if they have "*stapa*," a street language for stuff of *shabu*. PO1 Santillan handed the ₱500.00 marked bill to appellant. In exchange, appellant gave him one plastic sachet of *shabu*. Thereafter, PO1 Santillan removed the face towel wrapped around his head as the pre-arranged signal to indicate that the transaction has been consummated.[5] PO2 Venus then barged in and arrested appellant and Bawi-in. Turko was able to escape. PO1 Santillan frisked appellant. He was able to recover the ₱500.00 marked bill, three empty sachets with traces of *shabu* and an improvised

[4] Records, Vol. II, p. 1.

[5] TSN, 3 February 2005, pp. 3-8.

tooter inside appellant's wallet, and a green lighter and orange straw inside appellant's right pocket. The seized items were marked by PO2 Venus. Appellant tried to escape but PO2 Venus overpowered him. In the process, PO2 Venus dropped one plastic sachet of *shabu* and eventually lost it.[6]

Appellant and Bawi-in were then brought to the police station. The items recovered were recorded in the police blotter. Chief Inspector Bartolome took a photograph[7] of the accused, as well as the items seized from them at the police station. A request was made to the PNP Crime Laboratory for examination. PO2 Venus delivered the request and the specimen to the crime laboratory.[8] The chemistry report revealed that the following specimen were tested positive for methamphetamine hydrochloride or *shabu*:

1. One (1) heat-sealed transparent plastic packet marked "J" containing white crystalline substance weighing 0.06 gram.
2. Three (3) unsealed transparent plastic packets marked "J1" through "J3" each containing traces of white crystalline substance.
3. One (1) improvised tooter marked "J5" containing traces of white crystalline substance.
4. One (1) orange, plastic straw marked "J4" containing traces of white crystalline substance.[9]

Bawi-in was eventually dropped from the charge when he was found negative to a drug test.

The defense gave an entirely different version of the incident.

Appellant first denied the charges against him. He narrated that he was playing basketball at a gymnasium in Purok Kalubihan

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[6] TSN, 9 June 2005, pp. 16-19.

[7] Records, Vol. I, p. 64.

[8] TSN, 9 June 2005, p. 32.

[9] Records, Vol. I, p. 6.

at around 11:00 a.m. when he, was called by Turko, his co-worker to a nipa hut located at five (5) arms length from the basketball court. While appellant was approaching Turko, two tricycles carrying police officers arrived and arrested him and Bawi-in. Turko escaped. While on transit, appellant was manhandled by the police. He and Bawi-in were brought to the police station.[10]

Roberto Asparen (Asparen) testified that he was playing basketball with appellant when the latter was called by Turko. Five (5) minutes later, he saw two tricycles arrived and stopped in front of the nipa hut. He saw PO2 Venus and PO1 Santillan approach appellant, handcuff him from behind, and frisk him. They only recovered money from appellant. Asparen refuted the existence of a buy-bust operation. When Asparen visited appellant at the police station, PO1 Santillan approached appellant's parents to ask them to settle with PO2 Venus. On a separate occasion, appellant's parents were even asked to prepare ₱50,000.00 for the release of appellant but they refused.[11]

On 20 December 2005, the RTC rendered a Decision finding appellant guilty of violation of Sections 5 and 12 of R.A. No. 9165. The RTC gave credence to the testimonies of the police officers on the legitimate entrapment of appellant. The RTC disposed of the case in this wise:

> WHEREFORE, finding accused Gener Villar *y* Poja guilty beyond reasonable doubt for Violation of Section 5 of R.A. No. 9165 (Sale of Dangerous Drugs) and of Section 12 of the same law (Possession of Equipment x x x and other Paraphernalia for Dangerous Drugs), judgment is hereby rendered imposing upon him the penalty of Life Imprisonment and a fine of ₱500,000.00 in Criminal Case No. 04-26973 (Sale of Dangerous Drugs), and an indeterminate penalty of Six (6) months and one (1) day, as minimum, to Two (2) years and Eight (8) months, as maximum, in Criminal Case No. 04-26974

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[10] TSN, 20 September 2005, pp. 3-7.

[11] TSN, 8 November 2005, pp. 4-25.

(Possession of equipment and other paraphernalia for Dangerous Drug). He is also to suffer the accessory penalty provided by law. Costs against accused.

The 0.06 gram of methamphetamine hydrochloride or shabu (Exh. "F-8"), being a dangerous drug; and the red wallet containing the paraphernalia for dangerous drugs (Exh. "F-1"), the orange straw (Exh. "F-2"), the improvised tooter (Exh. "F-3"), the lighter (Exh. "F-4"), and the three (3) empty sachets with traces of shabu (Exhs. "F-5" to "F-7"), which are equipment or paraphernalia for dangerous drugs, are hereby ordered confiscated and/or forfeited in favor of the Government, and are to be forthwith turned over to [the] PDEA (Philippine Drug Enforcement Agency) Provincial Office for immediate destruction.

The immediate commitment of the accused to the national penitentiary is also hereby ordered.[12]

Appellant filed an appeal before the Court of Appeals. In his Brief,[13] appellant alleged the non-compliance with the chain of custody rule when the prosecution failed to present all persons who have possibly handled the evidence in court. Appellant argues that the police officers failed to comply with Section 21 of R.A. No. 9165, specifically on the absence of *barangay* official or media men during the buy-bust operation and the lack of date, time and signature of the officer who made the markings on the specimen submitted for examination. Appellant essentially claims that the prosecution failed to establish beyond reasonable doubt the *corpus delicti* of the case.

On the other hand, the Office of the Solicitor General (OSG) counters that the integrity of the evidence had been preserved because the evidence was confiscated in a heat-sealed transparent plastic sachet and then placed in another plastic then staple-sealed. The OSG also maintains that the prosecution's non-compliance with Section 21 did not affect the integrity of the evidence.

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[12] Records, Vol. I, pp. 116-117.

[13] CA *rollo*, pp. 70-88.

On 24 January 2014, the Court of Appeals affirmed the RTC's Decision. The Court of Appeals found that all the elements for the crime of illegal sale and possession of drug paraphernalias are present in this case. The Court of Appeals, likewise, held that the chain of custody was sufficiently established. Anent the defense of frame-up, the Court of Appeals applied the presumption of regularity in the performance of the police officers' duties and noted that appellant could not establish any motive why the police officers would file false charges against him.

Hence, this appeal.

We are tasked to resolve whether or not the appellant's guilt was proven beyond reasonable doubt.

In prosecutions involving illegal sale of dangerous drugs, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto.[14]

The prosecution has duly established the identity of PO1 Santillan, as the poseur-buyer and appellant, as the seller. The object of the transaction was a plastic sachet containing *shabu*, weighing 0.06 gram. The consideration was the ₱500.00 marked money. PO1 Santillan testified that he approached appellant to buy ₱500.00 worth of *shabu*. He handed the ₱500.00 bill to appellant. In turn, appellant gave him one plastic sachet of *shabu* which consummated the sale.

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[15]

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[14] *People v. Montevirgen*, 723 Phil. 534, 542 (2013).

[15] *People v. Mariano*, 698 Phil. 772, 785 (2012).

These elements are also present in this case. The prosecution has convincingly established that appellant was in possession of drug paraphernalia such as three (3) empty plastic sachets, one (1) improvised tooter and one (1) orange plastic straw, all of which were found positive for traces of *shabu*. Appellant did not present any proof that he is authorized to possess the same.

Appellant questions the non-compliance with Section 21 of R.A. No. 9165, particularly the failure to conduct the buy-bust operation in the presence of a *barangay* official and members of media. Moreover, appellant asserts that when the items were submitted for examination, there was no indication of date, time and signature of the officer who made the markings.

Section 21 of R.A. No. 9165 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:
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> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
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> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

Section 21(a) and (b) of the Implementing Rules and Regulation of R.A. No. 9165 pertinently provides:

> (a) The apprehending office/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;

First, there is nothing in the Rules which require the police officer who marked the seized items to indicate the date, time and signature on the specimen to be submitted for examination. Second, it is clear that noncompliance with the enumerated requirements in Section 21 does not automatically exonerate the accused. Upon proof that noncompliance was due to justifiable grounds and that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, the seizure and custody over said items are not, by the noncompliance, rendered void. This is the "chain of custody" rule.

In *Mallillin v. People*,[16] the Court explained that the "chain of custody" requirement ensures that unnecessary doubts concerning the identity of the evidence are removed. The chain of custody is constructed by proper exhibit handling, storage, labelling and recording, and must exist from the time the evidence is found until the time it is offered in evidence. Failure to prove that the specimen submitted for laboratory examination was

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[16] 576 Phil. 576, 587 (2008).

the same one allegedly seized from accused is fatal to the prosecution's case.[17]

The following are the links that must be established in the chain of custody in a buy-bust situation: *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.[18]

PO1 Santillan had in his possession one plastic sachet containing *shabu* that he received from appellant during the buy-bust sale. PO2 Venus recovered three empty plastic sachets, the marked money of ₱500.00, an improvised tooter and an orange plastic straw from appellant. The Court of Appeals had clearly outlined the rest of the procedure to prove that there was no break in the chain of custody, thus:

> The accused-appellant was immediately brought to the Talisay City Police Station for proper documentation. PO2 Venus marked the sachet of shabu sold by the accused-appellant, weighing 0.06 grams, with letter "J" which stands for Jovencio the first name of PO2 Venus. The latter said that after pictures were taken of the confiscated items, he prepared the Letter Request for Laboratory Examination. When PO2 Venus brought the letter request to the PNP Crime Laboratory together with PO1 Santillan, he also brought with him the accused-appellant and Jude Alyn Bawi-in for examination. Per Chemistry Report No. D-341-2004 conducted by Police Chief Inspector Rea Abastillas Villavicencio, who also testified in court, the specimen submitted for examination gave a positive result to *Methamphetamine Hydrochloride*, a dangerous drug. Police Officers Venus and Santillan identified the plastic sachet of shabu presented in court as Exhibit "F" as the one that was brought from the accused-appellant during the buy-bust operation.

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[17] *People v. Bulotano*, 736 Phil. 245, 257 (2014).

[18] *People v. Salvador*, 726 Phil. 389, 405 (2014).

We are convinced that this sachet of shabu was that which was sold by the accused-appellant to the poseur-buyer. The police had marked it before bringing it to the crime laboratory. Consequently, this sachet of shabu was examined by the forensic chemist and presented in court as evidence to prove the existence and identity of the shabu sold during the buy-bust operation. The sequence of events would show that the chain of custody has been established. In the case before Us, there was clearly no gap or missing link in the chain of custody. The integrity and the evidentiary value of the confiscated items were properly preserved by the prosecution. These circumstances when considered are adequate to prove corpus delicti of the crime of sale and delivery of dangerous drug.[19]

The defense of frame-up deserves scant consideration for failure of appellant to show any motive on the part of the police officers to falsely charge and/or testify against him.

In sum, it has been established by proof beyond reasonable doubt that appellant sold *shabu*. Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Thus, the trial court correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 in Criminal Case No. 04-26973.

Section 12, Article II of R.A. No. 9165 imposes the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten Thousand Pesos (₱10,000.00) to Fifty Thousand Pesos (₱50,000.00) upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming, administering, injecting, or introducing any dangerous drug into the body. In this case, the trial court failed to impose a fine,

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

on top of the penalty of imprisonment, as mandated by law. We, therefore, impose a fine of ₱25,000.00 in Criminal Case No. 04-26974.

**WHEREFORE**, premises considered, the Decision dated 24 January 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 00476 which, in turn, affirmed the Decision dated 20 December 2005 of the Regional Trial Court, Branch 47, Bacolod City, in Criminal Case Nos. 04-26973 and 04-26974, is **AFFIRMED** with **MODIFICATION** in that appellant GENER VILLAR y POJA is further ordered to pay a fine of ₱25,000.00 in Criminal Case No. 04-26974.

**SO ORDERED.**

*Peralta*[*]*, Bersamin*[**]*,* and *Reyes, JJ.,* concur.

*Velasco, Jr. (Chairperson),* on Wellness Leave.

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**SECOND DIVISION**

[G.R. No. 215957. November 9, 2016]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **FITNESS BY DESIGN, INC.,** *respondent.*

**SYLLABUS**

**1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; TAX ON INCOME; PAYMENT AND ASSESSMENT OF INCOME TAX FOR INDIVIDUALS AND CORPORATIONS; TAX ASSESSMENT; STARTS WITH**

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[*] Acting Chairperson per Special Order dated 19 October 2016.

[**] Additional Member per Raffle dated 2 November 2016.

**THE FILING OF TAX RETURN AND PAYMENT OF TAX BY THE TAXPAYER.—** An assessment "refers to the determination of amounts due from a person obligated to make payment." "In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997." The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment. After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.

**2. ID.; ID.; PROTESTING AN ASSESSMENT; TAX ASSESSMENT; PROCEDURE; AFFORDING TAXPAYERS WITH SUFFICIENT WRITTEN NOTICE OF THEIR TAX LIABILITY IS AN INDISPENSABLE REQUIREMENT.—** The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment. Section 3 of Revenue Regulations No. 12-99, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice for informal conference. The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes. If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing of the discrepancies in his or her payment of internal revenue taxes for "Informal Conference." The informal conference gives the taxpayer an opportunity to present his or her side of the case. The taxpayer is given 15 days from receipt of the notice of

informal conference to respond. If the taxpayer fails to respond, he or she will be considered in default. The revenue officer endorses the case with the least possible delay to the Assessment Division of the Revenue Regional Officer or the Commissioner or his or her authorized representative. The Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative is responsible for the "appropriate review and issuance of a deficiency tax assessment, if warranted." If, after the review conducted, there exists sufficient basis to assess the taxpayer with deficiency taxes, the officer shall issue a preliminary assessment notice showing in detail the facts, jurisprudence, and law on which the assessment is based. The taxpayer is given 15 days from receipt of the pre-assessment notice to respond. If the taxpayer fails to respond, he or she will be considered in default, and a formal letter of demand and assessment notice will be issued. The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void. The taxpayer or the authorized representative may administratively protest the formal letter of demand and assessment notice within 30 days from receipt of the notice.

**3. ID.; ID.; ID.; ID.; THE FORMAL LETTER OF DEMAND AND ASSESSMENT NOTICE SHALL REFLECT THE LEGAL AND FACTUAL BASES OF ASSESSMENT TO AID THE TAXPAYER IN MAKING A REASONABLE PROTEST, IF NECESSARY.—** [T]he act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision. The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.

**4. ID.; ID.; ASSESSMENT AND COLLECTION OF TAXES; PRESCRIPTIVE PERIOD; FALSE RETURN AND FRAUDULENT RETURN, DISTINGUISHED; WHEN A FRAUDULENT RETURN IS FILED, IT IS**

**INDISPENSABLE FOR THE COMMISSIONER OF INTERNAL REVENUE TO INCLUDE THE BASIS FOR ITS ALLEGATIONS OF FRAUD IN THE ASSESSMENT NOTICE.—** The prescriptive period in making an assessment depends upon whether a tax return was filed or whether the tax return filed was either false or fraudulent. When a tax return that is neither false nor fraudulent has been filed, the Bureau of Internal Revenue may assess within three (3) years, reckoned from the date of actual filing or from the last day prescribed by law for filing. However, in case of a false or fraudulent return with intent to evade tax, Section 222(a)[applies.] x x x In *Aznar v. Court of Tax Appeals*, this Court interpreted Section 332 (now Section 222[a] of the National Internal Revenue Code) by dividing it in three (3) different cases: first, in case of false return; second, in case of a fraudulent return with intent to evade; and third, in case of failure to file a return. x x x This Court held that there is a difference between "false return" and a "fraudulent return." A false return simply involves a "deviation from the truth, whether intentional or not" while a fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due." Fraud is a question of fact that should be alleged and duly proven. "The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed." Fraud entails corresponding sanctions under the tax law. Therefore, it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice.

5. **ID.; ID.; TAX ON INCOME; PAYMENT AND ASSESSMENT OF INCOME TAX FOR INDIVIDUALS AND CORPORATIONS; TAX ASSESSMENT; FINAL ASSESSMENT; REFERS TO A NOTICE TO THE EFFECT THAT THE AMOUNT THEREIN STATED IS DUE AS TAX AND A DEMAND FOR PAYMENT THEREOF.—** The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period

prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay. A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice." A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting. A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Balmeo and Go Law Offices* for respondent.

**D E C I S I O N**

**LEONEN, *J.*:**

To avail of the extraordinary period of assessment in Section 222(a) of the National Internal Revenue Code, the Commissioner of Internal Revenue should show that the facts upon which the fraud is based is communicated to the taxpayer. The burden of proving that the facts exist in any subsequent proceeding is with the Commissioner. Furthermore, the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.

This resolves a Petition for Review on Certiorari[1] filed by the Commissioner of Internal Revenue, which assails the Decision[2]

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[1] The Petition was filed under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 32-49. The Decision was penned by Associate Justice Juanito Castañeda, Jr. and concurred in by Associate Justices Roman G. Del Rosario, Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

dated July 14, 2014 and Resolution[3] dated December 16, 2014 of the Court of Tax Appeals. The Court of Tax Appeals *En Banc* affirmed the Decision of the First Division, which declared the assessment issued against Fitness by Design, Inc. (Fitness) as invalid.[4]

On April 11, 1996, Fitness filed its Annul Income Tax Return for the taxable year of 1995.[5] According to Fitness, it was still in its pre-operating stage during the covered period.[6]

On June 9, 2004, Fitness received a copy of the Final Assessment Notice dated March 17, 2004.[7] The Final Assessment Notice was issued under Letter of Authority No. 00002953.[8] The Final Assessment Notice assessed that Fitness had a tax deficiency in the amount of ₱10,647,529.69.[9] It provides:

**FINAL ASSESSMENT NOTICE**

March 17, 2004

**FITNESS BY DESIGN, INC**
169 Aguirre St., BF Homes,
Paranaque City

Gentlemen:

Please be informed that after investigation of your Internal revenue Tax Liabilities for the year 1995 pursuant to Letter of Authority No. 000029353 dated May 13, 2002, there has been found due deficiency taxes as shown hereunder:

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[3] *Id*. at 53-57. The Resolution was penned by Associate Justice Juanito Castañeda, Jr. and concurred in by Associate Justices Roman G. Del Rosario, Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

[4] *Id*. at 48, Court of Tax Appeals *En Banc* Decision.

[5] *Id*. at 33.

[6] *Id*.

[7] *Id*. at 34.

[8] *Id*. at 36.

[9] *Id*. at 34.

Assessment No. _____

**Income Tax**

| | | |
|---|---|---|
| Taxable Income per return ₱ | | |
| Add: Unreported Sales | | 7,156,336.08 |
| Taxable Income per audit | | 7,156,336.08 |
| Tax Due (35%) | | 2,504,717.63 |
| Add: Surcharge (50%) | ₱ 1,252,358.81 | |
| **Interest (20%/ annum) until 4-15-04** | 4,508,491.73 | 5,760,850.54 |
| **Deficiency Income Tax** | **₱** | **8,265,568.17** |
| | | ========== |

**Value Added Tax**

| | | |
|---|---|---|
| Unreported Sales | ₱ | 7,156,336.08 |
| Output Tax (10%) | | 715,633.61 |
| Add: Surcharge (50%) | ₱ 357,816.80 | |
| **Interest (20%/ annum) until 4-15-04** | 1,303,823.60 | 1,661,640.41 |
| **Deficiency VAT** | **₱** | **2,377,274.02** |

**Documentary Stamp Tax**

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|---|---|---|
| Subscribe Capital Stock | ₱ | 375,000.00 |
| DST due (2/200) | | 3,750.00 |
| Add: Surcharge (25%) | | 937.50 |
| **Deficiency DST** | **₱** | **4,687.50** |

**Total Deficiency Taxes** **₱ 10,647,529.69**

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249(B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004.**

In view thereof, you are requested to pay your aforesaid deficiency internal revenue taxes liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.[10] (Emphasis in the original)

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[10] *Id*. at 12-13, Petition for Review. The Annex referred to in the Final Assessment Notice was not attached to the records of the case. However, based on the testimony of Fitness' President, Domingo C. Juan, "[t]he attached details of discrepancy containing the assessment for income tax (IT), value-added tax (VAT) and documentary stamp tax (DST) as well as, the Audit Result/Assessment Notices do not impute fraud on the part of petitioner" (*Id*. at 37, Court of Tax Appeals *En Banc* Decision).

Fitness filed a protest to the Final Assessment Notice on June 25, 2004. According to Fitness, the Commissioner's period to assess had already prescribed. Further, the assessment was without basis since the company was only incorporated on May 30, 1995.[11]

On February 2, 2005, the Commissioner issued a Warrant of Distraint and/or Levy with Reference No. OCN WDL-95-05-005 dated February 1, 2005 to Fitness.[12]

Fitness filed before the First Division of the Court of Tax Appeals a Petition for Review (With Motion to Suspend Collection of Income Tax, Value Added Tax, Documentary Stamp Tax and Surcharges and Interests) on March 1, 2005.[13]

On May 17, 2005, the Commissioner of Internal Revenue filed an Answer to Fitness' Petition and raised special and affirmative defenses.[14] The Commissioner posited that the Warrant of Distraint and/or Levy was issued in accordance with law.[15] The Commissioner claimed that its right to assess had not yet prescribed under Section 222(a)[16] of the National Internal Revenue Code.[17] Because the 1995 Income Tax Return filed by

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] TAX CODE, Sec. 222(a) provides:

Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

[17] *Rollo*, p. 35, Court of Tax Appeals *En Banc* Decision.

Fitness was false and fraudulent for its alleged intentional failure to reflect its true sales, Fitness' respective taxes may be assessed at any time within 10 years from the discovery of fraud or omission.[18]

The Commissioner asserted further that the assessment already became final and executory for Fitness' failure to file a protest within the reglementary period.[19] The Commissioner denied that there was a protest to the Final Assessment Notice filed by Fitness on June 25, 2004.[20] According to the Commissioner, the alleged protest was "nowhere to be found in the [Bureau of Internal Revenue] Records nor reflected in the Record Book of the Legal Division as normally done by [its] receiving clerk when she received [sic] any document."[21] Therefore, the Commissioner had sufficient basis to collect the tax deficiency through the Warrant of Distraint and/or Levy.[22]

The alleged fraudulent return was discovered through a tip from a confidential informant.[23] The revenue officers' investigation revealed that Fitness had been operating business with sales operations amounting to ₱7,156,336.08 in 1995, which it neglected to report in its income tax return.[24] Fitness' failure to report its income resulted in deficiencies to its income tax and value-added tax of ₱8,265,568.17 and ₱2,377,274.02 respectively, as well as the documentary stamp tax with regard to capital stock subscription.[25]

Through the report, the revenue officers recommended the filing of a civil case for collection of taxes and a criminal case for failure to declare Fitness' purported sales in its 1995 Income

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 39.

[24] *Id.* at 35.

[25] *Id.* at 38.

Tax Return.[26] Hence, a criminal complaint against Fitness was filed before the Department of Justice.[27]

The Court of Tax Appeals First Division granted Fitness' Petition on the ground that the assessment has already prescribed.[28] It cancelled and set aside the Final Assessment Notice dated March 17, 2004 as well as the Warrant of Distraint and/or Levy issued by the Commissioner.[29] It ruled that the Final Assessment Notice is invalid for failure to comply with the requirements of Section 228[30] of the National Internal Revenue Code. The dispositive portion of the Decision reads:

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[26] *Id.* at 39.

[27] *Id.*

[28] *Id.* at 67, Petition for Review of the Commissioner of Internal Revenue before the Court of Tax Appeals *En Banc*.

[29] *Id.* at 40, Court of Tax Appeals *En Banc* Decision.

[30] TAX CODE, Sec. 228 provides:

Section 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

**The taxpayers shall be informed in writing of the law and he facts on which the assessment is made; otherwise, the assessment shall be void.**

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer

**WHEREFORE**, the Petition for Review dated February 24, 2005 filed by petitioner Fitness by Design, Inc., is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated March 17, 2004, finding petitioner liable for deficiency income tax, documentary stamp tax and value-added tax for taxable year 1995 in the total amount of ₱10,647,529.69 is hereby **CANCELLED** and **SET ASIDE**. The Warrant of Distraint and Levy dated February 1, 2005 is likewise **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**[31] (Emphasis in the original)

The Commissioner's Motion for Reconsideration and its Supplemental Motion for Reconsideration were denied by the Court of Tax Appeals First Division.[32]

Aggrieved, the Commissioner filed an appeal before the Court of Tax Appeals *En Banc*.[33] The Commissioner asserted that it had 10 years to make an assessment due to the fraudulent income tax return filed by Fitness.[34] It also claimed that the assessment already attained finality due to Fitness' failure to file its protest within the period provided by law.[35]

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fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[31] *Rollo*, pp. 32-33, Court of Tax Appeals *En Banc* Decision.

[32] *Id*. at 40.

[33] *Id*.

[34] *Id*. at 41.

[35] *Id*.

Fitness argued that the Final Assessment Notice issued to it could not be claimed as a valid deficiency assessment that could justify the issuance of a warrant of distraint and/or levy.[36] It asserted that it was a mere request for payment as it did not provide the period within which to pay the alleged liabilities.[37]

The Court of Tax Appeals *En Banc* ruled in favor of Fitness. It affirmed the Decision of the Court of Tax Appeals First Division, thus:

> **WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, both the Decision and Resolution in CTA Case No. 7160 dated July 10, 2012 and November 21, 2012 respectively are **AFFIRMED** in toto.[38] (Emphasis in the original)

The Commissioner's Motion for Reconsideration was denied by the Court of Tax Appeals *En Banc* in the Resolution[39] dated December 16, 2014.

Hence, the Commissioner of Internal Revenue filed before this Court a Petition for Review.

Petitioner Commissioner of Internal Revenue raises the sole issue of whether the Final Assessment Notice issued against respondent Fitness by Design, Inc. is a valid assessment under Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99.[40]

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[36] *Id*.

[37] *Id*.

[38] *Id*. at 48.

[39] *Id*. at 53-57.

[40] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty (1999).

BIR Revenue Reg. No. 12-99, Sec. 3.1.4 provides:

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment

Petitioner argues that the Final Assessment Notice issued to respondent is valid since it complies with Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99.[41] The law states that the taxpayer shall be informed in writing of the facts, jurisprudence, and law on which the assessment is based.[42] Nothing in the law provides that due date for payment is a substantive requirement for the validity of a final assessment notice.[43]

Petitioner further claims that a perusal of the Final Assessment Notice shows that April 15, 2004 is the due date for payment.[44] The pertinent portion of the assessment reads:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249(B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted *if paid prior or beyond April 15, 2004*.[45] (Emphasis supplied)

This Court, through the Resolution[46] dated July 22, 2015, required respondent to comment on the Petition for Review.

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3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the forma/letter of demand and assessment notice shall be void* (Emphasis supplied).

[41] *Rollo*, p. 16, Petition for Review.

[42] *Id*. at 18.

[43] *Id*.

[44] *Id*. at 20.

[45] *Id*. at 13.

[46] *Id*. at 87.

In its Comment,[47] respondent argues that the Final Assessment Notice issued was merely a request and not a demand for payment of tax liabilities.[48] The Final Assessment Notice cannot be considered as a final deficiency assessment because it deprived respondent of due process when it failed to reflect its fixed tax liabilities.[49] Moreover, it also gave respondent an indefinite period to pay its tax liabilities.[50]

Respondent points out that an assessment should strictly comply with the law for its validity.[51] Jurisprudence provides that "not all documents coming from the [Bureau of Internal Revenue] containing a computation of the tax liability can be deemed assessments[,] which can attain finality."[52] Therefore, the Warrant of Distraint and/or Levy cannot be enforced since it is based on an invalid assessment.[53]

Respondent likewise claims that since the Final Assessment Notice was allegedly based on fraud, it must show the details of the fraudulent acts imputed to it as part of due process.[54]

**I**

The Petition has no merit.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[55] "In the context

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[47] *Id.* at 90-101.

[48] *Id.* at 91.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.* at 92.

[54] *Id.* at 97.

[55] *SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/175410.pdf> 5 [Per *J.* Leonen, Second Division].

of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."[56]

The assessment process starts with the filing of tax return and payment of tax by the taxpayer.[57] The initial assessment

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[56] *Id*.

[57] TAX CODE, Sec. 56(A) provides:

Section 56. ***Payment and Assessment of Income Tax for Individuals and Corporations.***

A) *Payment of Tax*. -

(1) *In General*. - The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed. In the case of tramp vessels, the shipping agents and/or the husbanding agents, and in their absence, the captains thereof are required to file the return herein provided and pay the tax due thereon before their departure. Upon failure of the said agents or captains to file the return and pay the tax, the Bureau of Customs is hereby authorized to hold the vessel and prevent its departure until proof of payment of the tax is presented or a sufficient bond is filed to answer for the tax due.

(2) *Installment Payment*. - When the tax due is in excess of Two thousand pesos (₱2,000), the taxpayer other than a corporation may elect to pay the tax in two (2) equal installments in which case, the first installment shall be paid at the time the return is filed and the second installment, on or before July 15 following the close of the calendar year. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid becomes due and payable, together with the delinquency penalties.

(3) *Payment of Capital Gains Tax*. - The total amount of tax imposed and prescribed under Sections 24(C), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: *Provided*, That if the seller submits proof of his intention to avail himself of the benefit of exemption of capital gains under existing special laws, no such payments shall be required: *Provided, further*, That in case of failure to qualify for exemption under such special laws and implementing rules and regulations, the tax due on the gains realized from the original transaction shall immediately become due and payable, and subject to the penalties prescribed under applicable provisions of this Code: *Provided, finally*, That if the seller, having paid the tax, submits such proof of intent within six (6) months from the registration of the document transferring the real property, he shall be entitled to a refund

evidenced by the tax return is a self-assessment of the taxpayer.[58] The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from govemment.[59] If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.[60]

After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability.[61] The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination.[62] The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.[63]

The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement.[64]

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of such tax upon verification of his compliance with the requirements for such exemption.

In case the taxpayer elects and is qualified to report the gain by installments under Section 49 of this Code, the tax due from each installment payment shall be paid within thirty (30) days from the receipt of such payments.

No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfer has been reported, and the tax herein imposed, if any, has been paid.

[58] *SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/175410.pdf> 8 [Per *J.* Leonen, Second Division].

[59] *Id*.

[60] *Id*.

[61] TAX CODE, Sec. 6(A).

[62] TAX CODE, Sec. 6(A).

[63] TAX CODE, Sec. 5(A).

[64] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <sc.judiciary.gov.ph/pdf/

Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.[65]

Section 3 of Revenue Regulations No. 12-99,[66] the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice for informal conference.[67] The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes.[68] If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing[69] of the discrepancies in his or her payment of internal revenue taxes for "Informal Conference."[70] The informal conference gives the taxpayer an opportunity to present his or her side of the case.[71]

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web/viewer.html?file=/jurisprudence/2016/april2016/215534.pdf> 7 [Per *J.* Mendoza, Second Division].

[65] *Id*.

[66] On November 28, 2013, Revenue Regulations No. 18-2013 was enacted *amending Certain Sections of Revenue Regulations No. 12-99* relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment. The scope of the law provides that under the provisions of Section 244, in relation to Section 245 of the National Internal Revenue Code, as amended, these Regulations are promulgated to amend provisions of Revenue Regulations No. 12-99.

BIR Revenue Reg. No. 18-2013, Sec. 2 provides:

Section 2. Amendment. — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities.

[67] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[68] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[69] BIR Revenue Reg. No. 12-99, Sec. 3.1.1 provides that either the Revenue District Office or the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or the Chief of Division concerned (in the case of the BIR National Office) may inform the taxpayer of his or her discrepancies.

[70] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[71] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

The taxpayer is given 15 days from receipt of the notice of informal conference to respond.[72] If the taxpayer fails to respond, he or she will be considered in default.[73] The revenue officer[74] endorses the case with the least possible delay to the Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative.[75] The Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative is responsible for the "appropriate review and issuance of a deficiency tax assessment, if warranted."[76]

If, after the review conducted, there exists sufficient basis to assess the taxpayer with deficiency taxes, the officer shall issue a preliminary assessment notice showing in detail the facts, jurisprudence, and law on which the assessment is based.[77] The taxpayer is given 15 days from receipt of the pre-assessment notice to respond.[78] If the taxpayer fails to respond, he or she will be considered in default, and a formal letter of demand and assessment notice will be issued.[79]

The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void.[80] The taxpayer or the authorized representative may administratively protest the formal

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[72] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[73] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[74] Revenue Reg. No. 12-99, Sec. 3.1.1 provides that in case of default, the "Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office" shall endorse the case to the Assessment Division.

[75] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[76] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[77] BIR Revenue Reg. No. 12-99, Sec. 3.1.2.

[78] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[79] BIR Revenue Reg. No. 12-99, Sec. 3.1.1.

[80] BIR Revenue Reg. No. 12-99, Sec. 3.1.4.

letter of demand and assessment notice within 30 days from receipt of the notice.[81]

**II**

The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory.[82] The law requires that the bases be reflected in the formal letter of demand and assessment notice.[83] This cannot be presumed.[84] Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory.[85] The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.[86]

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.[87] Between the power of the State to tax and an individual's

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[81] BIR Revenue Reg. No. 12-99, Sec. 3.1.4.

[82] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/apri12016/215534.pdf> [Per *J.* Mendoza, Second Division];*Commissioner of Internal Revenue v. Enron Subic Power Corp.*, 596 Phil. 229 (2009) [Per *J.* Corona, First Division]; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils), Inc.*, 738 Phil. 335 (2014) [Per *J.* Peralta, Third Division].

[83] *Commissioner of Internal Revenue v. Enron Subic Power Corp.*, 596 Phil. 229, 235 (2009) [Per *J.* Corona, First Division].

[84] *Id*.

[85] *Id*.

[86] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/215534.pdf> 14 [Per *J.* Mendoza, Second Division].

[87] *Id*.

right to due process, the scale favors the right of the taxpayer to due process.[88]

The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary.[89] Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.[90]

*Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[91] held that a final assessment notice that only contained a table of taxes with no other details was insufficient:

> In the present case, a mere perusal of the [Final Assessment Notice] for the deficiency EWT for taxable year 1994 *will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis.* Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at.[92]

Any deficiency to the mandated content of the assessment or its process will not be tolerated.[93] In *Commissioner of Internal*

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[88] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 187 (2010) [Per *J.* Mendoza, Second Division].

[89] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/215534.pdf> 12 [Per *J.* Mendoza, Second Division].

[90] *Id.*, *citing Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 186-190 (2006) [Per *C.J.* Panganiban, First Division].

[91] 738 Phil. 335 (2014) [Per *J.* Peralta, Third Division].

[92] *Id.* at 349-350.

[93] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/apri12016/215534.pdf> [Per *J.* Mendoza, Second Division],*citing Commissioner of Internal Revenue v. United Salvage and Towage (Phils), Inc.*, 738 Phil. 335 (2014) [Per *J.* Peralta, Third Division],*in turn citing Commissioner of Internal Revenue v. Enron Subic Power Corp.*, 596 Phil. 229 (2009) [Per *J.* Corona, First Division].

*Revenue v. Enron*,[94] an advice of tax deficiency from the Commissioner of Internal Revenue to an employee of Enron, including the preliminary five (5)-day letter, were not considered valid substitutes for the mandatory written notice of the legal and factual basis of the assessment.[95] The required issuance of deficiency tax assessment notice to the taxpayer is different from the required contents of the notice.[96] Thus:

> *The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the [National Internal Revenue Code] and [Revenue Regulations] No. 12-99 would be rendered nugatory.* The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.[97] (Emphasis supplied)

However, the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied.[98] To emphasize, the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest.[99]

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*,[100] substantial compliance with Section 228 of the

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[94] 596 Phil. 229 (2009) [Per *J*. Corona, First Division].

[95] *Id*. at 235-236.

[96] *Id*. at 236.

[97] *Id*.

[98] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/215534.pdf> 14-15 [Per *J*. Mendoza, Second Division].

[99] *Id*.

[100] G.R. No. 193100, December 10, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/193100.pdf> [Per *J*. Villarama, Jr., Third Division].

National Internal Revenue Code is allowed, provided that the taxpayer would be later apprised in writing of the factual and legal bases of the assessment to enable him or her to prepare for an effective protest.[101] Thus:

> Although the [Final Assessment Notice] and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated.[102]

A final assessment notice provides for the amount of tax due with a demand for payment.[103] This is to determine the amount of tax due to a taxpayer.[104] However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest.[105] To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that

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[101] *Id*. at 12.

[102] *Id*.

[103] *Commissioner of Internal Revenue v. Menguito*, 587 Phil. 234, 256 (2008) [Per *J*. Austria-Martinez, Third Division].

[104] *Tupaz v. Ulep*, 374 Phil. 474, 484 (1999) [Per *J*. Pardo, First Division].

[105] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/215534.pdf> 15 [Per *J*. Mendoza, Second Division].

taxpayers should be able to present their case and adduce supporting evidence."[106]

Respondent filed its income tax return in 1995.[107] Almost eight (8) years passed before the disputed final assessment notice was issued. Respondent pleaded prescription as its defense when it filed a protest to the Final Assessment Notice. Petitioner claimed fraud assessment to justify the belated assessment made on respondent.[108] If fraud was indeed present, the period of assessment should be within 10 years.[109] It is incumbent upon petitioner to clearly state the allegations of fraud committed by respondent to serve the purpose of an assessment notice to aid respondent in filing an effective protest.

**III**

The prescriptive period in making an assessment depends upon whether a tax return was filed or whether the tax return filed was either false or fraudulent. When a tax return that is neither false nor fraudulent has been filed, the Bureau of Internal Revenue may assess within three (3) years, reckoned from the date of actual filing or from the last day prescribed by law for filing.[110] However, in case of a false or fraudulent return with intent to evade tax, Section 222(a) provides:

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[106] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 190 (2006) [Per *C.J.* Panganiban, First Division].

[107] *Rollo*, p. 33.

[108] *Id.* at 34.

[109] TAX CODE, Sec. 222(a).

[110] TAX CODE, Sec. 203 provides:

Section 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be *assessed within three (3) years after the last day prescribed by law for the filing of the return*, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at *any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphasis supplied)

In *Aznar v. Court of Tax Appeals*,[111] this Court interpreted Section 332[112] (now Section 222[a] of the National Internal Revenue Code) by dividing it in three (3) different cases: first, in case of false return; second, in case of a fraudulent return with intent to evade; and third, in case of failure to file a return.[113] Thus:

Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely "falsity", "fraud" and "omission."[114]

This Court held that there is a difference between "false return" and a "fraudulent return."[115] A false return simply involves a "deviation from the truth, whether intentional or not" while a

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[111] 157 Phil. 510 (1974) [Per *J.* Esguerra, First Division].

[112] TAX CODE, Sec. 222(a) provides:

(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud or omission.

[113] *Aznar v. Court of Tax Appeals*, 157 Phil. 510 (1974) [Per *J.* Esguerra, First Division].

[114] *Id.* at 523.

[115] *Id.* at 523.

fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due."[116]

Fraud is a question of fact that should be alleged and duly proven.[117] "The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed."[118] Fraud entails corresponding sanctions under the tax law. Therefore, it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice.

During the proceedings in the Court of Tax Appeals First Division, respondent presented its President, Domingo C. Juan Jr. (Juan, Jr.), as witness.[119] Juan, Jr. testified that respondent was in its pre-operating stage in 1995.[120] During that period, respondent "imported equipment and distributed them for market testing in the Philippines without earning any profit."[121] He also confirmed that the Final Assessment Notice and its attachments failed to substantiate the Commissioner's allegations of fraud against respondent, thus:

> More than three (3) years from the time petitioner filed its 1995 annual income tax return on April 11, 1996, respondent issued to petitioner a [Final Assessment Notice] dated March 17, 2004 for the year 1995, pursuant to the Letter of Authority No. 00002953 dated May 13, 2002. The attached Details of discrepancy containing the assessment for income tax (IT), value-added tax (VAT) and documentary stamp tax (DST) as well as the Audit Result/Assessment Notice *do not impute fraud on the part of petitioner*. Moreover, it was obtained on information and documents illegally obtained by a

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[116] *Id*.

[117] *Commissioner of Internal Revenue v. Ayala Securities Corp.*, 162 Phil. 287, 296 (1976) [Per *J*. Esguerra, First Division].

[118] *Commissioner of Internal Revenue v. Air India*, 241 Phil. 689, 698 (1988) [Per *J*. Gancayco, First Division].

[119] *Rollo*, p. 37, Court of Tax Appeals *En Banc* Decision.

[120] *Id*.

[121] *Id*.

[Bureau of Internal Revenue] informant from petitioner's accountant Elnora Carpio in 1996.[122] (Emphasis supplied)

Petitioner did not refute respondent's allegations. For its defense, it presented Socrates Regala (Regala), the Group Supervisor of the team, who examined respondent's tax liabilities.[123] Regala confirmed that the investigation was prompted by a tip from an informant who provided them with respondent's list of sales.[124] He admitted[125] that the gathered information did not show that respondent deliberately failed to reflect its true income in 1995.[126]

**IV**

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[127] Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects.[128] An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within

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[122] *Id*.

[123] *Id*. at 38.

[124] *Id*. at 39.

[125] *Id*. Regala admitted that "[i]n their memorandum report, they recommended the filing of a civil case for the collection of petitioner's tax liabilities and a criminal case, for its failure to declare in its ITR for the year 1995 the income derived from its cited sales. Thus, the BIR's filing of a criminal case against petitioner with the Department of Justice (DOJ). The witness confirmed that the gathered information *did not indicate that petitioner's failure to state in its ITR its income and sales for the year 1995 was deliberate*. The instant case was precipitated by the issuance of the Letter of Authority on May 13, 2002." (Emphasis supplied)

[126] *Id*.

[127] *Commissioner of Internal Revenue v. Menguito*, 587 Phil. 234, 256 (2008) [Per *J*. Austria-Martinez, Third Division].

[128] *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, 368 Phil. 714, 722 (1999) [Per *J*. Panganiban, Third Division].

a period prescribed.[129] Its main purpose is to determine the amount that a taxpayer is liable to pay.[130]

A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice."[131] A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.[132]

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."[133] This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]"[134] Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."[135]

The disputed Final Assessment Notice is not a valid assessment.

First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and

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[129] *Tupaz v. Ulep*, 374 Phil. 474, 484 (1999) [Per *J.* Pardo, First Division]; *Commissioner of Internal Revenue v. Menguito*, 587 Phil. 234, 256 (2008) [Per *J.* Austria-Martinez, Third Division].

[130] *Tupaz v. Ulep*, 374 Phil. 474, 484 (1999) [Per *J.* Pardo, First Division].

[131] *Commissioner of Internal Revenue v. Menguito*, 587 Phil. 234, 256 (2008) [Per *J.* Austria-Martinez, Third Division].

[132] *Id*.

[133] *Id*.

[134] *Id*.

[135] *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, 368 Phil. 714, 722 (1999) (Per *J.* Panganiban, Third Division].

fixed."[136] Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*[137] (Emphasis Supplied)

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.[138] Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice*.[139] (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.[140]

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

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[136] *Adamson v. Court of Appeals*, 606 Phil. 27, 44 (2009) [Per *C.J.* Puno, First Division].

[137] *Rollo*, p. 13, Petition for Review.

[138] *Id.* at 45, Court of Tax Appeals *En Banc* Decision.

[139] *Id.*

[140] *Id.* at 46.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement.[141] It is not a mere formality.[142] Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[143]

The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the "alleged deficiency income tax, value-added tax and documentary stamp tax amounting to ₱10,647,529.69, inclusive of surcharges and interest"[144] for lack of due process. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect.[145]

Taxes are the lifeblood of government and should be collected without hindrance.[146] However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure."[147]

The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to

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[141] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/198677.pdf> 9 [Per Justice Peralta, Third Division].

[142] *Id*.

[143] *Id*.

[144] *Rollo*, p. 47, Court of Tax Appeals *En Banc* Decision.

[145] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/198677.pdf> 9 [Per Justice Peralta, Third Division].

[146] *Id*. at 9-10, Petition for Review, *citing Commissioner of Internal Revenue v. Algue, Inc*., 241 Phil. 829 (1988) [Per *J*. Cruz, First Division].

[147] *Id*.

due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.

**WHEREFORE**, the Petition is **DENIED**. The Decision of the Court of Tax Appeals En Banc dated July 14, 2014 and Resolution dated December 16, 2014 in CTA EB Case No. 970 (CTA Case No. 7160) are hereby **AFFIRMED**.

**SO ORDERED.**

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

*Mendoza, J.*, on official leave.

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**FIRST DIVISION**

[G.R. No. 182201. November 14, 2016]

**UNIVERSAL INTERNATIONAL INVESTMENT (BVI) LIMITED,** *petitioner, vs.* **RAY BURTON DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 185815. November 14, 2016]

**UNIVERSAL INTERNATIONAL INVESTMENT (BVI) LIMITED,** *petitioner, vs.* **RAY BURTON DEVELOPMENT CORPORATION,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; ACTIONS; NATURE OF ACTION; THE CAPTION SHOULD NOT BE THE GOVERNING FACTOR, BUT RATHER THE ALLEGATIONS CONTAINED IN THE PLEADING, THAT SHOULD DETERMINE THE NATURE OF THE ACTION.—** [W]e

hold that the CA did not exceed its jurisdiction when it sustained the BOC Resolution dated 29 June 2004 granting the discharge, even if not through a motion for reconsideration but via a second Motion for Partial Discharge. The second Motion for Partial Discharge may very well take the place of a motion for reconsideration, considering that it also sought the reconsideration of the BOC's failure to resolve the first Motion for Partial Discharge. It is basic that the caption should not be the governing factor, but rather the allegations contained in the motion or pleading, that should determine the nature of the action.

**2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; IF THE TERMS OF THE CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL.—** Universal asserts that because RBDC failed to transfer possession of the properties, and their CCTs, petitioner-buyer is entitled to damages by way of the interest specified in Section 6 of the Contracts to Sell x x x. If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. In this case, the very words of Section 6 of the Contracts to Sell refer only to situations of (1) force majeure or (2) substantial delay in the condominium project, Elizabeth Place. Universal is not alleging either of these two circumstances. Rather, it is claiming damages for RBDC's failure to deliver possession of the condominium units, parking slots, and their CCTs. Hence, Section 6 of the Contracts to Sell is clearly inapplicable to petitioner's cause of action.

**3. ID.; ID.; ID.; DAMAGES; WHEN GRANTED.—** Universal reiterates its claims for actual damages based on the losses it suffered amounting to ₱19,646,483.72. x x x In effect, petitioner seeks to recover the depreciation costs **and** the additional sums it paid to obtain the release of the properties from China Bank. x x x To adjudicate petitioner's claims, this Court looks into the fundamental elements in recovering damages. x x x [I]n order to recover damages, the claimant must prove (1) an injury or a wrong sustained (2) as a consequence of a breach of contract or tort and (3) caused by the party chargeable with a wrong. As Universal claims actual damages, it is only entitled to such pecuniary loss as it has duly proved.

**4. ID.; ID.; ID.; ID.; COMPENSATORY DAMAGES; TO BE AWARDED, IT IS NECESSARY THAT THE ACTUAL AMOUNT OF LOSS BE PROVED WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF AND THE BEST EVIDENCE OBTAINABLE BY THE INJURED PARTY.—** Petitioner cites Article 2200 of the Civil Code to support its claim for losses equivalent to a ₱19,646,483.72 reduction in the market value of the condominium units. This provision speaks of indemnification for *lost profits* that would have been obtained by the claimant if not for the injury caused by the erring party. In the present case, however, Universal does not even allege that it is marketing the properties for profit, either by lease or by sale. Thus, Article 2200 cannot serve as the proper basis for recovering the value of the condominium units. In the alternative, assuming that the condominium units were utilized for profit, this Court finds no iota of evidence as to the *amount* of profits that Universal would have earned from the properties. To justify a grant of compensatory damages, it is necessary that the actual amount of loss to be proved with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. We cannot consider as unearned profits the ₱19,646,483.72 difference between the total contract price and the present market value of the properties. That conclusion presupposes that Universal has (1) successfully marketed the properties (2) at a favorable retail price that would allow it to recover its original investment.

**5. ID.; ID.; ID.; ID.; CLAIMS FOR DAMAGES MUST BE BASED ON GROUNDS SUPPORTED BY THE CONTRACT.—** Both parties entered into a contract to sell, not a contract of sale. In the former agreement, ownership is reserved by the vendor. Upon full payment of the purchase price, the resulting duties of RBDC as vendor are found in Section 3 of the subject agreement x x x. RBDC only has two obligations specified by Section 3: (1) to deliver deeds of absolute sale; and (2) to deliver the corresponding CCTs. Contrary to the demands of petitioner, respondent did not have any contractual obligation to surrender possession of the properties. Neither did the latter have to cause the transfer of the CCTs to petitioner's name. x x x Universal does not base its claim for damages on grounds supported by the Contracts to Sell. Instead, it argues that respondent's failure to transfer the CCTs and convey possession of the properties

caused the depreciation of their market value. Hence, this Court rules that petitioner's premise for its recovery of depreciation losses is misplaced.

**6. ID.; ID.; ID.; ID.; TO BE GRANTED, THE ACT OR OMISSION OF RESPONDENT MUST BE THE PROXIMATE CAUSE OF THE LOSS SUSTAINED BY THE CLAIMANT; PROXIMATE CAUSE, DEFINED.—** The act or omission of respondent must have been the proximate cause, as distinguished from the remote cause, of the loss sustained by the claimant. Proximate cause — determined by a mixed consideration of logic, common sense, policy, and precedent — is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. Applying that definition to the case at bar, Universal must demonstrate that the breaches of RBDC caused the depreciation of the condominium units; or conversely, that had respondent performed its contractual obligations, the properties would not have diminished in value. Universal does not specify how RBDC's non-delivery of the properties resulted in the depreciation of their value. Neither does petitioner prove that had it possessed the properties, it could have avoided their decline in the real estate market.

**7. ID.; ID.; ID.; DEFAULT; WHEN MAY A DEBTOR BE HELD IN DEFAULT.—** [R]espondent had two obligations specified in Section 3 of the Contracts to Sell: (1) to deliver the deeds of absolute sale; and (2) to give the corresponding CCTs. RBDC admittedly failed to perform these obligations, but invoked the excuse that Universal had defaulted on the payment of transfer charges under Section 5(a) of the Contracts to Sell. x x x The excuse given by RBDC deserves scant consideration. In order that the debtor may be held to be in default, the following requisite conditions must be present: (1) the obligation is demandable and already liquidated; (2) the debtor delays performance of the obligation; and (3) the creditor requires the performance judicially or extrajudicially. Nowhere in the records does this Court find a demand from RBDC for Universal to pay any sum under the above provision. x x x This Court does not consider Universal to have defaulted on the payment of transfer charges. x x x We appreciate that the charges under Section 5(a) are sums to be expended for the titling of the properties. However,

the obligation to pay these charges — specifically to the seller — arises only "in the event" that the latter elects to handle the titling of the properties. In this case, RBDC has not averred that it has undertaken that responsibility. Consequently, Universal cannot be obliged to pay the transfer charges to respondent. RBDC cannot demand performance by Universal without offering to comply with its own prestation. RBDC is then left with no just reason not to perform its obligations to Universal. As early as February 1999, respondent should have (1) executed deeds of absolute sale; and (2) given the CCTs of the properties to petitioner. RBDC has not at all complied with its duties despite the fact that Universal has already fully paid the purchase price of the properties.

