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FROM

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 160864. November 16, 2016]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. COJUANGCO, JR.,** *respondent.*

[G.R. No. 160897. November 16, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. COJUANGCO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT CANNOT GATHER EVIDENCE AGAINST A RESPONDENT, FILE A CRIMINAL COMPLAINT, AND THEN CONDUCT A PRELIMINARY INVESTIGATION OF THE CASE WITHOUT CONTRAVENING THE BASIC TENETS OF DUE PROCESS; CASE AT BAR.— [T]he PCGG filed an Information against respondent for violation of R.A. 3019. The Information alleged that he had illegally acted as a nominee/dummy of former President Ferdinand E. Marcos in acquiring shares of stock in the Bulletin Today Publishing Company and Liwayway Publishing, Inc. The PCGG found probable cause to file the Information after conducting a preliminary investigation of the charges filed against respondent. Earlier, or on 20 July 1987, the PCGG had filed a complaint

for reconveyance, reversion, accounting, restitution and damages against respondent and several other persons before the Sandiganbayan x x x[,] entitled *Republic of the Philippines v. Eduardo M. Cojuangco, Jr., et al.*, and docketed as Civil Case PCG No. 0022 x x x. Notably, the acts alleged against respondent in the foregoing civil action also formed the basis of the Information in the instant case. The PCGG, through its Security and Investigation Department, likewise gathered additional evidence against respondent during its reinvestigation of the case. x x x [T]hese additional pieces of evidence became the basis of the PCGG's reinvestigation and subsequent amendment of the Information in this case. By these two acts of the PCGG — the filing of the civil complaint and the gathering of additional evidence — the present preliminary investigation and the reinvestigation proceedings have been rendered defective. Considering that the PCGG initiated a civil complaint against respondent for the same acts alleged in the present Information, it is evident that it had already formed its conclusions even prior to conducting the preliminary investigation in this case. Further, since the PCGG itself gathered the additional evidence in support of the Information, the reinvestigation it carried out could not have been the fair and impartial review contemplated by law. x x x [T]he PCGG cannot gather evidence against a respondent, file a criminal complaint, and then conduct a preliminary investigation of the case without contravening the basic tenets of due process. The due process violation was compounded by the fact that the PCGG had filed a civil complaint against the same respondent alleging substantially the same illegal or criminal acts x x x.

2. ID.; ID.; PROSECUTION OF OFFENSES; INFORMATION; NOT RENDERED NULL AND VOID BY ANY DEFECT IN THE PRELIMINARY INVESTIGATION PROCEEDINGS OR EVEN THE ABSENCE THEREOF; EXCEPTION.— The denial of due process in this case, as well as the resulting nullity of the preliminary investigation proceedings and the Information, cannot be cured by the Sandiganbayan's earlier finding of probable cause. As a general rule, defects in the preliminary investigation proceedings, or even the absence thereof, will not render an Information null and void. An exception to this rule, however, was carved out for cases involving violations of the right to due process. x x x The

principle followed by this Court is that where there is a violation of basic constitutional rights, courts are ousted from jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue, which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. As a consequence of the nullity of the Information, any action taken by the Sandiganbayan pursuant thereto, including its initial determination of probable cause against respondent, is void and ineffective. A ruling on this point cannot validate, much less cure, the fatal defect in the preliminary investigation proceedings or in the Information filed by the PCGG.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Estelito P. Mendoza and *Alberto E. Valenzuela, Jr.* for private respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition[1] filed by the Office of the Special Prosecutor (OSP) on 23 December 2003 and a Petition for Review[2] filed by the Office of the Solicitor General (OSG) on 27 January 2004. Both Petitions, brought under Rule 45 of the 1997 Rules of Civil Procedure, prayed for the reversal of the Resolution[3] of the Sandiganbayan dated 24 April 2003 and the subsequent Resolution[4]

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[1] *Rollo* (G.R. No. 160864), pp. 12-53.

[2] *Rollo* (G.R. No. 160897), pp. 21-109.

[3] *Rollo* (G.R. No. 160864), pp. 59-67; Criminal Case No. 14161, penned by Associate Justice Ma. Cristina Cortez-Estrada, and concurred in by Presiding Justice Chairman Minita V. Chico-Nazario (now a retired member of this Court) and Associate Justice Diosdado M. Peralta (now a member of this Court.)

[4] *Id.* at 68-78; Criminal Case No. 14161, penned by Associate Justice Ricardo R. Rosario, and concurred in by Presiding Justice Chairman Minita V. Chico-Nazario and Associate Justice Diosdado M. Peralta (now a member of this Court.)

dated 20 November 2003. In these Resolutions, the Sandiganbayan declared null and void the preliminary investigation conducted by the Presidential Commission on Good Government (PCGG) against Eduardo M. Cojuangco, Jr. (respondent) and the Information filed pursuant thereto in Criminal Case No. 14161.

FACTUAL ANTECEDENTS

The PCGG, through an Information[5] dated 27 November 1989, charged respondent with violation of Section 4(b) in relation to Section 3(h) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act (R.A. 3019), *viz.*:

> That on or about and during the period from 1973 to 1985, both dates inclusive, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in his capacity as a private individual and being then a close associate of former President Ferdinand E. Marcos, did then and there willfully and unlawfully acted [sic] as nominee and/or dummy of the latter in acquiring shares of stock in the Bulletin Today Publishing Company and Liwayway Publishing Inc., both private corporations, thereby inducing and/or causing then President Ferdinand E. Marcos to directly or indirectly, participate in the management and control of and/or have pecuniary or financial interest in the said corporations.
>
> CONTRARY TO LAW.[6]

An *ex parte* motion for the issuance of a warrant of arrest was thereafter filed by the PCGG with the Sandiganbayan. On 19 January 1990, the Sandiganbayan denied the motion, based on a finding that the PCGG's preliminary investigation had established no probable cause against respondent.[7] The Sandiganbayan also ordered the PCGG to "undertake whatever steps it may deem necessary to sustain the Information" filed against respondent.

The PCGG assailed the Sandiganbayan Resolution before this Court through a Petition for *Certiorari* docketed as G.R. No. 91741.[8]

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

[6] *Id.* at 79.

[7] *Id*. at 240.

[8] *Id.*

In a Resolution dated 29 March 1990, the Court found no grave abuse of discretion on the part of the Sandiganbayan in not issuing a warrant for respondent's arrest.[9] The Petition was consequently dismissed,[10] but the PCGG was given 60 days within which to "conduct further proceedings, if it so minded."[11]

The PCGG, through its Security and Investigation Department, proceeded to gather additional evidence against respondent.[12] On the basis of the new evidence it obtained, the PCGG filed a *Manifestation with Ex Parte Motion to Admit the Amended Information* requesting the Sandiganbayan to allow the amendment of the Information to conform to the evidence.[13] The original Information was amended to read as follows:

> That on or about and during the period from 1973 to 1985, both dates inclusive, in Metro Manila, Phillippines [sic], and within the jurisdiction of this Honorable Court, then former President Ferdinand E. Marcos (Deceased) unlawfully acquired shares of stock in the Bulletin Publishing Corporation, a private corporation, representing about fifty-four (54%) percent of its equity, which shares of stock were originally apportioned and issued in the names of his close associates, namely, Cesar Zalamea, Jose Y. Campos and Ramon Cojuangco (Deceased), all of whom unlawfully and willfully [sic] acted as his nominees and/or dummies in the said corporation, and thereafter, then former President Marcos, with the active participation and/or indispensable cooperation of Ramon Cojuangco, and in conspiracy with accused Eduardo Cojuangco, Jr. cancelled or caused to be cancelled the shares of stock assigned and issued to said Ramon Cojuangco and transferred or caused to be transferred the same shares of stock in favor of the said accused Eduardo Cojuangco, Jr., who in his capacity as private individual, conspiring and confederating with Cesar Zalamea and Jose Y. Campos, and acting in substitution of Ramon Cojuangco as an original/initial nominee and/or dummy, did then and there, willfully and unlawfully act and continue to act as nominee and/or dummy of the said former President in the said

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[9] *Rollo* (G.R. No. 160897), pp. 296-299.

[10] *Id*.

[11] *Id*. at 299.

[12] *Rollo* (G.R. No. 160864), p. 240.

[13] *Id*. at 241.

corporation, thereby knowingly causing former President Marcos to maintain his beneficial ownership of the controlling interest in, and to directly or indirectly participate in the management and control of the said corporation in which the latter was prohibited by the constitution and the law from having any financial or pecuniary interest.

CONTRARY TO LAW.[14]

On 8 June 1990, the Sandiganbayan issued a Resolution[15] admitting the Amended Information and directing the issuance of a warrant for the arrest of respondent.[16]

On 20 June 1990, respondent filed a *Motion to Order the Dismissal of the Information in 'People v. Eduardo Cojuangco' Criminal Case No. 14161 (Sandiganbayan) and to Annul the Warrant of Arrest issued in G.R. No. 91741*.[17] This motion to dismiss was treated by the Court as a Petition for *Certiorari* under Rule 65 of the Rules of Court and was accordingly docketed as G.R. No. 93884.[18]

In a Resolution dated 19 June 2001,[19] the Court found no grave abuse of discretion on the part of Sandiganbayan in issuing a warrant of arrest against respondent. The Court declined to interfere with the finding of probable cause by the Sandiganbayan considering that the matter was addressed to the latter's sound discretion.[20] Instead, it directed the Sandiganbayan "to resume the proceedings in Criminal Case No. 14161 and dispose of the same with deliberate dispatch."[21]

In compliance with this Court's ruling, the Sandiganbayan issued a Resolution[22] setting the arraignment of respondent and the pre-

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

[15] *Id*. at 84-90.