**8. ID.; ID.; ID.; DAMAGES; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT THE AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVEN WITH CERTAINTY.—** Universal failed to prove its claims for actual damages, both as regards the liquidated damages under Section 6 of the Contracts to Sell and the alleged losses amounting to ₱19,646,483.72. Nonetheless, petitioner may still be awarded damages in the concept of temperate or moderate damages. Temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty. In this case, there is no doubt that Universal sustained pecuniary loss, albeit difficult to quantify, arising from RBDC's failure to execute deeds of absolute sale and to deliver the CCTs of the properties. Had RBDC fulfilled these obligations, its transaction with Universal under the Contracts to Sell would have been complete. After an absolute deed of sale has been signed by the parties, notarized and hence, turned into a public instrument, then the delivery of the real property is deemed made by the seller to the buyer. Consequently, the buyer would have right away enjoyed the possession of the realties. Likewise, the titles thereto would have permitted the use of the properties as collateral for further investments. Universal lost all of these opportunities after RBDC failed to perform the latter's duties as a seller. Hence, this Court is empowered to calculate moderate damages, rather than let the aggrieved party suffer without redress from RBDC's wrongful act.

**9. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; MAY BE AWARDED IF THE DEFENDANT ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.—** Exemplary damages are corrective damages imposed by way of example or correction for the public good. The grant thereof is intended to serve as a deterrent to or negative incentive for curbing socially deleterious actions. Relevant to this case, this Court highlights that the State has an avowed policy to protect innocent buyers in real estate transactions. Article 2232 of the Civil Code of the Philippines provides that in contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In this case, we find that respondent indeed acted in that manner when, despite demand for and full payment of the properties, it refused to execute deeds of absolute sale and release the CCTs to petitioner without any sound basis.

**APPEARANCES OF COUNSEL**

*Romulo Mabanta Buenaventura Sayoc & Delos Angeles* for petitioner.

*Paul Bernard T. Irao* for respondent.

**D E C I S I O N**

**SERENO, *C.J.*:**

At bench is a review of the damage claims for contractual breach sought by petitioner Universal International Investment (BVI) Limited (Universal) against respondent Ray Burton Development Corporation (RBDC). In G.R. No. 185815, Universal contests the Court of Appeals (CA) Decision and Resolution rejecting its demand for damages against RBDC.[1] Petitioner seeks damages for non-delivery of the properties it

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[1] *Rollo* (G.R. No. 185815), pp. 64-86. The CA Decision dated 31 July 2007 and Resolution dated 11 December 2008 in CA-G.R. SP No. 89468 were penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe (both now members of this Court) concurring.

had purchased from respondent and the titles thereto. In G.R. No. 182201, Universal assails the CA Decision and Resolution, which affirmed the discharge of one of respondent's attached properties meant to secure petitioner's claims for damages.[2]

**FACTUAL ANTECEDENTS**

RBDC owned and developed Elizabeth Place, a condominium located at H.V. De la Costa St., Salcedo Village, Makati City. On 18 October 1996, respondent and petitioner entered into separate Contracts to Sell[3] covering the purchase of 10 condominium units and 10 parking slots in the building. In February 1999, petitioner paid respondent the full purchase price of these properties amounting to ₱52,836,781.50.[4]

Universal issued a letter dated 23 August 2000 to RBDC demanding the cancellation of the sales transaction after the latter failed to deliver possession of the properties and reneged on its obligation to transfer the Condominium Certificates of Title (CCTs) to petitioner's name.[5] On 6 August 2001, respondent sent a letter to Universal informing the latter that the construction of the subject properties had been completed.[6] Several demand letters followed.[7]

RBDC ultimately failed to satisfy the demand of Universal to deliver the properties. Thereafter, petitioner discovered that the mother title to the lot of Elizabeth Place had been mortgaged to China Banking Corporation (China Bank) since 31 July 1991.[8] Petitioner found that a Mortgage Clearance from the Housing

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[2] *Rollo* (G.R. No. 182201), pp. 53-78. The CA Decision dated 25 June 2007 and Resolution dated 14 March 2008 in CA-G.R. SP No. 89578 were penned by Associate Justice Lucenito N. Tagle, with Associate Justices Amelita G. Tolentino and Sixto Marella, Jr. concurring.

[3] *Rollo* (G.R. No. 185815), pp. 88-343.

[4] *Id*. at 344-358.

[5] *Id*. at 1033.

[6] *Id*. at 412; dated 1 August 2001.

[7] *Id*. at 359-363.

[8] *Id*. at 364-379.

and Land Use Regulatory Board (HLURB) had been issued on 17 October 1996[9] and the securities foreclosed by China Bank on 18 May 2001.[10]

**PROCEEDINGS BEFORE THE HLURB**

On 29 May 2002, Universal filed with the Expanded National Capital Region Field Office (ENCRFO) of the HLURB a Complaint for Specific Performance or Rescission of Contract and Damages.[11] To secure its claims, petitioner moved for the issuance of a writ of preliminary attachment against the properties of RBDC. Universal imputed fraud to respondent for concealing the mortgage with China Bank. On 3 June 2002, a Writ of Attachment was issued by the ENCRFO.[12]

Universal sought the delivery of (1) the condominium units and (2) their CCTs. In the event that delivery were to be proven impossible, it prayed for the rescission of the Contracts to Sell with a refund of the purchase price plus the penalty interest stipulated under Section 6 thereof. The contracts provide for a 1.5% monthly interest on the total purchase price, computed from the date of cancellation of the sale until full refund of the payments.

RBDC countered[13] that Universal could not rightly demand delivery, for the latter had yet to pay transfer charges under the Contracts to Sell. In the alternative, respondent claimed that it had already delivered the properties when it sent a letter to petitioner on 6 August 2001.

As regards the CCTs, RBDC argued that petitioner should demand these from China Bank. The CA summarized that contention of respondent in this wise:[14]

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[9] *Id*. at 382.

[10] *Id*. at 1575; Memorandum of respondents, p. 14.

[11] *Id*. at 383-393; dated 21 May 2002.

[12] *Id*. at 394-395; issued by Jesse A. Obligacion, Regional Director of the ENCRFO.

[13] *Id*. at 396-411; Answer dated 25 June 2002.

[14] *Id*. at 67; CA Decision dated 31 July 2007, p. 4.

Moreover, RBDC claims that it was impeded from releasing the titles of Elizabeth Place to the deserving buyers because Chinabank had illegally foreclosed the mortgage over Elizabeth Place; that in fact, RBDC had instituted a case for delivery of titles before the HLURB entitled "*Ray Burton Development Corp. versus China Banking Corp*." docketed as HLURB REM 121401-11726; **and that in a *Judgment Upon Compromise* dated August 1, 2002, HLURB directed Chinabank "to release the titles of all units in Elizabeth Place that are now fully paid and those that will in the future be fully paid to their respective buyers irrespective of who the seller is."** RBDC asserted that Universal should instead direct its claim for delivery of the titles of the properties to Chinabank. (Emphasis supplied)

On 25 March 2003, the ENCRFO issued a Decision[15] in favor of Universal. The former found that petitioner had completed the payment of the total contract price of ₱52,836,781.50 in February 1999. At that point, said the ENCRFO, the reciprocal obligation of respondent to deliver possession of the properties and their CCTs became due and demandable.

On 12 May 2003, RBDC filed a Petition for Review[16] before the Board of Commissioners (BOC) of the HLURB. Respondent also moved for the partial discharge[17] of one of its attached properties: the lot in Lapu-Lapu City with Transfer Certificate of Title (TCT) No. T-29726.

RBDC reiterated its arguments below. Universal likewise echoed its earlier assertions, but additionally claimed that respondent's Petition for Review lacked the appeal bond needed to perfect an appeal.[18]

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[15] *Id*. at 450-456; The Decision docketed as HLURB Case No. REM-052902-11917 was penned by Housing and Land Use Arbiter Atty. Joselito F. Melchor.

[16] *Id*. at 457-485; dated 12 May 2003.

[17] *Id*. at 209-212; dated 16 May 2003.

[18] *Id*. at 486-504; Opposition to the Petition for Review dated 10 June 2003.

The BOC did not dismiss respondent's Petition for Review. Instead, on 10 October 2003, it issued an Order[19] directing the remand of the case to the ENCRFO so that the latter could include China Bank in the proceedings. Universal moved for reconsideration, but to no avail.[20]

The BOC did not rule upon the motion of RBDC for the discharge of its Lapu-Lapu City property. Therefore, respondents filed a second Motion for Partial Discharge.[21] In its Resolution dated 29 June 2004, the BOC allowed the discharge of the Lapu-Lapu City property owned by respondent, since the latter was willing to put up a counterbond.[22]

**PROCEEDINGS BEFORE THE OP**

Universal successfully appealed its case before the Office of the President (OP).[23] In its Decision dated 29 October 2004,[24] the OP reversed the ruling of the BOC and held that Universal had a right to rescind the Contracts to Sell, as well as to refund the purchase price of the properties with the liquidated damages specified in Section 6 of the contracts. Nonetheless, the OP maintained the validity of the discharge of the Lapu-Lapu City property.[25]

**PROCEEDINGS BEFORE THE CA**

Universal assailed the discharge of the Lapu-Lapu City property via a Petition for Certiorari under Rule 65 of the Rules of Court in CA-G.R. SP No. 89578.[26] In its Decision dated 25

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[19] *Id*. at 506-508; the Order docketed as HLURB Case No. REM-A-030519-0118 was penned by the Second Division of the HLURB.

[20] *Id*. at 509-522; Motion for Reconsideration dated 5 November 2003.

[21] *Id*. at 548-556; dated 19 November 2003.

[22] *Id*. at 557-560; Resolution dated 29 June 2004.

[23] *Id*. at 561-562; Notice of Appeal dated 15 July 2004.

[24] *Id*. at 637-643.

[25] *Id*. at 691-693; Order dated 7 April 2005.

[26] *Rollo* (G.R. No. 182201), pp. 449-473; Petition for *Certiorari* dated 10 October 2005.

June 2007 and Resolution dated 14 March 2008, the CA dismissed the action for lack of merit. Anent the main controversy involving the non-delivery of the condominium units and parking slots, RBDC filed a Petition for Review[27] under Rule 43 of the Rules of Court in CA-G.R. SP No. 89468. In both proceedings, the parties repeated their arguments *a quo*.

**During the pendency of the case before the CA, Universal manifested[28] that China Bank had released the subject properties, and that petitioner had already obtained their CCTs on 5 January 2005.**

On account of this supervening event, RBDC moved that this case be considered moot and academic.[29]

Universal responded that its acquisition of the condominium units from China Bank resulted only in the partial satisfaction of the former's claims against RBDC. Petitioner claimed before the CA that respondent must still pay for the damages specified in Section 6 of the Contracts to Sell on account of the latter's delayed delivery of the properties. Universal also claimed compensation for property losses amounting to ₱19,646,483.72, supposedly to cover the depreciation costs and expenses it had incurred for the release of the properties from China Bank.

In its Decision dated 31 July 2007, which was maintained in its Resolution dated 11 December 2008, the CA wholly denied Universal's entreaty for damages.

**PROCEEDINGS BEFORE THIS COURT**

The consolidated Petitions for Review on Certiorari filed by Universal under Rule 45 of the Rules of Court, docketed

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[27] *Rollo* (G.R. No. 185815), pp. 694-734; Petition for Review dated 10 May 2005.

[28] *Id*. at 1095-1101, 1120; Rejoinder with Manifestation re: Partial Satisfaction of Judgment dated 20 December 2005; Universal's Counter-Manifestation and Opposition dated 2 February 2006.

[29] *Id*. at 1103; Manifestation of Lack of Cause of Action with Motion to Declare Respondent in Indirect Contempt dated 12 January 2006.

as G.R. Nos. 182201 and 185815, collectively raise three points.[30]

***First***, Universal contends that the CA gravely erred when the latter sustained the OP's discharge of the Lapu-Lapu City property, notwithstanding the irregularities in the proceedings below.

***Second,*** Universal argues that because RBDC failed to attach an appeal bond when the latter elevated the ENCRFO Decision to the BOC, that ruling had become final and executory and can no longer be reviewed by the BOC, the OP, the CA, or this Court.

***Third***, petitioner claims that the CA gravely erred in refusing to award damages and property losses. Petitioner seeks damages on account of the contractual breaches of respondent consisting of the latter's failure to deliver the properties and to transfer their CCTs to the name of Universal. Petitioner also narrates that RBDC concealed the mortgage of the properties to China Bank.

RBDC stands by the validity of the partial discharge of its Lapu-Lapu City property. In the main, it denies committing any breach of contract against Universal. Absent any dereliction on its part, respondent claims that petitioner should not be awarded damages.[31]

**ISSUES**

Given the developments in this case, this Court adjudges that the main issues to be resolved are as follows:

I. Whether the CA incorrectly affirmed the discharge of the Lapu-Lapu City property of RBDC

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[30] *Rollo* (G.R. No. 182201), pp. 16-51; Petition for Review dated 8 May 2008. *Rollo* (G.R. No. 185815), pp. 9-62 and 1495-1546; Petition for Review dated 19 February 2009 and Memorandum dated 29 June 2010.

[31] *Rollo* (G.R. No. 182201), pp. 593-611; Comment dated 11 September 2008. *Rollo* (G.R. No. 185815), pp. 1370-1401 and 1562-1600; Comment dated 24 June 2009 and Memorandum dated 18 June 2010.

II. Whether the CA gravely erred in denying the demand of petitioner for the liquidated damages specified in Section 6 of the Contracts to Sell

III. Whether the CA committed a grievous error in not granting the claims of petitioner for losses amounting to ₱19,646,483.72

IV. Whether petitioner is entitled to damages on account of the contractual breaches committed by respondent

**RULING OF THE COURT**

At the outset, this Court outrightly rejects the argument of Universal regarding the failure of RBDC to attach an appeal bond when the latter elevated the ENCRFO Decision to the BOC for being moot and academic. To recall, the appealed ENCRFO Decision required RBDC to deliver the purchased properties and pay damages to Universal; and if that delivery was no longer possible, to refund the purchase price plus interests thereon.

The properties and the titles thereto were finally delivered to Universal on 5 January 2005. Hence, its only existing claim in this case is for damages, which an appeal bond does not secure under Section 3 (c), Rule XII of the 1996 HLURB Rules of Procedure.[32] Since interests, damages, and attorney's fees need not be covered by an appeal bond, that controversy has come to an end with no practical and effective relief to be given to petitioner.[33]

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[32] The provision reads:

SECTION 3. Contents of the Petition for Review –

x x x x

In addition, the appellant shall attach to the petition the following:

x x x x

c. In case of an award of a money judgment in the complainant's favor, an appeal bond satisfactory to the Board equivalent to the amount of the award excluding interests, damages and attorney's fees.

[33] *Ruiz v. Court of Appeals,* 164 Phil. 87 (1976).

***The Discharge of the Lapu-Lapu City Property***

Universal highlights the irregularities that supposedly attended the discharge of the Lapu-Lapu City property owned by RBDC. First, the BOC Order dated 10 October 2003, which did not rule upon the issue of the discharge, was improvidently modified by its Resolution dated 29 June 2004. The Order was modified upon respondent's filing of a second Motion for Partial Discharge, instead of a proper Motion for Reconsideration. Second, since the BOC had directed the remand of the case to the ENCRFO, the former lost the jurisdiction to order the discharge. Third, the discharge transpired without notice and hearing.

On the first infirmity, we hold that the CA did not exceed its jurisdiction when it sustained the BOC Resolution dated 29 June 2004 granting the discharge, even if not through a motion for reconsideration but via a second Motion for Partial Discharge. The second Motion for Partial Discharge may very well take the place of a motion for reconsideration, considering that it also sought the reconsideration of the BOC's failure to resolve the first Motion for Partial Discharge. It is basic that the caption should not be the governing factor, but rather the allegations contained in the motion or pleading, that should determine the nature of the action.[34]

As regards the second and the third irregularities, this Court finds no justification for the exercise of its discretionary power of appellate review. The CA, which heard the issues under the framework of a special civil action for certiorari, has thoroughly explained the purported irregularities. We quote with approval the following excerpt from the assailed CA Decision:[35]

> It is absurd to assume that the ENCRFO, a subordinate of the HLURB Board of Commissioners, is the only agency that can discharge the writ of attachment it previously issued. As the Board is the reviewing body of the entire HLURB, it definitely has the power to

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[34] *Sps. Munsalud v. National Housing Authority*, 595 Phil. 750 (2008).

[35] *Rollo* (G.R. No. 182201), pp. 66-67.

overturn, revise or modify the ruling handed down by its subordinate. To rule otherwise would render the appeal before the Board nugatory and irrelevant.

x x x x

As for the alleged lack of hearing, petitioner's filing of an Opposition to respondent's motion for partial discharge before the HLURB Board sufficiently satisfies said requirement. x x x.

***Universal's Claim for Liquidated Damages under Section 6 of the Contracts to Sell***

Proceeding to the main controversy of these consolidated cases, Universal asserts that because RBDC failed to transfer possession of the properties, and their CCTs, petitioner-buyer is entitled to damages by way of the interest specified in Section 6 of the Contracts to Sell, *viz:*

**SECTION 6. BREACH AND/OR VIOLATIONS OF THE CONTRACT.**

This agreement shall be deemed cancelled, at the option of the BUYER, in the event that SELLER, for the reasons of **force majeure**, decide not to continue with the Project **or** the Project has been **substantially delayed**. In such a case, the BUYER shall be entitled to refund all the payments made with **interest at one-and-a-half (1 ½) percent per month on the amount paid computed from the date of cancellation until the payments have been fully refunded.** Substantial delay is defined as six (6) months from date of estimated date of completion. The parties agree that the estimated date of completion shall be December 31, 1998. (Emphasis supplied)

RBDC counters that it cannot be considered in breach of the agreement, since Universal failed to pay the transfer charges. The CA agreed with respondent's reasoning and thus rejected petitioner's demand for liquidated damages. This Court concurs with the CA's rejection of liquidated damages, but for a different reason.

If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of

its stipulations shall control.[36] In this case, the very words of Section 6 of the Contracts to Sell refer only to situations of (1) force majeure or (2) substantial delay in the condominium project, Elizabeth Place.

Universal is not alleging either of these two circumstances. Rather, it is claiming damages for RBDC's failure to deliver possession of the condominium units, parking slots, and their CCTs. Hence, Section 6 of the Contracts to Sell is clearly inapplicable to petitioner's cause of action.

***The Demand of Universal to Recover Losses amounting to ₱19,646,483.72***

Universal reiterates its claims for actual damages based on the losses it suffered amounting to ₱19,646,483.72. This amount represents the depreciation between the ₱57,146,483.72 **purchase price** of the properties in 1996 and the ₱37,500,000 **market value** of the properties appraised at the time that petitioner obtained the titles from China Bank in 2005.[37]

Petitioner computes that the purchase price in 1996 totals ₱57,146,483.72, which is the summation of the following amounts: ₱52,836,781.50 total contract price; ₱770,613.68 condominium dues, ₱368,881.63 real estate taxes, and the ₱3,170,206.91 expenses paid to China Bank for the release of the properties. In effect, petitioner seeks to recover the depreciation costs **and** the additional sums it paid to obtain the release of the properties from China Bank. For lack of legal basis, the CA entirely rejected petitioner's claims for losses.

Universal now seeks refuge under Article 2200 of the Civil Code to justify its claim for damages:

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[36] CIVIL CODE OF THE PHILIPPINES, Article 1370.

[37] CA *rollo*, pp. 1350-1375; Valuation of CB Richard Ellis of Elizabeth Place Condominium dated 31 August 2006. Using the Market Value Approach, it opined that the market value of the 10 residential condominium units and 10 parking slots amounted to ₱37,500,000 as of 5 January 2005.

ARTICLE 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

To adjudicate petitioner's claims, this Court looks into the fundamental elements in recovering damages. In *MEA Builders Inc. v. Court of Appeals*,[38] We defined damages as follows:

In legal contemplation, the term "damages" is the sum of money which the law awards or imposes as a pecuniary compensation, a recompense or satisfaction for an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or a tortuous act.

Based on the above definition, in order to recover damages, the claimant must prove (1) an injury or a wrong sustained (2) as a consequence of a breach of contract or tort and (3) caused by the party chargeable with a wrong.[39] As Universal claims actual damages, it is only entitled to such pecuniary loss as it has duly proved.[40]

***Losses Sustained by Universal***

Petitioner cites Article 2200 of the Civil Code to support its claim for losses equivalent to a ₱19,646,483.72 reduction in the market value of the condominium units. This provision speaks of indemnification for *lost profits* that would have been obtained by the claimant if not for the injury caused by the erring party.[41] In the present case, however, Universal does not even allege that it is marketing the properties for profit, either by lease or by sale. Thus, Article 2200 cannot serve as the proper basis for recovering the value of the condominium units.

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[38] 490 Phil. 565, 577 (2005).

[39] *Garrido v. Dela Paz*, G.R. No. 183967, 11 December 2013.

[40] CIVIL CODE OF THE PHILIPPINES, Article 2199. "Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

[41] *Uy v. Puzon*, 169 Phil. 581 (1977).

In the alternative, assuming that the condominium units were utilized for profit, this Court finds no iota of evidence as to the *amount* of profits that Universal would have earned from the properties. To justify a grant of compensatory damages, it is necessary that the actual amount of loss to be proved with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party.[42]

We cannot consider as unearned profits the ₱19,646,483.72 difference between the total contract price and the present market value of the properties. That conclusion presupposes that Universal has (1) successfully marketed the properties (2) at a favorable retail price that would allow it to recover its original investment. In *National Power Corp. v. Philipp Brothers Oceanic, Inc.*,[43] this Court explained that in order to recover actual damages, the alleged unearned profits must not be conjectural or based on contingent transactions. Speculative damages are too remote to be included in an accurate estimate of damages.[44]

***Breach of Contract by RBDC***

Both parties entered into a contract to sell, not a contract of sale. In the former agreement, ownership is reserved by the vendor.[45] Upon full payment of the purchase price, the resulting duties of RBDC as vendor are found in Section 3 of the subject agreement, *viz:*

**SECTION 3. TITLE AND OWNERSHIP OF UNIT.**

a) Upon full payment of the BUYER of the above purchase price, including any and all payments as provided herein, and upon full compliance by the BUYER of all his obligation as contained in this contract, the SELLER shall deliver to the BUYER **a Deed of Absolute Sale** conveying its rights, interests and title to the UNIT and the

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[42] *Integrated Packaging Corp. v. Court of Appeals*, 388 Phil. 835 (2000).

[43] 421 Phil. 532 (2001).

[44] *Coca-Cola Bottlers, Phils., Inc. v. Roque*, 367 Phil. 493 (1999).

[45] *Go v. Pura V. Kalaw, Inc.*, 529 Phil. 150 (2006).

appurtenant undivided interest in the common areas of the Project, and the **corresponding Condominium Certificate of Title**. The BUYER shall give the SELLER reasonable time from date of completion of the Project to secure the title to the UNIT. A copy of the Deed of Absolute Sale is attached as Annex A. x x x. (Emphasis supplied)

RBDC only has two obligations specified by Section 3: (1) to deliver deeds of absolute sale; and (2) to deliver the corresponding CCTs. Contrary to the demands of petitioner, respondent did not have any contractual obligation to surrender possession of the properties. Neither did the latter have to cause the transfer of the CCTs to petitioner's name.

In *Chua v. Court of Appeals*,[46] we explained the nature and the incidents of a contract to sell as follows:

> In a contract to sell, the obligation of the seller to sell becomes demandable only upon the happening of the suspensive condition. In this case, the suspensive condition is the full payment of the purchase price by Chua. Such full payment gives rise to Chua's right to demand the **execution of the contract of sale.**
>
> It is **only upon the existence of the contract of sale** that the seller becomes obligated to transfer the ownership of the thing sold to the buyer.
>
> x x x x
>
> In the sale of real property, the seller is **not obligated to transfer in the name of the buyer a new certificate of title**, but rather to transfer ownership of the real property. There is a difference between transfer of the certificate of title in the name of the buyer, and transfer of ownership to the buyer. The buyer may become the owner of the real property even if the certificate of title is still registered in the name of the seller. (Emphasis supplied)

Universal does not base its claim for damages on grounds supported by the Contracts to Sell. Instead, it argues that respondent's failure to transfer the CCTs and convey possession of the properties caused the depreciation of their market value.

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[46] 449 Phil. 25, 45-46 (2003).

Hence, this Court rules that petitioner's premise for its recovery of depreciation losses is misplaced.[47]

***Proximate Cause of Universal's Losses***

The act or omission of respondent must have been the proximate cause, as distinguished from the remote cause, of the loss sustained by the claimant.[48] Proximate cause – determined by a mixed consideration of logic, common sense, policy, and precedent[49] – is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[50]

Applying that definition to the case at bar, Universal must demonstrate that the breaches of RBDC caused the depreciation of the condominium units; or conversely, that had respondent performed its contractual obligations, the properties would not have diminished in value.

Universal does not specify how RBDC's non-delivery of the properties resulted in the depreciation of their value. Neither does petitioner prove that had it possessed the properties, it could have avoided their decline in the real estate market. At most, it has only been able to show that with the ***passage of time***, its ₱57,146,483.72 investment in 1996 was reduced to ₱37,500,000 in 2005. Therefore, considering the dearth of proof of causality in this case, this Court cannot justly exact the supposed ₱19,646,483.72 depreciated value of the 10 condominium units and 10 parking slots from RBDC.

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[47] See *Bueno v. La Compania Minas de Carbon de Batan,* 5 Phil. 210 (1905).

[48] See *Manila Electric Co. v. Remonquillo,* 99 Phil. 117 (1956).

[49] *Land Bank of the Philippines v. Kho,* G.R. Nos. 205839 & 205840, 7 July 2016.

[50] *Ramos v. C.O.L. Realty Corp.,* 614 Phil. 169 (2009).

***Recovery from RBDC of Sums Paid by Universal to China Bank***

As mentioned above, Universal seeks to recover from RBDC the additional sums paid by the former to obtain the release of the properties from China Bank. Respondent counters that it should not be made to pay the ₱770,613.68 condominium dues, ₱368,881.63 real estate taxes, and ₱3,170,206.91 expenses, given that China Bank was the one obliged by the HLURB to release the condominium units.

We agree with RBDC. Respondent correctly argues that it is not chargeable for the alleged expense items. Clearly – and logically – the HLURB did not require any additional payment for the fully paid buyers of the condominium units. Hence, Universal should not have paid any additional amount to China Bank. In the final *Judgment Upon Compromise* dated 1 August 2002, the HLURB directed the bank to release the titles to all the units without qualification:[51]

> The affidavits of undertaking of the mortgagee bank are requirements in the issuance of a clearance to mortgage as provided for under Section 18 of Presidential Decree No. 957 for the protection of the buyers.
>
> It is clear from the affidavits that the mortgagee bank undertook to cancel/release the mortgage to fully paid units notwithstanding the non-payment of the total mortgage loan incurred by the mortgagor. The mortgagee bank has to abide by this undertaking.
>
> Moreover, Section 25 of Presidential Decree No. 957 substantially provides that the titles to fully paid condominium units should be secured and delivered to the buyers.
>
> Therefore, the China Banking Corporation should release the titles to all fully paid condominium units to the buyers whether they are its buyers or the buyers of Ray Burton Development Corporation or Mercantile Investment Company, Inc.

Given that the sums expended by Universal should not have been incurred in the first place, this Court finds no just reason

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[51] *Rollo* (G.R. No. 185815), pp. 441-442.

for petitioner to demand the payment of the expenses, association dues, and realty taxes from RBDC. Notably, as regards the payment of association dues and realty taxes, the Contracts to Sell provide that these shall not be shouldered by respondent seller.[52]

***Universal's Entitlement to Damages on Account of RBDC's Breaches***

As discussed, respondent had two obligations specified in Section 3 of the Contracts to Sell: (1) to deliver the deeds of absolute sale; and (2) to give the corresponding CCTs. RBDC admittedly failed to perform these obligations, but invoked the excuse that Universal had defaulted on the payment of transfer charges under Section 5(a) of the Contracts to Sell. The provision reads as follows:[53]

**SECTION 5. TAXES ASSESSMENTS AND EXPENSES.**

a) Documentary stamp taxes, registration fees, taxes and assessments on transfer of real properties and other necessary and incidental expenses and **all other forms of taxes as imposed by the government related to the acquisition of the property** as well as other expenses that may be incurred **in connection with the execution of the Absolute Deed of Sale and the conveyance/transfer of Title to the BUYER**, shall be for the sole account and responsibility of the BUYER.

**In the event** the SELLER agrees to handle the registration of the Deed of Sale and effect title transfer in the name of the BUYER, the amount of taxes, fees, and expenses covering the same shall be paid by the BUYER to the SELLER within five (5) days from receipt of the Notice of Completion and Delivery of the Unit issued by the SELLER. (Emphasis supplied)

The excuse given by RBDC deserves scant consideration. In order that the debtor may be held to be in default, the following requisite conditions must be present: (1) the obligation is demandable and already liquidated; (2) the debtor delays

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[52] *Id*. at 91-92; Contract to Sell dated 18 October 1996, Sections 5 and 7, pp. 5-6.

[53] *Id*. at 91; Contract to Sell dated 18 October 1996, p. 5.

performance of the obligation; and (3) the creditor requires the performance judicially or extrajudicially.[54]

Nowhere in the records does this Court find a demand from RBDC for Universal to pay any sum under the above provision. None of the letters of respondent to petitioner resembles a notice requiring the latter to tender any payment for government charges and expenses connected with the execution of the Deed of Absolute Sale or the transfer of titles. Moreover, there is no liquidated demand to speak of, as there is no itemized final computation.[55] All in all, this Court does not consider Universal to have defaulted on the payment of transfer charges.

Section 5(a) must be construed as a whole. Its first paragraph refers to the payment for (1) government-imposed taxes, fees, and expenses related to the acquisition of the property; and (2) expenses that may be incurred in connection with the execution of the Deeds of Absolute Sale and the conveyance or transfer of titles to the buyer.

The second paragraph of Section 5 specifies that in the event the seller handles the registration of the Deed of Absolute Sale and effects title transfer in the name of the buyer, then that is the time that the buyer would have to give the seller the payment for those transactions. Specifically, the buyer must tender payment within five days from receipt of the seller's notice of completion and delivery of the unit.

We appreciate that the charges under Section 5(a) are sums to be expended for the titling of the properties. However, the obligation to pay these charges – specifically to the seller – arises only "in the event" that the latter elects to handle the titling of the properties. In this case, RBDC has not averred

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[54] *Social Security System v. Moonwalk Development & Housing Corp.*, G.R. No. 73345, 7 April 1993, 221 SCRA 119.

[55] *Rollo* (G.R. No. 185815), pp. 1089-1091; letter dated 21 August 2001. This correspondence from Carol N. Co of RBDC to Mr. S.K. Tang of Universal stated the estimate of expenses related to the transfer of title and other charges. Both items contained the annotation "to be determined later."

that it has undertaken that responsibility. Consequently, Universal cannot be obliged to pay the transfer charges to respondent. RBDC cannot demand performance by Universal without offering to comply with its own prestation.[56]

RBDC is then left with no just reason not to perform its obligations to Universal. As early as February 1999, respondent should have (1) executed deeds of absolute sale; and (2) given the CCTs of the properties to petitioner. RBDC has not at all complied with its duties despite the fact that Universal has already fully paid the purchase price of the properties.

***Temperate Damages in lieu of Actual Damages***

As explained above, Universal failed to prove its claims for actual damages, both as regards the liquidated damages under Section 6 of the Contracts to Sell and the alleged losses amounting to ₱19,646,483.72.

Nonetheless, petitioner may still be awarded damages in the concept of temperate or moderate damages. Temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty.[57] In this case, there is no doubt that Universal sustained pecuniary loss, albeit difficult to quantify, arising from RBDC's failure to execute deeds of absolute sale and to deliver the CCTs of the properties.

Had RBDC fulfilled these obligations, its transaction with Universal under the Contracts to Sell would have been complete.[58] After an absolute deed of sale has been signed by the parties, notarized and hence, turned into a public instrument, then the delivery of the real property is deemed made by the seller to

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[56] ARTURO M. TOLENTINO, *CIVIL CODE OF THE PHILIPPINES*, VOL. IV, 109 (1991); see *Consolidated Industrial Gases, Inc. v. Alabang Medical Center*, 721 Phil. 155 (2013).

[57] *Canada v. All Commodities Marketing Corp.*, 590 Phil. 342 (2008).

[58] *Chua v. Court of Appeals*, 449 Phil. 25 (2003).

the buyer.[59] Consequently, the buyer would have right away enjoyed the possession of the realties. Likewise, the titles thereto would have permitted the use of the properties as collateral for further investments. Universal lost all of these opportunities after RBDC failed to perform the latter's duties as a seller.

Hence, this Court is empowered to calculate moderate damages, rather than let the aggrieved party suffer without redress from RBDC's wrongful act.[60]

The calculation of temperate damages is usually left to the sound discretion of the courts.[61] We observe the limit that in giving recompense, the amount must be reasonable, bearing in mind that the same should be more than nominal, but less than compensatory.[62] In jurisprudence, this Court has pegged temperate damages to an amount equivalent to a certain percentage of the actual damages claimed by the injured party.[63]

The plight of the petitioner in *Pacific Basin Securities Co., Inc. v. Oriental Petroleum*[64] is parallel to that of Universal. In that case, the petitioner was also not given transfer documents for the properties it had purchased, and the respondent unjustifiably refused to record the transfer of the ₱17,727,000 worth of shares purchased by the former. As a result, the petitioner

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[59] CIVIL CODE OF THE PHILIPPINES, Article 1498. "When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. x x x."

[60] *Spouses Hernandez v. Spouses Dolor,* 479 Phil. 593 (2004).

[61] *Bacolod v. People,* 714 Phil. 90 (2013).

[62] *International Container Terminal Services, Inc. v. Chua,* 730 Phil. 475 (2014).

[63] In *Dueñas v. Guce-Africa,* 618 Phil. 10 (2009), this Court specifically calculated that the temperate damages were equivalent to 20% of the original price of the subject of the breached contract. In *Iron Bulk Shipping Phil. Co. Ltd. v. Remington Industrial Sales Corp.*, 462 Phil. 694 (2003), we specified that 30% of the alleged cost of actual damages was reasonable enough for temperate damages.

[64] 558 Phil. 425 (2007).

therein was prevented from reselling the subject shares in the stock market. For that dereliction, this Court awarded the petitioner therein ₱1 million for temperate damages equivalent to 5% of the actual damages claimed.

Anent the failure to deliver the titles to a purchased property, *Government Service Insurance System v. Spouses Labung-Deang*[65] is instructive. Similar to petitioners herein, Spouses Labung-Deang were deprived by the bank of copies of the title to the property that they had purchased. Consequently, the spouses failed to mortgage it as security for a ₱50,000 loan that they could have utilized to renovate their house. As recompense, this Court awarded them ₱20,000 temperate damages equivalent to 40% of the amount of their alleged injury.

Aside from those two analogous cases, this Court has reviewed other cases involving the award of temperate damages for breaches of contract. We have considered the: (1) investment to be lost by the injured party;[66] (2) duration of suffering of the injured party;[67] and (3) urgent action undertaken by the party in breach to remedy the situation.[68] Thus, we take into account the following: (1) in 1999, Universal invested ₱52,836,781.50 for 10 condominium units and 10 parking slots of Elizabeth Place in Makati City; (2) Universal asked RBDC about the monthly rental rates of each of the properties, which turned out be in the range of ₱20,000 to ₱48,000;[69] (3) for six years, petitioner had no titles to or possession of the properties; and (4) RBDC could have easily executed deeds of absolute sale

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[65] 417 Phil. 662 (2001).

[66] *Adrian Wilson International Associates, Inc. v. TMX Philippines, Inc.*, 639 Phil. 335 (2010); *Canada v. All Commodities Marketing Corp.*, 590 Phil. 342 (2008); *College Assurance Plan v. Belfranlt Development, Inc.*, 563 Phil. 355 (2007).

[67] *Caritas Health Shield, Inc. v. MRL Cybertech Corp.*, G.R. Nos. 221651 & 221691, 11 July 2016.

[68] *Araneta v. Bank of America*, 148-B Phil. 124 (1971).

[69] *Rollo* (G.R. No. 185815), p. 1091; table of rates given to Universal on 27 July 2000.

as the templates of these contracts had already been attached to the Contracts to Sell.[70]

Having laid down all the circumstances obtaining in this case, this Court is of the view that an award for temperate damages equivalent to 15% of the ₱52,836,781.50 purchase value of the properties, or ₱7,925,517.23, is just and reasonable.

***Exemplary Damages and Attorney's Fees***

Since petitioner is entitled to temperate damages, then the courts may also examine the propriety of imposing exemplary damages on respondent.[71] Exemplary damages are corrective damages imposed by way of example or correction for the public good.[72] The grant thereof is intended to serve as a deterrent to or negative incentive for curbing socially deleterious actions.[73] Relevant to this case, this Court highlights that the State has an avowed policy to protect innocent buyers in real estate transactions.[74]

Article 2232 of the Civil Code of the Philippines provides that in contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In this case, we find that respondent indeed acted in that manner when, despite demand for and full payment of the properties,[75] it refused to execute deeds of absolute sale and release the CCTs to petitioner without any

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[70] *Id*. at 95-97. The last sentence of Section 3 (a) of the Contracts to Sell reads: "A copy of the Deed of Absolute Sale is attached as Annex A."

[71] CIVIL CODE OF THE PHILIPPINES, Article 2229. "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."

[72] *Zenith Insurance Corp. v. Court of Appeals,* 263 Phil. 1120 (1990).

[73] *Del Rosario v. Court of Appeals,* 334 Phil. 812 (1997).

[74] SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE, Presidential Decree No. 957 (1976); see *United Overseas Bank of the Phils., Inc. v. Board of Commissioners-HLURB,* G.R. No. 182133, 23 June 2015; *Casa Filipina Realty Corp. v. Office of the President,* 311 Phil. 170 (1995).

[75] *Republic Flour Mills Corp. v. Forbes Factors, Inc.,* 675 Phil. 599 (2011).

sound basis.[76] As already discussed, Universal's nonpayment of transfer charges does not even serve as a potent excuse for RBDC's refusal to execute deeds of absolute sale and to deliver the titles of the purchased properties.

Moreover, there was no impediment to RBDC's issuance of deeds of absolute sale. As the owner, it could have still sold the properties even if it mortgaged them to China Bank.[77] As for the CCTs, respondent need not cause their transfer to the name of petitioners. RBDC could have simply turned them over to Universal in 1999, two years prior the foreclosure of the securities by China Bank in 2001. To make matters worse, respondent did not categorically deny that it had failed to disclose to petitioner that the lot of Elizabeth Place had been mortgaged to China Bank prior the execution of the Contracts to Sell.[78] This Court holds that the totality of these circumstances justify the imposition of exemplary damages on RBDC.

In *Cantemprate v. CRS Realty Development Corporation*,[79] which is fairly akin to the case at bar, the developer did not deliver the titles to the buyers of the fully paid properties. For failing to comply with its unequivocal duty, this Court affirmed the HLURB's award of ₱30,000 exemplary damages and ₱20,000

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[76] *Metrobank v. Rosales*, 724 Phil. 66 (2014).

[77] *Ranjo v. Salmon*, 15 Phil. 436 (1910).

[78] SUBDIVISION AND CONDOMINIUM BUYER'S PROTECTIVE DECREE, Presidential Decree No. 957, Section 18 commands:

No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. **The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan.** The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof. (Emphasis supplied)

[79] 605 Phil. 574 (2009).

attorney's fees to each of the buyers. Considering that ruling vis-à-vis the dereliction of RBDC in the present case, which also involves the violation of a straightforward obligation to execute the deeds of absolute sale and to deliver the CCTs for the 10 condominium units and 10 parking slots, an award of ₱300,000 as exemplary damages is justified to set an example.

Given the award of exemplary damages, this Court likewise finds it just and equitable under the circumstances to award ₱200,000 as attorney's fees.[80] In addition, all damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this judgment until full payment.

**WHEREFORE**, premises considered, in G.R. No. 182201, the Court of Appeals Decision dated 25 June 2007 and Resolution dated 14 March 2008 in CA-G.R. SP No. 89578 are **AFFIRMED**. In G.R. No. 185815, the Court of Appeals Decision dated 31 July 2007 and Resolution dated 11 December 2008 in CA-G.R. SP No. 89468 are **AFFIRMED** with the **MODIFICATION** that ₱7,925,517.23 as temperate damages, ₱300,000 as exemplary damages, and ₱200,000 as attorney's fees are awarded to petitioner Universal International Investment (BVI) Limited. All damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this judgment until full payment.

**SO ORDERED.**

*Leonardo-de Castro, Peralta,*[*] and *Reyes,*[**] *JJ.,* concur.

*Caguioa, J.,* on leave.

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[80] CIVIL CODE OF THE PHILIPPINES, Article 2208. "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded; x x x x" ; see *PhilTranco Service Enterprises, Inc. v. Court of Appeals*, 340 Phil. 98 (1997); *Air France v. Carrascoso,* 124 Phil. 722 (1966).

[*] Designated additional member in lieu of Associate Justice Lucas P. Bersamin per raffle dated 28 September 2016, who concurred in the Court of Appeals Decision in CA-G.R. No. SP No. 89468.

[**] Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe per raffle dated 28 September 2016, who concurred in the Court of Appeals Decision in CA-G.R. No. SP No. 89468.

**SECOND DIVISION**

[G.R. No. 203284. November 14, 2016]

**NICOLAS S. MATUDAN,** *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and MARILYN[*] B. MATUDAN,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PSYCHOLOGICAL INCAPACITY; REQUISITES.—** The landmark case of *Santos v. Court of Appeals* taught us that psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. Thus, the incapacity "must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved." In this connection, the burden of proving psychological incapacity is on the petitioner, pursuant to *Republic v. Court of Appeals*, or the *Molina* case.

**2. ID.; ID.; ID.; ID.; THE COMPLETE FACTS SHOULD ALLEGE THE PHYSICAL MANIFESTATIONS WHICH ARE INDICATIVE OF PSYCHOLOGICAL INCAPACITY AT THE TIME OF THE CELEBRATION OF THE MARRIAGE.—** Indeed, "[w]hat is important is the presence of evidence that can adequately establish the party's psychological condition." "[T]he complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage." Petitioner's judicial affidavit and testimony during trial, however, fail to show gravity and juridical antecedence. While he complained that Marilyn lacked a sense of guilt and was involved in "activities defying social and moral ethics,"

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[*] Marlyn in some parts of the records.

and that she was, among others, irrational, irresponsible, immature, and self-centered, he nonetheless failed to sufficiently and particularly elaborate on these allegations, particularly the degree of Marilyn's claimed irresponsibility, immaturity, or selfishness. This is compounded by the fact that petitioner contradicted his own claims by testifying that he and Marilyn were happily married and never had a fight, which is why they begot four children; and the only reason for his filing Civil Case No. Q-08-62827 was Marilyn's complete abandonment of the marriage and family when she left to work abroad. x x x If any, petitioner's accusations against Marilyn are untrue, at the very least. At most, they fail to sufficiently establish the degree of Marilyn's claimed psychological incapacity. On the other hand, Maricel cannot be of help either. She was only two years old when Marilyn left the family. Growing up, she may have seen the effects of Marilyn's abandonment – such as the lack of emotional and financial support; but she could not have any idea of her mother's claimed psychological incapacity, as well as the nature, history, and gravity thereof. Just as well, Dr. Tayag's supposed expert findings regarding Marilyn's psychological condition were not based on actual tests or interviews conducted upon Marilyn herself; they are based on the personal accounts of petitioner. This fact gave more significance and importance to petitioner's other pieces of evidence, which could have compensated for the deficiency in the expert opinion which resulted from its being based solely on petitioner's one-sided account. But since these other pieces of evidence could not be relied upon, Dr. Tayag's testimony and report must fail as well.

**LEONEN, *J., dissenting opinion*:**

**CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PSYCHOLOGICAL INCAPACITY; THE SPOUSE'S ACT OF LEAVING THE CONJUGAL HOME WITHOUT CONTACTING THE FAMILY FOR THIRTY-ONE YEARS SHOWS A GRAVE AND INCURABLE ILLNESS, A PSYCHOLOGICAL INCAPACITY WARRANTING THE DISSOLUTION OF MARRIAGE; CASE AT BAR.—** A psychological evaluation should not be discounted if based on sources other than the patient. In psychiatry, it is accepted practice

to base a person's psychiatric history on collateral information. Ideally, the psychiatric history should "be based [on] the patient's own words from his or her point on view," the psychiatric history being a "record of [a] patient's life[.]" However, if the patient is not available, as in this case, information from other sources may be utilized. Dr. Tayag found that Marilyn was suffering from Narcissistic Personality Disorder with Antisocial Traits. The illness is marked by "negativistic attitude, passive resistance, [lack of] ability to assert [one's] opinions, and ... difficulty expressing [one's] feelings." x x x Dr. Tayag's expert testimony is consistent with the undisputed fact that Marilyn left the conjugal home and has not contacted her family since 1985. *Thirty-one years* of no contact with loved ones, to my mind, shows a grave and incurable illness, a psychological incapacity warranting the dissolution of Marilyn's marriage with Nicolas. Apart from failing to cohabit with her husband, Marilyn left while her children were still minors. Marilyn failed to comply with her essential obligations under the Family Code x x x. The totality of evidence presented here is more than sufficient to prove Marilyn's psychological incapacity. Nicolas and Marilyn's marriage is void under Article 36 of the Family Code. x x x The choice to stay in or leave a marriage is not for this Court, or the State, to make. The choice is given to the partners, with the Constitution providing that "[t]he right of spouses to found a family in accordance with their religious convictions and demands of responsible parenthood[.]" Counterintuitively, the State protects marriages if it allows those found to have psychological illnesses that render them incapable of complying with their marital obligations to leave the marriage. To force partners to stay in a loveless marriage, or a spouseless marriage as in this case, only erodes the foundation of the family. x x x The Constitution describes the family as "the basic *autonomous* social institution." To my mind, the Constitution protects the solidarity of the family *regardless of its structure.* Parties should not be forced to stay in unhappy or otherwise broken marriages in the guise of protecting the family. This avoids the reality that people fall out of love. There is always the possibility that human love is not forever. x x x For thirty-one (31) years, Nicolas has been alone without a spouse. There is no marriage to protect in this case. Whatever possibility to fix the marriage is obviously absent or, at best, improbable. To deny the Petition

of Nicolas is to require him to be condemned to a world that is not his. It is to ensure that he will live a life without the joy that marriage truly brings. It is to treat him as a ward.

**APPEARANCES OF COUNSEL**

*Walter T. Young* for petitioner.
*Office of the Solicitor General* for respondents.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certiorari*[1] seeks to set aside the January 31, 2012 Decision[2] and August 23, 2012 Resolution[3] of the Court of Appeals (CA) denying the Petition in CA-G.R. CV No. 95392 and the Motion for Reconsideration,[4] thus affirming the December 18, 2009 Decision[5] of the Regional Trial Court (RTC) of Quezon City, Branch 94, in Civil Case No. Q-08-62827.

***Factual Antecedents***

Petitioner Nicolas S. Matudan (petitioner) and respondent Marilyn B. Matudan (Marilyn) were married in Laoang, Northern Samar on October 26, 1976. They had four children.

In 1985, Marilyn left to work abroad. From then on, petitioner and the children lost contact with her; she had not been seen nor heard from again.

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[1] *Rollo*, pp. 7-13.

[2] *Id*. at 17-31; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Franchito N. Diamante.

[3] *Id*. at 14-16.

[4] CA *rollo*, pp. 97-101.

[5] *Id*. at 23-31; penned by Presiding Judge Roslyn M. Rabara-Tria.

Twenty-three years later, or on June 20, 2008, petitioner filed a Petition for Declaration of Nullity of Marriage,[6] docketed as Civil Case No. Q-08-62827 with the RTC of Quezon City, Branch 94. Petitioner alleged that before, during, and after his marriage to Marilyn, the latter was psychologically incapable of fulfilling her obligations as a wife and mother; that she consistently neglected and failed to provide petitioner and her children with the necessary emotional and financial care, support, and sustenance, and even so after leaving for work abroad; that based on expert evaluation conducted by Clinical Psychologist Nedy L. Tayag (Dr. Tayag), Marilyn's psychological incapacity is grave, permanent, and incurable; that petitioner's consent to the marriage was obtained by Marilyn through misrepresentation as she concealed her condition from him; and that Marilyn is "not ready for a lasting and permanent commitment like marriage"[7] as she "never (gave) him and their children financial and emotional support x x x and for being selfish through their six (6) years of cohabitation";[8] that Marilyn became "so despicably irresponsible as she has not shown love and care upon her husband, x x x and that she cannot properly and morally take on the responsibility of a loving and caring wife x x x."[9]

The Republic of the Philippines (Republic), through the Office of the Solicitor General, opposed the Petition.

The Quezon City Office of the City Prosecutor having determined that there is no collusion between the parties, proceedings were conducted in due course. However, trial proceeded in Marilyn's absence.

Apart from the testimonies of the petitioner, his daughter Maricel B. Matudan (Maricel), and Dr. Tayag, the following documents were submitted in evidence:

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[6] Records, pp. 1-4.

[7] *Id.* at 2.

[8] *Id.*

[9] *Id.*

1. Petitioner's Judicial Affidavit[10] (Exhibit "A") which was adopted as his testimony on direct examination;
2. The Judicial Affidavit[11] of Maricel (Exhibit "D"), which was adopted as part of her testimony on direct examination;
3. The Sworn Affidavit[12] of Dr. Tayag (Exhibit "B"), which was considered part of her testimony on direct examination;
4. Dr. Tayag's evaluation report entitled "A Report on the Psychological Condition of NICOLAS T. MATUDAN, the petitioner for Nullity of Marriage against respondent MARILYN BORJA-MATUDAN"[13] (Exhibit "C"); and
5. Other relevant evidence, such as petitioner's marriage contract/certificate and respective birth certificates of his children, and a Letter/Notice, with Registry Return Receipt, sent by Dr. Tayag to Marilyn requesting evaluation/ interview relative to petitioner's desire to file a petition for declaration of nullity of their marriage (Exhibits "E" to "G").

***Ruling of the Regional Trial Court***

On December 18, 2009, the RTC issued its Decision[14] dismissing the Petition in Civil Case No. Q-08-62827 on the ground that petitioner's evidence failed to sufficiently prove Marilyn's claimed psychological incapacity. It held, thus:

> Petitioner, his daughter Maricel Matudan and psychologist Nedy L. Tayag testified. Petitioner offered in evidence Exhibits "A" to "G" which were admitted by the Court.
>
> The State and the respondent did not present any evidence.

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[10] *Id*. at 44-45.

[11] *Id*. at 62-63.

[12] *Id*. at 46-50.

[13] *Id*. at 51-61.

[14] *Id*. at 113-122.

From the testimonial and documentary evidence of the petitioner, the Court gathered the following:

Petitioner and respondent were married on October 26, 1976 x x x. They begot four (4) children x x x. Petitioner and respondent lived together with their children. On June 25, 1985, petitioner asked respondent [sic] for permission to work and left the conjugal dwelling. Since then she was never heard of [sic]. Respondent never communicated with the petitioner and her children. Petitioner inquired from the relatives of the respondent but they did not tell him her whereabouts.

In his Affidavit which was considered as his direct testimony, petitioner claimed that respondent failed to perform her duties as a wife to him. Respondent never gave petitioner and their children financial and emotional support, love and care during their cohabitation. She was irresponsible, immature and exhibited irrational behavior towards petitioner and their children. She was self-centered, had no remorse and involved herself in activities defying social and moral ethics.

On cross-examination, petitioner testified that he and the respondent had a happy married life and they never had a fight. The only reason why he filed this case was because respondent abandoned him and their children.

Maricel Matudan was only two (2) years old when respondent left them. She corroborated the testimony of the petitioner that since respondent left the conjugal dwelling she never provided financial support to the family and never communicated with them.

Nedy L. Tayag, Psychologist, testified on the 'Report on the Psychological Condition of Nicolas Matudan' which she prepared (Exhibit "C"). She subjected petitioner to psychological test and interview. She likewise interviewed Maricel Matudan. She came up with the findings that petitioner is suffering from Passive-Aggressive Personality Disorder and respondent has Narcissistic Personality Disorder with Antisocial Traits. The features of petitioner's disorder are the following: negativistic attitude, passive resistance, lacks the ability to assert his opinions and has great difficulty expressing his feelings.

The root cause of his personality condition can be attributed to his being an abandoned child. At a young age, his parents separated and he was left in the custody of his paternal grandmother. He lacked

a support system and felt rejected. He developed a strong need for nurturance, love and attention and that he would do anything to attain such.

As for respondent, the manifestation of her disorder are as follows: Pre-occupation with pursuing matters that would make her happy; has a high sense of self-importance; wants to have her way and disregards her husband's opinions; lacks empathy; wants to have a good life.

Her personality condition is rooted on her unhealthy familial environment. She came from an impoverished family. Her parents were more pre-occupied with finding ways to make ends meet to such extent that they failed to give adequate attention and emotional support to their children.

Ms. Tayag further testified that the psychological condition of the parties are grave and characterized by juridical antecedence as the same already existed before they got married, their disorders having been in existence since their childhood years are permanent and severe.

The sole issue to be resolved is whether x x x respondent is psychologically incapacitated to perform her marital obligations under Article 36 of the Family Code.

Article 36 of the Family Code as amended, states:

> 'A marriage contracted by any party who at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.'

Article 68 of the same Code provides:

> 'The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.'

In the case of Leouel Santos vs. Court of Appeals, January 4, 1995, G.R. No. 112019, the Honorable Supreme Court held:

> 'Justice Alicia Sempio Dy, in her commentaries on the Family Code cites with approval the work of Dr. Gerardo Veloso a former Presiding Judge of the Metropolitan Marriage Tribunal

> of the Catholic Archdiocese of Manila x x x, who opines that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after the marriage; and it must be incurable or even if it were otherwise, the cure would be beyond the means of the party involved.
>
> For psychological incapacity however to be appreciated, the same must be serious, grave and 'so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.'x x x.
>
> In the case of Santos, it was also held that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.'

It must be emphasized that the cause of action of petitioner is the alleged psychological incapacity of the respondent. During the pre-trial, the sole issue raised is whether or not respondent is psychologically incapacitated to perform her marital obligations under Article 36 of the Family Code. The alleged personality disorder of the petitioner is clearly not an issue in this case.

Prescinding from the foregoing, the Court finds that the totality of the evidence adduced by petitioner has not established the requisites of gravity, juridical antecedence and incurability. Again, it must be emphasized that this petition was filed on the ground of the psychological incapacity of respondent and not the petitioner.

Respondent is said to be suffering from Narcissistic Personality Disorder with antisocial traits. The salient features of her disorder were enumerated by Nedy Tayag in her report as follows: pre-occupation with pursuing matters that would make her happy; has a high sense of self-importance; wants to have her way and disregards her husband's opinions; lacks empathy; wants to have a good life. Her personality disorder is considered permanent, grave and incurable. It has its root cause in her unhealthy familial environment during her early developmental years.

In petitions for declaration of marriage (sic), the testimony of the petitioner as to the physical manifestation of the psychological incapacity is of utmost importance. Unfortunately, petitioner's testimony particularly his affidavit which was considered as his direct examination contained only general statements on the supposed manifestations of respondent's incapacity. Respondent was described therein as irresponsible, immature, self-centered, lacks remorse, got involved with activities defying social and moral ethics. Petitioner however miserably failed to expound on these allegations. In fact during his cross-examination, he even contradicted the allegations in his petition and affidavit. He clearly stated that he had a happy marital relationship with the respondent and never had a fight with her (TSN, December 5, 2008, page 8).

Petitioner harped on the abandonment of respondent. He even admitted that this the [sic] only reason why he wants their marriage dissolved (TSN, December 5, 2008, page 9). Abandonment of spouse however is not psychological incapacity. It is only a ground for legal separation.

Petitions for declaration of nullity of marriage are *sui generis*, the allegations therein must be supported by clear and convincing evidence that would warrant the dissolution of the marriage bond. Absent such proof, the Court will uphold the validity of the marriage for 'the rule is settled that every intendment of the law or fact leans toward the validity of marriage, the indissolubility of the marriage bond.' (Sevilla v. Cardenas, G.R. No. 167684, July 31, 2006).

In a petition for declaration of nullity of marriage, the burden of proof to show the nullity of the marriage is on the petitioner.

WHEREFORE, premises considered, the instant petition is dismissed for insufficiency of evidence.

SO ORDERED.[15]

Petitioner moved to reconsider,[16] but in a May 12, 2010 Order,[17] the RTC held its ground reiterating its pronouncement that petitioner failed to demonstrate Marilyn's psychological

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[15] *Id*. at 114-121.

[16] *Id*. at 123-127, 130-136.

[17] *Id*. at 141-143.

incapacity, and that the petition is anchored merely on Marilyn's abandonment of the marriage and family, which by itself is not equivalent to psychological incapacity.

***Ruling of the Court of Appeals***

Petitioner filed an appeal before the CA, docketed as CA-G.R. CV No. 95392. However, in its assailed January 31, 2012 Decision, the CA instead affirmed the RTC judgment, declaring thus:

> Petitioner-appellant asserts that the RTC should not have denied the petition for declaration of nullity of his marriage to Marilyn x x x. He maintains that, contrary to the conclusion reached by the trial court, he was able to establish by the quantum of evidence required, the claimed psychological incapacity of his wife.
>
> The argument of Nicolas R. Matudan fails to persuade Us.
>
> Verily, instead of substantiating the alleged psychological incapacity of his wife, petitioner-appellant revealed during his cross examination that it was actually his wife's act of abandoning the family that led him to seek the nullification of their marriage. In fact, during his cross-examination, he readily admitted that they were happily married and that they never engaged in bickering with each other.
>
> x x x x
>
> Q: But how would you describe your marital relations [sic]? Were there moments that you were happy with your wife?
> A: Yes, ma'am, that is why we begot four children.
>
> COURT
>
> And so, you so you [sic] had a happy married life then?
>
> FISCAL
>
> I would presume that you had a happy married life, how come your wife just left you like that? Do you have any idea why your wife just left you like that?
>
> A: She did not communicate with us to tell her whereabouts.
>
> Q: Did you ever have a fight with your wife?
> A: None, ma'am.
>
> x x x x

COURT

> All right, you stated in this Affidavit that you are filing this case for the declaration of nullity of marriage because of the psychological incapacity of your wife, what do you mean by that?

WITNESS

> 'Pinabayaan lang kaming pamilya niya, hindi naman niya sinasabi kung saan siya hahanapin.' She did not inform us of her whereabouts.

COURT

> Is that the only reason why you want your marriage with her dissolved?

WITNESS

> Yes, your honor.

As correctly observed by the RTC, abandonment by a spouse, by itself, however, does not warrant a finding of psychological incapacity within the contemplation of the Family Code. It must be shown that such abandonment is a manifestation of a disordered personality which makes the spouse concerned completely unable to discharge the essential obligations of the marital state.

Indeed, the term 'psychological incapacity' to be a ground for the nullity of marriage under Article 36 of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of the marriage. Psychological incapacity must refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage.

In *Republic v. Court of Appeals and Rorodel Olaviano Molina*, the following definitive guidelines were laid down in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code:

> (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.

(3) The incapacity must be proven to be existing at 'the time of the celebration' of the marriage.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.

These Guidelines incorporate the basic requirements established in *Santos v. Court of Appeals* that psychological incapacity must be characterized by: (a) gravity; (b) juridical antecedence; and (c) incurability. These requisites must be strictly complied with, as the grant of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

Using the above standards, We find the totality of the petitioner-appellant's evidence insufficient to prove that the respondent-appellee is psychologically unfit to discharge the duties expected of her as a wife.

Just like his own statements and testimony, the assessment and finding of the clinical psychologist cannot be relied upon to substantiate the petitioner-appellant's theory of the psychological incapacity of his wife.

It bears stressing that Marilyn never participated in the proceedings below. The clinical psychologist's evaluation of the respondent-appellee's condition was based mainly on the information supplied by her husband, the petitioner, and to some extent from their daughter, Maricel. It is noteworthy, however, that Maricel was only around two (2) years of age at the time the respondent left and therefore cannot be expected to know her mother well. Also, Maricel would not have been very reliable as a witness in an Article 36 case because she could not have been there when the spouses were married and could not have been expected to know what was happening between her parents until long after her birth. On the other hand, as the petitioning spouse, Nicolas' description of Marilyn's nature would certainly be biased, and a psychological evaluation based on this one-sided description can hardly be considered as credible. The ruling in *Jocelyn Suazo v. Angelito Suazo, et al.*, is illuminating on this score:

> We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, *i.e.*, that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.
>
> x x x x
>
> From these perspectives, we conclude that the psychologist, using meager information coming from a directly interested party, could not have secured a complete personality profile and could not have conclusively formed an objective opinion

> or diagnosis of Angelito's psychological condition. While the report or evaluation may be conclusive with respect to Jocelyn's psychological condition, this is not true for Angelito's. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological report that the Court can rely on as basis for the conclusion that psychological incapacity exists.

In the earlier case of Rowena Padilla-Rumbaua v. Edward Rumbaua, it was similarly declared that '[t]o make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.'

At any rate, We find the report prepared by the clinical psychologist on the psychological condition of the respondent-appellee to be insufficient to warrant the conclusion that a psychological incapacity existed that prevented Marilyn from complying with the essential obligations of marriage. In said report, Dr. Tayag merely concluded that Marilyn suffers from Narcissistic Personality Disorder with antisocial traits on the basis of what she perceives as manifestations of the same. The report neither explained the incapacitating nature of the alleged disorder, nor showed that the respondent-appellee was really incapable of fulfilling her duties due to some incapacity of a psychological, not physical, nature.

x x x x

Dr. Tayag's testimony during her cross examination as well as her statements in the Sworn Affidavit are no different.

When asked to explain the personality disorder of Marilyn, Dr. Tayag simply replied:

> Q: On her case you assessed her as, likewise, suffering from a personality disorder characterized by Narcissistic Personality Disorder with Anti-Social Trait. Will you please tell to the Court what do you mean by that personality disorder?
>
> A: In layman's term, once you are being labeled as a narcissistic [sic], this is a person whose preoccupation are all toward his own self satisfaction both materially or emotionally at

> the expense of somebody. They have what you called [sic] strong sense of entitlement thinking that she can get away whatever [sic] she wants to in pursuit of her own satisfaction at the expense of somebody. And this is what happened to the respondent. She gave more consideration to her own satisfaction material wise at the expense of social embarrassment of the children because of what happened to her.

On the other hand, in her Sworn Affidavit, Dr. Tayag stated:

> 7. Without a doubt, Marilyn is suffering from a form of personality disorder that rooted [sic] the downfall of their marriage. As based on the DSM-IV, respondent's behavioral disposition fits with individuals with NARCISSISTIC PERSONALITY DISORDER with Anti-social traits, as characterized by her disregard for and violation of the rights of others as well as her failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are clearly immoral and socially despised. Such is also depicted through his [sic] deceitfulness, as indicated by repeated lying and conning methods she used upon others in order to achieve personal profit or pleasure. In addition, her consistent irresponsibility, as indicated by her repeated failure to sustain consistent work behavior or honor financial obligations and her lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. x x x. And such condition is considered to [sic] grave, severe, long lasting and incurable by any treatment available.

Accordingly, even if We assume that Marilyn is really afflicted with Narcissistic Personality Disorder with anti-social traits, in the absence of any showing that the same actually incapacitated her from fulfilling her essential marital obligations, such disorder cannot be a valid basis for declaring Nicolas' marriage to Marilyn as null and void under Article 36 of the Family Code.

To be sure, jurisprudence has declared that not every psychological illness/disorder/condition is a ground for declaring the marriage a nullity under Article 36. '[T]he meaning of 'psychological incapacity' [is confined] to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.'

All told, We find that no reversible error was committed by the trial court in rendering its assailed Decision.

WHEREFORE, the instant appeal is DENIED. The assailed Decision of the Regional Trial Court of Quezon City, Branch 94, in Civil Case No. Q-08-62827, is AFFIRMED.

SO ORDERED.[18] (Citations omitted)

Petitioner moved for reconsideration, but in its assailed August 23, 2012 Resolution, the CA stood its ground. Hence, the instant Petition.

In a November 19, 2014 Resolution,[19] this Court resolved to give due course to the Petition.

**Issue**

Petitioner mainly questions the CA's appreciation of the case, insisting that he was able to prove Marilyn's psychological incapacity.

***Petitioner's Arguments***

In his Petition and Reply,[20] petitioner argues that contrary to the CA's findings, he was able to prove Marilyn's psychological incapacity which is rooted in Dr. Tayag's diagnosis that she was suffering from Narcissistic Personality Disorder which existed even before their marriage, and continued to subsist thereafter; that her illness is grave, serious, incurable, and permanent as to render her incapable of assuming her marriage obligations; that the nullification of his marriage to Marilyn is not an affront to the institutions of marriage and family, but will actually protect the sanctity thereof because in effect, it will discourage individuals with psychological disorders that prevent them from assuming marital obligations from remaining in the sacred bond;[21] that the issue of whether psychological

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[18] *Rollo*, pp. 20-31.

[19] *Id*. at 70-71.

[20] *Id*. at 63-67.

[21] Citing *Ngo Te v. Gutierrez Yu-Te*, 598 Phil. 666 (2009).

incapacity exists as a ground to nullify one's marriage is a legal question; and that the totality of his evidence and Marilyn's failure to refute the same despite due notice demonstrate that he is entitled to a declaration of nullity on the ground of psychological incapacity.

***Respondent's Arguments***

In its Comment[22] praying for denial, the Republic argues that the Petition calls for an evaluation of facts, thus violating the rule that a petition for review on *certiorari* should be confined to legal questions. Citing *Perez-Ferraris v. Ferraris*,[23] which decrees as follows –

> The issue of whether or not psychological incapacity exists in a given case calling for annulment of marriage depends crucially, more than in any field of the law, on the facts of the case. Such factual issue, however, is beyond the province of this Court to review. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. It is a well-established principle that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on this Court, save for the most compelling and cogent reasons, like when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; or when there is a misappreciation of facts, which are unavailing in the instant case. (Citations omitted)

the State argues that the instant case should be dismissed instead.

The public respondent adds that allegations and proof of irresponsibility, immaturity, selfishness, indifference, and abandonment of the family do not automatically justify a conclusion of psychological incapacity under Article 36 of the Family Code; that the intent of the law is to confine the meaning of psychological incapacity to the most serious cases of personality disorders – existing at the time of the marriage –

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[22] *Rollo*, pp. 39-54.

[23] 527 Phil. 722 (2006).

clearly demonstrating an utter insensitivity or inability to give meaning and significance to the marriage, and depriving the spouse of awareness of the duties and responsibilities of the marital bond he/she is about to assume; that petitioner failed to show how each of Marilyn's claimed negative traits affected her ability to perform her essential marital obligations; that the supposed psychological evaluation of Marilyn was in fact based on the one-sided, self-serving, and biased information supplied by petitioner and Maricel – which renders the same unreliable and without credibility; that petitioner's real reason for seeking nullification is Marilyn's abandonment of the family; and that all in all, petitioner failed to prove the gravity, juridical antecedence, and incurability of Marilyn's claimed psychological incapacity.

**Our Ruling**

The Court denies the Petition.

The landmark case of *Santos v. Court of Appeals*[24] taught us that psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. Thus, the incapacity "must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved."[25] In this connection, the burden of proving psychological incapacity is on the petitioner, pursuant to *Republic v. Court of Appeals*,[26] or the *Molina* case.

The foregoing pronouncements in *Santos* and *Molina* have remained as the precedential guides in deciding cases grounded on the psychological incapacity of a spouse. But the Court has declared the

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[24] 310 Phil. 21 (1995).

[25] *Id*. at 39.

[26] 335 Phil. 664, 676 (1997).

existence or absence of the psychological incapacity based strictly on the facts of each case and not on *a priori* assumptions, predilections or generalizations. Indeed, the incapacity should be established by the totality of evidence presented during trial, making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.[27]

Both the trial and appellate courts dismissed the petition in Civil Case No. Q-08-62827 on the ground that the totality of petitioner's evidence failed to sufficiently prove that Marilyn was psychologically unfit to enter marriage – in short, while petitioner professed psychological incapacity, he could not establish its gravity, juridical antecedence, and incurability.

The Court agrees.

Petitioner's evidence consists mainly of his judicial affidavit and testimony; the judicial affidavits and testimonies of his daughter Maricel and Dr. Tayag; and Dr. Tayag's psychological evaluation report on the psychological condition of both petitioner and Marilyn. The supposed evaluation of Marilyn's psychological condition was based solely on petitioner's account, since Marilyn did not participate in the proceedings.

Indeed, "[w]hat is important is the presence of evidence that can adequately establish the party's psychological condition."[28] "[T]he complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage."[29] Petitioner's judicial affidavit and testimony during trial, however, fail to show gravity and juridical antecedence. While he complained that Marilyn lacked a sense of guilt and was involved in "activities defying social and moral ethics,"[30] and that she was, among others, irrational, irresponsible, immature, and self-centered, he nonetheless failed to sufficiently and particularly elaborate on these allegations,

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[27] *Republic v. Court of Appeals*, 698 Phil. 257, 267 (2012).

[28] *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

[29] *Republic v. Galang*, 665 Phil. 658, 672 (2011).

[30] Records, p. 2.

particularly the degree of Marilyn's claimed irresponsibility, immaturity, or selfishness. This is compounded by the fact that petitioner contradicted his own claims by testifying that he and Marilyn were happily married and never had a fight, which is why they begot four children; and the only reason for his filing Civil Case No. Q-08-62827 was Marilyn's complete abandonment of the marriage and family when she left to work abroad.

'Psychological incapacity,' as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental – not merely physical – incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[31]

If any, petitioner's accusations against Marilyn are untrue, at the very least. At most, they fail to sufficiently establish the degree of Marilyn's claimed psychological incapacity.

On the other hand, Maricel cannot be of help either. She was only two years old when Marilyn left the family. Growing up, she may have seen the effects of Marilyn's abandonment – such as the lack of emotional and financial support; but she could not have any idea of her mother's claimed psychological incapacity, as well as the nature, history, and gravity thereof.

Just as well, Dr. Tayag's supposed expert findings regarding Marilyn's psychological condition were not based on actual tests or interviews conducted upon Marilyn herself; they are based on the personal accounts of petitioner. This fact gave more significance and importance to petitioner's other pieces of evidence, which could have compensated for the deficiency

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[31] *Republic v. De Gracia*, 726 Phil. 502, 509 (2014).

in the expert opinion which resulted from its being based solely on petitioner's one-sided account. But since these other pieces of evidence could not be relied upon, Dr. Tayag's testimony and report must fail as well. In one decided case with a similar factual backdrop and involving the very same expert witness, this Court held:

> It is worth noting that Glenn and Mary Grace lived with each other for more or less seven years from 1999 to 2006. The foregoing established fact shows that living together as spouses under one roof is not an impossibility. Mary Grace's departure from their home in 2006 indicates either a refusal or mere difficulty, but not absolute inability to comply with her obligation to live with her husband.
>
> Further, considering that Mary Grace was not personally examined by Dr. Tayag, there arose a greater burden to present more convincing evidence to prove the gravity, juridical antecedence and incurability of the former's condition. Glenn, however, failed in this respect. Glenn's testimony is wanting in material details. Rodelito, on the other hand, is a blood relative of Glenn. Glenn's statements are hardly objective. Moreover, Glenn and Rodelito both referred to Mary Grace's traits and acts, which she exhibited during the marriage. Hence, there is nary a proof on the antecedence of Mary Grace's alleged incapacity. Glenn even testified that, six months before they got married, they saw each other almost everyday. Glenn saw "a loving[,] caring and well[-]educated person" in Mary Grace.
>
> Anent Dr. Tayag's assessment of Mary Grace's condition, the Court finds the same as unfounded. *Rumbaua* provides some guidelines on how the courts should evaluate the testimonies of psychologists or psychiatrists in petitions for the declaration of nullity of marriage, *viz.*:
>
> > We cannot help but note that Dr. Tayag's conclusions about the respondent's psychological incapacity were based on the information fed to her by only one side — the petitioner — whose bias in favor of her cause cannot be doubted. While this circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards in the manner we discussed above. For, effectively, Dr. Tayag only diagnosed the respondent from the prism of a third party account; she did not actually hear, see and evaluate the respondent

and how he would have reacted and responded to the doctor's probes.

Dr. Tayag, in her report, merely summarized the petitioner's narrations, and on this basis characterized the respondent to be a self-centered, egocentric, and unremorseful person who 'believes that the world revolves around him'; and who 'used love as a . . . deceptive tactic for exploiting the confidence [petitioner] extended towards him.' x x x

We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential obligations of marriage. It failed to identify the root cause of the respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. Neither did it explain the incapacitating nature of the alleged disorder, nor show that the respondent was really incapable of fulfilling his duties due to some incapacity of a psychological, not physical, nature. Thus, we cannot avoid but conclude that Dr. Tayag's conclusion in her Report — *i.e.*, that the respondent suffered 'Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable' — is an unfounded statement, not a necessary inference from her previous characterization and portrayal of the respondent. While the various tests administered on the petitioner could have been used as a fair gauge to assess her own psychological condition, this same statement cannot be made with respect to the respondent's condition. To make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[32]

Finally, the identical rulings of the trial and appellate courts should be given due respect and finality. This Court is not a trier of facts.

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[32] *Viñas v. Parel-Viñas*, G.R. No. 208790, January 21, 2015, 747 SCRA 508, 521-523, citing *Rumbaua v. Rumbaua*, 612 Phil. 1061 (2009).

The issue of whether or not psychological incapacity exists in a given case calling for annulment of marriage depends crucially, more than in any field of the law, on the facts of the case. Such factual issue, however, is beyond the province of this Court to review. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. It is a well-established principle that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on this Court, save for the most compelling and cogent reasons x x x.[33]

With the foregoing disquisition, there is no need to resolve the other issues raised. They have become irrelevant.

**WHEREFORE**, the Petition is **DENIED**. The January 31, 2012 Decision and August 23, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 95392 are **AFFIRMED**.

**SO ORDERED**.

*Carpio* (*Chairperson*) and *Brion, JJ.,* concur.

*Leonen, J.,* see dissent.

*Mendoza, J.,* on official leave.

## DISSENTING OPINION

**LEONEN, *J.*:**

I dissent.

In my view, petitioner Nicolas S. Matudan (Nicolas) sufficiently proved that respondent Marilyn B. Matudan (Marilyn) is psychologically incapacitated to comply with her essential marital obligations to him. To deny his Petition is a cruel interpretation of the provisions of existing law.

I disagree that the testimony of the parties' daughter Maricel was not "of help"[1] in this case. Marilyn left the conjugal home

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[33] *Perez-Ferraris v. Ferraris*, *supra* note 23 at 727.

[1] *Ponencia*, p. 14.

in 1985 when her children were still minors. She never kept in touch with her family. When her children needed her most, Marilyn failed to keep them in her company, to love and support them, all of which are essential obligations under the law. The Petition for Review on Certiorari must be granted.

**I**

Nicolas' evidence consisted mainly of his testimony and that of their daughter, Maricel. This the ponencia found insufficient because Marilyn did not participate in the proceedings. Further, the ponencia found Dr. Nedy L. Tayag's (Dr. Tayag) psychological evaluation deficient because she diagnosed Marilyn with having a narcissistic personality based on the sole account of Nicolas.[2]

A psychological evaluation should not be discounted if based on sources other than the patient. In psychiatry, it is accepted practice to base a person's psychiatric history on collateral information. Ideally, the psychiatric history should "be based [on] the patient's own words from his or her point on view,"[3] the psychiatric history being a "record of [a] patient's life[.]"[4] However, if the patient is not available, as in this case, information from other sources may be utilized.

Dr. Tayag found that Marilyn was suffering from Narcissistic Personality Disorder with Antisocial Traits. The illness is marked by "negativistic attitude, passive resistance, [lack of] ability to assert [one's] opinions, and . . . difficulty expressing [one's] feelings."[5] In its January 31, 2012 Decision, the Court of Appeals stated:

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[2] *Id*. at 15.

[3] B.J. Sadock, M.D. and V.A. Sadock, M.D., KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY BEHAVIORIAL SCIENCE/CLINICAL PSYCHIATRY 229 (9th ed., 2003).

[4] B.J. Sadock, M.D. and V.A. Sadock, M.D., KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY BEHAVIORIAL SCIENCE/CLINICAL PSYCHIATRY 229 (9th ed., 2003)

[5] *Ponencia*, p. 4.

When asked to explain the personality disorder of Marilyn, Dr. Tayag simply replied:

> Q: On her case you assessed her as, likewise, suffering from a personality disorder characterized by Narcissistic Personality Disorder with Anti-Social Trait. Will you please tell to the Court what do you mean by that personality disorder?
>
> A: In layman's term, once you are being labeled as a narcissistic [sic], this is a person whose preoccupation are all toward his own self satisfaction both materially or emotionally at the expense of somebody. They have what you called [sic] strong sense of entitlement thinking that she can get away whatever [sic] she wants to [sic] in pursuit of her own satisfaction at the expense of somebody. And this is what happened to the respondent. She gave more consideration to her own satisfaction material wise at the expense of social embarrassment of the children because of what happened to her.

On the other hand, in her Sworn Affidavit, Dr. Tayag stated:

> 7. Without a doubt, Marilyn is suffering from a form of personality disorder that rooted [sic] the downfall of their marriage. As based on the DSM-IV, respondent's behavorial disposition fits with individuals with NARCISSISTIC PERSONALITY DISORDER with Anti-social traits, as characterized by her disregard for and violation of the rights of others as well as her failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are clearly immoral and socially despised. Such is also depicted through his [sic] deceitfulness, as indicated by repeated lying and conning methods she used upon others in order to achieve personal profit or pleasure. In addition, her consistent irresponsibility, as indicated by her repeated failure to sustain consistent work behavior or honor financial obligations and her lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. . . . And such condition is considered to [sic] grave, severe, long lasting and incurable by any treatment available.[6]

Dr. Tayag's expert testimony is consistent with the undisputed fact that Marilyn left the conjugal home and has not contacted her family since 1985. *Thirty-one years* of no contact with loved

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

ones, to my mind, shows a grave and incurable illness, a psychological incapacity warranting the dissolution of Marilyn's marriage with Nicolas.

Apart from failing to cohabit with her husband, Marilyn left while her children were still minors. Marilyn failed to comply with her essential obligations under the Family Code:

> Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.
>
> . . . .
>
> Art. 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:
>
> (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
>
> (2) To give them love and affection, advice and counsel, companionship and understanding;
>
> (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
>
> (4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
>
> (5) To represent them in all matters affecting their interests;
>
> (6) To demand from them respect and obedience;
>
> (7) To impose discipline on them as may be required under the circumstances; and
>
> (8) To perform such other duties as are imposed by law upon parents and guardians.

The totality of evidence presented here is more than sufficient to prove Marilyn's psychological incapacity. Nicolas and

Marilyn's marriage is void under Article 36[7] of the Family Code.

**II**

*Santos v. Court of Appeals*[8] and *Republic v. Court of Appeals and Molina*[9] outline the history of Article 36 of the Family Code. *Santos* recounts how the Family Code Revision Committee deliberately refused to define the term "psychological incapacity" "to allow some resiliency in [the] application"[10] of the provision. No examples of psychological incapacity were given in the law so as not to "limit the applicability of the provision under the principle of *ejusdem generis*."[11]

Article 36 of the Family Code was taken from Canon 1095[12] of the New Code of Canon Law of the Catholic Church.[13] Citing the work of a former judge of the Metropolitan Marriage Tribunal

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[7] FAMILY CODE, Art. 36 provides:

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[8] 310 Phil. 21 (1995) [Per *J.* Vitug, *En Banc*].

[9] 335 Phil. 664 (1997) [Per *J.* Panganiban, *En Banc*].

[10] *Santos v. Court of Appeals*, 310 Phil. 21, 36 (1995) [Per *J.* Vitug, *En Banc*].

[11] *Id.*, *citing Salita v. Magtolis*, 303 Phil. 106 (1994) [Per *J.* Bellosillo, First Division]. *See also Republic v. Court of Appeals and Molina*, 335 Phil. 664, 677 (1997) [Per *J.* Panganiban, *En Banc*].

[12] New Code of Canon Law, Canon 1095 provides:

Canon 1095. They are incapable of contracting marriage:

1. who is lack of sufficient use of reason.
2. who suffer from a grave defect of discretion of judgment concerning essential matrimonial rights and duties, to be given and accepted mutually;
3. who for causes of psychological nature are unable to assume the essential obligations of marriage.

[13] *Santos v. Court of Appeals*, 310 Phil. 21, 37 (1995) [Per *J.* Vitug, *En Banc*].

of the Catholic Archdiocese of Manila, this Court in *Santos* stated that psychological incapacity "must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability."[14]

*Molina* is known for the eight (8) guidelines in interpreting and applying Article 36 of the Family Code:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The

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[14] *Id*. at 39.

manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

"The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[15] (Citations omitted)

Contrary to the purported fluidity of the meaning of "psychological incapacity," *Santos* and *Molina* provided guidelines comparable to a "strait-jacket"[16] into which the facts of psychological incapacity cases are forced to fit. This Court observed in *Ngo-Te v. Yu-Te*:[17]

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was

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[15] *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 676-680 (1997) [Per *J.* Panganiban, *En Banc*].

[16] *Ngo-Te v. Yu-Te*, 598 Phil. 666, 696 (2009) [Per *J.* Nachura, Third Division].

[17] 598 Phil. 666 (2009) [Per *J.* Nachura, Third Division].

then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the [Office of the Solicitor General's] exaggeration of Article 36 as the "most liberal divorce procedure in the world". The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage.[18] (Citations omitted)

The latest case where this Court voided the marriage due to psychological incapacity is *Kalaw v. Fernandez*,[19] which was decided on reconsideration in 2015. In *Kalaw*:

The [*Molina*] guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of "less specificity" obviously to enable "some resiliency in its application." Instead, every court should approach the issue of nullity "not on the basis of *a priori* assumptions, predilections or generalizations, but according to its own facts" in recognition of the verity that no case would be on "all fours" with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every "trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[20] (Citations omitted)

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[18] *Id*. at 695–696.

[19] G.R. No. 166357, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/166357.pdf> [Per J. Bersamin, Special First Division].

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

*Kalaw* is only the fifth[21] case since *Ngo-Te*'s promulgation in 2009 where the Court voided the parties' marriage due to psychological incapacity. Again, this reflects the State's interpretation of its constitutional mandate to protect marriages, the foundation of the family,[22] by contesting all Article 36 petitions until they reach this Court.[23]

The effect of applying the rigid Article 36 guidelines does not negate the compassion that some of the Members of this Court may have for the parties. Still, it is time that this Court operate within the sphere of reality. The law is an instrument to provide succor. It is not a burden that unreasonably interferes with individual choices of intimate arrangements.

The choice to stay in or leave a marriage is not for this Court, or the State, to make. The choice is given to the partners, with the Constitution providing that "[t]he right of spouses to found a family in accordance with their religious convictions and demands of responsible parenthood[.]"[24] Counterintuitively, the State protects marriages if it allows those found to have psychological illnesses that render them incapable of complying with their marital obligations to leave the marriage.[25] To force partners to stay in a loveless marriage, or a spouseless marriage as in this case, only erodes the foundation of the family.

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[21] The other four are *Azcueta v. Republic*, 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division]; *Halili v. Santos-Halili*, 607 Phil. 1 (2009) [Per J. Corona, Special First Division]; *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; and *Aurelio v. Aurelio*, 665 Phil. 693 (2011) [Per J. Peralta, Second Division].

[22] CONST., Art. XV, Sec. 2 provides:

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[23] *See* J. Leonen, Dissenting Opinion in *Mallilin v. Jamesolamin*, G.R. No. 192718, February 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/192718_leonen.pdf> 13 [Per J. Mendoza, Second Division].

[24] CONST., Art. XV, Sec. 3(1).

[25] *See Ngo-Te v. Yu-Te*, 598 Phil. 666, 698 (2009) [Per J. Nachura, Third Division].

**III**

The Family Code Revision Committee originally intended a provision on absolute or no-fault divorce.[26] Instead, the Committee drafted Article 36 of the Family Code, which it derived from Canon Law so as not to offend the Catholic religion to which the majority of Filipinos belong.[27]

It is strange that in drafting Article 36, the Family Code Revision Committee had to consider the sensibilities of a particular religion. None of our laws should be based on any religious law, doctrine, or teaching; otherwise, the separation of church and State will be violated.[28]

We had absolute divorce laws in the past. Act No. 2710,[29] enacted in 1917, allowed the filing of a petition for divorce on the ground of adultery on the part of the wife, or concubinage on the part of the husband.[30]

During the Japanese occupation, Executive Order No. 141[31] provided for 11 grounds for divorce, including "intentional or unjustified desertion continuously for at least one year prior to the filing of a [petition] for divorce" and "slander by deed or gross insult by one spouse against the other to such an extent as to make further living impracticable."[32]

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[26] *J.* Romero, Concurring Opinion in *Santos v. Court of Appeals*, 310 Phil. 21, 43 (1995) [Per *J.* Vitug, *En Banc*].

[27] *Id*.

[28] CONST., Art. II, Sec. 6 provides:

Section 6. The separation of Church and State shall be inviolable.

[29] An Act to Establish Divorce (1917).

[30] Act No. 2710, Sec.1 provides:

SECTION 1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in article four hundred and thirty-seven of the Penal Code.

*See Valdez v. Tuason*, 40 Phil. 943, 948 (1920) [Per *J.* Street, *En Banc*].

[31] Otherwise known as "The New Divorce Law."

[32] *Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per *J.* Ozaeta, *En Banc*].

After the Japanese left, the laws enacted during the Japanese occupation were declared void.[33] Act No. 2710 again took effect until the Civil Code's enactment in 1950. Since then, absolute divorce has been prohibited in our jurisdiction.

Laws on absolute divorce allegedly violate the Constitution, specifically, on the Filipino family being the foundation of the nation[34] and the inviolability of marriage.[35] I do not agree.

The Constitution describes the family as "the basic *autonomous* social institution."[36] To my mind, the Constitution protects the solidarity of the family *regardless of its structure*. Parties should not be forced to stay in unhappy or otherwise broken marriages in the guise of protecting the family. This avoids the reality that people fall out of love. There is always the possibility that human love is not forever.

The Philippines remains to be the only country in the world with no absolute divorce law available to its citizens regardless of religion.[37] Our country needs a law that recognizes the validity of marriage at the time of its celebration but nonetheless allows

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[33] *Id*. at 462-463.

[34] CONST., Art. XV, Sec. 1 provides:

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

[35] CONST., Art. XV, Sec. 2 provides:

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[36] CONST., Art. II, Sec. 12 provides:

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[37] Carlos H. Conde, *Philippines Stands All but Alone in Banning Divorce*, THE NEW YORK TIMES, June 17, 2011 <http://www.nytimes.com/2011/06/18/world/asia/18iht-philippines18.html> (visited November 14, 2016).

Pres. Decree No. 1083, otherwise known as the Code of Muslim Personal Laws, allows divorce but only for Filipino Muslims.

parties to dissociate without destroying the human dignity[38] of their former partners by pathologizing them with a psychological disorder.

For thirty-one (31) years, Nicolas has been alone without a spouse. There is no marriage to protect in this case. Whatever possibility to fix the marriage is obviously absent or, at best, improbable. To deny the Petition of Nicolas is to require him to be condemned to a world that is not his. It is to ensure that he will live a life without the joy that marriage truly brings. It is to treat him as a ward.

To deny the Petition of Nicolas is, thus, pure and simple cruelty.

**ACCORDINGLY**, I vote to **GRANT** the Petition.

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**SECOND DIVISION**

[G.R. No. 203293. November 14, 2016]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **MARDAN AMERIL,** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.—** In cases involving illegal sale of drugs, the prosecution must establish the following elements. (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that

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[38] CONST., Art. II, Sec. 11 provides that "[t]he State values the dignity of every human person and guarantees full respect for human rights."

the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti.* The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale – the prohibited or regulated drug – has been preserved. Evidence must show that the illegal drug presented in court is the same illegal drug actually recovered from the accused. If the prosecution fails to discharge this burden, it fails to establish an element of the offense charged and thus, an acquittal should follow.

**2. ID.; ID.; CHAIN OF CUSTODY; DEFINED.—** Chain of custody is defined as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." Such records of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final desposition.

**3. ID.; ID.; ID.; MARKING; THE MARKING OF THE EVIDENCE SERVES TO SEPARATE THE MARKED EVIDENCE FROM THE CORPUS OF ALL OTHER SIMILAR OR RELATED EVIDENCE FROM THE TIME THEY ARE SEIZED FROM THE ACCUSED UNTIL THEY ARE DISPOSED OF AT THE END OF THE CRIMINAL PROCEEDINGS, THUS PREVENTING SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE.—** Marking the seized drugs or other related items immediately after being seized from the accused is a *crucial step* to establish chain of custody. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized to identify it as the subject matter of the prohibited sale. Marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings,

thus preventing switching, planting, or contamination of evidence.

**4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON THE MARKING OF THE SEIZED DRUGS RELATE TO NO LESS THAN THE *CORPUS DELICTI* AND SHALL, TO SOME EXTENT, DISCREDIT A TESTIMONY.—** In the present case, from the very start, *i.e.*, at the point of marking, the prosecution already advanced conflicting testimonies on who made the actual markings and fully failed to explain the discrepancies. x x x The well-settled rule is that immaterial and significant inconsistencies do not discredit a testimony on the very material and significant point bearing on the very act of the accused. The reverse side of this rule is that inconsistencies on points that are material to the prosecution of the accused shall, to some extent, discredit a testimony. Where the conflict is on an issue as basic as the marking of the seized drugs for their subsequent identification, the unexplained and unremedied flaw in the prosecution's case can be fatal. In the present case, PO3 Salazar and PO2 Ilagan's testimonies on who marked the seized narcotics are undeniably indispensable to the successful prosecution of Ameril. The inconsistencies relate to no less than the *corpus delicti*.

**5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY; MARKING; SHOULD BE DONE IMMEDIATELY UPON CONFISCATION AND IN THE PRESENCE OF THE ACCUSED IN ORDER TO ENSURE THE IDENTITY AND INTEGRITY OF THE CONFISCATED DRUGS.—** We also found that there is a dearth of evidence on the circumstances of the marking, particularly on **when and where the seized narcotics were marked.** The prosecution witnesses, in their testimonies, failed to introduce any evidence as to the approximate time and place where the marking was made. In *People vs. Sanchez*, we held that the marking of the seized items to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence should be done immediately upon confiscation. We consider this failure on the prosecution's part as fatal to their case. Similarly, the prosecution's evidence is deafeningly silent as to whether or not the **marking was made**

**in Ameril's presence**. Jurisprudence states that the marking should be made in the presence of the accused in order to ensure the identity and integrity of the confiscated drugs. The prosecution evidence is likewise lacking on this point.

**6. ID.; ID.; ID.; THE UNEXPLAINED FAILURE TO STRICTLY COMPLY WITH THE REQUIRED PROCEDURES ON THE CUSTODY OF SEIZED ITEMS MAY WARRANT THE ACQUITTAL OF THE ACCUSED.—** The records of this case are x x x bereft of documents showing that the police officers made a physical inventory and took photos of the seized prohibited drugs. Likewise, no police officer testified that an inventory of the confiscated packets of *shabu* were made and photos of which were taken. The prosecution, in fact, has not even explained why Section 21 of R.A. No. 9165 has not been faithfully complied with. Jurisprudence is replete with cases which heavily stress the importance of complying with the required procedures of Section 21 of R.A. 9165, as well as cases showing that strict compliance may be excused if the deficiency is recognized and explained by the prosecution to prove that the integrity of the seized drugs has been preserved. Where deficiencies are blatant and are unexplained, the Court does not hesitate to acquit the accused as we did in *People vs. Garcia* and *People vs. Robles* where the police officers failed to make an inventory and to take photos of the seized narcotics as required by law.

**7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT DEFEAT THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE WHEN ATTENDANT IRREGULARITIES EXIST IN THE POLICE OPERATIONS.—** While the evidence on record shows that the packets of *shabu* were indeed marked, we reiterate that nothing shows when and where the marking was done. In addition, no evidence was ever presented to show compliance by the police officers with the mandate of Section 21 (1) of R.A. 9165. x x x In addition, the police failed to conduct an inventory and to photograph the seized drugs. These irregularities, which give rise to the conclusion that the police officers disregarded the requirements of law and jurisprudence, serve as sufficient reasons to rebut the presumption

of regularity in the performance of official duties. Notably, the prosecution did not offer any explanation or justification for the failure of the police to comply with the mandatory requirements of Section 21 of R.A. 9165 and its implementing rules. More importantly, the presumption of regularity in the performance of official duties is inferior to and cannot defeat the constitutional presumption of innocence. This is particularly true when attendant irregularities exist in the police operations – as in the present case.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**BRION, *J.*:**

We resolve the appeal of accused-appellant Mardan **Ameril** challenging the August 8, 2011 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01046. The CA decision affirmed the May 20, 2008 decision[2] of the Regional Trial Court (*RTC*), Branch 13, Cebu City, finding Ameril guilty beyond reasonable doubt of illegal sale of shabu, in violation of Article II, Section 5 of R.A. No. 9165.[3]

**THE CASE**

The prosecution evidence established that at around 11:45 P.M. on May 24, 2005, a confidential informant reported to the office of the Criminal Investigation and Intelligence Bureau (*CIIB*) that Ameril was going to sell him three (3) packs of *shabu* worth ₱9,000.00 each. Thereafter, PO3 Cesar **Pandong**

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Edgardo L. Delos Santos concurred in by Associate Justice Ramon Paul L. Hernando and Associate Justice Victoria Isabel A. Paredes.

[2] CA *rollo*, pp. 56-61; by Presiding Judge Meinrado P. Paredes.

[3] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

formed and dispatched a buy-bust team composed of himself, PO3 Olmedo, PO3 **Salazar** and PO2 **Ilagan**. After the necessary preparations and coordination with the Philippine Drug Enforcement Agency (PDEA), Pandong's team and the informant proceeded to the target area. The informant was to act as the poseur-buyer.

At about 12:30 A.M. of the following day, the buy-bust team arrived in front of the lodging house where Ameril and his family were staying. The poseur-buyer positioned himself across the lodging house and the police officers hid behind a cargo truck, parked five (5) to seven (7) meters away from the meeting point. Since the street was part of a commercial area, the area was well lit. When everyone was in position, the informant whistled and, minutes later, Ameril came downstairs.

During their conversation, the informant showed Ameril the boodle money. Ameril then went upstairs to his apartment. When he came back, Ameril gave the three (3) packs of shabu to the poseur-buyer who, in turn, handed him the boodle money.

The poseur-buyer immediately gave the prearranged signal by touching his head alerting the police officers to come forward to arrest Ameril. PO3 Pandong and PO2 Salazar rushed to where Ameril and the poseur-buyer were and announced that they were policemen. Ameril attempted to flee by entering his apartment but was caught at the third floor before he could open the door of his unit. The police officers informed Ameril of his constitutional rights and the reason for his arrest. PO2 Ilagan recovered the three (3) packs of shabu, while PO3 Salazar recovered the boodle money.

Thereafter, the seized packets were marked "BB-MA-1" to "BB-MA-3." The team brought Ameril and the seized evidence to the CIIB and the necessary records were entered in the police blotter. The confiscated drugs were turned over to the PNP Crime Laboratory where its contents were tested. The chemistry report showed the contents of three (3) sachets resulted positive for methamphetamine hydrochloride, commonly known as *shabu*.

On the other hand, the defense presented as witnesses **Anisah** Ameril, **Aida** Ameril, and **Aquillah** Ameril, the accused-appellant's daughter, wife and niece, respectively. All of them testified that no buy-bust operation took place. Their testimonies narrated that Ameril and his family were about to sleep when two police officers knocked on their door and asked to personally speak to Ameril. They talked in the kitchen without Anisah, Aida or Aquillah hearing what the conversation was about. After a few minutes, Ameril was invited to the police headquarters, allegedly for questioning. He complied and went with the police officers.

After over three (3) hours, Ameril called to inform them that he was under detention at the Gorordo Police Station. Aida, Anisah, and Aquilla all went to the police station. Ameril informed them that the police officers had accused him of selling illegal drugs and demanded ₱250,000.00 from him to settle the matter.

On May 28, 2008, after trial on the merits, the RTC convicted the accused beyond reasonable doubt of illegal sale of dangerous drugs as the testimonies of the police officers clearly established all its elements. The trial court accorded credit to the testimony of the prosecution's witnesses and applied the presumption of regularity in the performance of duty to the police officers in the entrapment and arrest of Ameril. Accordingly, the RTC sentenced the accused to suffer the penalty of life imprisonment and ordered to pay a fine of ₱700,000.00.

On appeal, the CA affirmed the RTC decision. The appellate court examined the evidence on record and concluded that the integrity and evidentiary value of the seized drugs had been preserved. It also stressed that such evidence is presumed to have been preserved in the absence of any showing of bad faith, ill will, or proof that the evidence has been tampered with. In addition, the CA considered the defenses of denial and frame-up inherently weak and thus did not give it credit. Lastly, the CA upheld the presumption of regularity in the performance of official duties that the RTC applied in the law enforcers' favor.

Faced with the CA's ruling, Ameril filed the present appeal before this Court.

## OUR RULING

After due consideration, we **REVERSE** and **SET ASIDE** the CA's decision and **ACQUIT** the accused on grounds of reasonable doubt.

### I. *For an accused to be convicted in illegal drug cases, the prosecution must establish all the elements of the offenses charged, as well as the corpus delicti or the dangerous drug itself.*

In cases involving illegal sale of drugs, the prosecution must establish the following elements: (1) the identity of the buyer and seller, the object and the consideration; and (2) the delivery of the thing sold and its payment.[4] What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.[5]

The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale — the prohibited or regulated drug — has been preserved.[6] Evidence must show that the illegal drug presented in court is the same illegal drug actually recovered from the accused.[7] If the prosecution fails to discharge this burden, it fails to establish an element of the offense charged and thus, an acquittal should follow.

The prosecution failed to discharge this duty in this case.

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[4] *People v. Opiana*, G.R. No. 200797, January 12, 2015, 745 SCRA 144, 151-152.

[5] *People v. Catalan*, G.R. No. 189330, November 28, 2012, 686 SCRA 631, 638.

[6] *People v. Nuarin*, G.R. No. 188698, July 22, 2015, 763 SCRA 504, 510.

[7] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 268.

**a. *The 'Marking' Requirement vis-a-vis the Chain of Custody Rule***

Chain of custody is defined as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[8]

Marking the seized drugs or other related items immediately after being seized from the accused is a *crucial step* to establish chain of custody.

"Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized to identify it as the subject matter of the prohibited sale. Marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference.[9] The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, planting, or contamination of evidence.[10]

In the present case, from the very start, *i.e.*, at the point of marking, the prosecution already advanced conflicting testimonies on who made the actual markings and fully failed to explain the discrepancies. In his direct testimony, PO3 Salazar — one of the buy-bust team members — claimed that it was

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[8] Dangerous Drugs Board Regulation No. 1, Series of 2002.

[9] *Supra* note 6, at 513.

[10] *Ibid.*

the investigator who marked the sachets. His testimony ran as follows:

PROSECUTOR AIDA SANCHEZ:

Q: Mr. Salazar, during the last time that you were presented you testified that in exchange for the boodle money together with the genuine three ₱100.00 bills the accused handed something to your poseur-buyer; what is that something that was handed by the accused to your poseur buyer?

PO3 SALAZAR:

A: The white crystalline substance placed in a transparent plastic pack.

Q: If shown these items again, would you still be able to identify them?

A: Yes, Ma'am.

Q: And what would be your basis?

**A: It was marked by the investigator.**[11]

On the other hand, contrary to PO3 Salazar's testimony, PO2 Ilagan claimed in his direct testimony that he himself made the markings, thus:

PROSECUTOR JOSE NATHANIEL S. ANDAL:

Q: Last time you testified, Mr. Witness, that in the course of your buy-bust operation your team was able to buy three transparent plastic packets of white crystalline substance from the accused. The same were turned over to the PNP Crime Laboratory for examination. If those three packs of white crystalline substance are shown to you, will you be able to identify them?

PO2 ILAGAN:

A: Yes, I can, Sir, because of the markings.

Q: What markings are you referring to?

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[11] TSN, February 14, 2006, pp. 2-3.

A: BB-MA-1 to BB-MA-3.

**Q: Who made that marking?**

**A: Myself.**[12]

For some reason, the prosecution simply failed to reconcile its witnesses' conflicting statements. Inevitably, these glaring contradictions cast doubt on the identity and integrity of the evidence against Ameril.

The well-settled rule is that immaterial and significant inconsistencies do not discredit a testimony on the very material and significant point bearing on the very act of the accused.[13] The reverse side of this rule is that inconsistencies on points that are material to the prosecution of the accused shall, to some extent, discredit a testimony. Where the conflict is on an issue as basic as the marking of the seized drugs for their subsequent identification, the unexplained and unremedied flaw in the prosecution's case can be fatal.

In the present case, PO3 Salazar and PO2 Ilagan's testimonies on who marked the seized narcotics are undeniably indispensable to the successful prosecution of Ameril. The inconsistencies relate to no less than the *corpus delicti*.

We also found that there is a dearth of evidence on the circumstances of the marking, particularly on **when and where the seized narcotics were marked**. The prosecution witnesses, in their testimonies, failed to introduce any evidence as to the approximate time and place where the marking was made. In *People vs. Sanchez*,[14] we held that the marking of the seized items to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence should

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[12] TSN, July 25, 2007, pp. 2-3.

[13] See *People v. Dadao*, G.R. No. 201860, January 22, 2014, 714 SCRA 524, 537, citing *Avelino v. People*, G.R. No. 181444, July 17, 2013, 701 SCRA 477, 479.

[14] 590 Phil. 214, 241 (2008).

be done immediately upon confiscation. We consider this failure on the prosecution's part as fatal to their case.

Similarly, the prosecution's evidence is deafeningly silent as to whether or not the **marking was made in Ameril's presence**. Jurisprudence states that the marking should be made in the presence of the accused in order to ensure the identity and integrity of the confiscated drugs. The prosecution evidence is likewise lacking on this point.