[16] *Id*. at 241.

[17] *Id*. at 241.

[18] *Id*. at 242.

[19] *Id*. at 239-247.

[20] *Id*. at 246.

[21] *Id*. at 247.

[22] *Id*. at 91.

trial of the case on 18 and 19 September 2002, respectively.[23] However, the scheduled arraignment of the case did not push through. Instead, on 18 September 2002, the prosecution was directed to submit a Memorandum in support of its position that the Sandiganbayan had jurisdiction over respondent.[24] The arraignment and pre-trial of respondent were rescheduled for 7 November 2002.

The PCGG filed the required Memorandum on 1 October 2002.[25] Citing Executive Order No. 14 (E.O. 14), as amended, it argued that it was mandated to file all cases involving the ill-gotten wealth of former President Ferdinand E. Marcos and his family before the Sandiganbayan, which shall exercise exclusive and original jurisdiction over the same.[26]

On 28 October 2002, respondent filed a Reply Memorandum addressing the arguments raised by the PCGG. In particular, he assailed the preliminary investigation it had conducted and the Information filed against him on the basis of this Court's pronouncements in *Cojuangco v. Presidential Commission on Good Governance*.[27] Respondent argued that the factual circumstances leading to the Court's Decision in *Cojuangco* were likewise present herein.

On 24 April 2003, the Sandiganbayan issued a Resolution that declared null and void the preliminary investigation conducted by the PCGG and the Information filed pursuant thereto. The Sandiganbayan found the investigation arbitrary and unjust, because the entity that had gathered the evidence to support the Information filed against respondent – the PCGG – was also the entity that had conducted the preliminary investigation of his case. Accordingly, the Sandiganbayan ruled that the circumstances fell squarely within the ruling in *Cojuangco*:

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[23] *Id*. at 30.

[24] *Id*. at 92.

[25] *Id*. at 93-103.

[26] *Id*.

[27] G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226.

The circumstances of the instant case which fall squarely with that of Cojuangco, Jr. vs. PCGG *(supra)*, are peculiar, in the sense that the PCGG itself which gathered the evidence and filed the complaint for purposes of preliminary investigation was the same entity which conducted the preliminary investigation in this case and which, according to the Supreme Court was arbitrary and unjust, thus ruling that the preliminary investigation conducted by the PCGG including the Information filed was null and void. x x x.

WHEREFORE, the Information docketed as Criminal Case No. 14161, filed by the PCGG against Eduardo M. Cojuangco, Jr., is hereby declared null and void. The PCGG is hereby directed to transmit the complaints and records of the instant case under I.S. No. 13 to the proper investigating official for appropriate action.

The arraignment and pre-trial on this case previously scheduled on April 28, 2003, is hereby cancelled.

SO ORDERED.[28]

The prosecution moved for the reconsideration of the Resolution, but the motion was likewise denied by the Sandiganbayan in a subsequent Resolution dated 14 November 2003.[29]

In separate Petitions for Review, the OSP and the OSG asked this Court to reverse and set aside the assailed Resolutions of the Sandiganbayan.[30] The two Petitions were consolidated by this Court on 21 January 2004.[31]

In their Petitions, the OSP and the OSG argue that the preliminary investigation conducted by the PCGG and the Information filed against respondent are valid based on the following grounds:

1. The PCGG is authorized to carry out the preliminary investigation against respondent in Criminal Case No. 14161 under E.O. No. 14.

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[28] *Rollo* (G.R. No. 160864), p. 66.

[29] *Id.* at 68.

[30] *Rollo* (G.R. No. 160864), p. 51; *rollo* (G.R. No. 160897) p. 106.

[31] *Rollo* (G.R. No. 160897), pp. 6-7.

2. The validity of the preliminary investigation conducted by the PCGG has been affirmed by this Court in the latter's Resolutions in G.R. Nos. 91741 and 93884. The finding therein constitutes the law of the case and cannot be disturbed.

3. The finding of probable cause by the Sandiganbayan leading to its issuance of a warrant of arrest against respondent confirmed that he had not been deprived of an impartial judge during the preliminary investigation proceedings.

THE ISSUE

We are called upon to determine whether the Sandiganbayan erred when it declared null and void the preliminary investigation conducted by the PCGG and the Information filed pursuant to that investigation.

OUR RULING

We DENY the Petitions. We find no error in the assailed Sandiganbayan Resolutions.

The Sandiganbayan correctly dismissed the Information filed against respondent, pursuant to this Court's ruling in Cojuangco v. PCGG.

In *Cojuangco*, this Court declared the preliminary investigation conducted by the PCGG in Criminal Cases No. 14398 and 14399 null and void on due process grounds. It was noted that prior to the conduct of the preliminary investigation, the PCGG had gathered evidence against respondent, issued a sequestration order against him, and filed a civil case for recovery of ill-gotten wealth based on the same facts involved in the criminal cases. Based on those circumstances, the Court found that the PCGG could not have possibly acted with the "cold neutrality of an impartial judge" during the preliminary investigation proceedings, since the latter had already formed conclusions on the matter. The Court stated in *Cojuangco*:

The Court cannot close its eyes to the glaring fact that in earlier instances, the PCGG had already found a *prima facie* case against the petitioner and intervenors when, acting like a judge, it caused the sequestration of the properties and the issuance of the freeze order of the properties of petitioner. Thereafter, acting as a law enforcer, in collaboration with the Solicitor General, the PCGG gathered the evidence and upon finding cogent basis therefor filed the aforestated civil complaint. Consequently the Solicitor General filed a series of criminal complaints.

x x x x x x x x x

The Court finds that under the circumstances of the case, the PCGG cannot inspire belief that it could be impartial in the conduct of the preliminary investigation of the aforesaid complaints against petitioner and intervenors. It cannot possibly preside in the said preliminary investigation with an even hand.

The Court holds that a just and fair administration of justice can be promoted if the PCGG would be prohibited from conducting the preliminary investigation of the complaints subject of this petition and the petition for intervention and that the records of the same should be forwarded to the Ombudsman, who as an independent constitutional officer has primary jurisdiction over cases of this nature, to conduct such preliminary investigation and take appropriate action.

All violators of the law must be brought before the bar of justice. However, they must be afforded due process and equal protection of the law, whoever they may be.

WHEREFORE, the petitions of Eduardo M. Cojuangco, Jr. and intervenors Maria Clara Lobregat, and Jose Eleazar, Jr. are hereby GRANTED. The PCGG is directed to transmit the complaints and records thereof under I.S. Nos. 74, 75, 79, 80, 81, 82, 83 and 84 to the Ombudsman for appropriate action. All proceedings of the preliminary investigation conducted by the PCGG of said complaints are hereby declared null and void including the informations which it filed in the Sandiganbayan against petitioner and intervenors docketed as Criminal Cases Nos. 14398 and 14399. The *status quo* order which this Court issued on March 12, 1990 is hereby made permanent and the PCGG is permanently prohibited from further conducting the preliminary investigation of the aforestated complaints. The Court makes no pronouncement as to costs. [32]

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[32] *Cojuangco v. Presidential Commission on Good Government,* G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 227, 256-257.

The same factual circumstances obtain in this case.

As discussed earlier, the PCGG filed an Information against respondent for violation of R.A. 3019. The Information alleged that he had illegally acted as a nominee/dummy of former President Ferdinand E. Marcos in acquiring shares of stock in the Bulletin Today Publishing Company and Liwayway Publishing, Inc.[33] The PCGG found probable cause to file the Information after conducting a preliminary investigation of the charges filed against respondent.[34]

Earlier, or on 20 July 1987, the PCGG had filed a complaint[35] for reconveyance, reversion, accounting, restitution and damages against respondent and several other persons before the Sandiganbayan. Entitled *Republic of the Philippines v. Eduardo M. Cojuangco, Jr., et al.*, and docketed as Civil Case PCG No. 0022, the complaint made the following allegations:

1. This is a civil action against Defendants Emilio T. Yap, Manuel G. Montecillo, Eduardo Cojuancgo, Jr., Cesar C. Zalamea, Ferdinand E. Marcos and Imelda R. Marcos to recover from them ill-gotten wealth consisting of funds and other property which they, in unlawful concert with one another had acquired and accumulated in flagrant breach of trust and of their fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws of the Republic of the Philippines, thus resulting in their unjust enrichment during Defendant Ferdinand E. Marcos' 20 years of rule from December 30, 1965 to February 25, 1986, first as President of the Philippines under the 1935 Constitution and thereafter, as one-man ruler under martial law and Dictator under the 1973 Marcos-promulgated Constitution.

x x x x x x x x x

12. Defendant Cesar C. Zalamea, by himself and/or in unlawful concert and active collaboration with Defendants Ferdinand E. Marcos and Imelda R. Marcos, among others:

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[33] *Rollo* (G.R. No. 160864), pp. 79-80.