We emphasize that the succeeding handlers of the seized drugs will use the markings as reference. If, at the first instance or opportunity, doubts already exist on who had actually marked the seized sachets (or if the markings had been made in accordance with the required procedures), serious uncertainty cannot be avoided and must necessarily hang over the identification of the seized *shabu* that the prosecution introduced into evidence.[15] In fact, in the light of the defense of frame-up that Ameril claimed, the question that arises is: was there an actual seizure of prohibited drugs as the police claimed?

**b. *The inventory and photography requirement***

Section 21(1) of R.A. No. 9165 requires that:

> (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. [emphasis ours]

The records of this case are likewise bereft of documents showing that the police officers made a physical inventory and took photos of the seized prohibited drugs. Likewise, no police officer testified that an inventory of the confiscated packets of *shabu* were made and photos of which were taken. The

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[15] *Supra* note 6, at 513.

prosecution, in fact, has not even explained why Section 21 of R.A. No. 9165 has not been faithfully complied with.

Jurisprudence is replete with cases which heavily stress the importance of complying with the required procedures of Section 21 of R.A. 9165, as well as cases showing that strict compliance may be excused if the deficiency is recognized and explained by the prosecution to prove that the integrity of the seized drugs has been preserved.[16] Where deficiencies are blatant and are unexplained, the Court does not hesitate to acquit the accused as we did in *People vs. Garcia*[17] and *People vs. Robles*[18] where the police officers failed to make an inventory and to take photos of the seized narcotics as required by law.

**II.*The Presumption of Regular Performance of Official Duty***

The CA upheld the presumption of regularity that the trial court accorded on the police officers' action in the buy-bust operation, seizure of drugs and arrest of Ameril, and ruled that there is an absence of clear and convincing evidence suggesting any ill motive or bad faith on the part of the police.

We disagree with the CA ruling.

In *People v. Coreche*,[19] we ruled that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties.[20]

While the evidence on record shows that the packets of *shabu* were indeed marked, we reiterate that nothing shows when and

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[16] *People v. Sabdula*, G.R. No. 184758, April 21, 2014, p. 10, citing *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 272-273.

[17] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[18] G.R. No. 177220, April 24, 2009, 586 SCRA 647.

[19] G.R. No. 182528, August 14, 2009, 596 SCRA 350.

[20] *Id.* at 357-358.

where the marking was done. In addition, no evidence was ever presented to show compliance by the police officers with the mandate of Section 21 (1) of R.A. 9165.

The police officers testified only as to the following: (1) after arresting Ameril, PO3 Salazar retrieved the buy-bust money and PO2 Ilagan retrieved the *shabu*; (2) the investigator prepared a request to test the contents of packets marked BB-MA-1 to BB-MA-3; and (3) the contents tested positive for methamphetamine hydrochloride.

In addition, the police failed to conduct an inventory and to photograph the seized drugs.

These irregularities, which give rise to the conclusion that the police officers disregarded the requirements of law and jurisprudence, serve as sufficient reasons to rebut the presumption of regularity in the performance of official duties. Notably, the prosecution did not offer any explanation or justification for the failure of the police to comply with the mandatory requirements of Section 21 of R.A. 9165 and its implementing rules.

More importantly, the presumption of regularity in the performance of official duties is inferior to and cannot defeat the constitutional presumption of innocence.[21] This is particularly true when attendant irregularities exist in the police operations — as in the present case.

All told, the totality of evidence against Ameril cannot support his conviction for violation of Section 5, Article II of R.A. 9165. The prosecution's failure to comply with Section 21, Article II of R.A. 9165 and with the chain of custody requirement compromised the identity and evidentiary value of the seized packs of *shabu*. Following the constitutional mandate, when the guilt of the accused has not been proven with moral certainty, the presumption of innocence prevails and his exoneration should follow.

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[21] See *People v. Cañete*, G.R. No. 138400, July 11, 2002, 384 SCRA 411, 413.

**WHEREFORE**, in the light of all these premises, we **REVERSE** and **SET ASIDE** the August 8, 2011 decision of the Court of Appeals in CA-G.R. CR-HC No. 01046. Accused-appellant Mardan Ameril is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

**SO ORDERED.**

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

*Mendoza, J.*, on official leave.

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**SECOND DIVISION**

[G.R. No. 207500. November 14, 2016]

**EFREN S. QUESADA, PETER CHUA, ARTURO B. PEREJAS, ERLINDA ESCOTA, CRISANTO H. LIM, VASQUEZ BUILDING SYSTEMS CORPORATION, LION GRANITE CONSTRUCTION SUPPLY CORPORATION, NELLIE M. MARIVELES, ALEJANDRO V. VARDELEON III, ANGELITA P. ROQUE, DAVID LU, J.A.O. BUILDERS & DEVELOPMENT CORPORATION,** *petitioners, vs.* **BONANZA RESTAURANTS, INC.,** *respondent.*

## SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; EJECTMENT; REQUISITES.—** Bonanza's complaint for ejectment was prematurely filed. According to Rule 70, Section 2 of the Rules of Court, the lessor can only proceed with a summary action for ejectment upon making a sufficient demand from the lessee x x x. The Rules requires the concurrence of two conditions. *First*, the lessor must first make a written demand for the lessee: (1) to pay or comply with the conditions of the lease; and (2) to vacate the premises. *Second*, the lessee fails to comply with the demand within the given period. A careful examination shows that Bonanza did not sufficiently comply with Rule 70, Section 2. x x x The demand did not indicate that Efren breached the lease contract. There was no demand for him to pay rent or comply with any of his obligations under the lease. Instead, it **merely informs him that Bonanza had unilaterally terminated** the lease and demands the surrender of the property.

2. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; MUTUALITY OF CONTRACTS; A CONTRACT BINDS BOTH CONTRACTING PARTIES AND ITS VALIDITY CANNOT BE LEFT TO THE WILL OF ONE OF THEM.—** [A] contracting party cannot unilaterally terminate a contract unless otherwise stipulated beforehand. A contract binds both contracting parties; its validity cannot be left to the will of one of them. To hold otherwise would offend the mutuality of contracts. Bonanza's complaint theorized that by constructing concrete structures on the property without Bonanza's permission, Efren effectively forestalled the sale of the property, constructively fulfilling the resolutory condition of the lease. However, this argument is without basis. There is no logical connection between the construction of concrete structures on the property and Bonanza's inability to sell it. The argument is a *non sequitur*. Moreover, the lease contract itself specifically recognized the lessee's right to construct on the property x x x. Bonanza failed to show how any of Efren's constructions go against the permissible use of the property based on its nature. Accordingly, Bonanza had no basis to unilaterally terminate the lease without offending the mutuality of contracts.

**3. ID.; ID.; ID.; LEASE; A LEASE CONTRACT IS ONEROUS IN CHARACTER CONTAINING RECIPROCAL OBLIGATIONS AND ANY AMBIGUITIES IN ITS TERMS ARE INTERPRETED IN FAVOR OF THE GREATEST RECIPROCITY OF INTEREST.—** There is also no merit in Bonanza's contention that the contract which was "*effective July 1, 2003 and until such time that it is replaced or amended by another resolution*" had expired because the Board of Directors had already issued a board resolution terminating the lease. Bonanza interprets the term "resolution" to mean a board resolution from Bonanza. This erroneous interpretation is offensive to the mutuality and obligatory force of contracts. x x x We point out that Bonanza has conveniently omitted the word "agreement" whenever it cited the effectivity of the contract. This omission is misleading and unethical. A lease contract is onerous in character containing reciprocal obligations; any ambiguities in its terms are interpreted in favor of *the greatest reciprocity of interests*. Accordingly, "resolution" or "resolution agreement" should be interpreted to mean a subsequent agreement between the lessor and the lessee instead of a unilateral resolution from the lessor's board of directors.

**4. ID.; ID.; ID.; ID.; EJECTMENT OF LESSEE; GROUNDS.—** A summary proceeding for unlawful detainer contemplates a situation where the defendant's possession, while initially lawful, had legally expired. Under the Civil Code, a lessor may judicially eject the lessee for any of the following causes: "Article 1673. The lessor may judicially eject the lessee for any of the following causes: (1) When the **period agreed upon**, or that which is fixed for the duration of leases under Articles 1682 and 1687, **has expired;** (2) **Lack of payment of the price** stipulated; (3) **Violation of any of the conditions agreed upon** in the contract; (4) When the lessee **devotes** the thing leased **to any use or service not stipulated which causes the deterioration** thereof; or if he does not observe the requirement in No. 2 of Article 1657, as regards the use thereof. The ejectment of tenants of agricultural lands is governed by special laws." The presence of any of these circumstances authorizes the lessor to directly resort to the MTC/MeTC for summary ejectment. The lessor is no longer required to file a separate complaint for rescission before the RTC. However, none of these circumstances is present in this case.

**APPEARANCES OF COUNSEL**

*Habitan Ferrer Chan Tagapan & Associates* for petitioners.
*Yulo Aliling Pascua & Zuñiga* for respondent.

**D E C I S I O N**

**BRION, *J.*:**

This is a petition for review on *certiorari* filed by Efren S. Quesada (*Efren*), et al., from the January 16, 2013 decision[1] and June 5, 2013 resolution[2] of the Court of Appeals (*CA*) in **CA-G.R. SP No. 122063**.[3] The CA affirmed the Regional Trial Court's (*RTC*) decision[4] in **Civil Case No. Q-11-69040**[5] which, in turn, reversed the decision[6] of the Metropolitan Trial Court (*MeTC*) in **Civil Case No. 38437** and ejected Efren Quesada from the property he was leasing.

**Antecedents**

Respondent Bonanza Restaurant, Inc. (*Bonanza*) is the registered owner of a 9,404-square meter property covered by Transfer Certificate of Title (*TCT*) No. RT-65703 (*subject lot*) situated at 1077-1079 EDSA, Balintawak, Quezon City.[7] In 2003, Efren was Bonanza's General Property Manager while his brother, Miguel Quesada, was the Company President.

On July 1, 2003, Bonanza, represented by Miguel, allegedly leased the subject lot to Efren. The lease was supposedly

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[1] *Rollo*, p. 47.

[2] *Id.* at 60.

[3] Both penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.

[4] *Rollo*, p. 207.

[5] RTC, Quezon City, Branch 83 through Presiding Judge Ralph S. Lee.

[6] *Rollo*, p. 121.

[7] *Id.* at 48.

"*effective July 1, 2003 until such time that it is replaced or amended by another resolution agreement*"[8] and "*effective until such time that the parcel of land is sold*."[9]

The lease contract further obliged Efren (1) to expressly include a 60-day pre-termination clause in his third party subleasing agreements to ensure that the property be always available for sale, and (2) to furnish Bonanza with copies of the subleasing agreements.[10]

Using the contract of lease, Efren entered into various subleases with third parties (*the sublessees*).

On February 7, 2008, Bonanza restaurants informed Efren that it had rescinded the lease contract and formally demanded the return of the subject lot.[11] Efren received the demand letter on the same day.

On February 11, 2008, Bonanza also notified Efren's sublessees about the rescission of the lease and formally demanded the surrender of the subject lot.[12]

On March 26, 2008, Bonanza filed a complaint[13] for unlawful detainer against Efren and his sublessees. The complaint alleged: (1) that Efren's subleases failed to include the mandatory 60-day pre-termination clause;[14] (2) that it had repeatedly questioned the sublease agreements, but Efren ignored its objections because he was forestalling the sale of the property;[15] (3) that Bonanza discovered sometime in November 2006 that Efren had already constructed concrete structures on the subject lot – in bad faith

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[8] *Id*. at 71.

[9] *Id*. at 70.

[10] *Id*. at 70.

[11] *Id*. at 72.

[12] *Id*. at 73-85.

[13] *Id*. at 61.

[14] *Id*. at 64.

[15] *Id*.

and without its knowledge or consent – to prolong his enjoyment of the lot;[16] (4) that Efren had been forestalling the sale of the subject lot because of the advantageous arrangement he then enjoyed; (5) that Efren's attempts at preventing the sale of the subject lot effectively fulfilled the resolutory condition of the lease;[17] and (6) that on January 8, 2008, Bonanza's Board of Directors resolved to cancel the lease with Efren pursuant to the provision that it "*shall be effective July 1, 2003 and until such time that it is replaced or amended by another resolution.*"[18]

In his answer[19] dated April 14, 2008, Efren denied frustrating the sale of the lot or building the improvements in bad faith. As affirmative defenses, Efren also argued: (1) that Bonanza could not unilaterally rescind the lease contract; and (2) that assuming there was legal justification to rescind the contract – an action incapable of pecuniary estimation — then the proper forum was the RTC.

On December 29, 2010, the MeTC dismissed the complaint for prematurity after finding that Bonanza had no cause of action yet against Efren and his sublessees.[20]

The MeTC reasoned that the basis for the ejectment complaint was Bonanza's unilateral cancellation of the lease. However, it had not yet been established that Efren violated the terms of the lease.[21] Since Efren had not yet established that the rescission was done in accordance with the law, his allegation — that Efren's possession of the property has become unlawful – was premature.[22]

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[16] *Id*.

[17] *Id*. at 65.

[18] *Id*. at 65.

[19] *Id*. at 98.

[20] *Id*. at 128.

[21] *Id*.

[22] *Id*.

The MeTC further observed that Bonanza's unilateral rescission of the lease was unjustified because the contract did not grant it the power to unilaterally or extrajudicially rescind the agreement. It concluded that it had no jurisdiction over the case based on the complaint and that the correct remedy was for Bonanza to file a case for rescission before the RTC.

On appeal, the RTC reversed[23] the MeTC decision, ejecting Efren and his sublessees from the property.

The RTC noted that the complaint alleged: (1) that Efren possessed the property; (2) that Bonanza formally demanded that Efren vacate the premises; and (3) that Efren and his sublessees refused and continued to refuse to surrender possession of the property.[24] Considering that the complaint was filed within one year from the last demand to vacate, the RTC held that the complaint sufficiently made a case for unlawful detainer — an action within the jurisdiction of the MeTC.

The RTC also pointed out that there was no need for a lessor to first file an action for rescission of the lease with the RTC before filing an ejectment case.[25] The availability of the action for rescission did not preclude the lessor from resorting to the remedy of ejectment.

The RTC found that Efren had deprived Bonanza of the possession of its property. It also held that the Contract of Lease was simulated because Miguel only agreed to sign the contract without authority from the Board to enable Efren to secure a business permit to lease the property.[26] It concluded that Efren and his sublessees' possession of the property became illegal when they refused to vacate upon Bonanza's demand.[27]

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[23] *Id.* at 207.

[24] *Id.* at 214.

[25] *Id.* at 213.

[26] *Id.* at 214.

[27] *Id.* at 217.

Efren moved for reconsideration, which the RTC denied on October 11, 2011. Thus, he and his sublessees elevated the case to the CA.[28]

Efren maintained that Bonanza needed to file an action for rescission and that the complaint did not make a case for unlawful detainer but one for *accion publiciana*.[29] Efren argued that Bonanza failed to establish a legal cause that justified his summary ejectment from the property.

He also challenged the RTC's finding that the lease was simulated or at least unenforceable.[30] He posited that these conclusions should have been reached after conducting a full-blown trial, not a mere summary proceeding.

Lastly, Efren insisted that Bonanza could not have unilaterally rescinded the lease agreement in the absence of a stipulation allowing it or without proof that he violated the terms of the agreement. He argued that Bonanza should have filed a case for rescission before the RTC, rather than an ejectment complaint before the MeTC.[31]

On January 16, 2013, the CA affirmed[32] the RTC's decision. It upheld the RTC's finding that the allegations in the complaint sufficiently made a case for unlawful detainer.[33] Assuming *arguendo* that the complaint was one for *accion publiciana*, the RTC was duty bound not to dismiss the case pursuant to Rule 40, Section 8 of the Rules of Court.[34]

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[28] *Id.* at 249.

[29] *Id.* at 261.

[30] *Id.* at 265.

[31] *Id.* at 268-271.

[32] *Id.* at 47.

[33] *Id.* at 54.

[34] *SEC. 8. Appeal from orders dismissing case without trial; lack of jurisdiction.* – If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of

On the merits, the CA agreed that the lease was simulated and was not intended to produce any legal effect.[35] At the very least, the lease was unenforceable pursuant to Article 1403 (1) of the Civil Code for having been entered into without authority from the Corporation.[36] Thus, Bonanza's exercise of its right to rescind the lease under the simulated or unenforceable contract is a mere superfluity.[37]

Efren moved for reconsideration but the CA denied[38] the motion on June 5, 2013. Hence, the present recourse to this Court.

## The Arguments

Citing the Doctrine of Apparent Authority of Corporate Officers, Efren argues that Bonanza was estopped from denying the existence and enforceability of the Lease Contract.[39] He also argues that Bonanza effectively ratified the lease by having accepted its proceeds throughout several years.[40] Thus, Bonanza is bound by the terms of the agreement which it cannot unilaterally terminate owing to the mutuality of contracts. The lease is effective and should be respected until the property is sold.

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dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings

**If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.**

[35] *Rollo*, p. 56.

[36] *Id*. at 56.

[37] *Id*. at 58.

[38] *Id*. at 60.

[39] *Id*. at 23.

[40] *Id*. at 26.

Efren further maintains that the original ejectment suit could not prosper without first filing an action for rescission because the validity of the contract was being questioned.[41] He points out that the complaint failed to allege any of the grounds for ejectment under the *Rent Control Act of 2005*[42] and the Civil Code.[43]

Bonanza counters: (1) that the Doctrine of Apparent Authority cannot be invoked by one who is not a third party, such as an officer of the corporation; and (2) that Efren failed to present any evidence that the Board of Directors ratified the contract.

Bonanza asserts that its complaint sufficiently made a case for unlawful detainer because it alleged: (a) Efren's possession of the property; (b) a demand for Efren to vacate the leased premises; (c) Efren's continued refusal to surrender possession of the premises; and (d) filing of the case within one year from the demand to vacate.[44] Therefore, the MeTC had jurisdiction to try the case.[45]

Finally, Bonanza points out that the circumstances regarding the execution of the lease contract are factual matters beyond the ambit of a petition for review on *certiorari*.

**Our Ruling**

The petition is meritorious.

This case is rooted in Bonanza's complaint for unlawful detainer. The complaint theorizes that by constructing concrete structures on the property without Bonanza's permission, Efren effectively forestalled the sale of the property, constructively fulfilling the resolutory condition of the lease.[46]

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[41] *Id*. at 32.

[42] Sec. 7, Republic Act No. 9341 (2005).

[43] Art. 1673, Republic Act No. 386 (1949).

[44] *Rollo*, p. 343.

[45] *Id*. at 334.

[46] *Id*. at 64.

The complaint also points out that Bonanza's Board of Directors passed a resolution on January 28, 2008, canceling, rescinding, and/or terminating the lease. Therefore, the lease contract, which was "*effective July 1, 2003 and until such time that it is replaced or amended by another resolution*" had already expired.[47]

*The lessor's demand to vacate had no legal basis.*

At the outset, we observe that Bonanza's complaint for ejectment was prematurely filed. According to Rule 70, Section 2 of the Rules of Court, the lessor can only proceed with a summary action for ejectment upon making a sufficient demand from the lessee:

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

The Rules requires the concurrence of two conditions. *First*, the lessor must first make a written demand for the lessee: (1) to pay or comply with the conditions of the lease; and (2) to vacate the premises. *Second*, the lessee fails to comply with the demand within the given period.

A careful examination shows that Bonanza did not sufficiently comply with Rule 70, Section 2. Its demand letter reads:

> Please be advised that **we have cancelled, rescinded and/or terminated the "Contract of Lease"** dated July 1, 2003, over that real property situated at 1077-79 EDSA, Balintawak, Quezon City, covered by Transfer Certificate of Title No. 65703. In view thereof, **formal demand is hereby made upon you (and all persons claiming**

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[47] *Id*. at 65.

**rights under you) to vacate and surrender the property to us** within fifteen (15) days from receipt of this letter.

For a peaceful and proper turnover of the premises, please coordinate with our new legal counsel YULO ALILING PASCUA & ZUÑIGA with offices at the 4th Floor C-J Yulo Building, Pasong Tamo comer Don Bosco Road, Makati City, and telephone number 816-6687. The contact person is Mr. Jose P.O. Aliling IV.

Messrs. Yulo Aliling Pascua & Zuñiga believe that the contract is not really a lease but a usufruct and that because you are a builder in bad faith, you lost what was built without right to indemnity.

The demand did not indicate that Efren breached the lease contract. There was no demand for him to pay rent or comply with any of his obligations under the lease. Instead, it **merely informs him that Bonanza had unilaterally terminated** the lease and demands the surrender of the property.

However, a contracting party cannot unilaterally terminate a contract unless otherwise stipulated beforehand. A contract binds both contracting parties; its validity cannot be left to the will of one of them.[48] To hold otherwise would offend the mutuality of contracts.

Bonanza's complaint theorized that by constructing concrete structures on the property without Bonanza's permission, Efren effectively forestalled the sale of the property, constructively fulfilling the resolutory condition of the lease.[49] However, this argument is without basis.

There is no logical connection between the construction of concrete structures on the property and Bonanza's inability to sell it. The argument is a *non sequitur*. Moreover, the lease contract itself specifically recognized the lessee's right to construct on the property:

**5. Improvements** – All construction improvements introduced by LESSEE shall be to his own account. It is also understood

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[48] Art. 1308, CIVIL CODE.

[49] *Rollo*, p. 64.

> that all materials used in the improvements shall be turned over to LESSEE upon the sale of the property based on a submitted control listing of all approved improvements and their respective costs at the end of the construction period.[50]

Bonanza's approval is only relevant with respect to Efren's right to the turnover of materials used upon the sale of the property. Other than that, the contract does not oblige Efren to secure Bonanza's consent prior to constructing improvements.

Furthermore, Article 1657 of the Civil Code enumerates Efren's statutory obligations as a lessee:

> Article 1657. The lessee is obliged:
>
> (1) To pay the price of the lease according to the terms stipulated;
>
> (2) To use the thing leased as a diligent father of a family, **devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place**;
>
> (3) To pay expenses for the deed of lease.[51]

Bonanza failed to show how any of Efren's constructions go against the permissible use of the property based on its nature. Accordingly, Bonanza had no basis to unilaterally terminate the lease without offending the mutuality of contracts.

*The period of the lease had not yet expired.*

There is also no merit in Bonanza's contention that the contract which was "*effective July 1, 2003 and until such time that it is replaced or amended by another resolution*" had expired because the Board of Directors had already issued a board resolution terminating the lease. Bonanza interprets the term "resolution" to mean a board resolution from Bonanza. This erroneous interpretation is offensive to the mutuality and obligatory force of contracts.

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[50] *Id*. at 70.

[51] Art. 1657, CIVIL CODE.

The contract actually states:

> **8. Effectivity** – This agreement shall be effective July 1, 2003 and until such time that it is replaced or amended by another **resolution agreement**.[52]

We point out that Bonanza has conveniently omitted the word "agreement" whenever it cited the effectivity of the contract. This omission is misleading and unethical.

A lease contract is onerous in character containing reciprocal obligations; any ambiguities in its terms are interpreted in favor of *the greatest reciprocity of interests*.[53] Accordingly, "resolution" or "resolution agreement" should be interpreted to mean a subsequent agreement between the lessor and the lessee instead of a unilateral resolution from the lessor's board of directors.

*There was no ground for summary ejectment.*

A summary proceeding for unlawful detainer contemplates a situation where the defendant's possession, while initially lawful, had legally expired. Under the Civil Code, a lessor may judicially eject the lessee for any of the following causes:

> Article 1673. The lessor may judicially eject the lessee for any of the following causes:
>
> (1) When the **period agreed upon**, or that which is fixed for the duration of leases under Articles 1682 and 1687, **has expired**;
>
> (2) **Lack of payment of the price** stipulated;
>
> (3) **Violation of any of the conditions agreed upon** in the contract;
>
> (4) When the lessee **devotes** the thing leased **to any use or service not stipulated which causes the deterioration** thereof; or if he does not observe the requirement in No. 2 of Article 1657, as regards the use thereof.

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[52] *Rollo*, p. 71.

[53] Art. 1378, CIVIL CODE.

> The ejectment of tenants of agricultural lands is governed by special laws.[54]

The presence of any of these circumstances authorizes the lessor to directly resort to the MTC/MeTC for summary ejectment. The lessor is no longer required to file a separate complaint for rescission before the RTC.[55] However, none of these circumstances is present in this case.

*First*, the contract did not specifically fix the period of the obligation. Therefore, we cannot conclude that the lease had already expired. While the nature and the circumstances of the contract make it apparent that a period was intended, this does not authorize the lessor to unilaterally conclude that the period had lapsed or to summarily eject the lessee. The Civil Code only grants the lessor the right to ask the courts to fix the period.[56]

*Second*, the complaint did not allege that Efren had been remiss in the payment of the stipulated rent.

*Third*, Bonanza failed to establish that Efren committed a substantial breach – as opposed to a casual breach — of his legal obligations (both under the contract and under Article 1657 of the Civil Code) that would defeat the very object of the parties in making the agreement and warrant the rescission of the contract.

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[54] Art. 1673, CIVIL CODE.

[55] *Cebu Autometic Motors, Inc. v. General Milling Corp.*, 643 Phil. 240, 251 (2010).

[56] **Art. 1197.** If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

*Lastly*, Bonanza failed to show that Efren had dedicated the property to a use that is contrary to its commercial nature and that caused its deterioration. On the contrary, Efren had maintained the property and made improvements on it.

*The RTC and the CA exceeded the scope of their appellate review.*

The CA and the RTC's findings challenging the validity of the lease contract went beyond the scope of their appellate review. We stress that an ejectment proceeding is a *summary action* of limited scope: the validity of the defendant's possession.

Consequently, the appellate courts erred when they passed upon the validity of the contract and Miguel's authority (or lack thereof) — matters outside the scope of the original ejectment suit. Moreover, Bonanza's complaint for unlawful detainer was *implicit recognition of the validity* of the lease contract.

Admittedly, Rule 40, Section 8 authorizes the RTC to decide an appealed case on the merits — *as if it were originally filed before it* — if it finds that it has original jurisdiction over the case. However, this is not the case here because the RTC affirmed the MTC's jurisdiction over the original complaint.

Thus, this Court finds it improper for the RTC and for the CA to have passed upon: (1) the validity (or invalidity) of the lease contract and (2) Miguel's authority (or alleged lack thereof) to enter into the lease. While the RTC has the power to determine the validity or invalidity of contracts, this power is exercised pursuant to its ***exclusive original jurisdiction*** over cases where the subject is incapable of pecuniary estimation.[57] Due process demands that, in such cases, the litigants are thoroughly heard in a full-blown trial and not just in a summary proceeding.

**WHEREFORE,** we hereby **GRANT** the petition. The January 16, 2013 decision and the June 5, 2013 resolution of the Court of Appeals in **CA-G.R. SP No. 122063** are **REVERSED**. The

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[57] Sec. 19, BP 129.

complaint in **Civil Case No. 38437** is DISMISSED for lack of merit.

**SO ORDERED.**

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

*Mendoza, J.*, on official leave.

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**THIRD DIVISION**

[G.R. No. 208350. November 14, 2016]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **HEIRS OF SPOUSES TOMASA ESTACIO and EULALIO OCOL,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; ALL LANDS NOT APPEARING TO BE CLEARLY WITHIN PRIVATE OWNERSHIP IS PRESUMED TO BELONG TO THE STATE.—** Under the *Regalian Doctrine*, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be presented to

establish that the land subject of the application is alienable or disposable.

**2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); REGISTRATION UNDER SECTION 14(1) AND REGISTRATION UNDER SECTION 14(2), DISTINGUISHED.—** Registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, without regard to whether the land was susceptible to private ownership at that time. The applicant needs only to show that the land had already been declared alienable and disposable at any time prior to the filing of the application for registration. On the other hand, registration under Section 14(2) of P.D. No. 1529 is based on acquisitive prescription and must comply with the law on prescription as provided by the Civil Code. In that regard, only the patrimonial property of the State may be acquired by prescription pursuant to the Civil Code. For acquisitive prescription to set in, therefore, the land being possessed and occupied must already be classified or declared as patrimonial property of the State. Otherwise, no length of possession would vest any right in the possessor if the property has remained land of the public dominion.

**3. ID.; ID.; ID.; REGISTRATION UNDER SECTION 14(1); REFERS TO THE JUDICIAL CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES TO PUBLIC LAND; REQUISITES.—** Section 14(1) of P.D. No. 1529 refers to the judicial confirmation of imperfect or incomplete titles to public land acquired under Section 48(b) of Commonwealth Act No. 141, or the Public Land Act, as amended by P.D. No. 1073. Under Section 14(1), respondents need to prove that: (1) the land forms part of the alienable and disposable land of the public domain; and (2) they, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier. These the respondents must prove by no less than clear, positive and convincing evidence.

**4. ID.; ID.; ID.; ID.; ALIENABLE AND DISPOSABLE CHARACTER OF LAND; LAND OF THE PUBLIC DOMAIN, TO BE SUBJECT TO APPROPRIATION, MUST**

**BE DECLARED ALIENABLE AND DISPOSABLE EITHER BY THE PRESIDENT OR THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.—** To prove that the subject property forms part of the alienable and disposable lands of the public domain, the respondents presented three certifications - two are dated January 29, 2010 (Exhibits "J-3" and "K-2") and one is dated January 28, 2010 (Exhibits "L-3") — issued by Senior Forest Management Specialist Corazon D. Calamno and Chief of the Forest Utilization and Law Enforcement Division of the DENR-National Capital Region. The certification attests that the lots are verified to be within alienable and disposable land under Project No. 27-B Taguig Cadastral Mapping as per LC Map No. 2623 approved on January 3, 1968 x x x. However, the certifications presented by the respondents are insufficient to prove that the subject properties are alienable and disposable. We reiterate the standing doctrine that land of the public domain, to be the subject of appropriation, must be declared alienable and disposable either by the President or the Secretary of the DENR. Applicants must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the records. x x x Clearly, the aforestated doctrine unavoidably means that the mere certification issued by the DENR does not suffice to support the application for registration, because the applicant must also submit a copy of the original classification of the land as alienable and disposable as approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. Hence, in the instant case, the DENR certifications that were presented by the respondents in support of their application for registration are not sufficient to prove that the subject properties are indeed classified by the DENR Secretary as alienable and disposable. It is still imperative for the respondents to present a copy of the original classification approved by the DENR Secretary, which must be certified by the legal custodian thereof as a true copy.

**5. ID.; ID.; ID.; ID.; POSSESSION AND OCCUPATION OF PUBLIC LAND; TAX DECLARATIONS OR REALTY TAX PAYMENTS OF PROPERTY ARE GOOD INDICIA OF POSSESSION IN THE CONCEPT OF AN OWNER.—** [T]he tax declarations do not prove respondents' assertion. Although respondents claim that they possessed the subject lots through

their predecessors-in-interest since the 1930s, their tax declarations belie the same. The earliest tax declarations presented for the first lot was issued only in 1966, while the earliest tax declaration for the third lot was issued in 1949. x x x While belated declaration of a property for taxation purposes does not necessarily negate the fact of possession, tax declarations or realty tax payments of property are, nevertheless, good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least, constructive possession. That the subject properties were first declared for taxation purposes only in those mentioned years gives rise to the presumption that the respondents claimed ownership or possession of the subject properties starting in the year 1966 only with respect to the first lot; and year 1949, with respect to the third lot. The voluntary declaration of a piece of property for taxation purposes not only manifests one's sincere and honest desire to obtain title to the property, but also announces an adverse claim against the State and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens ones *bona fide* claim of acquisition of ownership. Likewise, this Court notes that x x x there are only six tax declarations for the first lot, nine tax declarations for the second lot and five tax declarations for the third lot within the alleged actual and physical possession of the lands without any interruption for more than sixty five (65) years. x x x Moreover, this Court emphasizes that respondents paid the taxes due on the parcels of land subject of the application only in 2009, a year after the filing of the application. There is no showing of any tax payments before 2009. x x x From the foregoing, this Court doubts the respondents' claim that their predecessors-in-interest have been in continuous, exclusive, and adverse possession and occupation thereof in the concept of owners from June 12, 1945, or earlier. The evidence presented by the respondents does not prove title thru possession and occupation of public land under Section 14(1) of P.D. 1529.

**6. ID.; ID.; ID.; REGISTRATION UNDER SECTION 14(2); APPLICATION FOR ORIGINAL REGISTRATION OF LAND OF THE PUBLIC DOMAIN; THERE MUST BE AN OFFICIAL DECLARATION BY THE STATE THAT THE PUBLIC DOMINION PROPERTY IS NO LONGER INTENDED FOR PUBLIC USE, PUBLIC SERVICE, OR**

**FOR THE DEVELOPMENT OF NATIONAL WEALTH BEFORE IT CAN BE ACQUIRED BY PRESCRIPTION.—** An application for original registration of land of the public domain under Section 14(2) of Presidential Decree (PD) No. 1529 must show not only that the land has previously been declared alienable and disposable, but also that the land has been declared patrimonial property of the State at the onset of the 30-year or 10-year period of possession and occupation required under the law on acquisitive prescription. x x x [T]here must be an official declaration by the State that the public dominion property is no longer intended for public use, public service, or for the development of national wealth before it can be acquired by prescription; that a mere declaration by government officials that a land of the public domain is already alienable and disposable would not suffice for purposes of registration under Section 14(2) of P.D. No. 1529. The period of acquisitive prescription would only begin to run from the time that the State officially declares that the public dominion property is no longer intended for public use, public service, or for the development of national wealth.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Romerico P. Regio* for respondents.

**D E C I S I O N**

**PERALTA,[*] *J.*:**

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision[2] dated February 20, 2013, and Resolution[3] dated July 26, 2013

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[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[1] *Rollo,* pp. 7-26.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. and Rodil V. Zalameda, concurring; *id.* at 28-41.

[3] *Id.* at 42-43.

of the Court of Appeals (*CA*) in CA-G.R. CV No. 96879. The CA affirmed the Order[4] of the Regional Trial Court (*RTC*) in LRC Case No. N-11598 granting respondents' application for registration and confirmation of title over three (3) parcels of land located at Barangay Calzada, Taguig City with a total area of 11,380 square meters.

The factual antecedents are as follows:

On September 19, 2008,[5] respondents, Heirs of Spouses Tomasa Estacio and Eulalio Ocol filed with the RTC of Pasig City, Branch 266 an application for land registration under Presidential Decree No. 1529 (PD 1529) otherwise known as the Property Registration Decree. The application covers three (3) parcels of land described as follows: a) Lot 2 under approved survey plan Ccs-00-000258 with an area of 3,731 square meters; b) Lot 1672-A under approved subdivision plan Csd-00-001798 consisting of 1,583 square meters; c) a lot under approved survey plan Cvn-00-000194 consisting of 6,066 square meters.[6] The total assessed value of the parcels of land is ₱288,970.00[7]

On October 6, 2008, the RTC issued a Notice of Initial Hearing, copy furnished the Land Registration Authority (*LRA*). The notice was sent to the Official Gazette for publication and was served on all the adjoining owners. It was likewise posted conspicuously on each parcel of land included in the application.[8] During the initial hearing on January 13, 2010, respondents, by counsel, presented the jurisdictional requirements (*Exhibits "A" to "I" and their sub-markings*). There being no private oppositor, an Order of General Default was issued except against the Republic of the Philippines.

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[4] *Rollo,* pp. 44-49.

[5] *Id.* at 29.

[6] *Id.* at 44-46.

[7] *Id.* at 29.

[8] *Id.* at 30.

At the *ex-parte* presentation of evidence on January 22, 2010, respondents Rosa Ocol, 72 years old, and Felipe Ocol, 70 years old, testified that they are the children of the late Tomasa Estacio and Eulalio Ocol (*Exhibits "U" and "V*"). They inherited the subject lots from their father and mother who died on February 1, 1949 and March 22, 1999, respectively. When Felipe Ocol was only about eight years old and Rosa was still in grade school, their parents developed and cultivated the subject lots as rice fields. In the 1940's, there were only a few houses around their house. At present, one of the lots is residential while the two remaining lots have become idle. Their parents and grandparents had been in continuous, actual and physical possession of the lots without any interruption for more than sixty five (65) years. Felipe and Rosa have been in possession of the land for more than fifty (50) years. There is no existing mortgage or encumbrance over the said lots.[9]

Respondents presented witness Antonia Marcelo who was 85 years old at the time she testified. She is the neighbor of Tomasa Estacio and Eulalio Ocol in *Barangay* Calzada where she has been residing for more than fifty (50) years. She testified that during her childhood days, she used to play on the subject lots and had seen the spouses Ocol cultivate the lots by planting vegetables, rice and trees.[10]

In support of their application, respondents presented documentary evidence which sought to establish the following:

1. The first lot which is Lot 2 of the conv. Subd. plan Ccs-00- 000258 with an area of 3,731 square meters was declared for taxation purposes in the names of Tomasa Estacio and Eulalio Ocol in the years 1966, 1974, 1979, 1985, 2000 and 2002 (*Exhibits "T" to "T-7");*
2. The second lot which is Lot 1672-A under approved subdivision plan Csd-00-001798 consisting of 1,583

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[9] *Id.* at 47.

[10] *Id.*

square meters was declared for taxation purposes in the names of Tomasa Estacio and Eulalio Ocol in the years 1942, 1949, 1966, 1974, 1979, 1985, 1994, 2000 and 2002 (*Exhibits "R" to "R-10");*

3. The third lot which is a lot under approved survey plan CVN-00-000194 consisting of 6,066 square meters, being a conversion of Lot 1889, MCadm, 590-D Taguig Cadastral Mapping, was declared for taxation purposes in the names of Tomasa Estacio and Eulalio Ocol in the years 1949, 1974, 1979, 1985, 2000 and 2002 (*Exhibits "S" to "S-6"*);

4. The subject lots used to have larger areas but certain portions were taken and designated as legal easements. On December 17, 2009, the real property tax on the subject lots, declared in the names of Tomasa Estacio and Eulalio Ocol as owners, were paid (*Exhibits "Q", "Q-1" and "Q-2"*);

5. The subject lots were surveyed for Tomasa Vda. de Ocol as evidenced by the Geodetic Engineers' Certificates and Conversion Subdivision Plans (*Exhibits "J", "K", "L", "P", "P-1", and "P-2"*);

6. The subject lots are verified to be within alienable and disposable land under Project No. 27-B Taguig Cadastral Mapping as per LC Map No. 2623 approved on January 3, 1968 as evidenced by Certifications dated January 28, 2010 issued by the Department of Environment and Natural Resources-National Capital Region (*Exhibits "J-3, "K-2" and "L-3"*).[11]

On February 11, 2010, respondents formally offered their documentary evidence. The RTC set the case for presentation of evidence of the government on April 16, 2010. On the date of the hearing, there was no appearance from the government. Hence, the court, upon motion of applicants, considered the case submitted for resolution.

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[11] *Id.* at 46-47.

On August 12, 2010, the RTC issued an Order granting the respondents' application for registration of title to the subject properties, *viz.:*

> WHEREFORE, judgment is hereby rendered thus: the title of the heirs of Tomasa Estacio and Eulalio Ocol, namely, Rosa Ocol; and Felipe Ocol, to the three (3) parcels of land above-described is hereby CONFIRMED.
>
> Upon the finality of the judgment, let the proper Decree of Registration and Certificates of Title be issued to the applicants pursuant to Section 39 of P.D. 1529.
>
> Let two (2) copies of this Order be furnished the Land registration Authority Administrator Benedicto B. Ulep thru Salvador L. Oriel, the Chief of the Docket Division of said Office, East Avenue, Quezon City.
>
> SO ORDERED.[12]

The RTC found that respondents were able to prove that their predecessors-in-interest possessed the subject lots from 1966 until 2002 with respect to the first lot; from 1942 to 2002, with respect to the second lot; and from 1949 to 2002 with respect to the third lot, as shown in the tax declarations. The court posited that even if the subject lots were declared as alienable and disposable public land only on January 3, 1968, respondents had already "acquired title to the land according to P.D. 1529" by virtue of the continued possession of the respondents and their predecessors-in-interest from January 3, 1968 to the present.[13]

A motion for reconsideration was filed by the petitioner raising the following grounds:

(a) Respondents did not comply with the requirements in acquiring ownership of the subject lots by prescription because the few tax declarations of respondents failed to substantiate the requirement of open, continuous,

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[12] *Id.* at 48-49.

[13] *Id.* at 48.

notorious and exclusive possession of the subject lots for the required period as stated in the case of *Wee vs. Republic*;[14]

(b) The evidence is insufficient to establish the nature of possession because the testimony of witness Antonia Marcelo with regard to the cultivation of the subject properties by spouses Ocol does not convincingly prove possession and enjoyment of the subject lots to the exclusion of other people;

(c) There was no declaration, either in the form of a law or a presidential proclamation, showing that the lots are no longer intended for public use or for the development of national wealth, or that it has been converted to patrimonial property as stated in the case of *Heirs of Malabanan v. Republic*.[15]

The Motion for Reconsideration was denied by the RTC on February 15, 2011.

The RTC opined that the case of *Wee vs. Republic*[16] is not applicable in the instant case because the parcels of land involved in the said case are "unirrigated ricefields". In the instant case, the first and third lots are ricefields while the second lot is a residential one as shown in the tax declarations. The RTC averred that, even prior to the dates stated in the tax declarations specifically during the 1940s, spouses Tomasa and Eulalio Ocol had started planting rice on the first and third lots as testified to by respondents. The testimony was corroborated by witness Antonia Marcelo, who is 15 years older than the respondents, when she testified that she played on the subject lots and had seen the spouses Ocol cultivate the same by planting vegetables, rice and trees in the 1930s. As to the second lot, the RTC gave credence to the testimony of respondents that in the 1940s,

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[14] 622 Phil. 944 (2009).

[15] 605 Phil. 244 (2009).

[16] *Supra* note 14.

respondents' house was already erected on the said lot. According to the court, such is proof that the lot has been used for residential purposes even prior to 1942 which is the earliest date of the tax declaration on the lot.

The RTC further held that the case of *Heirs of Malabanan vs. Republic*[17] does not apply in the case at bar because the said case involved a 71,324-square-meter lot, while the subject lots have a total area of 11,380 square meters only. The court pointed out that respondents are not just entitled to a grant of their application under Section 14(1) of PD 1529 but also under Section 14(2) of the same law because respondents had proven that their predecessors-in-interest were in possession of the subject lands earlier than 1945. Thus, there is no need for an express government manifestation that the property is patrimonial, or that such is no longer intended for public service or for the development of national wealth.

Aggrieved, petitioner filed an appeal before the CA. In a Decision dated February 20, 2013, the CA affirmed the Decision of the RTC. The *fallo* of the Decision states:

> WHEREFORE, the instant appeal is DISMISSED, and the Order dated August 12, 2010, of the Regional Trial Court of Pasig City, Branch 266, in L.R.C. Case No. N-11598 (LRA Record No. N-79393) is AFFIRMED IN TOTO.
>
> SO ORDERED.[18]

In affirming the RTC Order, the CA made the following ratiocinations:

> In the case at bar, the applicants-appellees seek the confirmation of their ownership to the subject lands not based on prescription, but based on their claim that "they have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bonafide* claim of ownership since June 12, 1945, or earlier". (Section 14[1], PD 1529).

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[17] *Supra* note 15.

[18] *Rollo,* p. 40.

The requirement of prior declaration that the property is patrimonial property of the State, therefore, does not apply. As explained in *Heirs of Malabanan*, for application based on Section 14(1) of the Property Registration Decree, it is enough that the property is alienable and disposable property of the State and the applicant has been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier. Both of these requirements are present in this case.[19]

A motion for reconsideration was filed by the petitioner but the same was denied by the CA on July 26, 2013.

Hence, this petition, raising the following errors:

1. THE RECORD IS BEREFT OF PROOF THAT THE SUBJECT PROPERTIES HAD BEEN CLASSIFIED AS ALIENABLE AND DISPOSABLE;
2. THE RECORD IS BEREFT OF PROOF THAT RESPONDENTS HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION Of THE SUBJECT LOTS UNDER A *BONA FIDE* CLAIM OF OWNERSHIP SINCE JUNE 12, 1945, OR EARLIER;
3. ALTERNATIVELY, RESPONDENTS CANNOT INVOKE PRESCRIPTION UNDER SECTION 14(2) OF PRESIDENTIAL DECREE NO. 1529. THE SUBJECT LOTS HAVE NOT BEEN CONVERTED INTO PATRIMONIAL PROPERTY OF THE STATE.[20]

On the first ground, petitioner states that respondents failed to present a copy of the original certification, approved by the DENR Secretary and certified as a true copy by the legal custodian, which would support respondents' claim that the subject lands are alienable and disposable. The certification of Senior Forest Management Specialist Corazon D. Calamno and Chief of the Forest Utilization and Law Enforcement Division of the DENR should not be treated as sufficient compliance

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

[20] *Id.* at 11.

with the requirements of the law because she was not presented during trial to testify on the contents of the certification.

On the second ground, petitioner argues that there is insufficient evidence of acts of dominion on the part of respondents and their predecessors-in-interest for the following reasons:

(a) Respondents did not explain how the properties were acquired. The only explanation as to the acquisition of Lot 1672-A was that it was first acquired from a certain Gregorio, without even mentioning the date of acquisition as well as any document evidencing the same.[21]
(b) It was unusual for respondents' parents to possess and occupy three (3) parcels of land that are not contiguous to one another;
(c) Respondents were able to present a tax receipt only for the year 2009;
(d) In terms of improvements, respondents did not go to the extent of specifying whether fences were erected on the lots. While they claim that crops were planted, it did not appear that they exclusively and continuously enjoyed the possession of the lots;
(e) While respondents consistently affirm the development of the lots as ricefields, they failed to consider the fact that the second lot, Lot 1672-A, is a residential land as stated on the tax declaration of the land.

On the third ground, petitioner avers that respondents cannot invoke prescription under Section 14(2) of P.D. 1529 because they failed to present the necessary documents which would show that the subject properties are no longer intended for public service or no longer used for the development of the national wealth. They did not present a declaration in the form of a law or a Presidential Proclamation.

In their Comment,[22] respondents counter that the certifications issued by the DENR constitute substantial compliance with the legal requirement, and that with their continuous possession of the subject lots for more than thirty (30) years, they had

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[21] *Id.* at 17.

[22] *Id.* at 57-60.

acquired ownership over the subject lots through prescription under Section 14(2) of P.D. 1529.

In Reply,[23] petitioner maintains that respondents failed to establish their compliance with the requisites for original registration either under Section 14 (1) or Section 14 (2) of P.D. No. 1529. The certifications of Senior Forest Management specialist Corazon C. Calamno and the Chief of the Forest Utilization and Law Enforcement Division of the DENR did not comply with the legal requirements for lack of approval by the DENR Secretary and for lack of certification by its legal custodian. Respondents failed to establish that the State expressly declared, either through a law or a presidential proclamation, that the parcels of land are no longer retained for public service or the development of national wealth, or that they had been converted into patrimonial properties. Without such, the subject lots remain part of public dominion.

Petitioner further maintains that the tax declarations do not represent regular assertion of ownership because of the large gaps in the years between declarations. Such sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation in the concept of an owner. And that, since the parcels of land are not contiguous, alleged possession and occupation over one parcel of land cannot prove possession and occupation over the other parcels of land.[24]

The petition is meritorious.

Under the *Regalian Doctrine*, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The

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[23] *Id.* at 75-80.

[24] *Id.* at 76.

burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.[25]

Section 14 (1) of PD 1529, otherwise known as the *Property Registration Decree* provides:

> SEC. 14. *Who may apply*. - The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> x x x x x x x x x

In the Order of the RTC granting the registration of the subject lots, it was stated that respondents had "acquired title to the land according to P.D. 1529" by virtue of the continued possession of the respondents and their predecessors-in-interest from January 3, 1968 to present. On motion for reconsideration, however, the court added that respondents are not just entitled to a grant of their application under Section 14(2) of the P.D. 1529, but also under Section 14(1) of the same law because respondents had proven that their predecessors-in-interest were in possession of the subject lots earlier than 1945. The CA explained, however, that the confirmation of the ownership to the subject lots is not based on prescription, but on Section 14 (1), since it was established that the lots are alienable and

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[25] *Republic v. Medida*, 692 Phil. 454, 463 (2012).

disposable, and the applicants are in continuous possession thereof since June 12, 1945 or earlier.

To distinguish between registration under Section 14(1) of P.D. No. 1529 from the one filed under Section 14(2) of P.D. No. 1529, this Court held in the case of *Heirs of Mario Malabanan v. Republic*;[26]

> Section 14(1) mandates registration on the basis of possession, while Section 14(2) entitles registration on the basis of prescription. Registration under Section 14(1) is extended under the aegis of the Property Registration Decree and the Public Land Act while registration under Section 14(2) is made available both by the Property Registration Decree and the Civil Code.[27]

Registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, without regard to whether the land was susceptible to private ownership at that time. The applicant needs only to show that the land had already been declared alienable and disposable at any time prior to the filing of the application for registration.[28]

On the other hand, registration under Section 14(2) of P.D. No. 1529 is based on acquisitive prescription and must comply with the law on prescription as provided by the Civil Code. In that regard, only the patrimonial property of the State may be acquired by prescription pursuant to the Civil Code. For acquisitive prescription to set in, therefore, the land being possessed and occupied must already be classified or declared as patrimonial property of the State. Otherwise, no length of possession would vest any right in the possessor if the property has remained land of the public dominion.[29]

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[26] *Supra* note 15.

[27] *Supra* note 15, at 206.

[28] *Republic v. Zurbaran Realty and Development Corp.*, G.R. No. 164408, March 24, 2014, 719 SCRA 601, 612.

[29] *Id.* at 612- 613.

Moreover, Section 14(1) of P.D. No. 1529 refers to the judicial confirmation of imperfect or incomplete titles to public land acquired under Section 48(b) of Commonwealth Act No. 141, or the Public Land Act, as amended by P.D. No. 1073.[30] Under Section 14(1), respondents need to prove that: (1) the land forms part of the alienable and disposable land of the public domain; and (2) they, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier. These the respondents must prove by no less than clear, positive and convincing evidence.[31]

In the case at bar, the first requirement was not satisfied. To prove that the subject property forms part of the alienable and disposable lands of the public domain, the respondents presented three certifications — two are dated January 29, 2010 (Exhibits "J-3" and "K-2") and one is dated January 28, 2010 (Exhibits "L-3") — issued by Senior Forest Management Specialist Corazon D. Calamno and Chief of the Forest Utilization and Law Enforcement Division of the DENR-National Capital

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[30] Sec. 48(b) of the Public Land Act, as amended by P.D. No. 1073, provides that:

> Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors–in–interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

[31] *Republic v. De la Paz, et al.*, 649 Phil. 106, 119-120 (2010).

Region.[32] The certification attests that the lots are verified to be within alienable and disposable land under Project No. 27-B Taguig Cadastral Mapping as per LC Map No. 2623 approved on January 3, 1968, thus:

> This is to certify that the tract of land as shown and described at the reverse side hereof xxx as surveyed by Geodetic Engineer Jose S. Agres, Jr. for Tomasa Vda de Ocol is verified to be within the Alienable and Disposable Land, under Project No. 27-B of Taguig City as per LC Map 2623, approved on January 3, 1968.[33]

However, the certifications presented by the respondents are insufficient to prove that the subject properties are alienable and disposable. We reiterate the standing doctrine that land of the public domain, to be the subject of appropriation, must be declared alienable and disposable either by the President or the Secretary of the DENR. Applicants must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the records. In *Republic of the Philippines v. T.A.N. Properties, Inc.*,[34] this Court explicitly ruled:

> Further, it is not enough for the PENRO or CENRO[35] to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. **In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.**

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[32] *Rollo,* p. 35.