[34] *See*: Certification of then PCGG Chairman Mateo Caparas, *Rollo* (G.R. No. 160864), p. 82.

[35] *Rollo* (G.R. No. 160864), pp. 368-392.

(a) acted together with Defendant Eduardo Cojuangco, Jr., as the dummies, nominees and/or agents of the latter Defendant spouses in acquiring substantial shares in Bulletin Publishing Corporation in order to prevent disclosure and recovery of assets illegally obtained;[36]

The Complaint was filed by the PCGG through its chairperson, Ramon A. Diaz, who verified the Complaint; and Solicitor General Francisco I. Chavez and Assistant Solicitor General Ramon S. Desuasido.[37] Notably, the acts alleged against respondent in the foregoing civil action also formed the basis of the Information in the instant case.

The PCGG, through its Security and Investigation Department, likewise gathered additional evidence against respondent during its reinvestigation of the case. The OSP itself alleged the following in its Petition: [38]

Thus, the PCGG, through Atty. Domingo C. Palarca, conducted a reinvestigation of the case, gathering the following documents:

Annex 1 – Bulletin Publishing Corporation audited financial statement.

Annex 2 – Summary of Bulletin stockholders with their corresponding interest as of 22 August 1985.

Annex 3 – Board Resolution of 16 May 1985.

Annex 4 – Philtrust Check No. 332816 dated 14 June 1985 for ₱2,337,279.00 issued to Cesar Zalamea by the Bulletin Publishing Corporation.

Annex 5 – Philtrust Check No. 332817 dated 14 June 1985 for ₱2,337,279.00 issued to Jose Y. Campos by the Bulletin Publishing Corporation.

Annex 6 – Philtrust Check No. 332818 dated 14 June 1985 for ₱2,337,551.00 issued to accused Eduardo Cojuangco, Jr. by the Bulletin Publishing Corporation.

Annex 7 – Philtrust Check No. 333853 dated 23 August 1985 for ₱3,505,918.50 issued to Zalamea by the Bulletin Publishing Corporation.

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[36] *Id*. at 368-369, 380-381.

[37] *Id*. at 390-392.

[38] *Id*. at 25.

Annex 8 – Philtrust Check No. 333854 dated 23 August 1985 for ₱3,505,918.50 issued by the Bulletin Publishing Corporation.

Annex 9 – Philtrust Check No. 333855 dated 23 August 1985 for ₱3,506,326.50 issued to Cojuangco by the Bulletin Publishing Corporation.[39]

Annex 10 – Philtrust Check No. 490479 dated 23 August 1985 for ₱5,813,197.50 issued to Zalamea by the Bulletin Publishing Corporation.

Annex 11 – Philtrust Check No. 490478 dated 23 August 1985 for ₱5,843,197.50 issued to Campos by the Bulletin Publishing Corporation.

Annex 12 – Philtrust Check No. 490477 dated 23 August 1985 for ₱5,843,8777.50 [sic] issued to Cojuangco by the Bulletin Publishing Corporation.

As explained above, these additional pieces of evidence became the basis of the PCGG's reinvestigation and subsequent amendment of the Information in this case.

By these two acts of the PCGG – the filing of the civil complaint and the gathering of additional evidence – the present preliminary investigation and the reinvestigation proceedings have been rendered defective.

Considering that the PCGG initiated a civil complaint against respondent for the same acts alleged in the present Information, it is evident that it had already formed its conclusions even prior to conducting the preliminary investigation in this case. Further, since the PCGG itself gathered the additional evidence in support of the Information, the reinvestigation it carried out could not have been the fair and impartial review contemplated by law.

As this Court noted in *Cojuangco*, the PCGG cannot gather evidence against a respondent, file a criminal complaint, and then conduct a preliminary investigation of the case without contravening the basic tenets of due process. The due process violation was compounded by the fact that the PCGG had filed a civil complaint against the same respondent alleging substantially the same illegal or criminal acts:

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

In our criminal justice system, **the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is to say the least arbitrary and unjust.** It is in such instances that We say one cannot be "a prosecutor and judge at the same time." **Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor.** The circumstances of the instant petition are even worse. To repeat, the PCGG and the Solicitor General finding a *prima facie* basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. While ostensibly, it is only the Solicitor General who is the complainant in the criminal cases filed with the PCGG, in reality the PCGG is an unidentified co-complainant. Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of a *prima facie* finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of coconut levy funds. **Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the "cold neutrality of an impartial judge," as it has prejudged the matter.** Add to this the fact that there are many suits filed by petitioner and the intervenors against the PCGG and vice versa.[40] (Emphases supplied)

Consistent with the above-quoted Decision of this Court in *Cojuangco,* we find that respondent's right to due process was violated in the preliminary investigation proceedings conducted by the PCGG in this case. The investigation conducted and the Information filed pursuant thereto must therefore be declared null and void.

The Resolutions of this Court in G.R. Nos. 91741 and 93884 neither affirmed nor recognized the validity of

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[40] *Cojuangco Jr., v. Presidential Commission on Good Government*, G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 227-228.

the preliminary investigation conducted by the PCGG.

We likewise find no merit in the argument of petitioners that the previous Resolutions of this Court in G.R. Nos. 91741 and 93884 recognized the validity of the PCGG's preliminary investigation. A careful reading of the two Resolutions reveals that this Court made no such finding therein.

In G.R. No. 91741, this Court declined to interfere with the Sandiganbayan's finding that there was no probable cause to hold respondent liable for violation of R.A. 3019. Indeed, the Court affirmed the Sandiganbayan's Decision to allow the PCGG 60 days within which to conduct further proceedings in support of the Information.[41] This pronouncement, however, does not *per se* affirm the validity of the preliminary investigation conducted by the PCGG. It must be emphasized that the PCGG's participation in the gathering of evidence and the filing of a civil case against respondent, based on the same acts alleged in the Information had not been brought to the attention of the Court at the time. Furthermore, the Court's directive to "conduct further proceedings" cannot be considered a license for the PCGG itself to gather evidence against respondent prior to conducting a reinvestigation of the case.

Similarly, the validity of the preliminary investigation was not discussed in G.R. No. 93884. In that case, the only issue brought before, and resolved by, the Court was whether the Sandiganbayan had acted with grave abuse of discretion in finding probable cause against respondent based on the Amended Information filed by the PCGG. The purported nullity of the Information was raised only in respondent's Motion for Reconsideration. Having been belatedly raised, the Court no longer passed upon this new argument in its Resolution dated 29 January 2002.

Considering that these two Resolutions are silent on the issue of the validity of the PCGG's preliminary investigation, there is as

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[41] *See* Dispositive Portion of the 29 March 1990 Resolution in G.R. No. 91741, *Rollo* (G.R. No. 160897), p. 299.

yet no pronouncement that might be considered the "law of the case" on this matter. Accordingly, the Sandiganbayan did not err in making its own determination of this issue.

The Sandiganbayan's earlier finding of probable cause and its issuance of a warrant of arrest against respondent did not validate the preliminary investigation proceedings conducted by the PCGG.

In their respective Petitions, the OSP and the OSG also point out that the Sandiganbayan itself had found probable cause to issue a warrant of arrest against respondent on the basis of the Amended Information filed by the PCGG. This ruling allegedly validated the preliminary investigation conducted by the PCGG and proved that respondent did not suffer a violation of his right to due process.

This contention is unmeritorious. The denial of due process in this case, as well as the resulting nullity of the preliminary investigation proceedings and the Information, cannot be cured by the Sandiganbayan's earlier finding of probable cause.

As a general rule, defects in the preliminary investigation proceedings, or even the absence thereof, will not render an Information null and void.[42] An exception to this rule, however, was carved out for cases involving violations of the right to due process.[43] In *People of the Philippines v. Sierra, Jr.*, this Court held:

x x x In a 1969 decision, *People v. Figueroa*, after referring to the above Casiano doctrine, this Court, through Justice Teehankee, expressly negated the concept that the failure to conduct preliminary investigation would offend against such a constitutional right. **No other conclusion is warranted *if* there be adherence to the principle uninterruptedly adhered to that *only where an accused is held to answer for a criminal***

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[42] *San Agustin v. People of the Philippines*, G.R. No. 158211, 31 August 2004, 437 SCRA 392.

[43] See *People v. Monton*, G.R. No. L-23906, 22 June 1968, 23 SCRA 1024.

offense in an arbitrary or oppressive manner is there a disregard thereof. **The requirement of the proceeding being unjust or unreasonable must be met.** This is not to rule out cases where such infirmity could be predicated on a showing that the disregard of this procedural safeguard did infect the prosecution with unfairness. **In that sense, what was held in *People v. Monton*, as to such a failing nullifying the proceeding because of the due process protection could still be conceivably relied upon.**[44] (Citations omitted and boldface supplied)

The principle followed by this Court is that where there is a violation of basic constitutional rights, courts are ousted from jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue, which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.[45]

As a consequence of the nullity of the Information, any action taken by the Sandiganbayan pursuant thereto, including its initial determination of probable cause against respondent, is void and ineffective. A ruling on this point cannot validate, much less cure, the fatal defect in the preliminary investigation proceedings or in the Information filed by the PCGG.

Considering the foregoing, and in accordance with the ruling of this Court in *Cojuangco*, the records of this case should be forwarded to the Ombudsman, who has primary jurisdiction over cases of this nature, for the conduct of a preliminary investigation and for appropriate action.

One final observation. We are compelled to emphasize the fact that the legal points involved herein were already clarified by this Court in 1990 when it decided *Cojuangco*. We already declared in that case that it was improper for the PCGG to conduct

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[44] *People v. Sierra, Jr.*, G.R. No. L-27611, 30 August 1972, 46 SCRA 726-727.

[45] *Montoya v. Varilla*, G.R. No. 180146, 18 December 2008, 574 SCRA 831, 843; *Garcia v. Molina*, G.R. Nos. 157383 and 174137, 10 August 2010, 627 SCRA 540, 554.

preliminary investigations and initiate criminal proceedings against individuals whose properties were previously sequestered by the PCGG itself for the same acts and transactions. We made clear that the procedure adopted in *Cojuangco* could not be countenanced because it violated the basic tenets of due process. Not only did the Court expect the PCGG to act in accordance with this ruling in all future cases, it relied on the institution to rectify all past proceedings suffering from the same defect by transmitting the records of these cases to the Ombudsman for proper action. This would have allowed the criminal actions to proceed with dispatch.

WHEREFORE, the instant Petitions are **DENIED.** The Resolutions of the Sandiganbayan dated 24 April 2003 and 20 November 2003, which declared the preliminary investigation conducted by the PCGG and the Information filed pursuant thereto in Criminal Case 14161 null and void, are hereby **AFFIRMED.** The PCGG is directed to immediately transmit the Complaint and the records of the instant case to the Ombudsman for appropriate action. No pronouncement as to costs.

SO ORDERED.

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

Caguioa, J., on leave.

FIRST DIVISION

[G.R. No. 172539. November 16, 2016]

ALBERTO GARONG *y* VILLANUEVA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION BY A PUBLIC OFFICER OR EMPLOYEE OR NOTARY PUBLIC UNDER ARTICLE 171; ELEMENTS.— The elements of falsification by a public officer or employee or notary public as defined in Article 171 of the *Revised Penal Code* are that: (1) the offender is a public officer or employee or notary public; (2) the offender takes advantage of his official position; and (3) he or she falsifies a document by committing any of the acts mentioned in Article 171 of the *Revised Penal Code*.

2. ID.; ID.; FALSIFICATION BY A PRIVATE INDIVIDUAL UNDER PARAGRAPH 1, ARTICLE 172; ELEMENTS.— [T]he elements of falsification by a private individual under paragraph 1, Article 172 of the *Revised Penal Code* are that: (1) the offender is a private individual, or a public officer or employee who did not take advantage of his official position; (2) the offender committed any of the acts mentioned in Article 171 of the *Revised Penal Code*; (3) the falsification was committed in a public or official or commercial document.

3. ID.; ID.; FALSIFICATION BY A PRIVATE INDIVIDUAL UNDER PARAGRAPH 7, ARTICLE 171; SIMULATION OF A PUBLIC OR OFFICIAL DOCUMENT LIKE A COURT ORDER, DONE IN SUCH A MANNER AS TO EASILY LEAD TO ERROR AS TO ITS AUTHENTICITY, CONSTITUTES FALSIFICATION.— In producing Exhibit B, and signing thereon beneath the words "CERTIFIED TRUE COPY" stamped on Exhibit B, and presenting the document to Ricar and Silverio, the petitioner unquestionably made Exhibit B appear like a true copy of the signed original order issued in Petition No. 12,701 by Presiding Judge Dela Cruz. But Petition No. 12,701 that supposedly involved the application for the judicial reconstitution of Transfer Certificate of Title No. T-40361 in the name of Silverio Rosales as reflected on Exhibit B had no relevance to the signed original order issued in the proceeding for the issuance of new owner's duplicate copy of Transfer Certificate of Title No. T-3436 in the name of Emerenciano Sarabia. In short, Exhibit B was a simulated court order. Considering that the proceeding relating to Exhibit B

was non-existent in the docket of the court, the acts of the petitioner constituted falsification. Indeed, the simulation of a public or official document like a court order, done in such a manner as to easily lead to error as to its authenticity, constitutes falsification; and it was not essential that the falsification should have been made in a real public or official document. Based on the foregoing, the petitioner committed falsification by a private individual in the manner as provided in paragraph 7, Article 171 of the *Revised Penal Code* x x x.

4. ID.; ID.; ID.; TAKING ADVANTAGE OF PUBLIC POSITION; CANNOT BE APPRECIATED AS AN AGGRAVATING CIRCUMSTANCE IN CASE AT BAR, FOR THE CRIME COULD HAVE BEEN COMMITTED EVEN BY ANY OTHER INDIVIDUAL, INCLUDING ONE WHO DID NOT WORK IN THE COURT IN ANY OFFICIAL CAPACITY.— The falsification by the petitioner could have been committed without taking advantage of his public position as the court interpreter. His work for the court that had supposedly issued Exhibit B was of no consequence to his criminal liability, for the crime could have been committed even by any other individual, including one who did not work in the court in any official capacity. In his case, the petitioner committed the simulation of Exhibit B despite his not having the duty to make, or prepare, or otherwise intervene in the preparation of court orders.

5. ID.; ID.; FALSIFICATION BY A PRIVATE INDIVIDUAL; PENALTY IN CASE AT BAR.— The penalty for falsification committed by a private individual is *prision correccional* in its medium and maximum periods, and fine of not more than ₱5,000.00. Having determined that taking advantage of his public office by the petitioner should not be appreciated as a generic aggravating circumstance, the CA fixed the indeterminate penalty of two years and four months of *prision correccional*, as the minimum, to four years, nine months and 10 days of *prision correccional*, as the maximum, and fine of ₱5,000.00. The CA thereby imposed the limit of the medium period of the penalty of imprisonment, and the maximum of the fine. However, the CA should have tendered a justification for imposing the limits of the compound penalty. It should have done so, considering that the *seventh rule* on the application of penalties

containing three periods laid down in Article 64 of the *Revised Penal Code* expressly mandated that the courts "*shall determine* [*within the limits of each period*] *the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." Without tendering the requisite justification for imposing the limits of the penalties of imprisonment and the fine, the floor of the penalties would be warranted; otherwise, the CA would be seen as arbitrary. Nonetheless, the omission of the justification was an obvious oversight by the CA. We should rectify the oversight as a matter of course to conform to the law. The simulation perpetrated by the petitioner undeniably manifested his abject disregard of his responsibility as an employee of the Judiciary even as it revealed a perversity indicative of the greater extent of the evil produced by the crime. Upon due consideration of the circumstances of the case, we still uphold the CA thereon. He surely deserved the limits of the compound penalty.

6. ID.; ID.; SUBSIDIARY PENALTY; IN CASES OF FALSIFICATION, THE IMPOSITION OF SUBSIDIARY IMPRISONMENT IS NECESSARY SO AS NOT TO TRIVIALIZE THE PRESCRIPTION OF THE FINE AS PART OF THE COMPOUND PENALTY FOR FALSIFICATION.— [A]lthough the RTC imposed subsidiary imprisonment in case the petitioner should be unable to pay the fine due to insolvency, the CA did not reimpose it in affirming the conviction without explaining why. This is another omission that demands rectification. Article 39 of the *Revised Penal Code* states that "[i]f the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he *shall* be subject to a subsidiary personal liability xxx." To conform with the provision, the imposition of the subsidiary imprisonment was necessary in order not to trivialize the prescription of the fine as part of the compound penalty for falsification. Accordingly, the subsidiary imprisonment is restored.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A court interpreter who simulated a court order purportedly issued in a non-existent judicial proceeding of the court he worked for was guilty of falsification by a private individual. The aggravating circumstance of taking advantage of his public office as a court interpreter could not be appreciated against him because his public office did not facilitate the commission of the crime.

Antecedents

The petitioner was charged with falsification as defined by Article 172, in relation to Article 171, of the *Revised Penal Code* under the following information filed in the Regional Trial Court in Calapan, Oriental Mindoro (RTC), *viz.*:

That on or about the 21st day of September, 1989, and dates prior and subsequent thereto, in the Municipality of Calapan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a government employee, and as such took advantage of his official position as Court Interpreter, did then and there wilfully, unlawfully and feloniously cause, prepare and issue a Court Order dated August 11, 1989, entitled:

IN RE: PETITION FOR JUDICIAL RECONSTITUTION OF TRANSFER CERTIFICATE OF TITLE NO. T-40361, PETITION NO. 12,701

SILVERIO ROSALES,
Petitioner.

making it appear that such Court Order was duly issued by the Presiding Judge of Regional Trial Court Branch 40, when in truth and in fact, as said accused well knew, that Petition No. 12,701 refers to a Petition for the Issuance of new Owner's Duplicate copy of Transfer Certificate of Title (TCT) No. T-3436, wherein EMERENCIANO SARABIA is the petitioner, and accordingly a corresponding Court Order was duly issued by the then Presiding Judge Mario de la Cruz, thereby affecting the integrity and changes the meaning and affect of the genuine Court Order.