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

[34] 578 Phil. 441 (2008).

[35] Certificate of Community Environment and Natural Resources Office (CENRO) and Provincial Environmental and Natural Resources Office (PENRO).

Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.[36]

In *Republic v. Bantigue Point Development Corporation,*[37] this Court deemed it appropriate to reiterate the ruling in *T.A.N. Properties, viz.*:

> The Regalian doctrine dictates that all lands of the public domain belong to the State. The applicant for land registration has the burden of overcoming the presumption of State ownership by establishing through incontrovertible evidence that the land sought to be registered is alienable or disposable **based on a positive act of the government.** We held in *Republic v. T.A.N. Properties, Inc.* that a CENRO certification is insufficient to prove the alienable and disposable character of the land sought to be registered. The applicant must also show sufficient proof that the DENR Secretary has approved the land classification and released the land in question as alienable and disposable.
>
> Thus, the present rule is that an application for original registration must be accompanied by (1) a CENRO or PENRO Certification; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.
>
> Here, respondent Corporation only presented a CENRO certification in support of its application. Clearly, this falls short of the requirements for original registration.[38]

Similarly, in *Republic v. Cortez,*[39] this Court declared that:

> x x x. To prove that the subject property forms part of the alienable and disposable lands of the public domain, Cortez adduced in evidence a survey plan Csd-00-000633 (conversion-subdivision plan of Lot

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[36] *Republic v. T.A.N. Properties, Inc., supra* note 34, at 452-453. (Emphasis ours)

[37] 684 Phil. 192 (2012).

[38] *Republic v. Bantigue Point Development Corporation, supra,* at 205-206. (Emphasis in the original).

[39] G.R. No. 186639, February 5, 2014, 715 SCRA 417.

2697, MCadm 594-D, Pateros Cadastral Mapping) prepared by Geodetic Engineer Oscar B. Fernandez and certified by the Lands Management Bureau of the DENR. The said survey plan contained the following annotation:

> This survey is inside L.C. Map No. 2623, Project No. 29, classified as alienable & disposable by the Bureau of Forest Development on Jan. 3, 1968.

However, **Cortez' reliance on the foregoing annotation in the survey plan is amiss; it does not constitute incontrovertible evidence to overcome the presumption that the subject property remains part of the inalienable public domain**. In *Republic of the Philippines v. Tri-Plus Corporation*,[40] the Court clarified that, the applicant must at the very least submit a certification from the proper government agency stating that the parcel of land subject of the application for registration is indeed alienable and disposable, *viz*.:

> It must be stressed that incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.
>
> In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, this is hardly the kind of proof required by law. To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable. In the case at bar, **while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed**. Respondents failed to submit a certification from

[40] 534 Phil. 181 (2006).

> the proper government agency to prove that the lands subject for registration are indeed alienable and disposable.[41]

Clearly, the aforestated doctrine unavoidably means that the mere certification issued by the DENR does not suffice to support the application for registration, because the applicant must also submit a copy of the original classification of the land as alienable and disposable as approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[42]

Hence, in the instant case, the DENR certifications that were presented by the respondents in support of their application for registration are not sufficient to prove that the subject properties are indeed classified by the DENR Secretary as alienable and disposable. It is still imperative for the respondents to present a copy of the original classification approved by the DENR Secretary, which must be certified by the legal custodian thereof as a true copy. Accordingly, the lower courts erred in granting the application for registration in spite of the failure of the respondents to prove by well-nigh incontrovertible evidence that the subject properties are alienable and disposable.[43]

Anent the second requirement, the tax declarations do not prove respondents' assertion. Although respondents claim that they possessed the subject lots through their predecessors-in-interest since the 1930s, their tax declarations belie the same. The earliest tax declarations presented for the first lot was issued only in 1966, while the earliest tax declaration for the third lot was issued in 1949.

If it is true that the parents of respondents had been in possession of the properties in the 1930s as testified to by witness Antonia Marcelo, why was the first lot declared for taxation

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[41] *Supra* note 39, at 427-428. (Emphasis ours)

[42] *Republic v. Rosario de Guzman Vda. de Joson*, G.R. No. 163767, March 10, 2014, 718 SCRA 229, 243.

[43] *Republic v. Remman Enterprises, Inc.*, G.R. No. 199310, February 19, 2014, 717 SCRA 171, 188.

purposes for the first time only in 1966, and the third lot was declared only in 1949? While belated declaration of a property for taxation purposes does not necessarily negate the fact of possession, tax declarations or realty tax payments of property are, nevertheless, good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least, constructive possession.[44]

That the subject properties were first declared for taxation purposes only in those mentioned years gives rise to the presumption that the respondents claimed ownership or possession of the subject properties starting in the year 1966 only with respect to the first lot; and year 1949, with respect to the third lot.[45] The voluntary declaration of a piece of property for taxation purposes not only manifests one's sincere and honest desire to obtain title to the property, but also announces an adverse claim against the State and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens ones *bona fide* claim of acquisition of ownership.[46]

Likewise, this Court notes that the tax declarations on the subject properties presented by the respondents were only for the years 1966, 1974, 1979, 1985, 2000 and 2002 with respect to the first lot (*Lot 2 of the conv. Subd. plan Ccs-00- 000258 with an area of 3,731 square meters*); for the years 1942, 1949, 1966, 1974, 1979, 1985, 1994, 2000 and 2002 with respect to the second lot (*Lot 1672-A under approved subdivision plan Csd-00-001798 consisting of 1,583 square meters*); for the years 1949, 1974, 1979, 1985, 2000 and 2002 with respect to the third lot (*a lot under approved survey plan CVN-00-000194 consisting of 6,066 square meters being a conversion of Lot 1889, MCadm, 590-D Taguig Cadastral Mapping*).

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[44] *Republic v. Alconaba,* 471 Phil. 607, 622 (2004).

[45] *Republic v. T.A.N. Properties, Inc., supra* note 34, at 457-458.

[46] *Republic v. Alconaba, supra* note 44, at 620.

Thus, there are only six tax declarations for the first lot, nine tax declarations for the second lot and five tax declarations for the third lot within the alleged actual and physical possession of the lands without any interruption for more than sixty five (65) years. In *Wee v. Republic of the Philippines*,[47] this Court stated that:

> It bears stressing that petitioner presented only **five tax declarations** (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of **more than 45 years** (1945-1993). **This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.** In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[48]

Moreover, this Court emphasizes that respondents paid the taxes due on the parcels of land subject of the application only in 2009, a year after the filing of the application. There is no showing of any tax payments before 2009. This Court held in the case of *Tan, et al. vs. Republic:*[49]

> Tax declarations *per se* do not qualify as competent evidence of actual possession for purposes of prescription. More so, if the **payment of the taxes due on the property is episodic, irregular and random** such as in this case. Indeed**, how can the petitioners claim of possession for the entire prescriptive period be ascribed any ounce of credibility when taxes were paid only on eleven (11) occasions within the 40-year period from 1961 to 2001**?[50]

From the foregoing, this Court doubts the respondents' claim that their predecessors-in-interest have been in continuous, exclusive, and adverse possession and occupation thereof in the concept of owners from June 12, 1945, or earlier. The

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[47] *Supra* note 14.

[48] *Id.* at 956. (Emphasis ours)

[49] G.R. No. 193443, April 16, 2012, 669 SCRA 499.

[50] *Tan, et al. v. Republic, supra,* at 509. (Emphasis ours)

evidence presented by the respondents does not prove title thru possession and occupation of public land under Section 14(1) of P.D. 1529.

Further, the RTC ruled that with the continuous possession of the subject lots for more than 30 years, respondents had acquired ownership over the subject lots through prescription under Section 14(2) of P.D.529. This view was adopted by the respondents in their Comment,[51] to the petition.

An application for original registration of land of the public domain under Section 14(2) of Presidential Decree (PD) No. 1529 must show not only that the land has previously been declared alienable and disposable, but also that the land has been declared patrimonial property of the State at the onset of the 30-year or 10-year period of possession and occupation required under the law on acquisitive prescription.[52]

It was elucidated in *Heirs of Malabanan*[53] that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code will not convert it to patrimonial or private property. There must be an express declaration that the property is no longer intended for public service or the development of national wealth. In the absence thereof, the property remains to be alienable and disposable and may not be acquired by prescription under Section 14(2) of P.D. No. 1529.

This Court, therefore, stresses that there must be an official declaration by the State that the public dominion property is no longer intended for public use, public service, or for the development of national wealth before it can be acquired by prescription; that a mere declaration by government officials that a land of the public domain is already alienable and

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[51] *Rollo,* pp. 57-60.

[52] *Republic v. Zurbaran Realty and Development Corporation, supra* note 28, at 603.

[53] *Supra* note 15.

disposable would not suffice for purposes of registration under Section 14(2) of P.D. No. 1529. The period of acquisitive prescription would only begin to run from the time that the State officially declares that the public dominion property is no longer intended for public use, public service, or for the development of national wealth.[54]

In *Republic v. Rizalvo, Jr.*,[55] this Court reiterated the ruling in *Malabanan, viz.*:

> On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.
> x x x

In this case, there is no evidence showing that the parcels of land in question were within an area expressly declared by law either to be the patrimonial property of the State, or to be no longer intended for public service or the development of the national wealth.

Evidently, there being no compliance, with either the first or second paragraph of Section 14 of PD 1529, the *Regalian* presumption stands and must be enforced in this case.

**WHEREFORE,** the petition is **GRANTED**. The Decision of the Court of Appeals dated February 20, 2013, in CA-G.R. CV No. 96879, affirming the Decision of the Regional Trial Court of Pasig City, Branch 266, in LRC Case No. N-11598, is **REVERSED** and **SET ASIDE.** The application for registration and confirmation of title filed by respondents Heirs of Spouses Tomasa Estacio and Eulalio Ocol over three parcels of land,

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[54] *Republic v. Cortez, supra* note 39, at 431- 432.

[55] 659 Phil. 578, 589 (2011).

with a total area of eleven thousand three hundred eighty (11,380) square meters situated at *Barangay* Calzada, Taguig City, Metro Manila, is **DENIED**.

**SO ORDERED.**

*Carpio,*[**] *Perez,* and *Reyes, JJ.,* concur.

*Velasco, Jr. (Chairperson), J.,* on official leave.

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**SECOND DIVISION**

[G.R. No. 209098. November 14, 2016]

**JUAN B. HERNANDEZ,** *petitioner, vs.* **CROSSWORLD MARINE SERVICES, INC., MYKONOS SHIPPING CO., LTD., and ELEAZAR DIAZ,** *respondents.*

**SYLLABUS**

**CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; QUITCLAIMS AND WAIVERS; NOT VALID WHEN THE PAYMENT MADE TO THE PARTY DOES NOT CONSTITUTE A REASONABLE SETTLEMENT EQUIVALENT TO THE FULL MEASURE OF HIS LEGAL RIGHTS; CASE AT BAR.—** Respondents profess that the Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit which petitioner was made to sign were prepared in good faith and simply to comply with the execution proceedings below and prevent garnishment of their accounts. However, this Court believes otherwise. Hidden behind these documents appears to be a convenient ploy to deprive petitioner of all his rights to claim indemnity from respondents

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[**] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 22, 2014.

under all possible causes of action and in all available fora, and effectively *for nothing in return or exchange* — because in the event that the NLRC ruling is reversed, then petitioner must return what he received, thus leaving him with the proverbial empty bag. This is fundamentally unfair, and goes against public policy. x x x [B]y affixing his signature upon the Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit, petitioner effectively surrendered all his rights and waived all his claims and causes of action in all jurisdictions, and in exchange for nothing. Indeed, in the Affidavit, petitioner even went so far as to certify and warrant that he will not file any other complaint or prosecute any suit or action here or in any other country after receiving the settlement amount. x x x This waiver by petitioner in exchange for nothing has in fact become a reality, since the CA reversed the NLRC ruling, which means that petitioner would now have to return what he received from the respondents, and yet he is left with no available recourse since he agreed that he will not "prosecute **any suit or action** in the Philippines x x x against the shipowners and/or the released parties herein after receiving the payment of US$66,000.00 or its peso equivalent." "Any suit or action" **literally** includes a petition before this Court to review the CA reversal — or **the instant petition. It also covers a claim for interest that may justly accrue in his favor during the pendency of the case**. x x x Within the context of the constitutional, legislative, and jurisprudential guarantees afforded to labor, the position petitioner has been led into is unjust, unfair, and arbitrary. x x x For what they did, respondents are guilty of bad faith, and should suffer the consequences of their actions. One is that their payment of petitioner's claim should properly be treated as a voluntary settlement of his claim in full satisfaction of the NLRC judgment — which thus rendered the Petition in CA-G.R. SP No. 124685 moot and academic. x x x Just as in the *Career Phils. Shipmanagement* case, petitioner is equally prohibited from pursuing further claims; it is not simply that petitioner "still retains the right to judicial recourse"; what is of significance is that he stands to gain nothing in the end, and yet is unduly prevented from pursuing further claims — all without the benefit of receiving, in return, valuable consideration or a reasonable settlement equivalent to the full measure of his legal rights.

**APPEARANCES OF COUNSEL**

*R. Go, Jr. Law Office* for petitioner.
*Del Rosario* and *Del Rosario Law Offices* for respondents.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

Assailed in this Petition for Review on *Certiorari*[1] are the November 29, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 124685 which set aside the February 23, 2012 Decision[3] and March 16, 2012 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M)-11-000995-11 and dismissed herein petitioner's Complaint[5] in NLRC-NCR Case No. (M) 04-05732-11. Also assailed herein is the CA's September 3, 2013 Resolution[6] denying reconsideration of its assailed Decision.

***Factual Antecedents***

The Labor Arbiter, NLRC, and CA adopt an identical narrative of the salient facts.

Petitioner Juan B. Hernandez has been working continuously for respondents Mykonos Shipping Co., Ltd. (Mykonos), Crossworld Marine Services, Inc. (Crossworld), and Eleazar Diaz (Diaz) – Crossworld's President/Chief Executive Officer

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[1] *Rollo*, pp. 27-66.

[2] *Id*. at 68-82; penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Myra V. Garcia-Fernandez and Zenaida T. Galapate-Laguilles.

[3] *Id*. at 242-253; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

[4] *Id*. at 264-265.

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

[6] *Id*. at 84-86.

– since November 14, 2005, under different employment contracts covering the latter's several oceangoing vessels.

On October 7, 2008, petitioner was once more engaged by respondents to work as Chief Cook aboard the vessel M/V Nikomarin. This latest employment was for a period of nine months, with a monthly salary of US$587.00, plus fixed overtime pay, food allowance, leave pay, and long service bonus. When his contract expired, petitioner's service was extended for an additional five months. Thereafter, he was repatriated on December 19, 2009.

With a view to serving respondents anew under a new contract, petitioner was made to undergo a pre-employment medical examination on March 22, 2010, and he was found to be suffering from hypertension and diabetes mellitus. He was declared fit for duty and required to take maintenance medication. However, respondents deferred his employment on account of his state of health.

In 2011, petitioner consulted two separate physicians who turned out the same diagnosis: that he was suffering from hypertension, stage 2, and type 2 diabetes mellitus, and was therefore unfit for sea duty in whatever capacity as seaman.

Petitioner demanded compensation by way of disability benefits and medical expenses from respondents, but the latter refused to pay.

***Ruling of the Labor Arbiter***

On April 8, 2011, petitioner filed a claim for disability benefits, medical expenses, allowances, damages, and attorney's fees against respondents before the Labor Arbiter, which was docketed as NLRC-NCR Case No. (M) 04-05732-11.

On August 31, 2011, Labor Arbiter Jose G. De Vera issued his Decision[7] in the case, which decreed as follows:

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[7] *Id*. at 203-206.

There are formidable grounds why said complainant's claims must fail.

First, the complainant was repatriated not on medical grounds but on account of the completion of his employment contract. x x x

Second, it cannot be denied that before complainant was deployed and joined his vessel on October 17, 2008, he was already afflicted with hypertension and diabetes mellitus as found during his pre-employment medical examination. As a matter of fact, complainant admitted that upon joining the vessel in France, he had with him various maintenance drugs for his hypertension and diabetes mellitus. This necessarily indicates that complainant's medical condition of hypertension and diabetes mellitus were pre-existing and contracted during his employment on board the vessel from October 17, 2008 until he finished his contract and eventually repatriated on December 19, 2009. Moreover, there is no record that while on board the vessel for the entire period of his employment, he was treated on board the vessel and/or confined in a clinic or hospital in the foreign ports. In short, there is no proof of any aggravation of his ailments.

Third, the complainant was repatriated not on medical grounds but precisely on account of completion of his employment contract. Hence, there was no reason for him to submit to post-employment medical examination within three (3) days from date of his arrival on December 19, 2009. In fact, there is no record that complainant had reported to the respondents Crossworld for the mandatory post-employment medical examination preparatory to further treatment and management of his ailments as contemplated under Section 20 [B] paragraph 3 of the POEA Standard Employment Contract. If there was any medical examination conducted thereafter, it was not for purposes of the complainant's claim for disability benefit and medical expenses, but precisely for purposes of his aborted next employment contract sometime in March 2010.

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.[8]

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[8] *Id*. at 205-206.

***Ruling of the National Labor Relations Commission***

Petitioner appealed before the NLRC, where the case was docketed as NLRC LAC (OFW-M)-11-000995-11.

On February 23, 2012, the NLRC rendered its Decision granting the appeal, thus setting aside the Labor Arbiter's August 31, 2011 Decision and awarding petitioner's claims, as follows:

> Complainant claims that as Chief Cook, his duties include the provisioning of the ship, food preparation and budgeting, cleaning of dining, kitchen, galley and food compartment and work areas; carrying of ship provisions, and cleaning the heavy cooking utensils used by the vessel's cooks; likewise, he is constantly exposed to the different climates, unpredictable weather and the perils of the sea.
>
> In general, diabetes mellitus is a group of metabolic diseases which a person has high blood sugar, either because the body does not produce enough insulin, or because cells do not respond to the insulin that is produced.
>
> 'What are its risk factors?'
>
> 'Stress, both physical and mental, can send the blood sugar out of wreck. x x x Both physical and emotional stress can prompt an increase in these hormones, resulting in an increase in blood sugars.'
>
> Day in and day out, with the continuous discharge by complainant of his duties, the increase in his blood sugar becomes inevitable, thus aggravating his controlled diabetes mellitus.
>
> x x x x x x x x x
>
> Upon the other hand, high blood pressure is an ailment that is work connected and is listed as a compensable ailment.
>
> x x x x x x x x x
>
> Section 20, paragraph (B) sub paragraph 4 of the POEA-SEC provides that those illnesses not listed in Section 32 of this contract are disputably presumed work related.
>
> x x x x x x x x x
>
> Undeniably, therefore, there is work connection between the complainant's aggravation of his illness and his work.

Capital is being made by respondents, and concurred in by the Labor Arbiter, over the alleged non-reporting for post employment medical examination within three (3) days from his arrival.

On the other hand, complainant claims 'that he reported his condition to respondents, but the latter refused to provide him with his needed medical assistance and attention. He was just told to go home to his province and rest. Complainant then went home to his province and had his condition checked by a local doctor.

In Interorient Maritime Enterprises, Inc. vs. Leonora Remo,[9] it was ruled that where the absence of a post-employment medical examination was not due to seafarer's fault but to the inadvertence or deliberate refusal of petitioners, this cannot defeat respondent's claim.'

In a change of heart, and after realizing their folly, respondents ordered complainant to undergo a medical examination by the company doctor on March 22, 2010 again preparatory to the signing of a new employment contract.

Under the circumstances, We have no other recourse but to re-echo the Supreme Court ruling that should doubt exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

In this regard, We have noted that the claims of the parties (complainant and respondents) were orally made.

As the records show, the next employment contract was no longer consummated because of the hypertension and diabetes mellitus. In fact, complainant was never redeployed by respondents.

In Lloreta vs. Philippine Transmarine Carriers, Inc., et al., the Court held that there is permanent disability where a worker fails to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body, while 'total disability means that disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather

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[9] 636 Phil. 240 (2010).

it is the incapacity to work resulting in the impairment of one's earning capacity.'

Under Section 32 of the POEA-SEC, an impediment grade 1 is equivalent to 120% of US$50,000.00 or US$60,000.00.

Further medical expenses in the sum of ₱3,221.00[10] were incurred by complainant as shown by the receipts attached to the records.

As complainant was assisted by a counsel de parte, attorney's fees equivalent to 10% of the money awards.

WHEREFORE, the judgment on appeal is REVERSED and SET ASIDE and a NEW ONE entered ordering the respondents, to pay in solidum, in peso equivalent at the time of payment, the following amounts:

1. US$60,000.00 as disability benefit;
2. ₱3,721.00 as reimbursement of medical expenses; and
3. 10% of the amounts awarded as attorney's fees.

SO ORDERED.[11]

Respondents moved to reconsider, but the NLRC stood its ground.

***Ruling of the Court of Appeals***

In a Petition for *Certiorari*[12] filed with the CA and docketed therein as CA-G.R. SP No. 124685, respondents sought to set aside the above NLRC Decision and thus reinstate that of the Labor Arbiter's, arguing mainly that petitioner's illness is not compensable, and consequently, he is not entitled to his other money claims.

Meanwhile, on July 17, 2012, respondents paid petitioner the amount of the judgment award – or the sum of ₱2,702,766.00. In return, petitioner was made to sign a

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[10] Should be ₱3,721.00, as prayed for in petitioner's pleadings.

[11] *Rollo*, pp. 246-253.

[12] *Id*. at 266-285.

Conditional Satisfaction of Judgment (All Without Prejudice to the Pending Petition for *Certiorari* in the Court of Appeals),[13] Receipt of Payment,[14] and Affidavit[15] – which were duly filed with the NLRC and CA. The Conditional Satisfaction of Judgment states, in part:

1. x x x. **That payment is hereby made to complainant only to prevent imminent execution that this Honorable Office and the complainant are undertaking.**

2. x x x x x x x x x

3. That by virtue of said conditional payment of the judgment award x x x, herein complainant will no longer pursue the execution proceedings he initiated by virtue of the judgment x x x.

4. That this Conditional Satisfaction of Judgment is without prejudice to herein respondents' Petition for *Certiorari* pending with the Court of Appeals docketed as **CA GR SP No. 124685** x x x; and this Conditional Satisfaction of Judgment is being made only to prevent imminent execution being undertaken by this Honorable office and complainant.

**5. That Complainant understands that in case of reversal and/or modification x x x by the Court of Appeals and/or the Supreme Court, he shall return whatever is due and owing to shipowners/manning agents without need of further demand**.[16] (Emphasis in the original)

On the other hand, the Affidavit essentially states:

3. x x x. **That I understand this payment is being made by the shipowners/manning agents to me only to prevent further execution proceedings that I have initiated with the National Labor Relations Commission (NLRC)**;

4. That I understand that the conditional payment of the judgment award is without prejudice to the shipowners'/manning agents' Petition

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[13] *Id*. at 340-342.

[14] *Id*. at 343.

[15] *Id*. at 345-346.

[16] *Id*. at 340-341.

for *Certiorari* pending with the Court of Appeals docketed as **CA GR SP No. 124685** x x x;

5. That I understand that the payment of the judgment award x x x includes all my past, present and future expenses and claims, and all kinds of benefits due to me under the POEA employment contract and all collective bargaining agreements and all labor laws and regulations, civil law or any other law whatsoever and all damages, pains and sufferings in connection with my claim;

6. That I have no further claims whatsoever in any theory of law against the Owners of **MV 'NIKOMARIN'** because of the payment made to me. That I certify and warrant that I will not file any complaint or prosecute any suit or action in the Philippines, Panama, Japan or any other country against the shipowners and/or the released parties herein after receiving the payment of **US$66,000.00** or its peso equivalent x x x.[17] (Emphasis in the original)

On November 29, 2012, the CA issued the assailed Decision, containing the following pronouncement:

Before proceeding, this Court must tackle the issue raised by private respondent that the instant petition has already been rendered moot and academic by virtue of the *Conditional Satisfaction of Judgment*, in relation to the pronouncement of the Supreme Court in *Career Phils. Shipmanagement, Inc. vs. Madjus*.[18] Private respondent's contention must be rejected.

First, in *Career Phils. Shipmanagement*, the Supreme Court no longer passed upon the merits of the case because of the concurrence between the findings of the Labor Arbiter and the NLRC. The Supreme Court, not being a trier of facts and taking into account the parallel findings of the two administrative offices specializing in Labor Cases, invoked the doctrine of finality of judgment with respect to factual findings of administrative bodies. The same does not hold true in the instant case, as the NLRC had an opposing view vis-à-vis that of the Labor Arbiter.

Second, the Supreme Court upheld the validity of the conditional settlement of the judgment in *Career Phils. Shipmanagement*.

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[17] *Id.* at 345.

[18] 650 Phil. 157 (2010).

However, the Supreme Court opted to render the action therein moot and academic due to the fact that part of the condition is a prohibition on the part of the seafarer to pursue further claims. It basically rendered the judgment final and executory as against the seafarer but not against the employer. The same does not obtain in the present action. Private respondent still retains the right to judicial recourse in the event the instant petition is granted.

Third, Article 19 of the Civil Code exhorts: '[E]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.' Accordingly, private respondent was expected to honor his covenant with petitioners when he signed the *Conditional Satisfaction of Judgment*. To renege thereon constitutes bad faith.

From the foregoing disquisition, it is clear that the present action is not yet moot and academic.

x x x x x x x x x

There is no question that private respondent was able to finish his contract with petitioners without any incident, notwithstanding the fact that private respondent was already suffering from hypertension and diabetes mellitus prior to boarding the latter's vessel. x x x

x x x x x x x x x

On the other hand, this Court disagrees with the NLRC's finding that private respondent's work aggravated his condition. As aptly noted by the Labor Arbiter, private respondent was able to finish his contract without any incident. x x x

x x x x x x x x x

Likewise, the Court disagrees with the NLRC's pronouncement that petitioners had a change of heart anent private respondent's post-employment medical examination when they directed the latter to undergo medical examination by the company doctor on March 22, 2010 because the said examination is preparatory to the signing of a new contract. x x x

Indeed, it cannot be concluded that private respondent's condition was aggravated after the expiration of his previous contract, considering that he was still willing to enter into a new contract for deployment on board one of petitioners' vessels. In fact, private respondent indicated in his Exit Interview dated December 21, 2009 that the

condition of the ship, its safety level as well as the food, was good and that he actually showed willingness to rejoin the vessel.

Accordingly, this Court finds no basis for the NLRC to declare that private respondent's work aggravated his condition. Certainly, there is also no basis for the NLRC to observe that the dietary provisions on board the ship likewise aggravated private respondent's condition, considering that the latter, as chief cook, prepared the food himself, which he rated as good.

In a plethora of cases, the Supreme Court has ruled that grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

In fine, We hold that the NLRC committed grave abuse of discretion in rendering/issuing its said *Decision* and *Resolution*.

WHEREFORE, the instant petition is hereby GRANTED. The NLRC *Decision* dated February 12, 2012 and *Resolution* dated March 16, 2012 are hereby ANNULLED and SET ASIDE. Accordingly, private respondent's complaint is hereby DISMISSED.

SO ORDERED.[19]

Petitioner filed a Motion for Reconsideration,[20] insisting among others that the Petition for *Certiorari* has been rendered moot and academic by the respondents' satisfaction of the judgment in full, and that his illness is compensable. However, the CA denied the same in its September 3, 2013 Resolution. Hence, the present Petition.

**Issues**

Petitioner submits the following assignment of errors for resolution:

1. THE HONORABLE COURT OF APPEALS ACTED IN A WAY NOT IN ACCORD WITH THE DECISIONS OF THE

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[19] *Rollo*, pp. 77-81.

[20] *Id*. at 347-371.

HONORABLE SUPREME COURT IN HOLDING THAT THE PETITION FOR *CERTIORARI* WAS NOT RENDERED MOOT AND ACADEMIC BY THE VOLUNTARY PAYMENT OF THE JUDGMENT AWARD BY THE PETITIONERS WHICH RESULTED IN THE FULL AND FINAL SATISFACTION OF THE JUDGMENT.

2. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE NLRC AND DENYING THE CLAIMS OF SEAMAN HERNANDEZ FOR PERMANENT TOTAL DISABILITY COMPENSATION AND OTHER BENEFITS.[21]

***Petitioner's Arguments***

Praying that the assailed CA pronouncements be set aside and that the NLRC judgment be reinstated instead, petitioner contends in his Petition and Reply[22] that contrary to the ruling of the CA, the doctrine in *Career Phils. Ship Management, Inc. v. Madjus* case applies to him as well, since he is likewise prohibited from pursuing further claims under the documents he was made to sign; that all these documents – Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit – in *Career Phils. Ship Management* and in this case are identical and were prepared by one and the same counsel, the del Rosario and del Rosario Law Offices; that in signing these documents, he did so out of financial necessity and was left with no other recourse; that nonetheless, even assuming that the CA is correct in not applying *Career Phils. Ship Management*, he is still entitled to disability benefits and other claims awarded by the NLRC, as his illness is work-connected and thus compensable; and that he has worked for respondents since 2005 – which shows that his hypertension and diabetes developed and/or were aggravated while working for respondents and having to contend with the perils of the sea, harsh climate and weather conditions, and emotional strain of being away from his family.

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[21] *Id*. at 37.

[22] *Id*. at 387-403.

***Respondents' Arguments***

In their joint Comment,[23] respondents reiterate the CA pronouncement, adding that in paying petitioner conditionally, they simply acted in good faith, complied with the execution proceedings, and wanted to prevent garnishment of their accounts; that petitioner's illness was not contracted during his employment with them; that diabetes is not a compensable occupational disease; that petitioner's failure to submit to a post-employment medical test by a company-designated physician foreclosed his right to claim disability benefits; and that for the foregoing reasons, petitioner is not entitled to his other claims.

**Our Ruling**

The Court grants the Petition.

Respondents profess that the Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit which petitioner was made to sign were prepared in good faith and simply to comply with the execution proceedings below and prevent garnishment of their accounts. However, this Court believes otherwise. Hidden behind these documents appears to be a convenient ploy to deprive petitioner of all his rights to claim indemnity from respondents under all possible causes of action and in all available fora, and effectively *for nothing in return or exchange* – because in the event that the NLRC ruling is reversed, then petitioner must return what he received, thus leaving him with the proverbial empty bag. This is fundamentally unfair, and goes against public policy.

As was held before, human life is not more expendable than corporate capital.[24] The survival of the petitioner and his family depends on the former's ability to find and perform work for

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[23] *Id*. at 373-385.

[24] *Philippine Apparel Workers Union v. National Labor Relations Commission,* 193 Phil. 599, 617 (1981).

wages they need to secure food, shelter, clothing, and the education of his children. It may be that in this jurisdiction, petitioner may ultimately be adjudged as not entitled to the monetary claims he seeks, but in other fora – such as in Panama, Japan, or any other country – he may be found to be entitled thereto, and to other indemnities as well. Yet by affixing his signature upon the Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit, petitioner effectively surrendered all his rights and waived all his claims and causes of action in all jurisdictions, and in exchange for nothing. Indeed, in the Affidavit, petitioner even went so far as to certify and warrant that he will not file any other complaint or prosecute any suit or action here or in any other country after receiving the settlement amount.

> 6. That I have no further claims whatsoever in any theory of law against the Owners of **MV "NIKOMARIN"** because of the payment made to me. *That I certify and warrant that I will not file any complaint or prosecute any suit or action in the Philippines, Panama, Japan or any other country against the shipowners and/or the released parties herein after receiving the payment of* ***US$66,000.00*** *or its peso equivalent* x x x.[25] (Emphasis in the original)

This waiver by petitioner in exchange for nothing has in fact become a reality, since the CA reversed the NLRC ruling, which means that petitioner would now have to return what he received from the respondents, and yet he is left with no available recourse since he agreed that he will not "prosecute **any suit or action** in the Philippines x x x against the shipowners and/or the released parties herein after receiving the payment of US$66,000.00 or its peso equivalent."[26] "Any suit or action" **literally** includes a petition before this Court to review the CA reversal – or **the instant petition**. **It also covers a claim for interest that may justly accrue in his favor during the pendency of the case**.

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[25] *Rollo*, p. 345.

[26] *Id*.

In effect, while petitioner[27] had the luxury of having other remedies available to it such as its petition for *certiorari* pending before the appellate court, and an eventual appeal to this Court, respondent,[28] on the other hand, could no longer pursue other claims, including for interests that may accrue during the pendency of the case.[29]

That respondents did not invoke the prohibition in the Affidavit – when the instant Petition was instituted – does not take away the fact that petitioner has been unduly deprived of such recourse through the documents he was made to sign.

In *Career Philippines*, believing that the execution of the LA Decision was imminent after its petition for injunctive relief was denied, the employer filed before the LA a pleading embodying a conditional satisfaction of judgment before the CA and, accordingly, paid the employee the monetary award in the LA decision. In the said pleading, the employer stated that the conditional satisfaction of the judgment award was without prejudice to its pending appeal before the CA and that it was being made only to prevent the imminent execution.

The CA later dismissed the employer's petition for being moot and academic, noting that the decision of the LA had attained finality with the satisfaction of the judgment award. This Court affirmed the ruling of the CA, interpreting the 'conditional settlement' to be tantamount to an amicable settlement of the case resulting in the mootness of the petition for *certiorari*, considering (i) that the employee could no longer pursue other claims, and (ii) that the employer could not have been compelled to immediately pay because it had filed an appeal bond to ensure payment to the employee.

**Stated differently, the Court ruled against the employer because the conditional satisfaction of judgment signed by the parties was highly prejudicial to the employee. The agreement stated that the payment of the monetary award was without prejudice to the right of the employer to file a petition for *certiorari* and appeal, while the employee agreed that she would no longer file**

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[27] Employer.

[28] Employee.

[29] *Career Phils. Ship Management, Inc. v. Madjus*, *supra* note 18 at 165.

**any complaint or prosecute any suit of [sic] action against the employer after receiving the payment**.[30] (Emphasis supplied)

Within the context of the constitutional, legislative, and jurisprudential guarantees afforded to labor, the position petitioner has been led into is unjust, unfair, and arbitrary.

In *More Maritime Agencies, Inc. v. NLRC*,[31] the Court ruled that:

> The law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover nor prevent him from demanding benefits to which he is entitled. Quitclaims executed by the employees are thus commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the workers legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity. (Citation omitted)

Respondents could have simply paid the judgment award without attaching conditions that have far-reaching consequences other than those intended by a simple compliance with what was required under the circumstances – that is, the mandatory execution proceedings following a favorable judgment allowed under the Labor Code. But they did not; they had to find a way to tie petitioner's hands permanently, dangling the check as bait, so to speak. To borrow from a fairly recent ruling of the Court, "[t]he execution [of the documents] cannot be tolerated as it amounts to a deceptive scheme to unconditionally absolve employers from every liability.[32]

> x x x. As a rule, quitclaims and waivers or releases are looked upon with disfavor and frowned upon as **contrary to public policy**. They are thus ineffective to bar claims for the full measure of a worker's

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[30] *Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838, 846-848 (2013).

[31] 366 Phil. 646, 653-654 (1999).

[32] *Hanseatic Shipping Philippines Inc. v. Ballon*, G.R. No. 212764, September 9, 2015, citing *Varorient Shipping Co., Inc. v. Flores*, 646 Phil. 570 (2010). (Words in parentheses supplied)

legal rights, particularly when the following conditions are applicable: 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face. To determine whether the Quitclaims signed by respondents are valid, **one important factor that must be taken into account is the consideration accepted by respondents; the amount must constitute a reasonable settlement equivalent to the full measure of their legal rights**. In this case, the Quitclaims signed by the respondents do not appear to have been made for valuable consideration. x x x[33] (Emphasis supplied)

For what they did, respondents are guilty of bad faith, and should suffer the consequences of their actions. One is that their payment of petitioner's claim should properly be treated as a voluntary settlement of his claim in full satisfaction of the NLRC judgment – which thus rendered the Petition in CA-G.R. SP No. 124685 moot and academic.

For its part, the CA refused to apply the pronouncement in *Career Phils. Shipmanagement*, insinuating that the situation of the parties in said case and in the present one are different in that, in the instant case, petitioner "still retains the right to judicial recourse in the event"[34] that the NLRC decision is reversed, while in *Career Phils. Shipmanagement*, "the Supreme Court opted to render the action therein moot and academic due to the fact that part of the condition is a prohibition on the part of the seafarer to pursue further claims"[35] as stated in the same Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit which he was made to sign. The appellate court's position is flawed: petitioner's situation is no different from that of the seafarer in the *Career Phils. Shipmanagement* case.

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[33] *Hanjin Heavy Industries and Construction Co. Ltd. v. Ibañez*, 578 Phil. 497, 517-518 (2008), citing *Philippine Employ Services and Resources, Inc. v. Paramio*, 471 Phil. 753 (2004); *Land and Housing Development Corporation v. Esquillo*, 508 Phil. 478 (2005); *C. Planas Commercial v. National Labor Relations Commission*, 511 Phil. 232 (2005); and *Martinez v. National Labor Relations Commission*, 358 Phil. 288 (1998).

[34] *Rollo*, p. 78.

[35] *Id*. at 77.

The CA's reasoning laid down in its pronouncement is a mere convenient play on words. Just as in the *Career Phils. Shipmanagement* case, petitioner is equally prohibited from pursuing further claims; it is not simply that petitioner "still retains the right to judicial recourse"; what is of significance is that he stands to gain nothing in the end, and yet is unduly prevented from pursuing further claims – all without the benefit of receiving, in return, valuable consideration or a reasonable settlement equivalent to the full measure of his legal rights.

Respondents' counsel – the Del Rosario & Del Rosario Law Offices – should have known better than to once more utilize the Conditional Satisfaction of Judgment, Receipt of Payment, and Affidavit, knowing that this Court looked upon these very same documents with disfavor in the *Career Phils. Ship Management* case and in subsequent dispositions of the Court,[36] insofar as these and similar documents contain terms and conditions that are unfair to the employee.

Having disposed of the case in the foregoing manner, there is no need to pass upon the other issues raised by the parties.

**WHEREFORE,** the Petition is **GRANTED**. The November 29, 2012 Decision and September 3, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 124685 are **REVERSED** and **SET ASIDE**, and respondents' Petition for *Certiorari* in said case is considered **MOOT** and **ACADEMIC** in view of the full settlement and complete satisfaction of petitioner's claims.

**SO ORDERED.**

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

*Mendoza, J.,* on official leave.

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[36] *Seacrest Maritime Management, Inc. v. Picar, Jr.*, G.R. No. 209383, March 11, 2015, 753 SCRA 207, and *Philippine Transmarine Carriers, Inc. v. Legaspi, supra* note 30.

**THIRD DIVISION**

[G.R. No. 209303. November 14, 2016]

**NATIONAL POWER CORPORATION,** *petitioner, vs.* **THE PROVINCIAL TREASURER OF BENGUET, THE PROVINCIAL ASSESSOR OF BENGUET, THE MUNICIPAL TREASURER OF ITOGON, BENGUET and THE MUNICIPAL ASSESSOR OF ITOGON, BENGUET,** *respondents.*

**SYLLABUS**

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (THE LOCAL GOVERNMENT CODE OF 1991); REAL PROPERTY TAXATION; WHEN A TAXPAYER QUESTIONS THE EXCESSIVENESS OR REASONABLENESS OF THE ASSESSMENT, HE SHOULD FIRST PAY THE TAX DUE BEFORE HIS PROTEST CAN BE ENTERTAINED.—** [S]hould the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained x x x. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid. Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231, provides for the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes.

2. **ID.; ID.; ID.; ID.; A CLAIM FOR EXEMPTION FROM THE PAYMENT OF REAL PROPERTY TAXES PERTAINS TO THE REASONABLENESS OR CORRECTNESS OF THE ASSESSMENT BY THE LOCAL ASSESSOR WHICH**

**SHOULD BE RESOLVED BY THE LOCAL BOARD OF ASSESSMENT APPEALS.—** [A] claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. The same may be inferred in Section 206 of the LGC of 1991 x x x. Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the x x x provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the **property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon**.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE "FRESH PERIOD RULE" IN THE CASE OF *DOMINGO NEYPES, ET AL. V. COURT OF APPEALS, ET AL.* APPLIES ONLY TO JUDICIAL APPEALS AND NOT TO ADMINISTRATIVE APPEALS.—** In its statement of the timeliness of the appeal, the NPC alleged that as provided under Section 229 (c) of the LGC, it has 30 days from its receipt of the assailed Order on October 16, 2006 to file its appeal before the CBAA. However, the CBAA dismissed the same on the ground that it was filed beyond the period of appeal x x x. On August 9, 2006, NPC received the LBAA's Order dated July 28, 2009 postponing the hearing. Thereafter, petitioner opted to file a motion for reconsideration before the LBAA on August 25, 2006, or on the sixteenth day from receipt of the Order. On October 17, 2006, NPC received the Resolution of the LBAA dated October 3, 2006 denying its motion for reconsideration. Therefore, NPC had the remaining period of 14 days, or until October 31, 2006, within which to appeal. While it is evident in jurisprudence that the filing of motion for reconsideration

> before the LBAA is allowed, this Court finds that, inevitably, the filing of the appeal before the CBAA through registered mail on November 16, 2006 was already late. It is settled that the "fresh period rule" in the case of *Domingo Neypes, et al. v. Court of Appeals, et al.* applies only to judicial appeals and not to administrative appeals. x x x In the instant case, the subject appeal, *i.e.*, appeal from a decision of the LBAA to the CBAA, is not judicial but administrative in nature. Thus, the "fresh period rule" in *Neypes* does not apply. Contrary to NPC's allegation that it has 30 days from receipt of the Order denying its motion for reconsideration within which to appeal before the CBAA, it only has the remaining 14 days from the 30-day period of appeal.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.

**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 National Power Corporation (*NPC*) seeking to reverse and set aside the Decision[1] dated September 12, 2013 of the Court of Tax Appeals (*CTA*) *En Banc* in E.B. No. 891.

Below are the facts of the case.

NPC is a government-owned and controlled corporation created and existing under and by virtue of Republic Act (*R.A.*) No. 6395 with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City. NPC was created to undertake the development of power generation and production from

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[1] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Cielito N. Mindaro-Grulla, concurring; Roman G. Del Rosario, dissenting; Ma. Belen M. Ringpis-Liban, concurring and dissenting; and Amelia R. Gotangco-Manalastas, on leave; *rollo* pp. 32-45.

hydroelectric or other sources, and may undertake the construction, operation and maintenance of power plants, dams, reservoirs, and other works. It operates and maintains the Binga Hydro-Electric Power Plant.[2]

Respondents Provincial Treasurer, Provincial Assessor, Municipal Treasurer and Municipal Assessor of Itogon are representatives of the province of Benguet, a local government unit. Respondents issued the subject assessment in their official capacities.[3]

Sometime in May 2000, the Municipal Assessor of Itogon, Benguet assessed NPC the amount of ₱62,645,668.80 real property tax for the following properties located within the Binga Hydro-Electric Power Plant:

| Tax Declaration No. | Classification |
|---|---|
| 99-006-01448 | Home Economics Building |
| 99-006-01457 | Nursery School |
| 99-006-01458 | Elem. School Bldg. |
| 99-006-01505 | Power House |
| 99-006-01506 | Industrial Road |
| 99-006-01516 (N) | High School Building |
| 99-007-02221 | Equipment/ Structure |
| 99-008-01509 | Machineries/ Equipment |

On March 17, 2006, NPC received a letter dated February 16, 2006 from OIC- Provincial Treasurer of Benguet demanding the payment of real property tax delinquency in the amount of ₱62,645,668.80.[4]

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[2] *Id.* at. 32-33.

[3] *Id.* at 33.

[4] *Id.*

On April 20, 2006, NPC challenged before the Local Board of Assessment Appeals (*LBAA*) the legality of the assessment and the authority of the respondents to assess and collect real property taxes from it when its properties are exempt pursuant to Section 234 (b) and (c) of Republic Act (*R.A.*) No. 7160, otherwise known as the Local Government Code (*LGC*) of 1991. In the letters dated September 3, 2000 and April 19, 2001, NPC filed its requests for exemption, which the respondent Municipal Treasurer of Itogon, Benguet has not acted upon.[5]

In their Answer dated June 30, 2006, respondents alleged that NPC's properties were not exempt from tax since the properties were classified in their tax declarations as "industrial," "for industrial use," or "machineries and "equipment." There was no evidence that the properties were being used for generation and transmission of electric power. Respondents alleged that the period to assess had not prescribed as the demand letter in 2006 was for collection of delinquency taxes, and not an initial assessment which was issued in 2003 but was not settled by NPC. Respondents also alleged that the appeal to the LBAA was filed out of time.[6]

In an Order dated July 28, 2006, the LBAA deferred the proceedings upon NPC's payment under protest of the assessed amount, or upon filing of a surety bond to cover the disputed amount of tax. NPC moved to reconsider the Order on the ground of lack of legal basis, but the same was denied in a Resolution dated October 3, 2006.[7]

NPC filed a petition for review before the Central Board of Assessment Appeals (*CBAA*) claiming that payment under protest was not required before it could challenge the authority of respondents to assess tax on tax exempt properties before the LBAA.[8]

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

[6] *Id.* at 34.

[7] *Id.*

[8] *Id.* at 35.

In their Answer, respondents reiterated their contentions about the taxability of the subject properties. They added that, pursuant to Section 252 of the LGC, payment under protest was a necessary condition to a protest against the assessment issued by respondents.[9]

On July 28, 2011, the CBAA dismissed the appeal for being filed out of time, thus:

> IN VIEW THEREOF, the instant appeal is hereby dismissed for having filed out of time. (Petitioner) is advised to proceed under Section 206 of R.A. No. 7160 (the Local Government Code of 1991) and take the necessary steps in support of its claim for exemption (sic) to be dropped from the assessment roll.
>
> SO ORDERED.[10]

The CBAA, in an Order dated February 23, 2012, denied NPC's motion for reconsideration. It ruled that it is incumbent upon NPC to pay under protest before the LBAA could entertain its appeal as provided under Section 252 of the LGC. It also stressed that the meetings and ocular inspection during the pendency of the case were all pursuant to R.A. 9285[11] or the Alternative Dispute Resolution Act of 2004.

Undaunted, NPC appealed to the CTA *En Banc* by filing a Petition for Review dated April 13, 2012. The CTA *En Banc* denied the same for lack of merit.[12] It ruled that as expressly provided in Section 252 of the LGC, a written protest against the assessment may be filed before the LBAA within thirty (30) days from payment under protest. NPC failed to pay under

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[9] *Id.*

[10] *Id.*

[11] AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES

[12] *Id.* at 45.

protest the contested assessment, a condition *sine qua non* for invocation of LBAA's appellate authority.[13]

Hence, NPC filed the instant petition raising the sole issue:

THE CTA *EN BANC* ERRED IN DISMISSING THE PETITION BASED ON PRESCRIPTION AS SAID ISSUE WAS NEVER RAISED IN THE LBAA. IN FACT, WHEN PETITIONER ELEVATED THE CASE BEFORE THE CBAA, THE LATTER EVEN CONCLUDED THAT THE ONLY ISSUE TO BE RESOLVED THEREIN WAS WHETHER THE QUESTIONED PROPERTIES ARE MACHINERIES AND EQUIPMENT THAT ARE ACTUALLY, DIRECTLY AND EXCLUSIVELY USED BY NPC IN THE GENERATION AND TRANSMISSION OF ELECTRIC POWER. THUS, THE CTA *EN BANC* SHOULD HAVE RESOLVED THE CASE BASED ON THE ISSUE PRESENTED AND ON THE MERITS CONSIDERING THE FAR-REACHING IMPLICATIONS OF ITS DECISION ON THE OTHER PROPERTIES OF NPC WHICH ARE SIMILARLY SITUATED AS THE SUBJECT PROPERTIES HEREIN, INSTEAD OF DENYING THE PETITION BASED ON PRESCRIPTION.[14]

This Court finds the instant petition without merit.

At the outset, settled is the rule that should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained, thus:

SEC. 252. *Payment Under Protest*. — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be **annotated on the tax receipts the words "paid under protest."** The **protest in writing must be filed within thirty (30) days from payment of the tax** to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

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[13] *Id.* at 40.

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

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credits against his existing or future tax liability.

(d) In the **event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code**.[15]

There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.[16]

Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231,[17] provides for the administrative

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[15] Emphases supplied.

[16] *Olivares v. Marquez*, G.R. No. 155591, 482 Phil. 183 (2004).

[17] SEC. 226. *Local Board of Assessment Appeals.* — **Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose**, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

SEC. 229. *Action by the Local Board of Assessment Appeals.* — (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue *subpoena* and *subpoena duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes.

NPC alleges that payment under protest under Section 252 of the LGC is required when the reasonableness of the amount assessed is being questioned. Challenging the very authority and power of the assessor to impose the assessment and of the treasurer to collect the tax is an attack on the very validity on any increase and not merely on the amounts of increase in tax. Thus, such payment is not a condition *sine qua non* for the LBAA to entertain the NPC's challenge on the validity of the tax imposed on its tax-exempt properties.[18]

We are not persuaded. As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance,

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(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. **The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory**.

SEC. 231. *Effect of Appeal on the Payment of Real Property Tax.* — **Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.** (Emphases supplied)

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

by the LBAA.[19] The same may be inferred in Section 206 of the LGC of 1991, to wit:

> SEC. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, **who shall claim tax exemption for such property** under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
>
> **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll**.[20]

Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the **property being taxed has not been dropped from the assessment roll**, **taxes must be paid under protest if the exemption from taxation is insisted upon**.[21]

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[19] *National Power Corporation v. Province of Quezon,* G.R. No. 171586, 624 Phil. 738 (2010). (Emphases supplied)

[20] Emphases supplied.

[21] *Id.*

As held in *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*:[22]

> x x x the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled. The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.
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> x x x x x x x x x[23]

Records reveal that the petitioner sent a letter dated September 5, 2000 to the respondent Municipal Treasurer seeking clarification on the assessment levels used by the Assessor in the billing taxes, as well as claiming tax exemption on certain properties. It reiterated its claim of exemption in its letter dated April 19, 2001. NPC received the final demand for payment of tax delinquency issued by the Provincial Treasurer in a letter dated February 16, 2006. Thereafter, petitioner filed a petition purportedly questioning the authority of the respondents to assess and to collect taxes against some of its properties before the LBAA, without payment under protest of the assessed real property taxes.

Nothing in the said petition before the LBAA supports petitioner's claim regarding the respondents' alleged lack of authority. Instead, it raises the following issues, which involve a question of fact: 1.) the properties such as reservoir, machineries and equipment which are actually, directly and exclusively used

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[22] 718 Phil. 543 (2013).

[23] *Id.*

by NPC in the generation and transmission of electricity, and the school buildings are exempt from taxation; and 2.) regarding the escape revision which was made retroactive from 1994, said taxes could no longer be assessed and collected since they should have been assessed within five (5) years from the date they became due.[24] Though couched in terms which challenge the validity of the assessment and authority of the respondents, NPC, as a government-owned and controlled corporation engaged in the generation and transmission of electric power, essentially anchors its petition based on a claim of exemption from real property tax.