Contrary to Law.[1]

There is no dispute about the factual antecedents, as found by both the RTC and the Court of Appeals (CA).[2]

Silverio Rosales (Silverio) and Ricar Colocar (Ricar) went to the home of the petitioner in the early morning of September 18, 1989 to seek his help in the judicial reconstitution of Silverio's Transfer Certificate of Title No. 40361 issued by the Office of the Register of Deeds of the Province of Oriental Mindoro (Register of Deeds). The petitioner, then a court interpreter, agreed to help, and instructed Silverio to prepare the necessary documents, namely: the certified survey plan, technical description of the property, tax declaration, and the certification from the Register of Deeds. He fixed the amount of ₱5,000.00 as processing fee, but later reduced it to ₱4,000.00.[3] Silverio and Ricar produced the amount and submitted the requested documents to the petitioner.

On September 21, 1989, the petitioner delivered to Ricar a copy of a court order (Exhibit B) captioned as indicated in the information[4] Exhibit B bore the stamp mark "ORIGINAL SIGNED" above the printed name of Judge Mario de la Cruz, Presiding Judge of the Regional Trial Court (RTC), and the words "CERTIFIED TRUE COPY" with a signature but no printed name appeared beneath the signature. Upon the petitioner's instruction, Silverio and Ricar brought Exhibit B to the Register of Deeds for the issuance of the owner's duplicate of Transfer Certificate of Title No. 40361. Ricar handed Exhibit B to Meding Nacional, the person-in-charge of receiving court orders in the Register of Deeds.

On September 26, 1989, Nacional informed Ricar that Atty. Ricardo Legaspi, chief of the Office of the Register of Deeds,

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[1] *Rollo*, p. 22.

[2] *Id*. at 74-90; penned by Associate Justice Jose C. Mendoza (now a Member of this Court), with the concurrence of Associate Jose L. Sabio, Jr., and Associate Justice Arturo G. Tayag.

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

[4] *Id*. at 76.

had returned Exhibit B because he had found some sentences thereof erroneous. She told him to return the next day. When he returned to the Register of Deeds as told, Nacional instructed him to go back to the RTC and to look for Atty. Luningning Centron, the Clerk of Court. Ricar went back to the RTC but did not find Atty. Centron. As he was going home from the RTC, he encountered the petitioner who inquired about the developments. Ricar apprised him about the problem, and told him that he had returned Exhibit B to the RTC. The latter got angry and reproved him for bringing Exhibit B back to the RTC without his knowledge.[5]

On September 27, 1989, Ricar and the petitioner went to the Register of Deeds. The latter argued with Nacional on the defects of Exhibit B. Later on, he told Ricar to retrieve Exhibit B from the Office of the Clerk of Court (OCC) in the RTC because it had problems. Upon returning to the OCC on the next day, Ricar conferred with Atty. Centron, who informed him that Exhibit B appeared to be falsified because it referred to a "ghost petition" because its docket number pertained to the petition of Emerciano Sarabia instead of to the petition of Silverio Rosales. After Ricar reported his findings to Silverio, the latter advised him to forthwith demand the refund of the processing fee from the petitioner. When Ricar went to see him, the petitioner only promised to personally process the reconstitution of title legally.

Realizing that what had transpired with the petitioner was illegal, Ricar filed a complaint to charge the petitioner with falsification of a public document in the office of Atty. Victor Bessat of the National Bureau of Investigation (NBI), who then assigned the investigation to Atty. Ricson Chiong.[6] The investigation ultimately resulted in the filing of the criminal charge in court for falsification of a public document.

In his defense, the petitioner stated that Silverio and Ricar had sought his assistance in the judicial reconstitution of

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[5] *Id.*

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

Silverio's title; that he asked them to produce certain documents for the purpose, but informed Ricar that he would be endorsing them to Monica Sigue, the court stenographer, because he lacked the knowledge of the process of judicially reconstituting titles; that he went to the RTC and requested Sigue to attend to Silverio and Ricar; that he did not know what transpired between them afterwards until Ricar went to his house and turned over Exhibit B already bearing the stamp mark "CERTIFIED TRUE COPY" but without any signature; that Ricar then asked him to sign on top of the stamp mark, but he refused and advised Ricar to bring Exhibit B instead to Atty. Felix Mendoza, the Branch Clerk of Court; and that because Ricar was insistent, he then signed Exhibit B with hesitation.[7]

The petitioner denied receiving ₱4,000.00 as processing fee from Silverio and Ricar. He insisted that he had signed Exhibit B only to prove that it was a copy of the original; that he did not take advantage of his position as a court interpreter; that he had no knowledge of the petition filed by Emerenciano Sarabia in the RTC; and that it was Sigue who had placed the docket number of "Petition No. 12,701" on Exhibit B.[8]

Judgment of the RTC

After trial, the RTC convicted the petitioner as charged.[9] It noted that Ricar and Silverio were strangers to the petitioner but the latter volunteered to help them in the judicial reconstitution of Silverio's title; that he delivered the court order in question to Ricar; that the petitioner admitted having signed and certified the court order as pertaining to Petition No. 12,701, thereby attesting to the fact of its existence; that the petitioner testified to seeing the original of the court order bearing the signature of Judge Dela Cruz, the Presiding Judge of the RTC, but the petitioner's testimony was false considering

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[7] *Id*. at 77.

[8] *Id*.

[9] *Id*. at 22-32; penned by Judge Mario V. Lopez (now a Member of the Court of Appeals).

that the case pertained to another litigant; that the petitioner's contention that it was wrong to declare the court order as falsified without presenting the original thereof had no basis considering that there was no original document to speak of in the first place; and that being the person certifying to the authenticity of the document the petitioner made it appear that Judge Dela Cruz had participated in the act thereby stated when he did not in fact participate, he was liable for falsification.[10]

The RTC concluded that the petitioner committed falsification committed by a private individual as defined and punished under Article 172, with the generic aggravating circumstance of taking advantage of his public position under Article 14, paragraph 1, of the *Revised Penal Code*. The RTC opined that his position as a court interpreter had facilitated the commission of the offense by him as a private individual; and that his case did not come under Article 171 of the *Revised Penal Code* because it had not been his duty as the court interpreter to prepare the court order for the court in which he had been assigned.[11]

The RTC disposed as follows:

WHEREFORE, finding the accused **GUILTY BEYOND REASONABLE DOUBT** for the crime of falsification defined and penalized under Article 172 in relation to par. 2 of Article 171 of the Revised Penal Code with the generic aggravating circumstance of taking advantage of his public position, the accused, **ALBERTO V. GARONG**, is hereby sentenced to suffer the indeterminate penalty of **TWO (2) YEARS of prision correccional as minimum, to SIX (6) YEARS of prision correccional as maximum, and to pay a fine of ₱5,000.00** with the subsidiary penalty in case of insolvency and to reimburse the amount of ₱4,000.00 to the private offended party, Mr. Silverio Rosales, and to pay the COSTS.

SO ORDERED.[12]

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[10] *Id*. at 28-30.

[11] *Id.* at 31.

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

Decision of the CA

On appeal, the petitioner mainly argued that the Prosecution did not prove his guilt beyond reasonable doubt because of the failure to present the original of the document in question.

On January 25, 2006, however, the CA, rejecting the petitioner's argument because no original of the court order had actually existed, affirmed his conviction with modification of the penalty. It disregarded the appreciation by the RTC of the aggravating circumstance of taking advantage of his official position by him because his being a court interpreter did not facilitate the falsification, observing that any person with access to or knowledge of the procedure for judicial reconstitution of titles could have committed the crime. It pointed out that his position as a court interpreter did not give him custody of the document, or enabled him to make or prepare the falsified document.[13] It decreed thusly:[14]

> WHEREFORE, finding accused Alberto V. Garong guilty beyond reasonable doubt of the crime of Falsification under Art. 172 in relation to Art. 171 (par. 2), the Court hereby sentences him to suffer an indeterminate prison term ranging from TWO (2) YEARS and FOUR (4) MONTHS of *Prision Correccional* as minimum, to FOUR (4) YEARS, NINE (9) MONTHS, and TEN (10) DAYS of *Prision Correccional* as maximum; to pay a fine of ₱5,000.00; and to pay the costs.
>
> The accused is further ordered to pay Silverio Rosales the amount of ₱4,000.00 plus interest at the legal rate reckoned from the filing of the Information until fully paid.
>
> SO ORDERED.

Hence, this appeal by the petitioner.

Issue

The petitioner continues to insist that the CA erred in affirming the conviction despite the failure to establish his guilt beyond reasonable doubt.

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

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

Ruling of the Court

We uphold the petitioner's conviction but modify the decision as to the characterization of the crime.