Records are bereft of evidence which proves that, within 30 days from the filing of its Tax Declaration, NPC filed with the Municipal Assessor of Itogon, Benguet an application for exemption or any documentary evidence of the exempt status of its properties. Respondent Municipal Assessor assessed petitioner's properties for real property tax since they were not dropped from the assessment roll upon failure of NPC to comply with the requirements of the law. As found by the CTA *En Banc*:

> x x x Evidently, the two letters requesting exemption from payment of realty tax dated September 3, 2000 and April 19, 2001 addressed to respondent Municipal Assessor were filed beyond the required thirty (30)-day period from the declaration of the subject properties for realty tax purposes in May 2000. There is also no showing that petitioner submitted together with the said formal requests sufficient documents in support of such claim. Significantly, in the proceedings below, respondents categorically stated that petitioner failed to prove its claimed tax exemption. This declaration remains undisputed to date. Precisely, the subject properties were listed as taxable in the assessment roll giving respondents the authority to issue the assailed assessment.
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> x x x x x x x x x[25]

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[24] LBAA Records, Folder 3, pp. 6-7.

[25] *Rollo*, p. 39.

Based on the foregoing backdrop and the above-cited jurisprudence, it is evident that NPC's failure to comply with the mandatory requirement of payment under protest in accordance with Section 252 of the LGC was fatal to its appeal. We note that it is not the first occasion where this Court ruled that the NPC, in claiming tax exemption, questions the reasonableness or correctness of the assessment by the local assessor and not the legality of the assessment or his authority to assess real property tax.[26] As such, petitioner should have first complied with Section 252. Its failure to prove that this requirement has been complied with renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.

Notwithstanding such failure to comply therewith, the LBAA opted not to immediately dismiss the case but instead deferred the hearing subject to the condition that payment of the real property tax should first be made before proceeding, as provided for under Section 7,[27] Rule V of the Rules of Procedure of the

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[26] *National Power Corporation v. Province of Quezon, supra* note 18.

[27] Section 7. *Effect of Appeal on Collection of Taxes*. — An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the Provincial, City or Municipal Assessor, without prejudice to the subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but **the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond**, subject to the following conditions:

(1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;

(2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and

(3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which

LBAA. We held that, in requiring the payment under protest before proceeding with the case, the LBAA simply recognized the importance of the requirement of "payment under protest" before an appeal may be entertained, pursuant to Section 252, and in relation with Section 231[28] of the same Code as to non-suspension of collection of the realty tax pending appeal.[29]

NPC alleged that the filing of the motion for reconsideration before the LBAA, though not required under Section 229 (c) of the LGC, should not be taken against it for choosing to exhaust all the means to prove that the properties are tax-exempt. It should not be deprived of its right to appeal and ventilate its case before the courts where the decision on the issue of taxability of the properties will have a far-reaching implication on its other properties similarly situated. It would have been more prudent for the CBAA and the CTA *En Banc* to have resolved the case based on the evidence and arguments advanced rather than dismiss the same on pure technicality and require NPC to present all over again its evidence of exemption of its properties, which are already deemed exempt during the proceedings before the CBAA.[30]

In its statement of the timeliness of the appeal, the NPC alleged that as provided under Section 229 (c) of the LGC, it has 30 days from its receipt of the assailed Order on October 16, 2006 to file its appeal before the CBAA. However, the CBAA dismissed the same on the ground that it was filed beyond the period of appeal, *viz.*:

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case, a certification to this effect must likewise accompany the surety bond. (Emphasis supplied)

[28] SECTION 231. *Effect of Appeal on the Payment of Real Property Tax*. — Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

[29] *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*, *supra* note 20.

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

x x x [NPC] failed to realize that the period of prescription starts from receipt of the Order of the LBAA which deferred the hearing on the [NPC]'s Petition. By its own admission, said Order was "received by [NPC] on August 9, 2006," hence the period of appeal to the CBAA should have prescribed thirty (30) days thereafter, or to be exact, on September 8, 2006.

The provision does not require [NPC] to file a Motion for Reconsideration. But if it does, it files the same at its own risk as the Motion for Reconsideration does not stay the period of prescription.

To repeat therefore, [NPC] has thirty (30) days from August 9, 2006 or not later than September 8, 2006 within which to appeal to the Central Board of Assessment Appeals (CBAA). Clearly timeliness has been considerably breached when the herein Appeal reached this Board on November 22, 2006, seventy-five (75) days, way beyond the September 8, 2006 deadline.

x x x x x x x x x[31]

On August 9, 2006, NPC received the LBAA's Order dated July 28, 2009 postponing the hearing. Thereafter, petitioner opted to file a motion for reconsideration before the LBAA on August 25, 2006, or on the sixteenth day from receipt of the Order.[32] On October 17, 2006, NPC received the Resolution of the LBAA dated October 3, 2006 denying its motion for reconsideration. Therefore, NPC had the remaining period of 14 days, or until October 31, 2006, within which to appeal.

While it is evident in jurisprudence that the filing of motion for reconsideration before the LBAA is allowed,[33] this Court finds that, inevitably, the filing of the appeal before the CBAA through registered mail on November 16, 2006 was already late. It is settled that the "fresh period rule" in the case of *Domingo*

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[31] *Id.* at 156-17.

[32] CBAA Records, Folder 1, p. 12.

[33] *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*, *supra* note 20.

*Neypes, et al. v. Court of Appeals, et al.*[34] applies only to judicial appeals and not to administrative appeals.[35]

In *Panolino v. Tajala*,[36] We elucidated that:

x x x The "fresh period rule" in *Neypes* declares:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from *quasi-judicial* agencies to the Court of Appeals; and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

x x x x x x x x x

As reflected in the above-quoted portion of the decision in *Neypes*, the "fresh period rule" shall apply to Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the Court of Appeals or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the Court of Appeals); Rule 43 (appeals from quasi-judicial agencies to the Court of Appeals); and Rule 45 (appeals by *certiorari* to the Supreme Court).**Obviously, these Rules cover *judicial* proceedings under the 1997 Rules of Civil Procedure.**

Petitioner's present case is *administrative* in nature involving an appeal from the decision or order of the DENR regional office to the DENR Secretary. Such appeal is indeed governed by Section 1 of Administrative Order No. 87, Series of 1990. As earlier quoted, Section

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[34] 469 SCRA 633 (2005).

[35] *San Lorenzo Ruiz Builders and Developers Group, Inc. v. Bayang*, G.R. No. 194702, April 20, 2015.

[36] 636 Phil. 313 (2010).

1 clearly provides that if the motion for reconsideration is *denied*, the movant shall perfect his appeal "during the remainder of the period of appeal, reckoned from receipt of the resolution of denial;" whereas if the decision is *reversed*, the adverse party has a fresh 15-day period to perfect his appeal. (Emphasis supplied.)

x x x x x x x x x[37]

In the instant case, the subject appeal, *i.e.*, appeal from a decision of the LBAA to the CBAA, is not judicial but administrative in nature. Thus, the "fresh period rule" in *Neypes* does not apply. Contrary to NPC's allegation that it has 30 days from receipt of the Order denying its motion for reconsideration within which to appeal before the CBAA, it only has the remaining 14 days from the 30-day period of appeal.

Considering that the LBAA has not resolved the merits of the case, the CBAA cannot rule on the very issue of real property tax exemption of some of NPC's properties as it has yet to acquire jurisdiction. This Court, in compliance with the procedural steps prescribed in the law, cannot delve on the issue of NPC'S alleged non-taxability on the ground of exemption. As such, this Court's role in addressing NPC's concerns and the interests at stake is not all-encompassing. This Court cannot tackle the feared far-reaching implication of the decision on the other properties of NPC similarly situated as the subject properties, as discussed earlier, the LBAA has yet to decide on the merits of the case. We can only resolve the current controversy through a reading and interpretation of the law.

**WHEREFORE,** the petition is **DENIED** for lack of merit. The Decision of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 891 is **AFFIRMED**. The case is **REMANDED** to the Local Board of Assessment Appeals for further proceedings subject to payment under protest of the assailed assessment.

**SO ORDERED.**

*Leonardo-de Castro, Perez,* and *Reyes, JJ.*, concur.

*Velasco, Jr.* (*Chairperson*), *J.*, on official leave.

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[37] *Id.* at 317-319.

**FIRST DIVISION**

[G.R. No. 219510. November 14, 2016]

**MARLON CURAMMENG *y* PABLO**, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW.—** Appeals of cases decided by the RTCs in the exercise of its appellate jurisdiction are taken by filing a petition for review under Rule 42 of the Rules of Court. Section 2, thereof, provides that such petitions shall be accompanied by, *inter alia*, material portions of the record which would support the allegations of said petitions as well as a certification of non- forum shopping x x x. It must be stressed that since a petition for review is a form of appeal, non-compliance with the x x x rule may render the same dismissible. This is in furtherance of the well-settled rule that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost." Verily, compliance with procedural rules is a must, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."

**2. ID.; RULES OF PROCEDURE; MAY BE RELAXED FOR THE MOST PERSUASIVE OF REASONS IN ORDER TO RELIEVE A LITIGANT OF AN INJUSTICE NOT COMMENSURATE WITH THE DEGREE OF HIS THOUGHTLESSNESS IN NOT COMPLYING WITH THE PROCEDURE PRESCRIBED.—** [I]f a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations

> of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction. The Court's pronouncement in *Heirs of Zaulda v. Zaulda* is instructive on this matter x x x. Otherwise stated, procedural rules may be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.

**APPEARANCES OF COUNSEL**

*Hidalgo Estepa & Associates Law Offices* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated October 20, 2014[2] and June 30, 2015[3] of the Court of Appeals (CA) in CA-G.R. CR No. 36802, which dismissed petitioner Marlon Curammeng *y* Pablo's (Curammeng) petition for review for his failure to attach, *inter alia*, a certification of non-forum shopping.

**The Facts**

The instant case arose from an Information[4] filed before the Municipal Trial Court of Bauang, La Union (MTC), charging Curammeng of Reckless Imprudence Resulting in Homicide,

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[1] *Rollo*, pp. 12-34.

[2] *Id.* at 35-37. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Florito S. Macalino concurring.

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

[4] *Id.* at 41.

defined and penalized under Article 365 of the Revised Penal Code. The prosecution alleged that on the night of September 25, 2006, a Maria De Leon bus going to Laoag, Ilocos Norte being driven by Francisco Franco *y* Andres (Franco) was traversing the northbound lane of the national highway along Santiago, Bauang, La Union, when its rear left tire blew out and caught fire. This prompted Franco to immediately park the bus on the northbound side of the national highway, and thereafter, unloaded the cargoes from the said bus. At a little past midnight of the next day, an RCJ bus bound for Manila being driven by Curammeng traversed the southbound lane of the road where the stalled bus was parked and hit Franco, resulting in the latter's death.[5]

In his defense, Curammeng averred that he was driving the RCJ bus bound for Manila and traversing the southbound side of the national highway at less than 60 kilometers per hour (kph) when he saw from afar the stalled Maria De Leon bus at the road's northbound side which was not equipped with any early warning device, thus, prompting him to decelerate. When the RCJ bus was only a few meters away from the stalled Maria De Leon bus, a closed van suddenly appeared from the opposite direction, causing petitioner to steer his bus to the west shoulder, unfortunately hitting Franco and causing the latter's death. Out of fear of reprisal, petitioner surrendered to the Caba Police Station in the next town. Eventually, petitioner was arraigned and pleaded not guilty to the charge.[6]

**The MTC Ruling**

In a Decision[7] dated November 26, 2013, the MTC found Curammeng guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for the indeterminate period of four (4) months and one (1) day of *arresto mayor*, as minimum, to four (4)

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

[6] See *id*. at 14-15.

[7] *Id*. at 43-56. Penned by Judge Romeo V. Perez.

years and two (2) months of *prision correccional*, as maximum, and ordered him to pay Franco's heirs the amounts of 100,000.00 as civil indemnity and ₱200,000.00 as actual damages.[8]

The MTC found that Curammeng showed an inexcusable lack of precaution in driving his bus while passing through the stalled Maria De Leon bus, which resulted in Franco's death. Moreover, it found untenable Curammeng's assertion that he decreased the speed of his bus when he was nearing the stalled bus, considering that the evidence on record showed that he was still running at around 60 kph when he hit Franco. In this relation, the MTC pointed out that if Curammeng had indeed decelerated as he claimed, then he should have noticed the barangay tanods near the stalled bus who were manning the traffic and signalling the other motorists to slow down.[9]

Aggrieved, Curammeng appealed to the Regional Trial Court of Bauang, La Union, Branch 33 (RTC).

**The RTC Ruling**

In a Decision[10] dated June 3, 2014, the RTC affirmed Curammeng's conviction *in toto*.[11] It found that as a professional public utility vehicle driver, his primary concern is the safety not only of himself and his passengers but also that of his fellow motorists. However, he failed to exhibit such concern when he did not slow down upon seeing the Maria De Leon bus stalled on the northbound side of the national highway, especially so that the area where the incident happened was hardly illuminated by street lights and that there is a possibility that he might not be able to see oncoming vehicles because his view of the road was partially blocked by the said stalled bus. In view of the foregoing circumstances, the RTC concluded that Curammeng was negligent in driving his bus, and such negligence was the

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[8] *Id*. at 55.

[9] *Id*. at 55-56.

[10] *Id*. at 74-78. Penned by Judge Rose Mary R. Molina-Alim.

[11] *Id*. at 78.

proximate cause of Franco's death. As such, his liability for the crime charged must be upheld.[12]

Curammeng moved for reconsideration but was denied in an Order[13] dated July 22, 2014. Dissatisfied, he filed a petition for review[14] under Rule 42 of the Rules of Court before the CA.

**The CA Ruling**

In a Resolution[15] dated October 20, 2014, the CA dismissed outright Curammeng's petition based on procedural grounds. Specifically, the CA found that Curammeng violated Section 2, Rule 42 of the Rules of Court as he failed to attach a certification of non-forum shopping as well as material portions of the record (*e.g.*, affidavits referred to in the MTC Decision, transcript of stenographic notes of the MTC, documentary evidence of the parties).[16]

Undaunted, Curammeng filed a Motion for Reconsideration with Compliance[17] dated November 6, 2014, praying for the relaxation of procedural rules so that his petition will be reinstated and given due course. He explained that the failure to comply with the rules was only due to a plain oversight on the part of his counsel's secretary. To show that such failure was unintentional, he attached his certification of non-forum shopping as well as copies of the pertinent records of the case.[18]

In a Resolution[19] dated June 30, 2015, the CA denied Curammeng's motion for lack of merit. It held that Curammeng failed to give any convincing explanation which would constitute

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[12] *Id*. at 75-78.

[13] *Id*. at 84.

[14] *Id*. at 85-98.

[15] *Id*. at 35-37.

[16] *Id*. at 36.

[17] *Id*. at 99-105.

[18] *Id*. at 100-103.

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

a compelling reason for a liberal application of the procedural rules on appeal.[20]

Hence, this petition.

**The Issue Before the Court**

The primordial issue for the Court's resolution is whether or not the CA correctly dismissed Curammeng's petition for review based on procedural grounds.

**The Court's Ruling**

The petition is meritorious.

Appeals of cases decided by the RTCs in the exercise of its appellate jurisdiction are taken by filing a petition for review under Rule 42 of the Rules of Court.[21] Section 2, thereof, provides that such petitions shall be accompanied by, *inter alia*, material portions of the record which would support the allegations of said petitions as well as a certification of non-forum shopping, *viz*.:

SEC. 2. *Form and contents*. – **The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition**.

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[20] *Id*. at 39.

[21] See Section 2(b), Rule 41 of the Rules of Court.

**The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom**. (Emphases and underscoring supplied)

It must be stressed that since a petition for review is a form of appeal, non-compliance with the foregoing rule may render the same dismissible. This is in furtherance of the well-settled rule that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost."[22] Verily, compliance with procedural rules is a must, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[23]

Nevertheless, if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.[24]

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[22] *Manila Mining Corporation v. Amor*, G.R. No. 182800, April 20, 2015, 756 SCRA 15, 23-24, citations omitted.

[23] *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, 700 Phil. 575, 581 (2012).

[24] See *id*. at 582, citation omitted.

The Court's pronouncement in *Heirs of Zaulda v. Zaulda*[25] is instructive on this matter, to wit:

> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. **"It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal 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 miscarriage of justice."**
>
> **What should guide judicial action is the principle that a party-litigant should 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.** The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. At this juncture, the Court reminds all members of the bench and bar of the admonition in the often-cited case of *Alonso v. Villamor* [16 Phil. 315, 322 (1910)]:
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> > Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.[26] (Emphases and underscoring supplied)

Otherwise stated, procedural rules may be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result

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[25] 729 Phil. 639 (2014).

[26] *Id*. at 651-652. Citations omitted.

in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.[27]

In the instant case, the Court notes that the dismissal of Curammeng's appeal is based solely on his counsel's negligence in failing to attach a certification of non-forum shopping as well as material portions of the record. Notwithstanding the filing of a Motion for Reconsideration with Compliance dated November 6, 2014, the CA upheld its earlier dismissal, ratiocinating that the reasons presented by Curammeng's counsel were not compelling enough to relax the technical rules on appeal.

While the Court understands and applauds the CA's zealousness in upholding procedural rules, it cannot simply allow a man to be incarcerated without his conviction being reviewed due to the negligence of his counsel. To note, Curammeng, a public utility vehicle driver and his family's sole breadwinner, is appealing his conviction for the crime of Reckless Imprudence Resulting in Homicide where he stands to be sentenced with imprisonment for the indeterminate period of four (4) months and one (1) day of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, among others. In view of these circumstances, as well as his counsel's eventual – albeit irregular – compliance with the technical rules of appeal, the CA should have disregarded the rules and proceeded to make a full review of the factual and legal bases of Curammeng's conviction, including the attendance of modificatory circumstances (*e.g.*, the mitigating circumstance of voluntary surrender which Curammeng argues to be existent in his case), if any, pursuant to the principle that an appeal in criminal cases opens the entire case for review. [28]

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[27] See *City of Dagupan v. Maramba*, 738 Phil. 71, 87 (2014), citing *Sy v. Local Government of Quezon City*, 710 Phil. 549, 557 (2013).

[28] "At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the

In sum, the Court deems it appropriate to relax the technical rules of procedure in order to afford Curammeng the fullest opportunity to establish the merits of his appeal, rather than to deprive him of such and make him lose his liberty on procedural blunders which he had no direct hand in. Accordingly, the case should be remanded to the CA for resolution of the appeal on its merits.

**WHEREFORE,** the petition is **GRANTED**. Accordingly, the Resolutions dated October 20, 2014 and June 30, 2015 of the Court of Appeals in CA-G.R. CR No. 36802 are hereby **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the Court of Appeals for resolution of the appeal on its merits.

**SO ORDERED.**

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

*Caguioa, J.,* on leave.

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**FIRST DIVISION**

[G.R. No. 220333. November 14, 2016]

**ANTONIO GAMBOA *y* DELOS SANTOS,** *petitioner, vs.* **PEOPLE OF PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n appeal in criminal cases opens the entire

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judgment appealed from, increase the penalty, and cite the proper provision of the penal law." (See *People v. Comboy*, G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015)

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; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** Gamboa was charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165. In order to secure the conviction of an accused charged with 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.

**3. ID.; ID.; CHAIN OF CUSTODY RULE; SAVING CLAUSE UNDER SECTION 21 OF THE IRR; APPLIES ONLY WHERE THE PROCEDURAL LAPSES HAS BEEN RECOGNIZED AND THEN THE JUSTIFIABLE GROUNDS EXPLAINED AND THEREAFTER SHOWN THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM HAVE BEEN PRESERVED.—** [I]t 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.* x x x Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve its integrity and evidentiary value. Under the said 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, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.** The IRR of RA 9165 mirror the content of Section 21, Article II of the same law, 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, Article II– 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. x x x **The aforementioned saving clause in Section 21, Article II of the IRR of RA 9165 applies only where the prosecution has recognized the procedural lapses on the part of the police officers or PDEA agents, and thereafter explained the cited justifiable grounds; after which, the prosecution must show that the integrity and evidentiary value of the seized items have been preserved.**

**4. ID.; ID.; ID.; ID.; BREACHES OF PROCEDURE LEFT UNACKNOWLEDGED AND UNEXPLAINED MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT.—** In order for the saving clause under the IRR of RA 9165 to be effective, the prosecution must first recognize any lapses on the part of the police officers and justify the same. x x x [T]he breaches of the procedure contained in Section 21, Article II of RA 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised. Case law states that, the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Antonio Gamboa *y* Delos Santos (Gamboa) assailing the Decision[2] dated May 28, 2015 and the Resolution[3] dated August 25, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35709, which affirmed the Decision[4] dated September 25, 2012 of the Regional Trial Court of Angeles City, Branch 62 (RTC) in Crim. Case Nos. 03-171, 03-172, and 03-173 finding Gamboa and Elizabeth Musni *y* Sarona (Elizabeth) guilty beyond reasonable doubt of violating Section 11,[5] Article II of Republic

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[1] *Rollo,* pp. 10-28.

[2] *Id*. at 35-44. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

[3] *Id*. at 47-48.

[4] *Id*. at 69-82. Penned by Judge Gerardo Antonio P. Santos.

[5] The pertinent portion of Section II, Article 11 provides:

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 (l) 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,

Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

**The Facts**

The instant case stemmed from three (3) Informations filed before the RTC accusing Gamboa and Elizabeth of violating Sections 11 and 12, Article II of RA 9165, *viz.:*

**Criminal Case No. 03-171**[7]

That on or about the 1st day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Elizabeth], did then and there willfully, unlawfully and feloniously have in her possession, custody and control one (1) small transparent plastic sachet containing Methamphetamine Hydrochloride (SHABU) weighing more or less FIVE TENTHS (5) OF A GRAM, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

**Criminal Case No. 03-172**[8]

That on or about the 1st day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Gamboa], did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) small transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE (SHABU), weighing more or less FIVE TENTHS (5) OF A GRAM, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

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without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[6] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES."

[7] *Rollo,* pp. 69-70.

[8] Records, p. 11.

**Criminal Case No. 03-173**[9]

That on or about the 1st day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Elizabeth and Gamboa], conspiring and confederating together and mutually aiding and abetting each other, without authority whatsoever, did then and there willfully, unlawfully and feloniously have in their possession and control a lighter, empty pieces of small plastic sachet with *shabu* residue, crumpled aluminum foils, scissor[s], empty plastic packets and improvised tin burner, which are fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body.

CONTRARY TO LAW.

The prosecution alleged that at around 6 o'clock in the evening of May 1, 2003, Police Officer I (PO1) Wendy Sahagun (PO1 Sahagun) and Senior Police Officer I (SPO1)[10] Roberto Manuel (SPO1 Manuel) received information from a confidential informant (agent) that a certain Jun Negro (Negro) was engaged in illegal drug activity in Angeles City. They relayed the information to their Deputy Chief, Inspector Elaine Villasis (P/Insp. Villasis),[11] who then formed a buy-bust team composed of herself, SPO1 Manuel, PO3 Jerry Espadera, a certain PO2 Lagman, PO1 Sahagun, and the agent. PO1 Sahagun was designated as the poseur-buyer and was provided with two (2) ₱100.00 bills as buy-bust money, while the rest would serve as back-up officers. At around 6:30 o'clock in the evening, the buy-bust team proceeded to the target area at Hadrian Extension 3, Sitio Ipil-Ipil, Pulung Maragul, Angeles City.[12]

Upon their arrival at the target area, PO1 Sahagun and the agent encountered Negro. They approached him and the agent told him that they wanted to buy ₱200.00 worth of *shabu*. Negro then handed a plastic sachet containing suspected *shabu* to PO1

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

[10] "PO3" in some parts of the records.

[11] See records, p. 73.

[12] See *id*. at 37-38 and 72-73.

Sahagun and, in exchange, she gave him the buy-bust money. With the sale consummated, she executed the pre-arranged signal – by placing her hand on top of her head – prompting the back-up officers to rush in and arrest Negro. Negro, however, sensed that something was afoot and ran into a nearby house. PO1 Sahagun gave chase, but Negro managed to elude her. Inside the house, she discovered Gamboa and Elizabeth seated by a table which had *shabu* paraphernalia on top, and accordingly, arrested them with the assistance of the back-up officers. PO1 Sahagun frisked Elizabeth and recovered one (1) plastic sachet containing *shabu* residue from her pockets, while SPO1 Manuel confiscated one (1) plastic sachet of *shabu* from Gamboa.[13] They were then brought to the police station together with the seized items. At the office, PO1 Sahagun marked the sachet subject of the sale and the one she seized from Elizabeth with "WPS" A and B, respectively, while SPO1 Manuel marked the sachet he confiscated from Gamboa with "RLM."[14] Thereafter, they prepared the request for laboratory examination[15] dated May 2, 2003, among other necessary documents.[16] The next day, SPO1 Manuel delivered the seized items to the crime laboratory for examination, which was examined by Forensic Chemist Divina Mallare Dizon,[17] who found that the seized sachets contained methamphetamine hydrochloride or *shabu*, an illegal drug.[18]

In his defense, Gamboa denied the charges leveled against him. He claimed that at around 6 o'clock in the evening of May 1, 2003, he was at Rolly Musni's (Rolly) house to pick up

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[13] See *id*. at 38 and 73-74.

[14] See TSN, October 7, 2003, pp. 6-8.

[15] Prosecution's Documentary Exhibits, p. 2.

[16] See TSN, February 17, 2005, p. 12.

[17] See *id*. at 14-15. See also *rollo*, p. 76; and Prosecution's Documentary Exhibits, p. 1. "Divina Mallari-Dizon" in some parts of the records.

[18] See *rollo*, pp. 38-39, 73-74, and 76. See also Chemistry Report No. D- 176-2003; Prosecution's Documentary Exhibits, p. 1.

the television set he had dropped off for repairs. As he was chatting with Rolly outside the latter's house, two (2) men came and dragged them inside the house, where they were frisked along with Elizabeth and, thereupon, made it appear that illegal drugs were recovered from them. Thereafter, they were all handcuffed and taken to the police station.[19]

Upon arraignment, Elizabeth and Gamboa pleaded not guilty to the charges against them.[20] While awaiting trial, Elizabeth jumped bail.[21]

**The RTC Ruling**

In a Decision[22] dated September 25, 2012, the RTC found Gamboa and Elizabeth guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 in Crim. Case Nos. 03-171 and 03-172, for illegal possession of dangerous drugs and sentenced them to each suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years, and to pay a fine in the amount of ₱300,000.00.[23]

The RTC held that a valid buy-bust operation had been conducted, and the subsequent warrantless arrests were lawful. It noted that although the officers failed to mark the items at the scene of the crime and instead, brought them to the police station where they were marked and thereafter, to the crime laboratory for examination, they were able to preserve their integrity and identity. However, it dismissed the charge of illegal possession of drug paraphernalia against Gamboa and Elizabeth in Crim. Case No. 03-173 for the prosecution's failure to establish who had actual control or possession of the same.[24]

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[19] *Id*. at 39.

[20] See Orders dated May 29, 2003 and June 24, 2003 penned by Judge Melencio W. Claros; records, pp. 33 and 47, respectively.

[21] *Rollo*, p. 79.

[22] *Id*. at 69-82

[23] *Id*. at 81.

[24] See *id*. at 78-81.

Aggrieved, Gamboa elevated his conviction before the Court of Appeals (CA).[25]

**The CA Ruling**

In a Decision[26] dated May 28, 2015, the CA affirmed the RTC ruling *in toto*,[27] finding that the prosecution had established beyond reasonable doubt that Gamboa illegally possessed dangerous drugs in violation of Section 11, Article II of RA 9165.[28]

The CA held that a valid buy-bust operation was conducted despite the lack of coordination with the Philippine Drug Enforcement Agency (PDEA). It opined that the buy-bust operation was an *in flagrante delicto* arrest sanctioned by Section 5, Rule 113 of the Revised Rules of Criminal Procedure. It gave no credence to Gamboa's claim that the police officers' failure to abide by Section 21 of RA 9165 was fatal to the case, considering that the seized items may be marked at the nearest police station or office of the apprehending team instead of the place of arrest. Further, the absence of inventory or photographs neither raised doubts as to the identity of the illegal drugs seized nor rendered the same inadmissible as evidence, as the integrity and evidentiary value of the same had been preserved. Consequently, it ruled that the prosecution had shown an unbroken chain of custody over the illegal drugs confiscated from Gamboa.[29]

Unperturbed, Gamboa moved for reconsideration,[30] which was, however, denied by the CA in a Resolution[31] dated August 25, 2015; hence, the instant petition.

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[25] See Notice of Appeal dated December 3, 2012; records, p. 277.

[26] *Rollo,* pp. 35-44.

[27] *Id*. at 44.

[28] See *id*. at 39-44.

[29] See *id*. at 40-44.

[30] See motion for reconsideration dated July 2, 2015; CA *rollo,* pp. 109-119.

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

**The Issue Before the Court**

The issue for the Court's resolution is whether or not Gamboa's conviction for illegal possession of dangerous drugs defined and penalized under Section 11, Article II of RA 9165 should be upheld.

**The Court's Ruling**

The appeal is meritorious.

At the outset, it must be stressed that 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.[32] 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.[33]

In this case, Gamboa was charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165. In order to secure the conviction of an accused charged with 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.[34]

Notably, 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

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[32] See *People v. Dahil,* G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233.

[33] *People v. Comboy,* G.R. No. 218399, March 2, 2016, citing *Manansala v. People,* G.R. No. 215424, December 9, 2015.

[34] *People v. Bio,* G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578.

of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[35]

In his petition before the Court, Gamboa averred that the police officers violated Section 21, Article II of RA 9165 and its Implementing Rules and Regulation (IRR) in that: *(a)* no photographs of the *shabu* and drug paraphernalia were taken; *(b)* the marking and inventory were not done at the place of search and in the presence of the accused or his representative; *(c)* no representative from the Department of Justice and any elected official were present when SPO1 Manuel marked and inventoried the seized items; *(d)* the confiscated drugs and drug paraphernalia were not brought to the PDEA Forensic Laboratory or PNP Crime Laboratory within twenty four (24) hours from the time of seizure; and *(e)* the prosecution failed to show an unbroken chain of custody over the items purportedly seized from him, among others.[36]

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve its integrity and evidentiary value.[37] Under the said 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, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.**[38] The IRR of RA 9165 mirror the content of

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[35] See *People v. Viterbo,* G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680.

[36] *Rollo,* pp. 21-23.

[37] *People v. Sumili,* G.R. No. 212160, February 4, 2015, 750 SCRA 143, 150-151.

[38] See Section 21 (1) and (2), Article II of RA 9165.

Section 21, Article II of the same law, 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, Article II– 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.[39]

As a general rule, the apprehending team must strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its 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.[40] **The aforementioned saving clause in Section 21, Article II of the IRR of RA 9165 applies only where the prosecution has recognized the procedural lapses on the part of the police officers or PDEA agents, and thereafter explained the cited justifiable grounds; after which, the prosecution must show that the integrity and evidentiary value of the seized items have been preserved.**[41]

In the instant case, PO1 Sahagun and SPO1 Manuel marked and inventoried the seized items upon arrival at the police station. However, their testimonies failed to show that they took photographs of the said items and that Gamboa, or his representative, was able to observe or, at the very least, knew that the confiscated items were being marked. They were likewise silent as to the presence of the other required witnesses, *i.e.*, the representative from the Department of Justice (DOJ) and any elected public official.[42] An examination of the records

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[39] See Section 21 (a) and (b), Article II of the IRR of RA 9165.

[40] See *People v. Viterbo, supra* note 34, at 683.

[41] See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[42] See TSN, October 7, 2003, pp. 19-22. See also TSN, February 17, 2005, pp. 12-14.

would similarly show that the prosecution did not offer the photographs of the seized items.[43]

As stated earlier, the IRR of RA 9165 provides a saving clause which permits minor deviations from the procedure. In order for the said saving clause to be effective, the prosecution must first recognize any lapses on the part of the police officers and justify the same.[44] Here, the prosecution failed to acknowledge the shortcomings of the apprehending team in complying with Section 21, Article II of RA 9165 and its IRR. It was silent on the absence of a representative from the DOJ and an elected public official to witness the inventory and receive copies of the same. Similarly unexplained was the dearth of photographs of the seized items, which could have taken place in the police station where they were marked and inventoried.

Further, the items were delivered to the PNP Crime Laboratory beyond twenty four (24) hours from seizure. The items were seized on May 1, 2003 and were delivered only on May 3, 2003,[45] without any acknowledgment on the part of the prosecution of such deviation, and without explanation from the police officers. Worse, SPOI Manuel and PO1 Sahagun both failed to identify the custodian of the seized items during the intervening period, where they were kept, and how they were secured. When police officers do not tum over dangerous drugs to the laboratory within twenty-four (24) hours from seizure, they must identify its custodian, and the latter must be called to testify. The custodian must state the security measures in place to ensure that the integrity and evidentiary value of

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[43] See Formal Offer of Evidence dated June 23, 2005; records, pp. 147-149.

[44] See *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

[45] See Chemistry Report No. D-176-2003 dated May 3, 2003 examined by Forensic Chemical Officer, P/Insp. Divina Mallare Dizon and Request for Laboratory Examination dated May 2, 2003 signed by P/Insp. Villasis; Prosecution's Documentary Exhibits, pp. 1-2.

the confiscated items were preserved,[46] which did not take place in this case.

All told, the breaches of the procedure contained in Section 21, Article II of RA 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[47] Case law states that, the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[48] For indeed, however, noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

With the foregoing pronouncement, the Court finds petitioner's acquittal in order. As such, it is unnecessary to delve into the other issues raised in this case.

**WHEREFORE,** the appeal is **GRANTED.** The Decision dated May 28, 2015 and the Resolution dated August 25, 2015 of the Court of Appeals in CA-G.R. CR No. 35709 are hereby **REVERSED** and **SET ASIDE.** Accordingly, petitioner Antonio Gamboa *y* Delos Santos is **ACQUITTED** of the crime charged.

**SO ORDERED.**

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

*Caguioa, J.,* on leave.

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[46] See *People v. Abetong,* G.R. No. 209785, June 4, 2014, 725 SCRA 304, 312-320.

[47] See *People v. Sumili, supra* note 34, at 152 and 154.

[48] See *People v. Umipang, supra* note 40, at 1038-1039; citations omitted.

**THIRD DIVISION**

[G.R. No. 227146. November 14, 2016]

**RADIOWEALTH FINANCE COMPANY, INC.,** *petitioner, vs.* **ROMEO T. NOLASCO and REYNALDO T. NOLASCO,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; BATAS PAMBANSA BILANG 129 (THE JUDICIARY REORGANIZATION ACT OF 1980), AS AMENDED BY REPUBLIC ACT NO. 7691; JURISDICTION IN CIVIL CASES; REGIONAL TRIAL COURTS; HAVE AUTHORITY TO HEAR AND DECIDE MONEY CLAIMS EXCEEDING FOUR HUNDRED THOUSAND PESOS.—** It bears noting that "'[j]urisdiction' is the court's authority to hear and determine a case. The court's jurisdiction over the nature and subject matter of an action is conferred by law." x x x. The amount of ₱1,600,153.02 involved in the instant case is undoubtedly within the jurisdiction of the RTC, as all money claims exceeding ₱400,000.00 are within its authority to hear and decide. It is an error, therefore, for the RTC to claim lack of jurisdiction over the case.

2. **ID.; ACTIONS; JURISDICTION AND VENUE, DISTINGUISHED.—** To clarify, jurisdiction and venue are not synonymous concepts. Primarily, jurisdiction is conferred by law and not subject to stipulation of the parties. It relates to the nature of the case. On the contrary, venue pertains to the place where the case may be filed. Unlike jurisdiction, venue may be waived and subjected to the agreement of the parties provided that it does not cause them inconvenience.

3. **ID.; CIVIL PROCEDURE; VENUE OF PERSONAL ACTIONS; STIPULATION ON VENUE IS PERMITTED FOR AS LONG AS IT DOES NOT DEFEAT THE PURPOSE OF THE RULES WHICH PRIMARILY AIMS FOR THE CONVENIENCE OF THE PARTIES TO THE DISPUTE.—** Section 2, Rule 4 of the 1997 Rules of Civil Procedure, which was relied upon by the RTC to support its ruling of dismissal x x x is not restrictive. A plain reading of the provision shows

that it is merely permissive as manifested by the use of the term "may." Moreover, the clear language of the ensuing provision of Section 4 expressly allows the venue of personal actions to be subjected to the stipulation of the parties. x x x Clearly, stipulation on venue is permitted and must be recognized for as long as it does not defeat the purpose of the Rules which primarily aims for the convenience of the parties to the dispute. x x x There is, therefore, nothing that prohibits the parties to decide on a different venue for any dispute or action that may arise from their agreement. In this case, in the promissory note executed and signed by the parties, there is a provision which states that "[a]ny action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within the National Capital Judicial Region or in any place where [the petitioner] has a branch/office, at its sole option." Thus, the petitioner's filing of the case in San Mateo, Rizal, where it maintains a branch is proper and should have been respected by the RTC especially when there appears no objection on the part of the respondents.

**4. ID.; ID.; ID.; THE CHOICE OF VENUE IS A MATTER ADDRESSED TO THE SOUND JUDGMENT OF THE PARTIES BASED ON CONSIDERATIONS PERSONAL TO THEM.—** [T]he Court has emphasized in several cases that the RTC may not *motu proprio* dismiss the case on the ground of improper venue. It is a matter personal to the parties and without their objection at the earliest opportunity, as in a motion to dismiss or in the answer, it is deemed waived. x x x In the present case, the RTC carelessly interfered with the parties' agreement on the venue of their dispute and interrupted what could have been an expeditious flow of the proceeding. To reiterate, the choice of venue is a matter addressed to the sound judgment of the parties based on considerations personal to them, *i.e*. convenience. It is only the parties who may raise objection on the same. Absent such protest, it is an error for the RTC to decide that the venue was improperly laid as it is tantamount to needlessly interfering to a mutually agreed term.

**APPEARANCES OF COUNSEL**

*Alquin Bugarin Manguera* for petitioner.
*Reyes And Co. Law Offices* for respondents.

## R E S O L U T I O N

**REYES, *J.*:**

This is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Amended Order[2] dated July 21, 2016 and Order[3] dated September 1, 2016 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 75, in Civil Case No. 2806-15 SM, on pure questions of law.

### Factual Antecedents

Radiowealth Finance Company, Inc. (petitioner) is a domestic financing corporation duly organized and existing under the laws of the Philippines, with principal address at 7th Floor, DMG Center, Domingo M. Guevara Street, Mandaluyong City. On the other hand, Romeo Nolasco and Reynaldo Nolasco (respondents) are obligors of the petitioner who both maintain residence in Mandaluyong City.[4]

On March 31, 2014, the respondents secured a loan from the petitioner in the amount of ₱1,908,360.00, payable in installments within a period of 36 months, as evidenced by a Promissory Note[5] executed on the same day. To secure the payment of the loan, the respondents constituted a Chattel Mortgage[6] over a Fuso Super Great Dropside Truck, 2001 Model.[7]

Unfortunately, the respondents defaulted in the payment of the installments which caused the entire amount to become due and demandable. The petitioner repeatedly demanded from the

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[1] *Rollo*, pp. 8-20.

[2] Rendered by Presiding Judge Beatrice A. Caunan-Medina; *id*. at 21-22.

[3] *Id*. at 23.

[4] *Id*. at 27.

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

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

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

respondents the payment of the balance of the loan, but they would not take heed and even refused to surrender the possession of the motor vehicle which stood as security for the loan. Thus, on September 30, 2015, the petitioner filed a complaint[8] for Sum of Money and Damages with Application for Writ of Replevin with the RTC of San Mateo, Rizal, praying that the respondents be ordered to pay their balance of ₱1,600,153.02 or, in the alternative, surrender the possession of the motor vehicle subject of the Chattel Mortgage dated March 31, 2014 so that the same may be put up on sale to answer for the obligation and the deficiency, if any, may be determined.

After an *ex parte* hearing, the RTC issued an Order[9] dated March 28, 2016, directing the issuance of the Writ of Replevin. Subsequently, however, the RTC of San Mateo, Rizal issued an Amended Order[10] dated July 21, 2016, dismissing *motu proprio* the case for lack of jurisdiction. Citing Section 2, Rule 4 of the 1997 Rules of Civil Procedure, it ruled that since neither the petitioner nor the respondents reside within the jurisdiction of the trial court, that is, either in San Mateo or Rodriguez, Rizal, the case must be dismissed.[11]

On August 16, 2016, the petitioner filed a Motion for Reconsideration[12] arguing that the RTC of San Mateo, Rizal has jurisdiction over the case. It pointed out that the sum of money involved amounting to ₱1,600,153.02 is well within the jurisdiction of the RTC. Further, the venue is also proper, considering that there is a provision in the promissory note which states that any action to enforce payment of any sums due shall exclusively be brought in the proper court within the National Capital Judicial Region *or* in any place where the petitioner has a branch or office at its sole option.

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[8] *Id*. at 27-32.

[9] *Id*. at 43.

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

[11] *Id*. at 22.

[12] *Id*. at 44-47.

In an Order[13] dated September 1, 2016, the RTC reiterated its earlier ruling and denied the petitioner's motion for reconsideration.

The petitioner now comes before this Court, challenging the order of the RTC on pure questions of law. It contends that the RTC erred in concluding that it had no jurisdiction over the case and in *motu proprio* dismissing the same on the ground of improper venue.

**Ruling of the Court**

The petition is meritorious.

A reading of the questioned orders shows that the RTC confused the terms jurisdiction and venue, which are completely different concepts. There is no question that the RTC has jurisdiction over the complaint filed by the petitioner considering the nature of the case and the amount involved.

It bears noting that "'[j]urisdiction' is the court's authority to hear and determine a case. The court's jurisdiction over the nature and subject matter of an action is conferred by law."[14] Section 19(8) of Batas Pambansa Bilang 129,[15] as amended by Republic Act (R.A.) No. 7691, provides:

SEC. 19. *Jurisdiction in civil cases*. Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (₱100,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items, exceeds Two hundred thousand pesos (₱200,000.00).

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[13] *Id*. at 23.

[14] *Land Bank of the Philippines v. Villegas*, 630 Phil. 613, 617 (2010).

[15] The Judiciary Reorganization Act of 1980.

This had been amended by Section 5 of R.A. No. 7691 which 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).

The amount of ₱1,600,153.02 involved in the instant case is undoubtedly within the jurisdiction of the RTC, as all money claims exceeding ₱400,000.00 are within its authority to hear and decide. It is an error, therefore, for the RTC to claim lack of jurisdiction over the case.

At one point, the RTC anchored its ruling of dismissal on the fact that the complaint should have been filed in Mandaluyong City where the petitioner holds its main office and where the respondents both reside, and not in San Mateo, Rizal.

Apparently, the RTC mistook jurisdiction for the more lenient concept of venue. To clarify, jurisdiction and venue are not synonymous concepts. Primarily, jurisdiction is conferred by law and not subject to stipulation of the parties. It relates to the nature of the case. On the contrary, venue pertains to the place where the case may be filed. Unlike jurisdiction, venue may be waived and subjected to the agreement of the parties provided that it does not cause them inconvenience.

Section 2, Rule 4 of the 1997 Rules of Civil Procedure, which was relied upon by the RTC to support its ruling of dismissal, reads as follows:

> **Section 2.** *Venue of personal actions*. — All other actions **may** be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff. (Emphasis ours)

The foregoing provision is not restrictive. A plain reading of the provision shows that it is merely permissive as manifested by the use of the term "may." Moreover, the clear language of the ensuing provision of Section 4 expressly allows the venue of personal actions to be subjected to the stipulation of the parties. It reads, thus:

> **Section 4.** *When rule not applicable*. — This Rule shall not apply.
>
> (a) In those cases where a specific rule or law provides otherwise; or
>
> (b) **Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.** (Emphasis ours)

Clearly, stipulation on venue is permitted and must be recognized for as long as it does not defeat the purpose of the Rules which primarily aims for the convenience of the parties to the dispute. In *Unimasters Conglomeration, Inc. v. CA*,[16] the Court emphasized:

> Parties may by stipulation waive the legal venue and such waiver is valid and effective being merely a personal privilege, which is not contrary to public policy or prejudicial to third persons. It is a general principle that a person may renounce any right which the law gives unless such renunciation would be against public policy.
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> x x x x x x x x x
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> Since convenience is the *raison d'etre* of the rules of venue, it is easy to accept the proposition that normally, venue stipulations should be deemed permissive merely, and that interpretation should be adopted which most serves the parties' convenience. In other words, stipulations designating venues other than those assigned by Rule 4 should be interpreted as designed to make it more convenient for the parties to institute actions arising from or in relation to their agreements; that is to say, as simply adding to or expanding the venues indicated in said Rule 4.[17] (Citations omitted)

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[16] 335 Phil. 415 (1997).

[17] *Id*. at 424-425.

There is, therefore, nothing that prohibits the parties to decide on a different venue for any dispute or action that may arise from their agreement. In this case, in the promissory note executed and signed by the parties, there is a provision which states that "[a]ny action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within the National Capital Judicial Region or in any place where [the petitioner] has a branch/office, at its sole option."[18] Thus, the petitioner's filing of the case in San Mateo, Rizal, where it maintains a branch is proper and should have been respected by the RTC especially when there appears no objection on the part of the respondents.

Moreover, the Court has emphasized in several cases that the RTC may not *motu proprio* dismiss the case on the ground of improper venue. It is a matter personal to the parties and without their objection at the earliest opportunity, as in a motion to dismiss or in the answer, it is deemed waived.

The discussion m *Dacoycoy v. Intermediate Appellate Court*[19] is squarely in point, *viz.*:

> Dismissing the complaint on the ground of improper venue is certainly not the appropriate course of action at this stage of the proceeding, particularly as venue, in inferior courts as well as in the Courts of First Instance (now RTC), may be waived expressly or impliedly. Where defendant fails to challenge timely the venue in a motion to dismiss as provided by Section 4 of Rule 4 of the Rules of Court, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is deemed waived.
>
> Thus, unless and until the defendant objects to the venue in a motion to dismiss, the venue cannot be truly said to have been improperly laid, as for all practical intents and purposes, the venue, though technically wrong, may be acceptable to the parties for whose convenience the rules on venue had been devised. The trial court

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[18] *Rollo*, p. 38.

[19] 273 Phil. 1 (1991).

cannot pre-empt the defendant's prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case.[20]

In the present case, the RTC carelessly interfered with the parties' agreement on the venue of their dispute and interrupted what could have been an expeditious flow of the proceeding. To reiterate, the choice of venue is a matter addressed to the sound judgment of the parties based on considerations personal to them, *i.e.* convenience. It is only the parties who may raise objection on the same. Absent such protest, it is an error for the RTC to decide that the venue was improperly laid as it is tantamount to needlessly interfering to a mutually agreed term.

**WHEREFORE,** the petition is **GRANTED**. The Amended Order dated July 21, 2016 and Order dated September 1, 2016 of the Regional Trial Court of San Mateo, Rizal, Branch 75, are **REVERSED and SET ASIDE** and Civil Case No. 2806-15 SM is hereby ordered **REINSTATED**. The RTC is ordered to proceed with dispatch in the disposition of the mentioned case.

**SO ORDERED.**

*Peralta,*[*] *Perez,* and *Jardeleza, JJ.*, concur.

*Velasco, Jr., J.*, on official leave.

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

[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

**EN BANC**

[A.M. No. P-15-3386. November 15, 2016]
(Formerly A.M. No. 15-07-227-RTC)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **CLERK OF COURT VI MELVIN C. DEQUITO and CASH CLERK ABNER C. ARO, REGIONAL TRIAL COURT, SAN PABLO CITY, LAGUNA,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY; THE ACT OF A CASH CLERK OF MISAPPROPRIATING THE COURT'S FUNDS FOR HIS OWN USE EVINCES HIS DISPOSITION TO DEFRAUD THE COURT.—** Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. In this case, Aro had admitted to misappropriating the court's funds for his own use, which resulted in the shortage in the FF. His justification that he used the court's money to help his daughter is no excuse for using judiciary funds in his custody. As a cash clerk, he is an accountable officer entrusted with the delicate task of collecting money for the court. This proprietary function imbues his position with trust and confidence, and acts of misappropriation clearly betray his integrity, much more evince his disposition to defraud the court. For whatever personal reason Aro may proffer, it should be remembered that as a court personnel, he is expected, at all times, to uphold the public's interest over and above his personal interest. To stress, judicial employees should be living examples of uprightness and must bear in mind that the image of the court, as a true temple of justice, is mirrored in their conduct.

**2. ID.; ID.; ID.; ID.; THE LACK OF PROPER SUPERVISION, MUCH MORE TOLERANCE OF PROFESSIONAL**

**OBLIQUITY, CANNOT EXCUSE ONE'S OWN WRONGDOING.—** Equally unavailing is Aro's defense that his superior, Dequito, never bothered to correct his infractions. The lack of proper supervision, much more tolerance of professional obliquity, cannot excuse one's own wrongdoing. A court employee, whether in the capacity of a subordinate or a superior, should be held accountable for his own actions. If it is indeed true that Dequito condoned his misappropriation of court funds, then the correct course of action is to hold them both liable. That said, the Court agrees with the OCA that Aro is guilty of Dishonesty. Where respondent is an accountable officer, and the dishonest act directly involves property, accountable forms or money for which he is directly accountable and respondent shows an intent to commit material gain, graft and corruption, the dishonesty is considered serious, as in this case.

**3. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; MISAPPROPRIATION OF JUDICIAL FUNDS, A CASE OF.—** Aro should also be held administratively liable for Grave Misconduct. In several cases, the Court has regarded the misappropriation of judicial funds not only as a form of Dishonesty, but also of Grave Misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer. The misconduct is considered grave when it is accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, as Aro's misappropriation of the FF in this case.

**4. ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY AND SIMPLE NEGLECT OF DUTY, DISTINGUISHED.—** Gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. In contrast, simple neglect of duty only refers to the failure to give proper attention to a required task or a disregard of duty due to carelessness or indifference.

**5. ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY; COMMITTED BY A CLERK OF COURT WHO FAILS**

**TO TIMELY DEPOSIT JUDICIARY COLLECTIONS AND TO SUBMIT MONTHLY FINANCIAL REPORTS.—** The safeguarding of funds and collections, and the submission of monthly collection reports are essential to the orderly administration of justice. In this light, Supreme Court (SC) Circular No. 13-92 mandates clerks of court to immediately deposit fiduciary funds with the authorized government depository banks, specifically the Land Bank of the Philippines (LBP). Moreover, SC Circular No. 32-93 requires all clerks of court or accountable officers to submit a monthly report of collections for all funds not later than the tenth ($10^{th}$) day of each succeeding month. A clerk of court is the custodian of court funds. Hence, he is liable for any loss, shortage, destruction or impairment of these funds. Any shortage in the amounts to be remitted, as well as the delay in the actual remittance of these funds, constitutes Gross Neglect of Duty of a clerk of court. The Court has also ruled that a clerk of court who fails to timely deposit judiciary collections, as well as to submit monthly financial reports, is administratively liable for Gross Neglect of Duty. In this case, Dequito clearly exhibited Gross Neglect of Duty when he completely left the task of remitting the court funds and submitting the collection reports to the cash clerk, Aro. As clerk of court, he is duty-bound to timely remit the collections and submit the required financial reports even if he delegates these tasks to other court employees, which he failed to accomplish. x x x Case law holds that the unwarranted failure of a clerk of court to fulfill his responsibilities deserves administrative sanction and not even the full payment of any incurred shortage —as in this case — will exempt the accountable officer from liability. Therefore, for his glaring disregard of his duties as clerk of court, Dequito is adjudged guilty of Gross Neglect of Duty.