The elements of falsification by a public officer or employee or notary public as defined in Article 171 of the *Revised Penal Code* are that: (1) the offender is a public officer or employee or notary public; (2) the offender takes advantage of his official position; and (3) he or she falsifies a document by committing any of the acts mentioned in Article 171 of the *Revised Penal Code*.[15] On the other hand, the elements of falsification by a private individual under paragraph 1, Article 172 of the *Revised Penal Code* are that: (1) the offender is a private individual, or a public officer or employee who did not take advantage of his official position; (2) the offender committed any of the acts mentioned in Article 171 of the *Revised Penal Code*; (3) the falsification was committed in a public or official or commercial document.[16]

The information charged the petitioner with the crime of falsification by a private individual as defined and penalized under Article 172, in relation to Article 171, paragraph 2, both of the *Revised Penal Code*, which pertinently state:

> Article 172. Falsification by private individual and use of falsified documents. -—The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:
>
> 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
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> x x x x x x x x x

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[15] *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 263.

[16] *Daan v. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, 247.

Article 171. Falsification by public officer, employee, or notary or ecclesiastical minister.

x x x x x x x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

x x x x x x x x x.

It is not disputed in this case that the petitioner admitted having seen the original of the court order issued in Petition No. 12,701 bearing the signature of the Presiding Judge Dela Cruz. He explicitly testified so on May 9, 2002, as follows:

Atty. T. I. Gines (Counsel)	Did you see the original of the order?
Alberto V. Garong	Yes, ma'am.
Atty. T.I. Gines	Did you verify if the same was signed?
Alberto V. Garong	Yes, ma'am. It bears the signature of Jude Dela Cruz, Your Honor, the Presiding Judge.[17]

It is not also disputed that the petitioner was the individual who had delivered to Silverio and Ricar the court order (Exhibit B) subject of this case. Such circumstances established the sole authorship of Exhibit B by the petitioner. This was the unanimous finding of the RTC and the CA. On its part as the trial court, the RTC particularly observed thusly:

> With the foregoing welter of evidence, both documentary and circumstantial, **this Court is morally convinced that the accused prepared, and he is the author of the document (Exhibit "B"), subject matter of this case**. This document is a public document because it was created, executed or issued in response to the exigency of the public service (U.S. v. Asensi, 34 PHIL 765). By his certification, the accused caused it to appear that persons have participated in an act or proceeding when they did not in fact participate, he committed falsification.[18] (Bold emphasis supplied)

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[17] *Rollo*, pp. 78-79.

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

On appeal, the CA affirmed the factual findings of the RTC, discoursing as follows:

> The instant appeal is bereft of merit.
>
> A circumspect scrutiny of accused-appellant's version leaves Us unconvinced that he is innocent of the crime of falsification.
>
> The straightforward and categorical testimony of the prosecution's main witness, Ricar Colocar, undermines accused-appellant's plea of "not guilty." x x x
>
> x x x x x x x x x
>
> In the absence of any evidence that the prosecution's main witness harbored ill will towards the accused, his testimony must be presumed true. As held in the case of *People v. Pama*, where there is no evidence demonstrating any dubious reason or improper motive why a prosecution witness should testify against the accused, the witness' testimony should be accorded full faith and credit. In this case, therefore, Ricar's testimony must stand, there being no evidence of any ill motive on his part to testify falsely against accused-appellant.
>
> It is settled that the determination of the credibility of witnesses is the domain of the trial court and the matter of assigning values to their testimonies is best performed by it. Thus, the evaluation by the trial judge on the credibility of witnesses is well nigh conclusive on the appellate court unless cogent reasons are shown. In the case at bar, We find no compelling reason to depart from the general rule.
>
> In stark contrast to the spontaneous narration of facts by Ricar and later corroborated by Atty. Centron, accused-appellant offered only for his defense, his bare denial. Thus:
>
> x x x x x x x x x
>
> Accused-appellant's version appears inconsistent. At first, he was saying that he could be of help as long as the pertinent documents are presented. Later, he was already saying that he merely indorsed Ricar to Mrs. Monica Sigue as he had no knowledge regarding the reconstitution of titles.
>
> Accused-appellant further testified that he affixed his signature on the purported Order after verifying that the original thereof was duly signed by Judge Mario Dela Cruz. If verification was indeed made by him, he could have discovered that the 'original' Petition

No. 12701 had Emerenciano Sarabia as petitioner and not Silverio Rosales.

The argument that the original copy must be presented for comparison holds no water. *How can such original be presented when the supposed original does not exist at all?*

All told, accused-appellant is guilty of falsification under Article 172 in relation to paragraph 2 of Article 171 of the Revised Penal Code. Thus, We agree with the reasoning of the trial court why it could not be a falsification under Art. 171. For easy reference, We again quote herein its ratiocination:

> "The accused is a Court Interpreter and does not have the duty to prepare or intervene in the preparation of the subject document, neither doe he (accused) has (sic) official custody of the documents falsified. It is not also the duty of the accused to certify document released or issued from the Court. Thus, by certifying that the duplicate copy is the true copy of the original, which does not exist, he did not abuse his official position as required under Article 171 (supra). He is, however, liable for falsification committed by a private individual under Article 172 x x."

The foregoing is in line with the position of an expert in the field of criminal law who wrote:

> *The offender takes advantage of his official position* in falsifying a document when (1) he has the *duty to make or to prepare* or otherwise to intervene in the preparation of the document; or (2) he has the official custody of the document which he falsifies. (See People v. Santiago Uy, 53 O.G. 7236, and U.S. vs. Inosanto, 20 Phil. 376)
>
> Even if the offender was *a public officer but if he did not take advantage of his official position*, he would be guilty of falsification of a document by a private person under Art. 172.[19]

Having concluded on the petitioner's authorship of the falsified court order, the RTC and the CA characterized the acts of the petitioner as falsification committed by a private individual *by causing it to appear that persons had participated in the act*

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[19] *Id.* at 80-89.

or proceeding when they did not in fact so participate, as defined in paragraph 2 of Article 171, *Revised Penal Code*.

The characterization of the acts of the petitioner was erroneous.

In producing Exhibit B, and signing thereon beneath the words "CERTIFIED TRUE COPY" stamped on Exhibit B, and presenting the document to Ricar and Silverio, the petitioner unquestionably made Exhibit B appear like a true copy of the signed original order issued in Petition No. 12,701 by Presiding Judge Dela Cruz. But Petition No. 12,701 that supposedly involved the application for the judicial reconstitution of Transfer Certificate of Title No. T-40361 in the name of Silverio Rosales as reflected on Exhibit B had no relevance to the signed original order issued in the proceeding for the issuance of new owner's duplicate copy of Transfer Certificate of Title No. T-3436 in the name of Emerenciano Sarabia. In short, Exhibit B was a simulated court order. Considering that the proceeding relating to Exhibit B was non-existent in the docket of the court, the acts of the petitioner constituted falsification. Indeed, the simulation of a public or official document like a court order, done in such a manner as to easily lead to error as to its authenticity, constitutes falsification; and it was not essential that the falsification should have been made in a real public or official document.[20]

Based on the foregoing, the petitioner committed falsification by a private individual in the manner as provided in paragraph 7, Article 171 of the *Revised Penal Code*, to wit:

x x x x x x x x x

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original;

x x x x x x x x x

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[20] *United States v. Corral*, 15 Phil. 383 (1910).

The RTC appreciated the fact of the petitioner being a court interpreter as the generic aggravating circumstance of taking advantage of his public position under paragraph 1, Article 14 of the *Revised Penal Code* against the petitioner. It explained why thusly:

> x x x . He is, however, liable for falsification committed by a private individual under Article 172 with the generic aggravating circumstance of taking advantage of one's public position under Article 14, paragraph 1 of the Revised Penal Code. By reason of the accused public position as a Court Interpreter, the commission of falsification, which cannot ordinarily be committed by private individuals, was facilitated. The accused had used his influence, prestige, or ascendancy, which his office (the Court) gives him in falsifying an Order.[21]

The CA did not concur with the RTC, however, and ruled that the petitioner's position as court interpreter was not a generic aggravating circumstance, stating:

> As to the maximum of the penalty, it should only be within the range of the medium period. **The reason is that the aggravating circumstance of taking advantage of his official position cannot be taken against him. We can see the logic of the court below in arriving at such a determination but We are guided by the teaching in the case of People v. Sumaoy, G.R. No. 105961, October 22, 1996, that: "If the accused could have perpetrated the crime without occupying his position, then there is no abuse of public position." In the situation at hand, the accused, as a court interpreter, might have some knowledge of the practical aspect of a petition for reconstitution and had easy access to court forms, patterns or records but, even as an outsider, he could have still committed the crime.**There is a gray area but We give him the benefit of a doubt.[22]

We uphold the CA's ruling.

The falsification by the petitioner could have been committed without taking advantage of his public position as the court

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[21] *Rollo*, p. 31 (the underscoring is part of the original).

[22] *Id*. at 89 (bold emphasis supplied to highlight the relevant part).

interpreter. His work for the court that had supposedly issued Exhibit B was of no consequence to his criminal liability, for the crime could have been committed even by any other individual, including one who did not work in the court in any official capacity. In his case, the petitioner committed the simulation of Exhibit B despite his not having the duty to make, or prepare, or otherwise intervene in the preparation of court orders.

The penalty for falsification committed by a private individual is *prision correccional* in its medium and maximum periods, and fine of not more than ₱5,000.00.[23] Having determined that taking advantage of his public office by the petitioner should not be appreciated as a generic aggravating circumstance, the CA fixed the indeterminate penalty of two years and four months of *prision correccional*, as the minimum, to four years, nine months and 10 days of *prision correccional*, as the maximum, and fine of ₱5,000.00. The CA thereby imposed the limit of the medium period of the penalty of imprisonment, and the maximum of the fine. However, the CA should have tendered a justification for imposing the limits of the compound penalty. It should have done so, considering that the *seventh rule* on the application of penalties containing three periods laid down in Article 64 of the *Revised Penal Code* expressly mandated that the courts "*shall determine* [*within the limits of each period*] *the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." Without tendering the requisite justification for imposing the limits of the penalties of imprisonment and the fine, the floor of the penalties would be warranted;[24] otherwise, the CA would be seen as arbitrary.

Nonetheless, the omission of the justification was an obvious oversight by the CA. We should rectify the oversight as a matter

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[23] Article 172, Revised Penal Code.

[24] See *People v. Bayker*, G.R. No. 170192, February 10, 2016.

of course to conform to the law. The simulation perpetrated by the petitioner undeniably manifested his abject disregard of his responsibility as an employee of the Judiciary even as it revealed a perversity indicative of the greater extent of the evil produced by the crime. Upon due consideration of the circumstances of the case, we still uphold the CA thereon. He surely deserved the limits of the compound penalty.

In addition, although the RTC imposed subsidiary imprisonment in case the petitioner should be unable to pay the fine due to insolvency, the CA did not reimpose it in affirming the conviction without explaining why. This is another omission that demands rectification. Article 39 of the *Revised Penal Code* states that "[i]f the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he *shall* be subject to a subsidiary personal liability xxx." To conform with the provision, the imposition of the subsidiary imprisonment was necessary in order not to trivialize the prescription of the fine as part of the compound penalty for falsification. Accordingly, the subsidiary imprisonment is restored.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on January 25, 2006 **IN ALL RESPECTS** subject to the **MODIFICATIONS** that: (1) the crime committed by petitioner **ALBERTO GARONG *y* VILLANUEVA** was falsification committed by a private individual as defined and penalized by Article 172, in relation to paragraph 7 of Article 171, both of the *Revised Penal Code*; and (2) the petitioner shall suffer subsidiary imprisonment in case of his insolvency.

The petitioner shall pay the costs of suit.

SO ORDERED.

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

Caguioa, J., on leave.

THIRD DIVISION

[G.R. No. 188751. November 16, 2016]

BONIFACIO NIEVA *y* MONTERO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF IS ACCORDED GREAT RESPECT ON APPEAL DUE TO ITS UNIQUE POSITION TO OBSERVE THE WITNESSES' DEPORTMENT ON STAND.— [I]t is a basic rule that questions on the credibility of witnesses is best addressed to the trial courts because of their unique position to not only examine real and testimonial evidence but also observe the elusive and incommunicable evidence of the witnesses' deportment while on stand, a privilege which is denied to the appellate court. The trial court's assessment of the credibility of the witnesses is therefore accorded great respect on appeal, in the absence of evidence showing that the trial court disregarded or overlooked significant facts that would merit the reversal of its findings. The reviewing court is bound by the findings of the trial court, more so when the same is affirmed by the appellate court on appeal.

2. ID.; ID.; ID.; NOT NEGATED BY MINOR INCONSISTENSIES IN THE TESTIMONIES.— In the case before us, both the RTC and the CA found that the witnesses categorically and positively identified Nieva to have fired a gun towards Judy. Nieva fired the gun several times, with each attempt misfiring, until finally the gun went off and hit Judy at her upper right leg. The perceived inconsistency on where the gun was aimed at is a trivial matter which cannot negate the credibility of the witnesses, especially where the witnesses were consistent on their account relating to the principal occurrence, which is the shooting of Judy, and their positive identification of Nieva as the assailant. Further, far from weakening the credibility of the witnesses, minor inconsistencies actually bolster their credibility. x x x [T]he slight variance on

Judy's testimony as to the aim of the gun could have been attributed to the suddenness of the situation and her confusion. Thus, the minor lapse in her testimony does not affect her credibility.

3. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE CATEGORICAL AND CONSISTENT POSITIVE IDENTIFICATION OF CREDIBLE WITNESSES.— It is well-entrenched in jurisprudence that denial is an intrinsically weak defense. If not substantiated by clear and convincing evidence, denial is merely a negative and self-serving evidence which has no weight in law. It cannot prevail over the categorical and consistent positive identification of credible witnesses. Here, Nieva's version of the story is not substantiated with proof other than his own bare assertions. Nieva's testimony cannot stand against the testimonies of Judy, Luna and Raymundo which are consistent in material points.

4. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; ACCIDENT; REQUISITES; THE BASIS FOR EXEMPTION IS THE COMPLETE ABSENCE OF NEGLIGENCE AND INTENT.— Nieva cannot also invoke the exempting circumstance of accident to free him from criminal liability. x x x [under] Article 12 (4), Book I of the Revised Penal Code of the Philippines (Revised Penal Code) x x x The basis for exemption under the x x x provision is the complete absence of negligence and intent. The accused commits a crime but there is no criminal liability. An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens. It is an affirmative defense which the accused is burdened to prove by clear and convincing evidence. To successfully claim the defense of accident, the accused must show that the following circumstances are present: (1) a person is performing a lawful act; (2) with due care; (3) he causes an injury to another by mere accident; and (4) he had no fault in or intention of causing the injury. **None of these circumstances are present in this case.**

5. ID.; ID.; FRUSTRATED HOMICIDE; INTENT TO KILL; DULY ESTABLISHED IN CASE AT BAR.— In *Rivera v.*

People, we explained that intent to kill may be proved by: (a) the means used by the malefactors; (b) the nature, location and number of wounds sustained by the victim; (c) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; (d) the circumstances under which the crime was committed; and (e) the motives of the accused. We concur with the findings of the CA that intent to kill was present. It is undisputed that Nieva used a gun, a deadly weapon, in assaulting Judy. At that time, Judy was unarmed and could not have defended herself. Nieva fired the gun several times towards Judy. If the bullets had not jammed, Nieva could have killed Judy through multiple gunshot wounds. As it was, the gun's bullets jammed and the gun fired only once; albeit, leaving Judy with a wound on her upper right leg, which according to Dr. Serrano could have caused her death if not for the timely medical intervention at the MCU Hospital. Prior to the incident, Nieva also admitted that there had been several quarrels between him and Judy. These circumstances showing the weapon used, the nature of the wound sustained by Judy, and the conduct of Nieva before and during the incident, manifest Nieva's intent to kill Judy.

6. ID.; ID.; ID.; ELEMENTS.— [T]he prosecution established beyond reasonable doubt the elements of frustrated homicide, which are: *first*, the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; *second*, the victim sustained a fatal or mortal wound but did not die because of timely medical assistance; and *third*, none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code, as amended, is present.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] of the February 25, 2009 Decision[2] and July 9, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 31336, finding petitioner Bonifacio Nieva (Nieva) guilty beyond reasonable doubt of the crime of frustrated homicide.

Facts

In an Information dated November 2, 2005, Nieva was charged with the crime of Frustrated Murder in the Regional Trial Court (RTC) of Malabon, Branch 73.[4] The accusatory portion of the Information, docketed as Criminal Case No. 33415-MN, reads:

> That on or about the 28th day of October 2005, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, acting with discernment, while armed with a gun, with intent to kill, treachery and evident premeditation, did, then and there, willfully, unlawfully and feloniously attack, assault, shoot with the said gun one **JUDY DELATAVO IGNACIO**, hitting the latter on her left leg, thus accused performed all the acts of execution which would produce the crime of Murder, but which nevertheless did not produce it by reason of some other causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to the victim which prevented her death.
>
> CONTRARY TO LAW.[5]

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[1] *Rollo*, pp. 10-35.

[2] *Id.* at 86-103; penned by Associate Justice Ramon R. Garcia with Associate Justices Jose L. Sabio, Jr. and Magdangal M. De Leon, concurring.

[3] *Rollo*, pp. 115-116.

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

[5] *Id.* at 87-88.

During arraignment, Nieva entered a plea of not guilty. Trial then ensued. The prosecution presented five (5) witnesses, namely: the victim, Judy Ignacio (Judy); the eyewitnesses, Luna Ignacio (Luna) and Raymundo Delatavo (Raymundo); the attending physician, Dr. Dindohope Serrano (Dr. Serrano); and the arresting officer, PO2 Jesus Del Fiero (PO2 Del Fiero).[6]

Prosecution's version

On October 28, 2005, at around six o'clock in the evening, Luna and Raymundo were doing carpentry works for Judy at Kaunlaran, Hernandez, Catmon, Malabon City. Judy was supervising the construction of her nipa hut when Nieva arrived and approached her.[7] Judy was then the President of the Catmon Homeowners Association. Nieva inquired on the electrification project of the Homeowners Association, to which Judy replied that the matter was already taken care of by the Manila Electric Company (MERALCO).[8] However, Nieva suddenly shouted at Judy and cursed her saying: "*Mga putang ina nyo, lima kayo mga president kayo, kung gusto nyo magkaroon ng mga problema, bibigyan ko kayo ng mga problema ngayon.*"[9] He then drew a .357 caliber revolver (wrapped in a white piece of cloth) from his waist.[10] Overwhelmed with fear, Judy clung to Luna's back and used him as a shield against Nieva.[11]

Nieva, who was about two arms' length away, pointed his gun at Judy and fired several times but the gun jammed.[12] At this point, Raymundo, who was at the roof of the nipa hut, jumped from the hut to help her aunt, Judy. However, before Raymundo reached

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6 *Id.* at 88.