**6. ID.; ID.; ID.; ID.; CLERK OF COURT; PRIMARILY ACCOUNTABLE FOR ALL FUNDS THAT ARE COLLECTED FOR THE COURT, WHETHER RECEIVED BY HIM PERSONALLY OR BY A DULY APPOINTED CASHIER WHO IS UNDER HIS SUPERVISION AND CONTROL.—** Dequito, being the RTC's Clerk of Court, is primarily responsible for all its funds — such as the FF — and is further charged with administrative supervision over court personnel. x x x Dequito was undoubtedly remiss in performing his functions when he failed to supervise Aro in the management

of the court's funds, thus resulting in its misappropriation. To note, Aro's admission of misappropriation of a substantial portion of the missing funds could not exculpate Dequito from his own negligence. x x x [A] clerk of court is primarily accountable for all funds that are collected for the court, whether received by him personally or by a duly appointed cashier who is under his supervision and control. Hence, Dequito cannot pass the blame onto his subordinate, Aro. As such, he was properly held liable to return the FF shortage, including the unearned interest caused by the delay in its remittance.

**7. ID.; ID.; ID.; ID.; AS FRONT LINERS IN THE ADMINISTRATION OF JUSTICE, THEY SHOULD LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY IN THE PUBLIC SERVICE.—** The Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people and must serve them with responsibility, integrity, loyalty, and efficiency. The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice. As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service, and in this light, are always expected to act in a manner free from reproach. Thus, any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated.

## D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint[1] against respondents Melvin C. Dequito (Dequito), Clerk of Court VI, and Abner C. Aro (Aro), Cash Clerk, both of the Regional Trial Court of San Pablo City, Laguna (RTC), charging them of Gross Neglect of Duty and Dishonesty, respectively.

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[1] See Memorandum-Report of petitioner Office of the Court Administrator dated July 14, 2015; *rollo*, pp. 52-59.

**The Facts**

This matter stemmed from a Memorandum-Report[2] dated June 30, 2015 submitted by the Financial Audit Team (Audit Team or Team) of the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator (OCA), in connection with the financial audit conducted on the books of account of the aforementioned RTC. The examination covered Dequito's financial transactions for the period September 2, 2002 to March 31, 2015. For failure to comply with the submission of the monthly financial reports despite due notice, Dequito's salaries and allowances were withheld effective April 2015.[3]

Among others, the Audit Team uncovered that there was a total shortage of ₱888,320.59 in the Fiduciary Fund (FF) account due to non-remittance of collections in the amount of ₱878,320.59 and an unaccounted withdrawal in the amount of ₱10,000.00.[4] The unremitted collections covering the period August 28, 2014 to April 6, 2015 were concealed by Dequito's non-submission of the required monthly financial reports to the Revenue Section, Accounting Division, Financial Management Office, OCA, whereas ₱10,000.00 of Dequito's ₱30,000.00 withdrawal on September 8, 2014 remained unaccounted for.[5]

When informed of the shortage in the FF, Dequito admitted responsibility only for ₱80,000.00[6] and passed the blame onto Aro for the remainder.[7] On the other hand, Aro did not deny

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[2] *Rollo*, pp. 3-13. Signed by Audit Team Leader John L. Ferrera, and Members Cielo D. Calonia, Pablito V. Buño, Ferdinand A. Marquez, Rosalie M. Durendes, Allan Joseph R. Cabesuela, and Normee P. Moredo and approved by Court Administrator Jose Midas P. Marquez.

[3] *Id.* at 3.

[4] See *id.* at 6.

[5] *Id.* at 6-8.

[6] ₱70,000.00 represented a day's collection when Aro was absent and ₱10,000.00 represented the unaccounted cash bond withdrawal. (See *id.* at 8).

[7] *Id.*

that he misappropriated the unremitted FF collections. Based on the command responsibility rule, however, the Audit Team asked Dequito to restitute the missing funds, which he complied with on June 18, 2015.[8] Despite the restitution, the Audit Team nonetheless noted that the Court was still deprived of interest amounting to ₱46,671.41 that could have accrued to its benefit had the collections been deposited during the prescribed time.[9]

During the Team's exit conference with Executive Judge Agripino G. Morga, the latter expressed his dismay about the shortage in the FF account. Hence, both respondents were relieved of their respective duties.[10]

In view of the foregoing, the Audit Team recommended that its Memorandum-Report be docketed as a regular administrative complaint against respondents for violating the Court's issuances on the proper handling of judiciary collections. Respondents were also directed to explain the incurrence of the FF shortage and the non-submission of the monthly financial reports.[11]

Further, the Audit Team found unliquidated withdrawals amounting to ₱437,400.00 in the Sheriff's Trust Fund (STF). Thus, it recommended that the Court direct the accountable officers — among others, Sheriffs Mario S. Devanadera (Devanadera) and Rodrigo G. Baliwag (Baliwag) — to submit the pertinent liquidation reports with the corresponding supporting documents; otherwise, they would be liable to pay the same.[12]

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[8] *Id*.

[9] *Id*. at 8. See also Schedule of Delayed Remittances FF prepared by Ferdinand A. Marquez; *id*. at 27-29.

[10] *Id*. at 3 and 11. See also Memorandum dated April 20, 2015 (*id*. at 18-19) and Memorandum No. 04-2015 dated April 30, 2015 (*id*. at 26) of Judge Morga.

[11] *Id*. at 12-13.

[12] See *id* at 8-9 and 12.

In a Resolution[13] dated September 16, 2015, the Court adopted the Audit Team's recommendations.

As directed, Aro submitted his *Sinumpaang Salaysay*[14] on December 16, 2015, averring that it was Dequito who asked him to make adjustments in the deposit and continued to borrow money from the court's collections, despite his reminders to the contrary. Nonetheless, he admitted to using the court's collections to resolve a personal problem, but added that Dequito never bothered to find a way to correct the same. He also alleged that he prepared the monthly financial reports, but Dequito refused to sign them.[15]

On the other hand, Dequito, in his Explanation[16] dated December 18, 2015, regarded the situation as a case of abused trust and confidence. He narrated that from the time he assumed office as Clerk of Court VI, he gave his full trust and confidence to the previous cash clerk, Celia Getrudes-Magpantay (Magpantay) until the latter's promotion.[17] Aro then took over and the same "system" implemented by Magpantay went on with similar smoothness and efficiency until the early part of 2014 when Aro started incurring numerous absences. Dequito noticed that there were delays in the preparation of the monthly financial reports and thus, constantly reminded Aro of his duties.[18] Further, Dequito alleged that he only found out about the FF shortage after he was informed by the Audit Team. When he confronted Aro about the shortage, the latter admitted having incurred the same but could not give any answer on how to rectify the situation. Finally, Dequito, who had borrowed money from several persons just to restitute the shortage, implored the Court to help him recover the restituted amount from Aro

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[13] *Id*. at 41-43. Issued by Division Clerk of Court Edgar O. Aricheta.

[14] *Id*. at 44.

[15] *Id*. at 44 and 54.

[16] *Id*. at 45-48.

[17] *Id*. at 45.

[18] *Id*. at 46 and 54.

and likewise, impose the proper disciplinary sanctions upon the latter.[19]

**The OCA's Report and Recommendation**

In a Memorandum-Report[20] dated July 14, 2016, the OCA found Dequito and Aro administratively liable for Gross Neglect of Duty and Dishonesty, respectively. However, considering that this is the first administrative case filed against them, the OCA recommended that they both be suspended for a period of six (6) months without salary and benefits, instead of being dismissed from service.[21]

The OCA pronounced that Dequito should be sanctioned for being lax in the performance of his duties as clerk of court and further remarked that his restitution of the shortage should not exempt him from liability. It also chastised Dequito for passing the blame for the incurred shortage onto Aro, given that it was his duty to ensure that his subordinates perform their duties and responsibilities in accordance with the pertinent circulars relating to deposits and collections and proper accountability of all court funds.[22] On the other hand, Aro admitted to using judicial funds for his personal benefit. Hence, the OCA adjudged him guilty of Dishonesty.[23]

Relatedly, the OCA observed that Baliwag had an unliquidated STF balance in the amount of ₱74,000.00. However, since Baliwag had already retired from service on December 30, 2012, the OCA recommended that Dequito be held liable for the unliquidated STF if he had already issued the former's clearance upon retirement.[24]

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[19] *Id*. at 47-48 and 54-55.

[20] *Id*. at 52-59.

[21] *Id*.

[22] *Id*. at 56.

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

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

Finally, albeit not being a party to the case, the OCA directed Devanadera to pay his unliquidated STF in the amount of ₱15,000.00[25] and furnish the OCA proof of deposit upon payment thereof.[26]

**The Issue Before the Court**

The main issue in this case is whether or not Dequito and Aro should be held administratively liable.

**The Court's Ruling**

At the outset, the Court observes that Devanadera was not impleaded as a party to the present case.[27] Hence, up until the proper complaint is filed against him, the Court cannot adopt nor approve the OCA's directive against him as it would violate his right to due process.

As for Aro, the Court not only adopts the OCA's finding that he is guilty of Dishonesty, but also finds him administratively liable for Grave Misconduct pursuant to existing jurisprudence.

Dishonesty is the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[28]

In this case, Aro had admitted to misappropriating the court's funds for his own use, which resulted in the shortage in the FF. His justification that he used the court's money to help his daughter is no excuse for using judiciary funds in his custody. As a cash clerk, he is an accountable officer entrusted with the

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[25] Inadvertently mentioned as "₱17,000.00" in the OCA's recommendation (see *id*. at 58).

[26] *Id*.

[27] It appears from the *rollo* that the Memorandum-Report was docketed as a regular administrative case against respondents Dequito and Aro only (see Court's Resolution dated September 16, 2015; *id*. at 41).

[28] *OCA v. Acampado*, 721 Phil. 12, 30 (2013), citations omitted.

delicate task of collecting money for the court.[29] This proprietary function imbues his position with trust and confidence, and acts of misappropriation clearly betray his integrity, much more evince his disposition to defraud the court. For whatever personal reason Aro may proffer, it should be remembered that as a court personnel, he is expected, at all times, to uphold the public's interest over and above his personal interest.[30] To stress, judicial employees should be living examples of uprightness and must bear in mind that the image of the court, as a true temple of justice, is mirrored in their conduct.[31]

Equally unavailing is Aro's defense that his superior, Dequito, never bothered to correct his infractions. The lack of proper supervision, much more tolerance of professional obliquity, cannot excuse one's own wrongdoing. A court employee, whether in the capacity of a subordinate or a superior, should be held accountable for his own actions. If it is indeed true that Dequito condoned his misappropriation of court funds, then the correct course of action is to hold them both liable. That said, the Court agrees with the OCA that Aro is guilty of Dishonesty. Where respondent is an accountable officer, and the dishonest act directly involves property, accountable forms or money for which he is directly accountable and respondent shows an intent to commit material gain, graft and corruption, the dishonesty is considered serious,[32] as in this case.

In addition, Aro should also be held administratively liable for Grave Misconduct. In several cases,[33] the Court has regarded

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[29] See *OCA v. Savadera*, 717 Phil. 469, 487 (2013).

[30] *Gabatin v. Quirino*, 594 Phil. 406, 415 (2008).

[31] *Id*. at 414, citing *Gutierrez v. Quitalig*, 448 Phil. 469, 479-480 (2003).

[32] See *Committee on Security and Safety, Court of Appeals v. Dianco*, A.M. No. CA-15-31-P, June 16, 2015, 758 SCRA 137, 155, citing Section 3 of Civil Service Commission Resolution No. 06-0538 or the "RULES ON THE ADMINISTRATIVE OFFENSE OF DISHONESTY" issued on April 4, 2006.

[33] See *OCA v. Acampado, supra* note 28; *OCA v. Nacuray*, 521 Phil. 32 (2006); *Concerned Citizen v. Gabral, Jr.*, 514 Phil. 209 (2005); *OCA v.*

the misappropriation of judicial funds not only as a form of Dishonesty, but also of Grave Misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer. The misconduct is considered grave when it is accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule,[34] as Aro's misappropriation of the FF in this case. Consequently, the Court modifies the OCA's recommendation to include Aro's administrative liability for Grave Misconduct.

As for Dequito, the Court similarly adopts the OCA's finding of Gross Neglect of Duty, in view of the shortage in the FF, as well as his failure to timely remit collections and to submit the required monthly financial reports.

Gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[35] In contrast, simple neglect of duty only refers to the failure to give proper attention to a required task or a disregard of duty due to carelessness or indifference.[36]

The safeguarding of funds and collections, and the submission of monthly collection reports are essential to the orderly administration of justice.[37] In this light, Supreme Court (SC)

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*Bernardino*, 490 Phil. 500 (2005); and *Re: Report on the Examination of the Cash and Accounts of the Clerks of Court of the RTC and the MTC of Vigan, Ilocos Sur*, 448 Phil. 464 (2003).

[34] See *OCA v. Viesca*, A.M. No. P-12-3092, April 14, 2015, 755 SCRA 385, 396.

[35] *Lucas v. Dizon*, A.M. No. P-12-3076, November 18, 2014, 740 SCRA 506, 515.

[36] *OCA v. Acampado*, *supra* note 28, at 26.

[37] *OCA v. Varela*, 568 Phil. 9, 19 (2008).

Circular No. 13-92[38] mandates clerks of courts to immediately deposit fiduciary funds with the authorized government depository banks,[39] specifically the Land Bank of the Philippines (LBP).[40] Moreover, SC Circular No. 32-93[41] requires all clerks of court or accountable officers to submit a monthly report of collections for all funds not later than the tenth (10th) day of each succeeding month.

A clerk of court is the custodian of court funds.[42] Hence, he is liable for any loss, shortage, destruction or impairment of these funds.[43] Any shortage in the amounts to be remitted, as well as the delay in the actual remittance of these funds, constitutes Gross Neglect of Duty of a clerk of court.[44] The Court has also ruled that a clerk of court who fails to timely deposit judiciary collections, as well as to submit monthly financial reports, is administratively liable for Gross Neglect of Duty.[45]

In this case, Dequito clearly exhibited Gross Neglect of Duty when he completely left the task of remitting the court funds and submitting the collection reports to the cash clerk, Aro. As clerk of court, he is duty-bound to timely remit the collections

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[38] "Subject: Court Fiduciary Funds" issued by then Court Administrator Josue N. Bellosillo on March 1, 1992.

[39] See *Relova v. Rosales*, 441 Phil. 104 (2002).

[40] See SC Administrative Circular No. 5-93 (Amending Circular No. 5, dated February 21, 1985) "Re: Land Bank of the Philippines, Likewise the Authorized Government Depository Bank for the Judiciary Development Fund (JDF)" issued by then Chief Justice Andres R. Narvasa on April 30, 1993.

[41] "Subject: Collection of Legal Fees and Submission of Monthly Report of Collections" issued by then Court Administrator Ernani Cruz Paño on July 9, 1993.

[42] See *OCA v. Villanueva*, 630 Phil. 248, 257 (2010).

[43] *Id*.

[44] *OCA v. Acampado*, *supra* note 28, at 29-30.

[45] See *id*. at 30.

and submit the required financial reports even if he delegates these tasks to other court employees, which he failed to accomplish.

Further, Dequito, being the RTC's Clerk of Court, is primarily responsible for all its funds — such as the FF and is further charged with administrative supervision over court personnel.[46] As the records show, Dequito was undoubtedly remiss in performing his functions when he failed to supervise Aro in the management of the court's funds, thus resulting in its misappropriation.[47] To note, Aro's admission of misappropriation of a substantial portion of the missing funds could not exculpate Dequito from his own negligence.[48] As above-intimated, a clerk of court is primarily accountable for all funds that are collected for the court, whether received by him personally or by a duly appointed cashier who is under his supervision and control.[49] Hence, Dequito cannot pass the blame onto his subordinate, Aro. As such, he was properly held liable to return the FF shortage, including the unearned interest caused by the delay in its remittance.[50]

Separately, the Court observes that the OCA recommended that Dequito be ordered to pay Baliwag's unliquidated STF balance in the amount of ₱74,000.00 if he had issued the latter's clearance upon retirement.[51] The records are, however, bereft of any showing that such clearance had indeed been issued. Thus, the Court deems it proper for the OCA to first make a determination of the matter, and thereafter, make the appropriate recommendation depending on its finding.

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[46] See *Report on the Financial Audit Conducted on the Books of Account of Dy, RTC, Catarman, Northern Samar*, 655 Phil. 367, 379 (2011).

[47] See *OCA v. Buencamino*, 725 Phil. 110, 120 (2014).

[48] *Id*.

[49] *OCA v. Ofilas*, 633 Phil. 36, 56-57 (2010).

[50] See Court's Resolution dated September 16, 2015; *rollo*, p. 41.

[51] See *id*. at 58.

Case law holds that the unwarranted failure of a clerk of court to fulfill his responsibilities deserves administrative sanction and not even the full payment of any incurred shortage — as in this case — will exempt the accountable officer from liability.[52] Therefore, for his glaring disregard of his duties as clerk of court, Dequito is adjudged guilty of Gross Neglect of Duty.

Anent the penalties to be imposed, Serious Dishonesty, Grave Misconduct, and Gross Neglect of Duty are all serious offenses punishable by dismissal from public service, even on a first offense.[53] Hence, the Court disapproves the OCA's recommendation to reduce the penalty to mere suspension for both Aro and Dequito.

The Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people and must serve them with responsibility, integrity, loyalty, and efficiency.[54] The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice. As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service,[55] and in this light, are always expected to act in a manner free from reproach.[56] Thus, any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated.[57]

**WHEREFORE,** respondent Abner C. Aro (Aro), Cash Clerk of the Regional Trial Court of San Pablo City, Laguna, and

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[52] See *OCA v. Julian*, 491 Phil. 179, 188 (2005).

[53] See Section 46 (A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 18, 2011).

[54] See *Mendoza v. Esguerra*, 703 Phil. 435, 439 (2013).

[55] *OCA v. Buencamino supra* note 47, at 119.

[56] See *OCA v. Acampado supra* note 28, at 17.

[57] See *OCA v. Buencamino supra* note 47, at 122.

respondent Melvin C. Dequito (Dequito), Clerk of Court VI of the same court, are found **GUILTY** of Serious Dishonesty and Grave Misconduct, and Gross Neglect of Duty, respectively, and are, thus, **DISMISSED** from service effective immediately. Accordingly, their respective civil service eligibility are **CANCELLED**, and their retirement and other benefits, except accrued leave credits, are hereby **FORFEITED**. Likewise, they are **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

Further, the Office of the Court Administrator is **DIRECTED** to: (*a*) file the appropriate administrative complaint against Sherriff Mario S. Devanadera in view of his unliquidated Sheriff's Trust Fund (STF) balance; and (*b*) determine whether or not Dequito had issued a clearance for Sheriff Rodrigo G. Baliwag's retirement and thereafter, make the appropriate recommendation relative to the latter's unliquidated STF.

Finally, the Executive Judge of the Regional Trial Court of San Pablo City, Laguna is **DIRECTED** to **MONITOR** all financial transactions of the court in strict adherence to the issuances of this Court on the proper handling of all Judiciary funds. He or she shall be equally liable for the infractions committed by the employees under his or her command and supervision.

Let a copy of this Decision be attached to the personal records of respondents Aro and Dequito.

**SO ORDERED.**

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

*Sereno, C.J.* and *Caguioa, J.*, on leave.

*Velasco, Jr.* and *Mendoza, JJ.*, on official leave.

**EN BANC**

[A.M. No. 16-02-01-CTA. November 15, 2016]

**MA. ROSARIO R. ESCAÑO, Chief Judicial Staff Officer, Human Resource Division, Office of Administrative and Finance Services, Court of Tax Appeals,** *complainant, vs.* **ADRIAN P. MANAOIS, Human Resource Management Officer III, Human Resource Division, Court of Tax Appeals,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; JUSTICES AND JUDGES OF LOWER COURTS HAVE THE POWER TO INVESTIGATE AND RECOMMEND TO THE SUPREME COURT THE APPROPRIATE DISCIPLINARY MEASURES AGAINST ERRING EMPLOYEES.—** The proceedings below were essentially investigative and the hearing committee's actions were merely recommendatory. The hearing committee did not directly impose any sanction on Manaois. In fact, it was explicitly stated in the dispositive portion that the penalty was "subject to the approval of the Supreme Court." The hearing committee acted within the bounds of its authority, as embodied in Rule II Section 14 of the CTA EROD, the governing rules on disciplinary cases involving CTA employees x x x. In promulgating the CTA EROD, the CTA knew the extent of its disciplinary authority under OCA Circular No. 30-91. It made the same delineation between light offenses and grave/less grave offenses as prescribed in the circular. Because the charges against Manaois involved grave and less grave offenses, the hearing committee correctly limited itself to conducting an investigation, recommending penalties, and forwarding the case to this Court for appropriate action. The hearing committee, therefore, did not usurp the Court's administrative power over the employees of the judiciary. The power of justices and judges of lower courts to investigate and recommend to the Supreme Court the necessary disciplinary action is well recognized. In *Nery v. Gamolo*, we held that "[a]s administrator of her court, she is responsible for its conduct

and management. She has the duty to supervise her court personnel to ensure prompt and efficient dispatch of business in her court." Thus, in that case, we ruled that the order of suspension issued by Judge Nery finds support in Rule 3.10 of the Code of Judicial Conduct, which provides that, "A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct which the judge may become aware of." The same principle applies why the CTA, through the procedure laid down in its EROD, is allowed to investigate and recommend appropriate disciplinary measures against erring employees. In administrative complaints involving grave offenses, the role of the CTA (through the designated hearing committee) is confined to the investigation of the case, and the recommendation of the appropriate disciplinary action. Consistent with existing rules, this Court receives the Formal Investigation Report, which we can affirm, reverse, or modify based on our independent judgment.

**2. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; COMMITTED WHEN A COURT EMPLOYEE FAILS TO OBSERVE THE HIGHEST DEGREE OF EFFICIENCY AND COMPETENCE IN PERFORMING HIS ASSIGNED TASK.—** Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and dilligently at all times. Since the image of the courts, as the administrators and dispensers of justice, is not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions. In this case, Manaois failed to timely process the service records of Atty. Agnes D. Arao (Court Attorney IV), and Ms. Tanya B. Galapon (Executive Assistant V), both employees under the Office of Associate Justice Caesar A. Cassanova. In finding Manaois guilty, the hearing committee relied on the testimony of Escaño. x x x Manaois' inaction in processing the service records shows that he was remiss in his duty, and therefore guilty of simple neglect of duty.

**3. ID.; ID.; ID.; ID.; IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES, JUDICIAL EMPLOYEES ARE BOUND TO OBSERVE COURTESY, CIVILITY, AND SELF-RESTRAINT IN DEALING WITH OTHERS.—** [W]e find Manaois guilty of discourtesy in the course of official duties. As a public officer, Manaois is bound, in the performance of his official duties, to observe courtesy, civility, and self-restraint in his dealings with others. "All judicial employees must refrain from the use of abusive, offensive, scandalous, menacing or otherwise improper language. They are expected to accord due respect, not only to their superiors, but also to all others. Their every act and word should be characterized by prudence, restraint, courtesy and dignity." In this case, it has been shown that Manaois failed to live up to these standards on several occasions.

**4. ID.; ID.; ID.; ID.; MUST STRICTLY OBSERVE OFFICIAL TIME AT ALL TIMES.—** Manaois' unauthorized absences and loafing during office hours are impermissible. Due to the nature and functions of their office, officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of the prescribed office hours and efficient use of every moment for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees are, at all times, behooved to strictly observe official time.

**5. ID.; ID.; ID.; ID.; NOTORIOUSLY UNDESIRABLE EMPLOYEE, HOW DETERMINED; THE GENERAL REPUTATION OF AN EMPLOYEE AS SOMEONE WHO IS QUARRELSOME AND DIFFICULT TO WORK WITH AND HIS HISTORY OF RUDE AND DISCOURTEOUS CONDUCT TOWARDS HIS SUPERIORS ADEQUATELY SHOW THAT HE IS NOTORIOUSLY UNDESIRABLE.—** Manaois' notorious undesirability is manifest from his general reputation among his co-workers in the HRD, as well as his previous transfers from different divisions of the CTA due to his inability to work well with others and his disrespect for his immediate supervisors. x x x In determining whether an employee is notoriously undesirable, the CSC prescribes a two-fold test: (1) whether it is common knowledge or generally known as

universally believed to be true or manifest to the world that the employee committed the acts imputed against him; and (2) whether he had contracted the habit for any of the enumerated misdemeanors. We are satisfied that Manaois' general reputation within the HRD as someone who is quarrelsome and difficult to work with, in addition to his history of rude and discourteous conduct towards his supervisors, adequately show that he is notoriously undesirable. Manaois' actions have been substantiated and corroborated by the testimonies of the witnesses presented during the investigation. An employee who cannot get along with his co-employees and superiors can upset and strain the working environment and is therefore detrimental to institution. Such instance calls for us to exercise our prerogative to take the necessary action to correct the situation and protect the judiciary.

**6. ID.; ID.; ID.; ID.; WHERE A RESPONDENT IS FOUND GUILTY OF TWO OR MORE CHARGES, THE PENALTY TO BE IMPOSED SHOULD BE THAT CORRESPONDING TO THE MOST SERIOUS CHARGE AND THE REST SHALL BE CONSIDERED AS AGGRAVATING.—** Section 50 of the x x x [Revised] Rules [on Administrative Cases in the Civil Service] provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating. In this case, the most serious charge for which we find Manaois guilty of is the grave offense of being notoriously undesirable, which is punishable by dismissal from service. We therefore adopt the hearing committee's recommendation that Manaois be imposed the penalty of dismissal from the service.

## D E C I S I O N

***PER CURIAM*:**

This is an administrative case against respondent Adrian P. Manaois (Manaois) initiated by complainant Ma. Rosario R. Escaño (Escaño) in her Complaint-Affidavit[1] dated February

[1] *Rollo,* pp. 38-44.

25, 2015 for grossly disrespectful behavior, discourtesy in the course of official duties, gross insubordination, knowingly making false statements against co-employees, being notoriously undesirable, neglect in the performance of duty, failure to act promptly on letters and requests, and conduct prejudicial to the best interest of the service.[2]

I

Manaois is employed as Human Resource Management Officer III (HRMO III) of the Human Resource Division (HRD), Office of Administrative and Finance Services (OAFS), Court of tax Appeals (CTA). Escaño is the Chief Judicial Staff Officer of the HRD, and is the immediate supervisor of Manaois.

This administrative case is an offshoot of previous OAFS Grievance Reports filed by Escaño[3] (OAFS Grievance Report No. 02-2014) and Manaois[4] (OAFS Grievance Report No. 01-2014) against each other before the OAFS. Their Grievance Reports were docketed as Office of the Presiding Justice (OPJ) Grievance No. 01-2015.[5] Manaois, however, indicated that he was withdrawing his complaint for direct filing before the Office of the Court Administrator (OCA).[6] Nonetheless, these complaints were elevated to the CTA Grievance Committee for proper disposition pursuant to the rules.[7] Subsequently, on December 11, 2014, the CTA Grievance Committee issued a Resolution[8] to "**REFER and FORWARD** the Complaint of Ms. Escaño to the CTA Employees' Rules on Discipline (CTA

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[2] *Id.* at 38.

[3] Docketed as OAFS Grievance Report No. 02-2014. *Id.* at 76-77, 481.

[4] Docketed as OAFS Grievance Report No. 01-2014. *Id.* at 76-77, 480-481.

[5] *Id.* at 34.

[6] *Id.* at 78.

[7] *Id.*

[8] *Rollo*, pp. 76-84.

EROD) for proper disposition,"[9] and to re-docket the case as a regular administrative case. Manaois moved for the reconsideration of this Resolution, but the motion was denied. The proceedings in OAFS Grievance Report Nos. 01-2014 and 02-2014 were considered closed and terminated.[10]

Pursuant to the December 11, 2014 CTA Grievance Committee Resolution, the records of the case were forwarded to Associate Justice Ma. Belen M. Ringpis-Liban (Investigating Officer Justice Ringpis-Liban), as the Investigating Officer of the CTA EROD. In a Resolution[11] dated February 23, 2015, Investigating Officer Justice Ringpis-Liban noted a formal defect on the complaint of Escaño, but found that it "is not fatal to the initiation of an administrative complaint against Mr. Manaois."[12] Thus, citing Section 6, Rule II of the CTA EROD, Investigating Officer Justice Ringpis-Liban ordered Escaño to amend her complaint.[13] In her amended complaint[14] (re-docketed as CTA EROD No. 2015-01), Escaño identified the following instances as bases for the Formal Charge against Manaois:

1. Manaois failed to submit the service record of Atty. Agnes Arao and Ms. Tanya Galapon under the Office of Associate Justice Caesar A. Cassanova on time which caused the Civil Service Commission (CSC) to follow up with HRD regarding the delayed submission.[15]

2. Manaois showed and/or granted access to unauthorized persons strictly confidential personnel files, such as 201 files, statements of assets, liabilities and net worth, and

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[9] *Id.* at 83. Emphasis in the original.

[10] *Id.* at 34.

[11] *Id.* at 34-37.

[12] *Id.* at 36, citing Resolution dated February 13, 2015 in OPJ Grievance No. 01-2015.

[13] *Id.* at 37.

[14] *Id.* at 38-44.

[15] *Id.* at 40, 278.

performance ratings, which prompted Escaño to issue a memorandum to the entire department.[16]

3. Complaints from CTA employees assigned to Manaois regarding his rude and hostile demeanor, which led Escaño to rotate and change employees assigned to HRMOs.[17]

4. Manaois issued memoranda to Escaño, his immediate supervisor, and to then Acting Section Chief, Ms. Mary Anne Miralles (Miralles), without Escaño's knowledge and approval, and in excess of his authority.[18]

5. Manaois' accusation, in front of other HRD employees, against Ms. Maria Lourdes Mayor (Mayor), a fellow HRMO, that the latter is incompetent and was delegating work within the scope of her responsibilities.[19]

6. Manaois falsely accused a co-terminous court employee from the Office of Justice Amelia C. Cotangco-Manalastas of entering and registering two time cards without any basis.[20]

7. On several occasions, Manaois had neglected to timely provide Escaño with status reports regarding pending matters assigned to him.[21]

8. Manaois publicly accused another co-employee, Ms. Ana Ria Sundiam, of being incompetent, and upon being counseled by Escaño on the matter, turned his back on her while she was speaking and then stormed out of the room.[22]

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[16] *Id.* at 40.

[17] *Id.*

[18] *Id.*

[19] *Rollo*, pp. 40, 82.

[20] *Id.* at 10, 41.

[21] *Id.* at 11.

[22] *Id.* at 41.

9. Manaois, on several occasions, left the office without informing or asking permission from Escaño.[23]

10. Manaois usurped the duties of Mr. Redd Ryan Adayo (Adayo) as Liaison Officer of HRD, despite being relieved of such function.[24]

11. Manaois questioned the overtime services rendered by senior tax specialists when the request for overtime had already been approved by the presiding justice upon the request of other associate justices.[25]

12. Manaois was absent without official leave from September 9-11 and 15, 2014.[26]

In the proceedings before Investigating Officer Justice Ringpis-Liban, Manaois filed a manifestation with motion to dismiss[27] instead of a counter-affidavit. He claimed that the investigating officer has no jurisdiction over the administrative case, but that only the Supreme Court has the disciplinary authority over court personnel, considering that he is being charged with grave or less grave offenses. Investigating Officer Justice Ringpis-Liban denied the motion, and instructed Manaois to file his counter-affidavit.[28] Again, instead of filing his counter-affidavit, Manaois filed an "appeal" with the OPJ, and furnished Investigating Officer Justice Ringpis-Liban a copy of his "appeal."[29]

When the case was set for preliminary investigation, only Escaño appeared.[30] Manaois excused himself from attending

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[23] *Id.*

[24] *Id.*

[25] *Rollo*, p. 42.

[26] *Id.*

[27] *Rollo*, pp. 86-102.

[28] *Id.* at 131.

[29] *Id.* at 132.

[30] *Id.* at 136.

in view of the pendency of his appeal. He said that he "would like to exhaust all legal remedies available to him,"[31] including his appeal with the OPJ. Investigating Officer Justice Ringpis-Liban noted the manifestation, and said that CTA EROD does not provide for an appeal mechanism at this stage of the proceedings.[32]

Meanwhile, the CTA *En Banc* noted without action Manaois' appeal, and stated that the appeal with the OPJ "is not an available remedy under the [CTA EROD]."[33] In view of this development, Investigating Officer Justice Ringpis-Liban extended to Manaois another opportunity to attend a preliminary investigation conference, as well as to submit any affidavits or counter-affidavits supporting his cause.[34] However, Manaois filed a manifestation *ad cautelam*[35] expressing his intent to elevate the case to the Supreme Court.

When the preliminary investigation terminated,[36] and after evaluation of the witnesses presented by Escaño, Investigating Officer Justice Ringpis-Liban issued her Preliminary Investigation Report[37] finding probable cause to formally charge Manaois. She also recommended for his preventive suspension for the maximum period of 90 days, or in the alternative, for his immediate lateral transfer to a different department.[38] On May 18, 2015, a Formal Charge was filed by Investigating Officer Justice Ringpis-Liban against Manaois.[39] On the same day, the CTA Third Division affirmed the recommendation of

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[31] *Id.* at 134.

[32] *Id.* at 136-137.

[33] *Id.* at 156.

[34] *Id.* at 159.

[35] *Id.* at 160-161.

[36] *Id.* at 163.

[37] *Id.* at 20-33.

[38] *Id.* at 32.

[39] *Id.* at 485.

Investigating Officer Justice Ringpis-Liban, and resolved to refer the matter regarding the preventive suspension to the Office of the Presiding Justice Roman G. Del Rosario for proper disposition.[40]

On June 29, 2015, Investigating Officer Justice Ringpis-Liban endorsed to Presiding Justice Roman G. Del Rosario the records of CTA EROD No. 2015-01 for raffling of the hearing on the Formal Charge.[41] On June 30, 2015, the case was raffled to the CTA First Division which was composed of Associate Justices Roman Del Rosario (Chairman), Erlinda Uy, and Cielito Mindaro-Grulla (hearing committee). They set the case for preliminary conference on July 13, 2015,[42] where only Escaño appeared. Instead of attending the conference, Manaois filed an omnibus motion to cancel the preliminary conference. He moved for the inhibition of the members of the hearing committee, and the referral of the case to the OCA. The hearing committee denied the omnibus motion.[43]

Despite due notice, Manaois failed to appear in the July 23,[44] July 29,[45] and August 28, 2015[46] hearings set by the hearing committee. He likewise failed to submit his memorandum, hence, the formal investigation was considered terminated, and submitted for decision.[47] To establish the allegations in the Formal Charge, Escaño and five other witnesses testified by way of judicial affidavits.[48]

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[40] *Id.* at 17-19, 485.

[41] *Id.* at 2.

[42] *Id.* at 199-200.

[43] *Id.* at 216-217.

[44] *Id.* at 304.

[45] *Id.* at 347.

[46] *Id.* at 457.

[47] *Id.* at 470.

[48] *Id.* at 487.

In its Formal Investigation Report[49] dated October 15, 2015, the hearing committee found Manaois guilty of simple neglect of duty, simple misconduct, discourtesy in the course of official duties, violation of Sections 1 and 2, Canon IV of the Code of Conduct for Court Personnel, frequent unauthorized absences from duty during regular office hours, insubordination, conduct prejudicial to the best interest of the service, and being notoriously undesirable. Accordingly, it recommended, subject to the approval of the Supreme Court, that Manaois be dismissed from service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and from taking the civil service examination.[50]

On November 3, 2015, the hearing committee formally endorsed the case to this Court for its approval.[51]

II

We first discuss the issue of jurisdiction which Manaois used as basis for ignoring the proceedings below. He argues that the power to discipline justices, judges and court employees is constitutionally vested in the Supreme Court. Citing OCA Circular No. 30-91,[52] he maintains that the disciplinary authority of the presiding justices of lower collegiate courts is limited to light offenses only. However, since he is being charged with grave and less grave offenses, it is the Supreme Court that has jurisdiction.[53]

The contention lacks merit. Manaois misapprehends the nature of the proceedings before the hearing committee, and the actions it undertook.

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[49] *Id.* at 472-518.

[50] *Id.* at 518.

[51] *Id.* at 523-524.

[52] Guidelines on the Functions of the Office of the Court Administrator, September 30, 1991.

[53] *Rollo,* pp. 93-101.

The proceedings below were essentially investigative and the hearing committee's actions were merely recommendatory. The hearing committee did not directly impose any sanction on Manaois. In fact, it was explicitly stated in the dispositive portion that the penalty was "subject to the approval of the Supreme Court."[54] The hearing committee acted within the bounds of its authority, as embodied in Rule II Section 14 of the CTA EROD, the governing rules on disciplinary cases involving CTA employees, to wit:

> Sec. 14. *Referral of the CTA's Formal Investigation Report on the Administrative cases to the Supreme Court – Office of the Court Administrator (OCA).* – The CTA's Formal Investigation Report (including all the records of the administrative case) for the meting out of the proper penalty(ies), which has already become final, shall be submitted by the CTA to the Supreme Court, through the OCA, within fifteen (15) days therefrom, for its approval. The Supreme Court may affirm, reverse or modify the CTA's Formal Investigation Report.
>
> However, in cases where the CTA's Formal Investigation Report imposes only a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary, and have already become final, the same shall be deemed immediately executory by the CTA without further need of submitting the aforesaid Formal Investigation Report to the Supreme Court.

In promulgating the CTA EROD, the CTA knew the extent of its disciplinary authority under OCA Circular No. 30-91. It made the same delineation between light offenses and grave/less grave offenses as prescribed in the circular. Because the charges against Manaois involved grave[55]

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[54] *Id.* at 518.

[55] Revised Rules on Administrative Cases in the Civil Service, Rule X, Sec. 46:

(A). The following **grave offenses** shall be punishable by dismissal from the service:

x x x x x x x x x

4. **Being notoriously undesirable;**

x x x x x x x x x

and less grave[56] offenses, the hearing committee correctly limited itself to conducting an investigation, recommending penalties, and forwarding the case to this Court for appropriate action. The hearing committee, therefore, did not usurp the Court's administrative power over the employees of the judiciary.

The power of justices and judges of lower courts to investigate and recommend to the Supreme Court the necessary disciplinary action is well recognized.[57] In *Nery v. Gamolo*,[58] we held that "[a]s administrator of her court, she is responsible for its conduct and management. She has the duty to supervise her court personnel to ensure prompt and efficient dispatch of business in her court."[59] Thus, in that case, we ruled that the order of suspension issued by Judge Nery finds support in Rule 3.10 of

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(B). The following **grave offenses** shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x x x x x x

5. **Frequent unauthorized absences**, or tardiness in reporting for duty, loafing from duty during regular office hours;

x x x x x x x x x

8. **Conduct prejudicial to the best interest of service**; x x x (Emphasis supplied.)

[56] Revised Rules on Administrative Cases in the Civil Service, Rule X, Sec. 46:

(D). The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

1. **Simple neglect of duty;**
2. **Simple misconduct;**
3. **Discourtesy in the course of official duties;**
4. **Violation of existing** Civil Service Law and **rules of serious nature;**
5. **Insubordination;** x x x (Emphasis supplied.)

[57] *Ulat-Marrero v. Torio, Jr.*, A.M. No. P-01-1519, November 19, 2003, 416 SCRA 177.

[58] A.M. No. P-01-1508, February 7, 2003, 397 SCRA 110.

[59] *Id.* at 117.

the Code of Judicial Conduct, which provides that, "A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct which the judge may become aware of."[60]

The same principle applies why the CTA, through the procedure laid down in its EROD,[61] is allowed to investigate and recommend appropriate disciplinary measures against erring employees. In administrative complaints involving grave offenses, the role of the CTA (through the designated hearing committee) is confined to the investigation of the case, and the recommendation of the appropriate disciplinary action. Consistent with existing rules, this Court receives the Formal Investigation Report, which we can affirm, reverse, or modify based on our independent judgment.

III

We agree with the findings of the hearing committee that Manaois is guilty of simple neglect of duty, discourtesy in the course of official duties, frequent unauthorized absences, and being notoriously undesirable.

*Simple Neglect of Duty*

Neglect of duty is the failure of an employee to give one's attention to a task expected of him.[62] Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and diligently at all times. Since the image of the courts, as the administrators and dispensers of justice, is not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her

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[60] *Id.*

[61] CTA EROD, Rule II, Sec. 14.

[62] *Marquez v. Pablico*, A.M. No. P-06-2201, June 30, 008, 556 SCRA 531, 537.

assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions.[63]

In this case, Manaois failed to timely process the service records of Atty. Agnes D. Arao (Court Attorney IV), and Ms. Tanya B. Galapon (Executive Assistant V), both employees under the Office of Associate Justice Caesar A. Cassanova. In finding Manaois guilty, the hearing committee relied on the testimony of Escaño. She testified that the CSC had been following up the service records with her, prompting her to issue a Memorandum[64] addressed to Manaois instructing him to submit the documents to the CSC Field Office the next day. The submission of the service records may be considered as a clerical job, thus any delay in its performance is considered unreasonable.[65] Manaois' inaction in processing the service records shows that he was remiss in his duty, and therefore guilty of simple neglect of duty.

*Discourtesy in the Course of Official Duties*

The hearing committee also recommended that Manaois be adjudged guilty of discourtesy in the course of official duties based on the following instances:

*First,* Escaño alleged that she has been receiving complaints from CTA employees assigned to Manaois regarding his rudeness, callousness, and notorious undesirability, which caused her to frequently change the employees assigned to him, as evidenced by a Memorandum[66] dated May 10, 2013.

*Second*, Manaois disregarded the hierarchy of positions and acted in excess of his authority when he bypassed the authority of Escaño (as the Division Chief) by directly issuing a

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[63] *Office of the Court Administrator v. Gaspar*, A.M. No. P-07-2325, February 28, 2011, 644 SCRA 378, 382.

[64] *Rollo*, p. 278.

[65] See *Philippine Retirement Authority v. Rupa*, G.R. No. 140519, August 21, 2001, 363 SCRA 480.

[66] *Rollo*, p. 285.

memorandum against Miralles, who was then Acting HRD Section Chief. In a Memorandum[67] dated March 28, 2012, Escaño reminded her staff of the proper protocol in case of intra-division disputes, and expressed that Manaois' act was "prejudicial to [her] capacity as the Chief of the Division and to Ms. Miralles who [was] acting as Section Chief x x x."[68]

*Third*, Manaois accused Mayor (HRMO III) of giving false instructions to Karla D. Aspa (HRMO I). In a letter addressed to Escaño, he stated that in his view, Mayor should "refrain from verbally instructing her subordinates especially in the performance of [their] duties and responsibilities, if she is not familiar to [*sic*] the same x x x."[69] In response, Mayor expressed that she was indignant with Manaois' statement because it intended to malign her work value.[70]

*Fourth*, Manaois was rude and discourteous in his dealings with Escaño. In one instance, Manaois stormed out of the room while Escaño was clarifying another incident involving Manaois and a fellow HRMO, Anna Ria Sundiam. Mayor also testified that Manaois had a tendency to talk balk to Escaño in an arrogant manner.[71] Another employee, Rowena Lising (Lising), also attested to Manaois' impolite behavior towards Escaño.[72]

Based on the foregoing, we find Manaois guilty of discourtesy in the course of official duties. As a public officer, Manaois is bound, in the performance of his official duties, to observe courtesy, civility, and self-restraint in his dealings with others.[73] "All judicial employees must refrain from the use of abusive,

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[67] *Id.* at 280-281.

[68] *Id.* at 280.

[69] *Id.* at 282.

[70] *Id.* at 284.

[71] *Id.* at 508.

[72] *Id.* at 479, 508.

[73] *Sison v. Morales-Malaca*, G.R. No. 169931, March 12, 2008, 548 SCRA 136, 146.

offensive, scandalous, menacing or otherwise improper language. They are expected to accord due respect, not only to their superiors, but also to all others. Their every act and word should be characterized by prudence, restraint, courtesy and dignity."[74] In this case, it has been shown that Manaois failed to live up to these standards on several occasions.

*Frequent Unauthorized Absences*

The hearing committee found that Manaois incurred absences without official leave (AWOL) on September 9, 10, 11, and 15, 2014, and was "no-call, no-show" during those days. These acts constitute violations of the Human Resource Department's Internal Policy on Office Protocol which requires all Human Resource Department employees to inform their Chief of their absences.[75] Manaois' fellow HRMOs — namely, Miralles, Lising, and Adayo — also testified that he often left the office during working hours without informing Escaño of his whereabouts.[76]

We agree with the recommendations of the hearing committee. Manaois' unauthorized absences and loafing during office hours are impermissible. Due to the nature and functions of their office, officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of the prescribed office hours and efficient use of every moment for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees are, at all times, behooved to strictly observe official time.[77]

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[74] *Bajar v. Baterisna*, A.M. No. P-06-2151, August 28, 2006, 499 SCRA 629, 637.

[75] *Rollo*, p. 509.

[76] *Id.* at 510.

[77] *Re: Frequent Unauthorized Absences of Ms. Nahren D. Hernaez*, A.M. No. 2008-05-SC, August 6, 2008, 561 SCRA 1, 11.

*Notorious Undesirability*

Finally, we agree with the hearing committee's finding that Manaois' notorious undesirability is manifest from his general reputation among his co-workers in the HRD, as well as his previous transfers from different divisions of the CTA due to his inability to work well with others and his disrespect for his immediate supervisors. Escaño,[78] Mayor,[79] Lising,[80] Miralles,[81] and Adayo,[82] testified that Manaois was difficult to work with and that he had negative interactions with his co-employees. Manois' former supervisor in the Budget Division, Isidro Barredo, Jr., also stated that Manaois displayed unruly attitude towards him and had asked that he be transferred to another division.[83]

In determining whether an employee is notoriously undesirable, the CSC prescribes a two-fold test: (1) whether it is common knowledge or generally known as universally believed to be true or manifest to the world that the employee committed the acts imputed against him; and (2) whether he had contracted the habit for any of the enumerated misdemeanors.[84] We are satisfied that Manaois' general reputation within the HRD as someone who is quarrelsome and difficult to work with, in addition to his history of rude and discourteous conduct towards his supervisors, adequately show that he is notoriously undesirable. Manaois' actions have been substantiated and corroborated by the testimonies of the witnesses presented during the investigation.

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[78] *Rollo*, pp. 218-228.

[79] *Id.* at 237-240.

[80] *Id.* at 257-261.

[81] *Id.* at 243-247.

[82] *Id.* at 250-254.

[83] *Id.* at 231-234.

[84] *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 270-271.

An employee who cannot get along with his co-employees and superiors can upset and strain the working environment and is therefore detrimental to institution.[85] Such instance calls for us to exercise our prerogative to take the necessary action to correct the situation and protect the judiciary.

The Revised Rules on Administrative Cases in the Civil Service prescribes the following penalties for respondent's violations:

> Sec. 46. *Classification of Offenses*. – x x x
>
> (A). The following grave offenses shall be punishable by dismissal from the service:
>
> x x x x x x x x x
>
> 4. Being notoriously undesirable;
>
> x x x x x x x x x
>
> (B). The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:
>
> x x x x x x x x x
>
> 5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours;
>
> x x x x x x x x x
>
> (D). The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:
>
> 1. Simple neglect of duty;
>
> x x x x x x x x x
>
> 3. Discourtesy in the course of official duties;
>
> x x x x x x x x x

Section 50 of the same Rules provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating. In this case, the most serious charge for which we find Manaois guilty

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[85] *Heavylift Manila, Inc. v. Court of Appeals*, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 549.

of is the grave offense of being notoriously undesirable, which is punishable by dismissal from service. We therefore adopt the hearing committee's recommendation that Manaois be imposed the penalty of dismissal from the service.

**WHEREFORE,** the Court finds respondent Adrian P. Manaois **GUILTY** of simple neglect of duty, discourtesy in the course of official duties, frequent unauthorized absences, and being notoriously undesirable. Accordingly, he is meted with the penalty of **DISMISSAL** from the service with the accessory penalties of cancellation of his eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations.[86]

**SO ORDERED.**

*Carpio (Acting C.J.),*[*] *Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen,* and *Jardeleza, JJ.,* concur.

*Velasco, Jr.* and *Mendoza, JJ.,* on official leave.

*Sereno, C.J.* and *Caguioa, J.,* on leave.

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[86] Revised Rules on Administrative Cases in the Civil Service, Rule X:

Sec. 52. *Administrative Disabilities Inherent in Certain Penalties*. – a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.See also Formal Investigation Report, *rollo*, p. 518.

[*] Designated as Acting Chief Justice per Special Order No. 2401dated November 15, 2016.

**EN BANC**

[G.R. Nos. 209415-17. November 15, 2016]

**JOCELYN "JOY" LIM-BUNGCARAS,** *petitioner, vs.* **COMMISSION ON ELECTIONS (COMELEC) and RICO RENTUZA**, *respondents.*

**HERMENEGILDO S. CASTIL,** *petitioner, vs.* **COMMISSION ON ELECTIONS (COMELEC) and RACHEL B. AVENDULA,** *respondents.*

**JESUS AVENDULA, JR., DOMINGO RAMADA, JR. and VICTOR RAMADA,** *petitioners, vs.* **COMMISSION ON ELECTIONS (COMELEC), MANUEL O. CALAPRE, SATURNINO V. CINCO, FERNAN V. SALAS, ANTONIO DALUGDUGAN, FEDERICO C. JAPON, SANTIAGO M. SANTIAGO, JACINTA O. MALUBAY and BELEN G. BUNGCAG,** *respondents.*

[G.R. No. 210002. November 15, 2016]

**ALDRIN B. PAMAOS,** *petitioner, vs.* **COMMISSION ON ELECTIONS, MANUEL O. CALAPRE, SATURNINO V. CINCO, FERNAN V. SALAS, ANTONIO DALUGDUGAN, FEDERICO C. JAPON, SANTIAGO M. SANTIAGO, JACINTA O. MALUBAY and BELEN G. BUNGCAG**, *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS (COMELEC); APPEALS; AN APPEAL FROM A TRIAL COURT'S DECISION IN A MUNICIPAL ELECTION CONTEST IS PERFECTED BY FILING A NOTICE OF APPEAL AND THE SIMULTANEOUS PAYMENT OF THE APPEAL FEE TO THE TRIAL COURT THAT RENDERED THE JUDGMENT AND THE PAYMENT OF THE COMELEC APPEAL FEE WITHIN**

**15 DAYS FROM THE TIME OF THE FILING OF THE NOTICE OF APPEAL IN THE TRIAL COURT.—** [F]or the May 10, 2010 Automated Elections, the Court approved on April 27, 2010 **A.M. No. 10-4-1-SC**, the *2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials*. For **municipal election contests**, A.M. No. 10-4-1-SC superseded A.M. No. 07-4-15-SC. To appeal the trial court's decision in a municipal election contest, **Sections 8 and 9, Rule 14 of A.M. No. 10-4-1-SC** require the filing of a notice of appeal and the simultaneous payment of a ₱1,000.00 appeal fee to the trial court that rendered judgment. x x x With respect to the payment of the COMELEC appeal fee, an appellant is also required to pay an additional amount of ₱3,200.00 under **Section 3, Rule 40 of the COMELEC Rules of Procedure**, as amended by COMELEC Minute Resolution No. 02-0130 x x x. Formerly, under **Section 4, Rule 40 of the COMELEC Rules of Procedure**, the appeal fee payable to the COMELEC "shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal." Said period refers to the period stated in Section 3, Rule 22 of the aforesaid Rules, which is within five days after the promulgation of the decision of the court. The promulgation of the decision is understood to mean the receipt by a party of a copy of the decision. Thereafter, on July 15, 2008, the COMELEC promulgated **COMELEC Resolution No. 8486** in order to clarify the implementation of the rules on the required appeal fees for the perfection of the appeals of election cases decided by the trial courts. x x x Plainly, COMELEC Resolution No. 8486 allows an appellant to pay the COMELEC appeal fee at the COMELEC's Cash Division through the ECAD or by postal money order payable to the COMELEC within a period of **15 days from the time of the filing of the notice of appeal in the trial court**. COMELEC Resolution No. 8486, for all intents and purposes, **extended** the period provided for the filing of the COMELEC appeal fee under Section 4, Rule 40 in relation to Section 3, Rule 22 of the COMELEC Rules of Procedure. Thus, in *Batalla v. Commission on Elections*, the Court confirmed that COMELEC Resolution No. 8486 effectively amended Section 4, Rule 40 of the COMELEC Rules of Procedure.

**2. ID.; ID.; ELECTION PROTESTS; WHEN A DECISION IN AN ELECTION PROTEST INCLUDES A MONETARY AWARD FOR DAMAGES, THE ISSUE OF THE SAID**

**AWARD IS NOT RENDERED MOOT UPON THE EXPIRATION OF THE TERM OF OFFICE THAT IS CONTESTED IN THE ELECTION PROTEST.—** In *Malaluan v. Commission on Elections*, the Court ruled that when a decision in an election protest includes a monetary award for damages, the issue of the said award is not rendered moot upon the expiration of the term of office that is contested in the election protest. x x x In the instant case, while the terms of the contested offices already expired on June 30, 2013, the trial court, nonetheless, awarded in favor of each of the private respondents moral damages in the amount of ₱450,000.00 and ₱150,000.00 as attorney's fees. In accordance with *Malaluan*, the question of whether the petitioners are liable for the payment of the monetary awards in this case remains ripe for adjudication.

**3. ID.; ID.; OMNIBUS ELECTION CODE; ELECTION CONTESTS; THE AWARD OF MORAL DAMAGES IS NOT ALLOWED IN ELECTION CONTESTS.—** We find that the trial court gravely erred in awarding moral damages of ₱450,000.00 in favor of each of the private respondents. The award is improper as the same is not sanctioned under our current election law. x x x What is patently clear from Section 259 of the Omnibus Election Code is that only actual or compensatory damages may be awarded in election contests. The x x x provision is a stark contrast to the x x x provisions in the past election codes that expressly permit the award of moral and exemplary damages. As the Court concluded in *Atienza*, the omission of the provisions allowing for moral and exemplary damages in the current Omnibus Election Code clearly underscores the legislative intent to do away with the award of damages other than those specified in Section 259 of the Omnibus Election Code, *i.e.*, actual or compensatory damages.

**4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ATTORNEY'S FEES; FOR THE TRIAL COURT TO AWARD ATTORNEY'S FEES, THE SAME MUST BE JUST AND BORNE OUT BY THE PLEADINGS AND EVIDENCE OF THE PARTY CONCERNED.—** Concerning the trial court's award of attorney's fees of ₱150,000.00 in favor of each of the private respondents, the same is likewise unwarranted. x x x Thus, for the trial court to award attorney's fees, the same must be just and borne out by the pleadings and evidence of the party

concerned. Furthermore, Article 2208 of the Civil Code enumerates the specific instances when attorney's fees may be awarded, among which is when the defendant's act or omission has compelled the plaintiff to litigate or to incur expenses to protect the latter's interest. Verily, the trial court used the aforementioned ground when it justified the award of attorney's fees x x x. In the case at bar, while the private respondents did include their claim for attorney's fees in their memorandum before the trial court, the Court finds that they did not adduce sufficient evidence to substantiate their entitlement to said claim. Moreover, the fact that the private respondents were compelled to litigate does not, by itself, merit the award of attorney's fees.

**5. POLITICAL LAW; ELECTION LAWS; ELECTION PROTESTS; FAILURE TO ADDUCE SUBSTANTIAL EVIDENCE TO SUSTAIN THE ELECTION PROTEST DOES NOT NECESSARILY LEAD TO A CONCLUSION THAT THE PARTIES WERE GUILTY OF BAD FAITH IN THE FILING OF THE CASE.—** The failure of the petitioners to adduce substantial evidence to sustain their election protests does not necessarily lead to a conclusion that they were guilty of bad faith in the filing of said cases. Such a conclusion is conjectural and unjustified under the circumstances. As held in *Andrade v. Court of Appeals*, the entrenched rule is that bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.

**6. REMEDIAL LAW; ACTIONS; APPEALS; AN APPEAL OF ONE DEFENDANT BENEFITS HIS NON-APPEALING CO-DEFENDANTS WHEN THE DEFENSE UPON WHICH THE REVERSAL OF THE TRIAL COURT'S JUDGMENT WAS BASED WAS NOT PERSONAL TO ANY OR SOME OF THE DEFENDANTS BUT APPLIED TO ALL.—** [W]e address the effect of this Decision on the parties who failed to perfect their appeal from the RTC judgment. x x x [I]n *Unsay v. Palma*, we allowed the appeal of one defendant to benefit his non-appealing co-defendants where the defense upon which the reversal of the trial court's judgment was based was not personal to any or some of the defendants but applied to all. x x x Considering our determination that the trial court's award

of moral damages and attorney's fees in these consolidated election cases had no justification in fact or law and this ground for reversal applies to all the petitioners, it would be grossly unjust to limit our ruling only to those who perfected their appeals.

**APPEARANCES OF COUNSEL**

*Renato Ramon B. Rances III* for petitioners in G.R. Nos. 209415-17.

*Jaromay Laurente Pamaos Law Offices* for petitioner in G.R. No. 210002.

*The Solicitor General* for public respondents.

*Carlo Pontico C. Fortuna* for private respondents.

**D E C I S I O N**

**LEONARDO-DE CASTRO, *J.*:**

The consolidated petitions before this Court are offshoots of related election protest cases first instituted before the Regional Trial Court (RTC) of San Juan, Southern Leyte, Branch 26.

These petitions for *certiorari*[1] were filed under Rule 64 in relation to Rule 65 of the Rules of Court, assailing (a) the three Orders[2] dated February 1, 2011 of the Commission on Elections (COMELEC) First Division; and (b) the Resolution[3] dated September 6, 2013 of the COMELEC *En Banc* in EAC (AE) Nos. A-57-2010, A-58-2010, and A-59-2010.

In **G.R. Nos. 209415-17**, the petitioners are Jocelyn "Joy" Lim-Bungcaras, Hermenegildo S. Castil, Jesus Avendula, Jr., Domingo Ramada, Jr., and Victor Ramada. The private respondents therein are Rico C. Rentuza, Rachel B. Avendula,

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[1] *Rollo* (G.R. Nos. 209415-17), Vol. I, pp. 8-31; *Rollo* (G.R. No. 210002), pp. 3-27.

[2] *Id*. at 32-35; signed by Presiding Commissioner Rene V. Sarmiento and Commissioners Armando C. Velasco and Gregorio Y. Larrazabal.

[3] *Id*. at 54-58.

Manuel O. Calapre, Saturnino V. Cinco, Fernan V. Salas, Antonio Dalugdugan, Federico C. Japon, Santiago M. Santiago, Jacinta O. Malubay, and Belen G. Bungcag. In **G.R. No. 210002**, Aldrin B. Pamaos is the lone petitioner against private respondents Calapre, Cinco, Salas, Dalugdugan, Japon, Santiago, Malubay, and Bungcag.

During the May 10, 2010 Automated Elections, the petitioners and private respondents vied for the local elective positions in the municipality of Saint Bernard, Southern Leyte.

Respondent Rentuza was proclaimed the winner for the mayoralty position over petitioner Lim-Bungcaras; while for the position of Vice Mayor, respondent Avendula was proclaimed the winner over petitioner Castil. For the members of the Sangguniang Bayan, private respondents Calapre, Cinco, Salas, Dalugdugan, Japon, Santiago, Malubay, and Bungcag were declared winners as they received the eight highest numbers of votes. Petitioners Pamaos, Avendula, Domingo Ramada, Jr. and Victor Ramada, were candidates for positions in the Sangguniang Bayan who got the lower numbers of votes.

The petitioners contested the election results before the RTC of San Juan, Southern Leyte. The election protest of petitioner Lim-Bungcaras was docketed as **Election Protest No. 2010-01**,[4] while the election protest of petitioner Castil was docketed as **Election Protest No. 2010-02**.[5] The joint election protest of petitioners Pamaos, Avendula, Domingo Ramada, Jr., and Victor Ramada was docketed as **Election Protest No. 2010-03**.[6]

***The Judgment of the RTC***

After the submission of the private respondents' Verified Answer with Compulsory Counterclaim,[7] the conduct of a

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[4] *Id*. at 59-77.

[5] *Id*. at 183-200.

[6] *Id*. at 296-318.

[7] *Id*. at 417-446, 450-479, 483-511.

preliminary conference and trial on the merits of the case, the RTC rendered a **Consolidated Decision**[8] **dated November 17, 2010**, whereby it decreed:

**WHEREFORE**, in light of all the foregoing findings, **JUDGMENT** is hereby rendered **DECLARING**:

1. Protestee, Rico C. Rentuza, winner over Protestant, Jocelyn Lim-B[u]ngcaras, for the position of Municipal Mayor of St. Bernard, Southern Leyte;

2. Protestee, Rachel B. Avendula winner over Protestant Hermenegildo S. Castil for the position of Vice-Mayor of the same Municipality;

3. Protestees, Manu[e]l O. Calapre, Saturnino V. Cinco, Fernan V. Salas, Antonio C. Dalugdugan, Federico C. Japon, Santiago M. Santiago, Jacinta O. Malubay and Belen G. Bungcag winners over Protestants Aldrin B. Pamaos, Jesus R. Avendula, Jr., Domingo G. Ramada, Jr., and Victor C. Ramada for the positions of Sangguniang Bayan Members of the same Municipality.

Consequently, the three (3) election protests are all **DISMISSED** with costs against the protestants.

**ACCORDINGLY**, the counterclaims of the protestees are **GRANTED** by **ORDERING**:

1. Protestant, **JOCELYN "JOY" LIM-BUNGCARAS** to pay **RICO C. RENTUZA** moral damages in the amount of **Php400,000.00** and attorney's fees of **Php150,000.00**;

2. Protestant, **HERMENEGILDO S. CASTIL** to pay Protestee, **RACHEL V. AVENDULA** moral damages in the amount of **Php400,000.00** and attorney's fees of **Php150,000.00**; and

3. Protestants, **JESUS R. AVENDULA, JR.**, **ALDRIN B. PAMAOS**, **DOMINGO RAMADA, JR.**, and **VICTOR RAMADA** to pay jointly and severally (in solidum) Protestees, **MANUEL O. CALAPRE**, **SATURNINO V.**

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[8] *Rollo* (G.R. Nos. 209415-17), Vol. II, pp. 601-657; penned by Acting Judge Rolando L. Gonzalez.

**CINCO**, **FERNAN V. SALAS**, **ANTONIO C. DALUGDUGAN**, **FEDERICO C. JAPON**, **SANTIAGO M. SANTIAGO**, **JACINTA O. MALUBAY**, and **BELEN G. BUNGCAG** moral damages of **Php400,000.00 for each of them** and attorney's fees of **Php150,000.00**.[9]

Having received the above decision on the same day of its promulgation, petitioners Lim-Bungcaras, Castil, Avendula, Domingo Ramada, Jr., and Victor Ramada jointly filed a Notice of Appeal[10] before the RTC and paid the appeal fee on November 22, 2010.

Petitioner Pamaos filed his Notice of Appeal and paid ₱1,020.00 as appeal fee to the RTC on November 23, 2010 as he allegedly received the trial court's judgment only on November 18, 2010.[11]

The RTC granted due course to the petitioners' appeals.[12]

***The Rulings of the COMELEC***

Before the COMELEC First Division, the appeal of petitioner Lim-Bungcaras was docketed as **EAC (AE) No. A-57-2010**, while the appeal of petitioner Castil was docketed as **EAC (AE) No. A-58-2010**. The appeal of petitioners Pamaos, Avendula, Domingo Ramada, Jr., and Victor Ramada, was docketed as **EAC (AE) No. A-59-2010**.

On December 7, 2010, all the petitioners manifested that they paid an appeal fee of ₱3,550.00 to the COMELEC Electoral Contests Adjudication Department (ECAD) by postal money order.[13]

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[9] *Id*. at 655-657.

[10] *Id*. at 658-660.

[11] COMELEC records, EAC (AE) No. A-59-2010, pp. 19-23 and 28-29.

[12] *Id*. at 24-25; RTC records, pp. 971-972.

[13] *Rollo* (G.R. No. 210002), pp. 134-139.

On February 1, 2011, the COMELEC First Division issued three separate but similarly worded **Orders**[14] in EAC (AE) Nos. A-57-2010, A-58-2010, and A-57-2010 that dismissed the petitioners' appeals for failure to pay the appeal fee payable to the COMELEC within the reglementary period. The COMELEC reasoned that:

> **Section 4, Rule 40 of the Comelec Rules of Procedure** mandates the payment of the appeal fee within the period to file the notice of appeal or five (5) days from receipt of the decision sought to be appealed, while Sec. 9, Rule 22 of the same Rules provides that failure to pay the appeal fee is a ground for the dismissal of the appeal. These provisions were reinforced by the ruling of the Supreme Court in the case of *Divinagracia vs. Comelec* (G.R. Nos. 186007 & 186016) promulgated on 27 July 2009. The Ruling declared that for notices of appeal filed after its promulgation, errors in the matters of non-payment or incomplete payment of appeal fees in the court *a quo* and the Commission on Elections are no longer excusable. (Emphasis supplied.)

In **EAC (AE) No. A-57-2010**, the COMELEC First Division noted that petitioner Lim-Bungcaras timely filed a Notice of Appeal and paid the required appeal fee to the RTC on November 22, 2010. Anent the appeal fee payable to the COMELEC, the First Division found that Lim-Bungcaras paid the same through postal money order on December 7, 2010 but the payment was said to be fifteen (15) days late from the last day of the reglementary period for the filing of the appeal.[15]

In **EAC (AE) No. A-58-2010**, the COMELEC First Division observed that petitioner Castil also timely filed a Notice of Appeal and paid the appeal fee to the RTC on November 22, 2010; however, he failed to tender to the COMELEC the appeal fee.[16]

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[14] *Rollo* (G.R. Nos. 209415-17), Vol. I, pp. 32-35.

[15] *Id*. at 32; *see* footnote 1 of the Order.

[16] *Id*. at 33; *see* footnote 1 of the Order.

Lastly, in **EAC (AE) No. A-59-2010**, the COMELEC First Division ruled that petitioners Pamaos, Avendula, Domingo Ramada, Jr. and Victor Ramada likewise timely filed their notices of appeal and paid the appeal fee to the RTC. As to their payment of the COMELEC appeal fee, the First Division noted that only petitioner Pamaos paid the same on December 7, 2010, which payment, however, was beyond the reglementary period. Petitioners Avendula, Domingo Ramada, Jr. and Victor Ramada allegedly failed to pay the said fee to the COMELEC.[17]

Seeking the reversal of the above orders before the COMELEC *En Banc*, petitioners Lim-Bungcaras, Castil, Avendula, Domingo Ramada, Jr., and Victor Ramada filed their Joint Motion for Reconsideration,[18] while petitioner Pamaos filed his own Motion for Reconsideration.[19]

The motions were, however, denied by the COMELEC *En Banc* in its assailed **Resolution dated September 6, 2013**. The COMELEC *En Banc* ruled that the motions had been rendered moot given that the terms of the contested offices already expired on June 30, 2013. As such, a decision on the motions would no longer serve any useful purpose.[20]

On September 9, 2013, the COMELEC ECAD issued an Entry of Judgment[21] pursuant to the above resolution.

***The Petitions***

Still not conceding their defeat, petitioners Lim-Bungcaras, Castil, Avendula, Domingo Ramada, Jr., and Victor Ramada filed a petition for *certiorari* with this Court, which was docketed as **G.R. Nos. 209415-17**. Petitioner Pamaos filed his own petition

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[17] *Id*. at 34; *see* footnote 1 of the Order.

[18] *Id*. at 36-53.

[19] *Rollo* (G.R. No. 210002), pp. 140-154.

[20] *Rollo* (G.R. Nos. 209415-17), Vol. I, pp. 56-57.

[21] *Id*., Vol. II, pp. 661-662.

for *certiorari*, which was docketed as **G.R. No. 210002**.[22] Subsequently, the Court ordered the consolidation of the instant petitions in a Resolution dated February 24, 2015. [23]

Essentially, the consolidated petitions assail the Orders dated February 1, 2011 of the COMELEC First Division as the petitioners herein insist that they duly perfected their appeals within the reglementary periods required by law. They alleged that they paid the appeal fee of ₱3,550.00 to the COMELEC through postal money order on December 7, 2010 – well within fifteen (15) days from the filing of their notices of appeal to the RTC pursuant to COMELEC Resolution No. 8486. Similarly, the petitioners impugn the Resolution dated September 6, 2013 of the COMELEC *En Banc*, which declared their appeal moot. They argue that the tribunal overlooked the fact that petitioners also challenged in their appeal before the RTC the imposition of allegedly exorbitant damages in favor of private respondents without any factual or legal basis.[24]

On the other hand, private respondents averred that the COMELEC *En Banc* did not commit grave abuse of discretion in denying petitioners' motion for reconsideration as the reliefs prayed for by petitioners lacked merit. Said reliefs were allegedly anchored on the petitioners' rights to the respective positions of Mayor, Vice-Mayor and Sangguniang Bayan of Saint Bernard, Southern Leyte and the same can no longer be granted in view of the expiration of the terms of office of the private respondents on June 30, 2013. Moreover, the petitioners' allegations of

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[22] In a Resolution dated December 10, 2013, the Court initially dismissed the petition of Aldrin B. Pamaos in G.R. No. 210002 for failure to simultaneously submit soft copies of the petition and its annexes; failure to submit clearly legible duplicate original or certified true copies of the assailed judgments; and the petition having become moot in light of the May 13, 2013 local elections [*Rollo* (G.R. No. 210002), pp. 156-157]. However, in a Resolution dated March 17, 2015, the Court ordered the reinstatement of the said petition [*Rollo* (G.R. No. 210002), pp. 391-393].

[23] *Rollo* (G.R. No. 210002), pp. 386A-386C.

[24] *Rollo* (G.R. Nos. 209415-17), Vol. II, pp. 819-827; *Rollo* (G.R. No. 210002), pp. 11-20.

fraud and irregularities were said to be mere fabrications, which makes them liable for moral damages and attorney's fees.

In both petitions, the COMELEC countered that the petitioners paid the COMELEC appeal fee beyond the reglementary period for doing so. According to the COMELEC, a party who desires to appeal the trial court's decision in an election contest must file a notice of appeal and pay the appeal fee of ₱1,000.00 with said court within five days from the promulgation of the decision. Also, the aggrieved party is mandated to pay the COMELEC appeal fee of ₱3,000.00 under Section 3, Rule 40 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 02-130. The COMELEC points out that this fee shall be deposited with the COMELEC Cash Division within the period to file the notice of appeal, *i.e.*, within five days after the promulgation of the RTC decision, pursuant to Section 4, Rule 40 of the COMELEC Rules of Procedure.[25]

The COMELEC argued that the petitioners erroneously relied on COMELEC Resolution No. 8486, which provided that an appellant has a period of 15 days from the filing of the notice of appeal with the trial court within which to pay the COMELEC appeal fee. The COMELEC pointed out that the applicability of said resolution had been clarified in *Divinagracia v. Commission on Elections*,[26] where the Court supposedly ruled that COMELEC Resolution No. 8486 applies only to notices of appeal filed **on or before** July 27, 2009, which is the date of promulgation of the said case. The COMELEC insists that for notices of appeal filed **after** July 27, 2009, the applicable law is Section 4, Rule 40 in relation to Section 3, Rule 22 of the COMELEC Rules of Procedure. Thus, the petitioners should have paid the COMELEC appeal fee within five days from the promulgation of the RTC Consolidated Decision dated November 17, 2010.[27]

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[25] *Id*. at 792-793; *id*. at 399-401.

[26] 611 Phil. 538-558 (2009).

[27] *Rollo* (G.R. Nos. 209415-17), Vol. II, pp. 795-796; *Rollo* (G.R. No. 210002), pp. 402-403.

Additionally, in G.R. No. 210002, the COMELEC alleged that the expiration of the term of the contested positions renders an election protest moot and academic.[28]

The resolution of the instant case, therefore, hinges on the determination of the following issues: *first*, whether the petitioners perfected their appeals by timely paying the required appeal fees; and *second*, whether the issues raised by the petitioners in their motions for reconsideration before the COMELEC *En Banc* had already been rendered moot by the expiration of the terms of the contested offices.

***The Decision of the Court***

The petitions are meritorious. The COMELEC First Division erred in dismissing the petitioners' appeals, while the COMELEC *En Banc* erred in denying the petitioners' motions for reconsideration.

***I. The Perfection of the Petitioners' Appeals***

At the outset, the Court notes that the COMELEC erroneously cited **A.M. No. 07-4-15-SC**[29] as the applicable rules in the instant cases. Said rules, which took effect on May 15, 2007, laid down the procedure for election contests and *quo warranto* cases involving **municipal** and ***barangay* officials** that are initiated in the trial courts. The same supplanted Rule 35 ("*Election Contests Before Courts of General Jurisdiction*") and Rule 36 ("*Quo Warranto Case Before Courts of General Jurisdiction*") of the 1993 COMELEC Rules of Procedure.[30]

However, for the May 10, 2010 Automated Elections, the Court approved on April 27, 2010 **A.M. No. 10-4-1-SC**, the *2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials*. For **municipal election**

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[28] *Rollo* (G.R. No. 210002), pp. 403-407.

[29] Entitled "The Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials."

[30] Section 1, second paragraph, Rule 17 of A.M. No. 07-4-15-SC.

**contests,** A.M. No. 10-4-1-SC superseded A.M. No. 07-4-15-SC.[31]

To appeal the trial court's decision in a municipal election contest, **Sections 8 and 9, Rule 14 of A.M. No. 10-4-1-SC** require the filing of a notice of appeal and the simultaneous payment of a ₱1,000.00 appeal fee to the trial court that rendered judgment. Thus –

> SEC. 8. *Appeal*. – An aggrieved party may appeal the decision to the COMELEC **within five (5) days after promulgation**, by filing a **notice of appeal** with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.
>
> SEC. 9. *Appeal fee*. – The appellant in an election contest shall pay to the court that rendered the decision an **appeal fee of One Thousand Pesos (₱1,000.00)**, simultaneously with the filing of the notice of appeal. (Emphasis supplied.)

With respect to the payment of the COMELEC appeal fee, an appellant is also required to pay an additional amount of ₱3,200.00 under **Section 3, Rule 40 of the COMELEC Rules of Procedure**, as amended by COMELEC Minute Resolution No. 02-0130,[32] to wit:

> SEC. 3. Appeal Fees. - The appellant in election cases shall pay an appeal fee as follows:
>
> (a) For election cases appealed from Regional Trial Courts.....₱3,000.00 (per appellant)
>
> (b) For election cases appealed from courts of limited jurisdiction.....₱3,000.00 (per appellant)

Formerly, under **Section 4, Rule 40 of the COMELEC Rules of Procedure**, the appeal fee payable to the COMELEC "shall

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[31] Section 1, Rule 18 of A.M. No. 10-4-1-SC.

[32] COMELEC Minute Resolution No. 02-0130 prescribes an amount of ₱3,000.00 as appeal fee, plus ₱150.00 for bailiff's fee and ₱50.00 for legal research fee. (*See Pacanan, Jr. v. Commission on Elections*, 613 Phil. 549, 556 [2009].)

be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal." Said period refers to the period stated in Section 3, Rule 22[33] of the aforesaid Rules, which is within five days after the promulgation of the decision of the court. The promulgation of the decision is understood to mean the receipt by a party of a copy of the decision.[34]

Thereafter, on July 15, 2008, the COMELEC promulgated **COMELEC Resolution No. 8486** in order to clarify the implementation of the rules on the required appeal fees for the perfection of the appeals of election cases decided by the trial courts. Said resolution states:

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective barangay officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure for instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

"Section 8. *Appeal*. – An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel."

"Section 9. *Appeal Fee*. – The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One

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[33] Section 3, Rule 22 of the COMELEC Rules of Procedure states:

SEC. 3. *Notice of Appeal*. – Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

[34] *Batalla v. Commission on Elections*, 615 Phil. 805, 819 (2009).

Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal."

WHEREAS, **payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at ₱3,200.00 in COMELEC Minute Resolution No. 02-0130** made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal fees for the perfection of appeals of cases brought before it from the Courts of General and Limited Jurisdictions.

WHEREAS, there is a need to clarify the rules on compliance with the required appeal fees for the proper and judicious exercise of the Commission's appellate jurisdiction over election protest cases.

WHEREFORE, in view of the foregoing, the Commission hereby RESOLVES to DIRECT as follows:

1. That if the appellant had already paid the amount of **₱1,000.00** before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, **said appellant is required to pay the Comelec appeal fee of ₱3,200.00** at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD**, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court.** If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

"Sec. 9. *Grounds for Dismissal of Appeal*. The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the correct appeal fee; x x x"

2. That if the appellant failed to pay the ₱1,000.00 appeal fee with the lower court within the five (5) day period as prescribed by

the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforestated Section 9(a) of Rule 22 of the Comelec Rules of Procedure. (Emphases supplied.)

Plainly, COMELEC Resolution No. 8486 allows an appellant to pay the COMELEC appeal fee at the COMELEC's Cash Division through the ECAD or by postal money order payable to the COMELEC within a period of **15 days from the time of the filing of the notice of appeal in the trial court**. COMELEC Resolution No. 8486, for all intents and purposes, **extended** the period provided for the filing of the COMELEC appeal fee under Section 4, Rule 40 in relation to Section 3, Rule 22 of the COMELEC Rules of Procedure. Thus, in *Batalla v. Commission on Elections*,[35] the Court confirmed that COMELEC Resolution No. 8486 effectively amended Section 4, Rule 40 of the COMELEC Rules of Procedure.

Incidentally, although COMELEC Resolution No. 8486 specifically mentions Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC as the applicable provisions on the procedure for instituting an appeal before the courts in election cases involving elective municipal and *barangay* officials, the same does not materially affect the application of the said resolution in this case as Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC are substantially similar to Sections 8 and 9, Rule 14 of A.M. No. 10-4-1-SC. To repeat, A.M. No. 10-4-1-SC superseded A.M. No. 07-4-15-SC insofar as municipal elections are concerned.

The Court finds that the COMELEC First Division erred in disregarding COMELEC Resolution No. 8486. The justification of the COMELEC therefor is illogical and uncalled for. In *Divinagracia, Jr. v. Commission on Elections*,[36] which was promulgated on July 27, 2009, the Court made the following pronouncements:

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[35] *Id*. at 819-820.

[36] 611 Phil. 538, 550-552 (2009).

That Comelec Resolution No. 8486 took effect on July 24, 2008 or after a party had filed a notice of appeal, as in the case of petitioner, does not exempt it from paying the Comelec-prescribed appeal fees. The Comelec merely clarified the **existing** rules on the payment of such appeal fees, and allowed the payment thereof within 15 days from filing the notice of appeal.

In the recent case of *Aguilar v. Comelec*, the Court harmonized the rules with the following ratiocination:

The foregoing resolution is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is **perfected** upon the filing of the notice of appeal **and** the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. **The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC** Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, **does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal.** Following, Rule 22, Section 9(a) of the COMELEC Rules, the appeal ***may*** be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the **discretion** to dismiss the appeal or not. x x x.

x x x x x x x x x

*Aguilar* has not, however, diluted the force of Comelec Resolution No. 8486 on the matter of compliance with the Comelec-required appeal fees. To reiterate, Resolution No. 8486 merely *clarified* the rules on Comelec appeal fees which have been existing as early as 1993, the amount of which was last fixed in 2002. The Comelec even went one step backward and extended the period of payment to 15 days from the filing of the notice of appeal.

Considering that a year has elapsed after the issuance on July 15, 2008 of Comelec Resolution No. 8486, and to further affirm the discretion granted to the Comelec which it precisely articulated through the specific guidelines contained in said Resolution, the Court **NOW DECLARES**, for the guidance of the Bench and Bar, that **for notices of appeal filed *after* the promulgation of this decision, errors in**

**the matter of non-payment or incomplete payment of the two appeal fees in election cases are *no longer excusable***. (Citations omitted.)

A careful reading of our ruling in *Divinagracia* reveals that there is nothing therein that would even slightly suggest that the provisions of COMELEC Resolution No. 8486 apply only to notices of appeal filed on or before July 27, 2009, the date of promulgation of the said case. What the Court emphatically declared in *Divinagracia* is that, after the extensive discussion made therein regarding the payment of the two appeal fees in election cases in accordance with COMELEC Resolution No. 8486, errors in the matter of nonpayment or incomplete payment of said fees will no longer be tolerated or excused. Thus, COMELEC Resolution No. 8486 remains applicable to this day and until the same is repealed or modified accordingly. To be sure, in *Batalla*, the Court categorically stated that the additional ₱3,200.00 appeal fee may be paid to the COMELEC Cash Division within 15 days from the filing of the notice of appeal pursuant to COMELEC Resolution No. 8486 notwithstanding the promulgation of *Divinagracia*.

The COMELEC First Division, thus, erred in issuing the three February 1, 2011 Orders in EAC (AE) Nos. A-57-2010, A-58-2010, and A-57-2010 in accordance with Section 4, Rule 40 of the COMELEC Rules of Procedure without taking into consideration the provisions of COMELEC Resolution No. 8486 in connection with A.M. No. 10-4-1-SC. Nevertheless, the Court finds that **not all** the petitioners in this case properly complied with COMELEC Resolution No. 8486 regarding the payment of the appeal fee payable to the COMELEC.

To reiterate, petitioners Lim-Bungcaras, Castil, Avendula, Domingo Ramada, Jr., and Victor Ramada received the Consolidated Decision dated November 17, 2010 of the RTC on the same day of its promulgation. They jointly filed a notice of appeal and paid the appeal fee of ₱1,000.00 to the RTC on **November 22, 2010**, which was within the five-day reglementary period. In like manner, petitioner Pamaos received the trial court's judgment on November 18, 2010. He filed his notice

of appeal and paid ₱1,020.00 as appeal fee to the RTC on **November 23, 2010**. Clearly, the petitioners' filing of their notices of appeal and the payment of the appeal fees to the RTC complied with Sections 8 and 9, Rule 14 of A.M. No. 10-4-1-SC.

Anent the filing of the appeal fee payable to the COMELEC, the records of this case support the factual findings of the COMELEC First Division that only petitioners Lim-Bungcaras and Pamaos paid the said fee.

With respect to the appeal of petitioner Lim-Bungcaras in EAC (AE) No. A-57-2010, she paid the COMELEC appeal fee on **December 7, 2010**, *i.e.*, the fifteenth day from the filing of the joint notice of appeal with the RTC. Said payment was evidenced by postal money orders issued in her name amounting to ₱3,550.00[37] and the official receipt[38] issued therefor. As to the appeal of petitioner Pamaos in EAC (AE) No. A-59-2010, he likewise paid the COMELEC appeal fee on **December 7, 2010**, which was the fourteenth day from the filing of his notice of appeal to the trial court. His payment was likewise evidenced by postal money orders issued in his name amounting to ₱3,550.00[39] and the official receipt issued therefor.[40] Clearly, the aforesaid payments complied with COMELEC Resolution No. 8486.

As regards the appeals of petitioners Castil, Avendula, Domingo Ramada, Jr., and Victor Ramada, however, the Court finds that they indeed failed to remit the appeal fee payable to the COMELEC. In said petitioners' Manifestations/Notice of

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[37] *Rollo* (G.R. No. 210002), p. 139.

[38] *See* first page of COMELEC records, EAC (AE) No. A-57-2010. The ₱3,550.00 was composed of the ₱3,000.00 appeal fee, ₱50.00 as legal research fee, and ₱500.00 as bailiff's fee.

[39] *Rollo* (G.R. No. 210002), p. 138.

[40] *See* first page of COMELEC records, EAC (AE) No. A-59-2010. The ₱3,550.00 was composed of the ₱3,000.00 appeal fee, ₱50.00 as legal research fee, and ₱500.00 as bailiff's fee.

Appeal[41] before the COMELEC, they merely attached the photocopies of the postal money orders issued in the names of petitioners Lim-Bungcaras and Pamaos as proof of payment. Unfortunately, this is insufficient as Section 3, Rule 40 of the COMELEC Rules of Procedure, as amended by COMELEC Minute Resolution No. 02-0130, expressly requires that each individual appellant must pay the appeal fee payable to the COMELEC. The failure of petitioners Castil, Avendula, Domingo Ramada, Jr., and Victor Ramada to remit their respective payments of the COMELEC appeal fee was a valid ground for the dismissal of their appeals.

Accordingly, the assailed COMELEC Order dated February 1, 2011 in **EAC (AE) No. A-57-2010**, which involved the appeal of petitioner Lim-Bungcaras, and the COMELEC Order of even date in **EAC (AE) No. A-59-2010**, insofar as it involved the appeal of petitioner Pamaos, had been issued with grave abuse of discretion such that the same should have been given due course.

As for the appeal of petitioner Castil docketed as **EAC (AE) No. A-58-2010** and the appeals of petitioners Avendula, Domingo Ramada, Jr., and Victor Ramada in **EAC (AE) No. A-59-2010** that were not duly perfected in accordance with COMELEC Resolution No. 8486, the particular circumstances of this case compels this Court to likewise take cognizance of the same.

***II. The Mootness of the Issues Raised by the Petitioners***

Instead of ruling on the merits of the petitioners' appeals, the COMELEC *En Banc* denied the same outright in its assailed Resolution dated September 6, 2013 in view of the expiration of the terms of the contested offices on June 30, 2013.

We find the dismissal of the appeals on this ground erroneous.

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[41] COMELEC records, EAC (AE) No. A-58-2010, pp. 2-6; COMELEC records, EAC (AE) No. A-59-2010, pp. 2-6.

In *Malaluan v. Commission on Elections*,[42] the Court ruled that when a decision in an election protest includes a monetary award for damages, the issue of the said award is not rendered moot upon the expiration of the term of office that is contested in the election protest. We held in *Malaluan* that:

> **When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor the term of which had expired, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value**. This rule we established in the case of *Yorac vs. Magalona* which we dismissed because it had been mooted by the expiration of the term of office of the Municipal Mayor of Saravia, Negros Occidental. This was the object of contention between the parties therein. The recent case of *Atienza vs. Commission on Elections*, however, squarely presented the situation that is the exception to that rule.
>
> Comparing the scenarios in those two cases, we explained:
>
> > "Second, petitioner's citation of *Yorac vs. Magalona* as authority for his main proposition is grossly inappropriate and misses the point in issue. The sole question in that case centered on an election protest involving the mayoralty post in Saravia, Negros Occidental in the general elections of 1955, which was rendered moot and academic by the expiration of the term of office in December, 1959. It did not involve a monetary award for damages and other expenses incurred as a result of the election protest. x x x That is not the case here. In contradistinction to *Yorac*, a decision on the merits in the case at bench would clearly have the practical value of either sustaining the monetary award for damages or relieving the private respondent from having to pay the amount thus awarded."
>
> Indeed, this petition appears now to be moot and academic because the herein parties are contesting an elective post to which their right to the office no longer exists. **However, the question as to damages remains ripe for adjudication**. x x x. (Emphasis supplied; citations omitted.)

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[42] 324 Phil. 676, 683-684 (1996).

In the instant case, while the terms of the contested offices already expired on June 30, 2013, the trial court, nonetheless, awarded in favor of each of the private respondents moral damages in the amount of ₱450,000.00 and ₱150,000.00 as attorney's fees. In accordance with *Malaluan*, the question of whether the petitioners are liable for the payment of the monetary awards in this case remains ripe for adjudication.

In order to obviate any further delay in the disposition of this case, however, the Court deems it proper to rule on the merits of the appeals in these petitions with respect to the aforesaid monetary awards instead of remanding the same to the COMELEC.

***A. The award of moral damages***

We find that the trial court gravely erred in awarding moral damages of ₱450,000.00 in favor of each of the private respondents. The award is improper as the same is not sanctioned under our current election law.

As the Court explained in *Atienza v. Commission on Elections*[43]:

> The country's early election laws contained provisions requiring the furnishing of a bond or cash deposit for purposes of payment of expenses and costs incidental to election contests and appeals. The Administrative Code of 1917 for instance provides:
>
> > Sec. 482. *Bond or Cash Deposit Required of Contestants.* Before the Court shall entertain any such contest or counter-contest or admit an appeal, the party filing the contest, counter-contest or appeal shall give bond in an amount fixed by the court with two sureties satisfactory to it, conditioned that he will pay all expenses and costs incident to such motion or appeal, or shall deposit cash in court in lieu of such bond. If the party paying such expenses and costs shall be successful, they shall be taxed by the court and entered and be collectible as a judgment against the defeated party.

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[43] G.R. No. 108533, December 20, 1994, 239 SCRA 298, 306-307.

The Election Law of 1938 (Commonwealth Act No. 357) contained the same provision with a minor modification providing for increasing or decreasing the bond or cash deposit "as the course of the contest mat require." This provision was repeated *in toto* in the Revised Election Code of 1947. [The Election Code of 1971 (Republic Act No. 6388) and the 1978 Election Code (Presidential Decree No. 1296)] contained provisions allowing awards for **moral and exemplary damages** "as the Commission may deem just if the aggrieved party has included (such) in his pleadings," but left out the provision for bond and cash deposits found in the earlier election codes. **The provisions for moral and exemplary damages as well as the early provisions requiring the furnishing of a bond to cover expenses related to election contests have all but disappeared in the current Omnibus Election Code**. (Emphasis supplied; citations omitted.)

Indeed, Sections 223, 225, and 226 of the Election Code of 1971 (Republic Act No. 6388) explicitly provided for the award of moral and exemplary damages in election contests in this wise:

SECTION 223. *Bond or Cash Deposit.* — Before the court shall take cognizance of a protest, or a counter-protest, or a protest-in-intervention, or admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the court and for such amount as it may fix, to answer for the payment of all expenses and costs incidental to said protest or appeal **including any amount for moral and exemplary damages** that may be adjudicated by the court, or shall deposit with the court cash in lieu of the bond or both as the court may order. x x x.

SECTION 225. *Moral and Exemplary Damages in Election Contests and Quo Warranto Proceedings*. — In all election protests or in *quo warranto* proceedings, the court or the Electoral Tribunals of both Houses of Congress may adjudicate in the same case, **moral and exemplary damages** as it may deem just if the aggrieved party has included in his pleadings such claims.

In no case shall moral and/or exemplary damages exceed the amount equivalent to the total emoluments attached to the office concerned.

SECTION 226. *Adjudication of Moral and Exemplary Damages*. — The **moral and/or exemplary damages** shall be adjudicated and shall form part of the decision of the same case, and may be executed

after the decision in the same case becomes final and executory. (Emphasis supplied.)

In like manner, Sections 194 and 195 of the 1978 Election Code (Presidential Decree No. 1296) state:

SECTION 194. *Moral and exemplary damages in election contests and quo warranto proceedings*. — In all election contests or in *quo warranto* proceedings the Commission or court may adjudicate in the same case, **moral and exemplary damages** as it may deem just if the aggrieved party has included in his pleadings such claims.

In no case shall moral and/or exemplary damages exceed the amount equivalent to the total emoluments attached to the office concerned.

SECTION 195. *Adjudication of moral and exemplary damages*. — The **moral and/or exemplary damages** shall be adjudicated and shall form part of the decision of the same case, and may be executed after the decision in the same case becomes final and executory.

Presently, the award of damages in election contests is provided under Section 259 of the Omnibus Election Code, which states:

SEC. 259. Actual or compensatory damages. – **Actual or compensatory damages** may be granted in all election contests or in *quo warranto* proceedings in accordance with law. (Emphasis supplied.)

What is patently clear from Section 259 of the Omnibus Election Code is that only actual or compensatory damages may be awarded in election contests. The above provision is a stark contrast to the aforestated provisions in the past election codes that expressly permit the award of moral and exemplary damages. As the Court concluded in *Atienza*, the omission of the provisions allowing for moral and exemplary damages in the current Omnibus Election Code clearly underscores the legislative intent to do away with the award of damages other than those specified in Section 259 of the Omnibus Election Code, *i.e.*, actual or compensatory damages.[44]

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[44] *Id*. at 308-309.

***B. The award of attorney's fees***

Concerning the trial court's award of attorney's fees of ₱150,000.00 in favor of each of the private respondents, the same is likewise unwarranted.

Section 2, Rule 15 of A.M. No. 10-4-1-SC mandates that:

SEC. 2. *Damages and attorney's fees*. – In all election contests, the court may adjudicate damages and attorney's fees as it may deem just and as established by the evidence, if the aggrieved party has included these claims in the pleadings.

Thus, for the trial court to award attorney's fees, the same must be just and borne out by the pleadings and evidence of the party concerned.

Furthermore, Article 2208 of the Civil Code[45] enumerates the specific instances when attorney's fees may be awarded,

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[45] Article 2208 of the Civil Code states that:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

among which is when the defendant's act or omission has compelled the plaintiff to litigate or to incur expenses to protect the latter's interest.

Verily, the trial court used the aforementioned ground when it justified the award of attorney's fees as follows:

> Finally, the [private respondents] are entitled to an award of attorney's fees in the amount of Php150,000.00 each. The Supreme Court in *Industrial Insurance Company, Inc. vs. Bondad* (330 SCRA 706) held that attorney's fees may be awarded by a court if one who claims it is compelled to litigate or to incur expenses to protect one's interest by reason of an unjust act or omission on the part of the party from whom it is sought.[46]

In the case at bar, while the private respondents did include their claim for attorney's fees in their memorandum before the trial court,[47] the Court finds that they did not adduce sufficient evidence to substantiate their entitlement to said claim. Moreover, the fact that the private respondents were compelled to litigate does not, by itself, merit the award of attorney's fees. The Court explained this concept in *Mindex Resources Development v. Morillo*[48] thusly:

> We find the award of attorney's fees to be improper. The reason which the RTC gave — because petitioner had compelled respondent to file an action against it — falls short of our requirement in *Scott Consultants and Resource Development v. CA*, from which we quote:
>
> > "It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins suit. **The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture.** Where granted, the court must explicitly state in the body of the decision, and not only

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[46] *Rollo* (G.R. Nos. 209415-17), Vol. II, p. 656.

[47] *Id*. at 595-599.

[48] 428 Phil. 934, 948-949 (2002).

in the dispositive portion thereof, the legal reason for the award of attorney's fees."

Moreover, a recent case ruled that "in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff"s action or defendant's stand is so untenable as to amount to gross and evident bad faith."

Indeed, respondent was compelled to file this suit to vindicate his rights. However, such fact by itself will not justify an award of attorney's fees, when there is no sufficient showing of petitioner's bad faith in refusing to pay the said rentals as well as the repair and overhaul costs. (Citations omitted; emphasis supplied.)

The RTC ruled that the petitioners were guilty of bad faith in filing their respective election protests against the private respondents, which protests were brushed aside as "a product or figment of [the petitioners'] fertile and wild imaginations to make it appear that there were fraud, irregularities and flagrant violations committed during the conduct of elections."[49] Essentially, the trial court arrived at the above conclusion in view of the apparent failure of the petitioners to adduce adequate evidence to prove their claims.

The Court, however, is not convinced.

The failure of the petitioners to adduce substantial evidence to sustain their election protests does not necessarily lead to a conclusion that they were guilty of bad faith in the filing of said cases. Such a conclusion is conjectural and unjustified under the circumstances. As held in *Andrade v. Court of Appeals*,[50] the entrenched rule is that bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.

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[49] *Rollo* (G.R. Nos. 209415-17), Vol. II, p. 656.

[50] 423 Phil. 30, 43 (2001).

We reiterated in *BPI Family Savings Bank, Inc. v. Manikan, Inc.*[51] that:

> Such an award, in the concept of damages under Article 2208 of the Civil Code, demands factual and legal justifications. While the law allows some degree of discretion on the part of the courts in awarding attorney's fees and expenses of litigation, the use of that judgment, however, must be done with great care approximating as closely as possible the instances exemplified by the law. Attorney's fees in the concept of damages are not recoverable against a party just because of an unfavorable judgment. Repeatedly, it has been said that no premium should be placed on the right to litigate. (Citations omitted.)

Accordingly, we nullify the award of attorney's fees.

Finally, we address the effect of this Decision on the parties who failed to perfect their appeal from the RTC judgment. In *First Leverage and Services Group, Inc. v. Solid Builders, Inc.*,[52] we had the occasion to state that:

> This Court has always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal as to all.This exception, which is based on a communality of interest of said parties, is recognized in this jurisdiction. x x x. (Citations omitted.)

To illustrate, in *Unsay v. Palma*,[53] we allowed the appeal of one defendant to benefit his non-appealing co-defendants where the defense upon which the reversal of the trial court's judgment was based was not personal to any or some of the defendants but applied to all.

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[51] 443 Phil. 463, 468 (2003).

[52] 690 Phil. 1, 15-16 (2012).

[53] 121 Phil. 932, 936 (1965).

Persuasively, in American jurisprudence, the exception to the general rule on non-appealing parties is stated, thus:

> Where the judgment is entire and jointly binding on or in favor of several coparties, or the cause of action is of such a nature that the rights and issues are interdependent and injustice might result from a reversal as to less than all the parties, the appellate court will reverse the judgment as to all.[54]

Considering our determination that the trial court's award of moral damages and attorney's fees in these consolidated election cases had no justification in fact or law and this ground for reversal applies to all the petitioners, it would be grossly unjust to limit our ruling only to those who perfected their appeals.

**WHEREFORE,** the petitions for *certiorari* are **GRANTED**. The three Orders dated February 1, 2011 of the COMELEC First Division and the Resolution dated September 6, 2013 of the COMELEC *En Banc* in EAC (AE) Nos. A-57-2010, A-58-2010, and A-59-2010 are **REVERSED** and **SET ASIDE**.

The Consolidated Decision dated November 17, 2010 of the Regional Trial Court of San Juan, Southern Leyte in Election Protest Nos. 2010-01, 2010-02, and 2010-03 is hereby **REVERSED** insofar as the award of moral damages and attorney's fees is concerned. The Court takes no action on the portion of the Consolidated Decision that declared the private respondents Rico C. Rentuza, Rachel B. Avendula, Manuel O. Calapre, Saturnino V. Cinco, Fernan V. Salas, Antonio Dalugdugan, Federico C. Japon, Santiago M. Santiago, Jacinta O. Malubay, and Belen G. Bungcag as the respective winners for the local elective positions of the municipality of Saint Bernard, Southern Leyte in the May 10, 2010 Automated

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[54] 5 C.J.S. Appeal and Error § 1078 (September 2016 Update), citing *J.A.P. v. L.W.A*, 910 So. 2d 115 (Ala. Civ. App. 2004); *Shearman Concrete Pipe Co. v. Wooldridge*, 218 Ark. 16, 234 S.W. 2d 384 (1950); *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 296 Ill. Dec. 448, 835 N.E. 2d 801 (2005); and *Smith v. Flannery*, 383 Pa. 526, 119 A. 2d 224 (1956).

Elections as the said matter had been rendered moot and academic in view of the expiration of the terms of office of the local elective positions.

**SO ORDERED.**

*Carpio (Acting C.J.),*[*] *Brion, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe,* and *Leonen, JJ.,* concur.

*Velasco, Jr.* and *Mendoza, JJ.,* on official leave.

*Sereno, C.J.* and *Caguioa, J.,* on leave.

*Jardeleza, J.,* no part, prior OSG action.

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[*] Per Special Order No. 2401dated November 15, 2016.

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— The choice of venue is a matter addressed to the sound judgment of the parties based on considerations personal to them. (*Id*.)

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*Defense of* — Physical impossibility pertains to the distance between the place where the accused was during the commission of the crime and the place where the crime was actually committed, as well as the facility of access between the two places. (People *vs*. Villalon *y* Ordono, G.R. No. 215198, Nov. 9, 2016) p. 370

**AN ACT DEFINING AND PENALIZING CERTAIN PROHIBITED ACTS INIMICAL TO THE PUBLIC INTEREST AND NATIONAL SECURITY INVOLVING PETROLEUM AND/OR PETROLEUM PRODUCTS, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES, AS AMENDED BY P.D. 1865 (B.P. BLG. 33)**

*Liability for violations* — A member of the Board of Directors of a corporation, who is not the President, General Manager or Managing Partner, cannot, by mere reason of such membership, be held liable for the corporation's probable violation of B.P. Blg. 33. (Federated LPG Dealers Association *vs*. Del Rosario, G.R. No. 202639, Nov. 9, 2016) p. 251

*Prohibited acts* — The offenses of illegal trading through unauthorized refilling and under filling of petroleum products are separate and distinct offenses. (Federated LPG Dealers Association *vs*. Del Rosario, G.R. No. 202639, Nov. 9, 2016) p. 251

**AN ACT RESTRUCTURING THE VALUE ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASED AND ENHANCING ITS ADMINISTRATION AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES (R.A. NO. 7716)**

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*Registration under Section 14(2)* — Application for original registration of land of the public domain; there must be an official declaration by the state that the public dominion property is no longer intended for public use, public service, or for the development of national wealth before it can be acquired by prescription. (Rep. of the Phils. *vs.* Heirs of Sps. Tomasa Estacio and Eulalio Ocol, G.R. No. 208350, Nov. 14, 2016) p. 514

*Requirements for registration of title* — The applicant for land registration must prove that the DENR (Department of Environment and Natural Resources) Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of application for registration falls within that approved area. (Rep. of the Phils. *vs*. Lao, G.R. No. 200726, Nov. 9, 2016) p. 211

— Under Sec. 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a bona fide claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (2) that the property sought to be registered is already declared alienable and disposable at the time of the application. (*Id*.)

**PUBLIC TELECOMMUNICATIONS POLICY ACT OF THE PHILIPPINES (R.A. NO. 7925)**

*National Telecommunications Commission (NTC)* — The NTC is given the authority to approve or adopt access charge arrangements between two public telecommunication entities (PTEs). (Phil. Telegraph & Telephone Corp. *vs.* Smart Communications, Inc., G.R. No. 189026, Nov. 9, 2016) p. 78

— The proceeding before the NTC is quasi-judicial in nature as it involves a determination of the fair and reasonable access charges based on various factors which affects the rights of PTEs. (*Id*.)

gravity; (b) juridical antecedence; and (c) incurability; the incapacity "must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved." (Matudan *vs*. Rep. of the Phils., G.R. No. 203284, Nov. 14, 2016) p. 449

— The complete facts should allege the physical manifestations which are indicative of psychological incapacity at the time of the celebration of the marriage. (*Id*.)

**WITNESSES**

*Credibility of* — Findings of the trial court thereon will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted so as to materially affect the disposition of the case. (People *vs.* Villalon *y* Ordono, G.R. No. 215198, Nov. 9, 2016) p. 370

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