7 *Id.* at 73.

8 *Id.* at 75.

9 *Id.* at 73.

10 *Id.* at 75.

11 *Id.* at 73.

12 *Id.* at 73-75.

Judy, he heard a gunshot and saw Judy fall to the ground.[13] As she simultaneous fell, Judy was able to push Luna towards Nieva. Luna and Nieva then grappled for the gun. With the help of Raymundo, Luna seized the gun from Nieva.[14]

Judy was brought to the Manila Central University (MCU) Hospital. Dr. Serrano, a surgeon at the MCU Hospital, attended to the wound of Judy. He stated that Judy suffered a gunshot wound at her right leg, which caused a bone fracture at her right tibia and lacerated wound at the left thigh.[15] He confirmed that Judy's gunshot wound could have led to her death if not for the timely medical attention.[16]

Meanwhile, PO2 Del Fiero, who was also a resident of Kaunlaran, Hernandez, Catmon, Malabon City, went to the scene of the crime upon learning that Judy was shot. Luna surrendered the gun to PO2 Del Fiero.[17] Thereafter, PO2 Del Fiero arrested Nieva in the latter's home.[18]

Defense's version

The defense had three witnesses, namely: petitioner Nieva himself; his wife, Luz, and son, Julius. However, the testimonies of Luz and Julius were dispensed with since they would merely corroborate Nieva's defense.[19]

Nieva narrated that at about six-thirty in the evening, while on his way to buy cigarettes, he passed by the Kaunlaran ng Samahan Hernandez Catmon Homeowners, where he met Judy. He inquired on the electrification of the Homeowners Association and Judy informed him that it was already done.[20] Thereafter, a heated

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[13] *Id.* at 75.

[14] *Id.* at 76.

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

[16] *Id.* at 89.

[17] *Id.* at 77.

[18] *Id.* at 89.

[19] *Id.* at 45.

[20] *Id.* at 43.

argument ensued between him and Judy. The latter accused him of having a hand on an electric post that fell down. Irritated, Nieva pulled a handkerchief from his pocket and wrapped it on his right hand, preparatory to boxing Judy. Suddenly, however, Luna got in front of Judy and pointed a gun towards Nieva.[21]

Nieva then grabbed the gun from Luna. In the process, the gun went off and Nieva was unaware if the bullet hit anyone. He and Luna went down as they continued to wrestle for the possession of the gun. However, Raymundo intervened and smashed Nieva at the back with a hammer causing Nieva to let go of Luna.[22]

As Luna now had the gun, Nieva clung at Raymundo. Luna failed to shoot Nieva because the latter's wife, who happens to be Luna's first cousin, shielded Nieva with her body.[23]

RTC Ruling

In its Decision[24] dated October 11, 2007, the RTC convicted Nieva of Frustrated Homicide only, to wit:

> x x x [T]he Court cannot agree that this is a case of frustrated murder. The reason is simple.
>
> As stated above, it is not disputed that an argument between complainant and the accused immediately preceded the shooting incident. There was, therefore, no evident premeditation and there could be no treachery as well. Consequently, the Court finds that the offense committed is frustrated homicide only.[25]

In the absence of any aggravating or mitigating circumstance, Nieva was sentenced to imprisonment of six (6) years and one (1) day of *prision correccional*, as minimum, to twelve (12) years and 1 day of *prision mayor*, as maximum. He was also ordered to pay Judy the amount of ₱40,000.00 by way of reimbursement for her

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[21] *Id.* at 44.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 60-66. Penned by Pairing Judge Benjamin M. Aquino, Jr.

[25] *Id.* at 65-66.

hospitalization expenses; and another ₱40,000.00 as moral damages.[26]

Nieva appealed to the CA. He took issue with the inconsistencies of the testimonies of the prosecution witnesses, particularly Judy, Luna and Raymundo. He also claimed that the exempting circumstance of accident is applicable in his case;[27] but assuming that he is criminally liable, he should only be convicted of physical injuries because he had no intent to kill Judy.[28]

CA Ruling

In its Decision dated February 25, 2009, the CA affirmed Nieva's conviction, with modification only as to the penalty imposed. The decretal portion reads:

> **WHEREFORE,** premises considered, the instant appeal is hereby **DENIED**. The Decision dated October 11, 2007 of the Regional Trial Court, Branch 73, Malabon City finding accused appellant Bonifacio Nieva y Montero guilty beyond reasonable doubt of the crime of Frustrated Homicide is **AFFIRMED with MODIFICATION** in that he is sentenced to suffer imprisonment of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.
>
> **SO ORDERED**.[29]

Nieva filed a Motion for Reconsideration[30] which the CA denied in its Resolution dated July 9, 2009; hence, this petition for review.

Issue

Whether the CA erred in affirming the conviction of Nieva.

Our Ruling

We rule in the negative and resolve to deny the petition.

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[26] *Id.* at 66.

[27] *Id*. at 45.

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

[29] *Id*. at 102-103.

[30] *Id*. at 104-109.

Nieva submits the following defenses to prove that he is innocent of the crime of frustrated homicide:

a. The accounts of the prosecution witnesses are highly questionable;

b. Nieva is exempt from criminal liability because the shooting of Judy is a mere accident; and

c. Nieva had no intent to kill Judy, thus, he should only be convicted of physical injuries.

We are not persuaded.

As his first defense, Nieva harps on the alleged inconsistencies among the testimonies of Judy, Luna and Raymundo, particularly on the position of the gun during the shooting incident. He recounts that while Judy testified that the gun was pointed to the ground when it fired, Luna claimed that the gun was pointed to him (Luna) since he was in front of Judy; whereas, Raymundo averred that when the gun was fired, it was pointed at Judy.[31] Nieva maintains that the conflicting versions of the prosecution witnesses strongly suggest that Nieva did not really aim a gun towards Judy and that Judy might have only fabricated the charge against Nieva to pin him down because of the animosity between them.[32]

At the outset, it is a basic rule that questions on the credibility of witnesses is best addressed to the trial courts because of their unique position to not only examine real and testimonial evidence but also observe the elusive and incommunicable evidence of the witnesses' deportment while on stand, a privilege which is denied to the appellate court.[33] The trial court's assessment of the credibility of the witnesses is therefore accorded great respect on appeal, in the absence of evidence showing that the trial court disregarded or overlooked significant facts that would merit the reversal of its

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[31] *Id*. at 24.

[32] *Id.* at 24-25.

[33] *People v. Barcela*, G.R. No. 208760, April 23, 2014, 723 SCRA 647, 660, citing *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

findings.[34] The reviewing court is bound by the findings of the trial court, more so when the same is affirmed by the appellate court on appeal.[35]

In the case before us, both the RTC[36] and the CA[37] found that the witnesses categorically and positively identified Nieva to have fired a gun towards Judy. Nieva fired the gun several times, with each attempt misfiring, until finally the gun went off and hit Judy at her upper right leg. The perceived inconsistency on where the gun was aimed at is a trivial matter which cannot negate the credibility of the witnesses, especially where the witnesses were consistent on their account relating to the principal occurrence, which is the shooting of Judy, and their positive identification of Nieva as the assailant.[38]

Further, far from weakening the credibility of the witnesses, minor inconsistencies actually bolster their credibility. Thus, in *People v. Malate*,[39] we stated that:

> Furthermore, accused-appellant cannot plausibly bank on the minor inconsistencies in the testimony of the complainant to discredit her account of the incident. **Even if they do exist, minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed. Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.** As aptly held in the American case of *State v. Erikson*, the rule that a victim's testimony in

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[34] *People v. Barcela, supra,* at 660-661, citing *People v. Dominguez, Jr.,* G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.

[35] *People v. Laog*, G.R. No. 178321, October 5, 2011, 658 SCRA 654, 665-666, citing *People v. Dominguez, Jr*., *supra.*

[36] *Rollo,* p. 65.

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

[38] See *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 194-195, citing *People v. Bernabe*, G.R. No. 185726, October 16, 2009, 604 SCRA 216, 231.

[39] G.R. No. 185724, June 5, 2009, 588 SCRA 817.

sexual assault cases must be corroborated "does not apply where the inconsistency or contradiction bears upon proof not essential to the case." **Well to point, even the most truthful witnesses can sometimes make mistakes, but such minor lapses do not necessarily affect their credibility**.[40] (Emphasis supplied; citations omitted.)

In this connection, we concur with the CA's finding that the slight variance on Judy's testimony as to the aim of the gun could have been attributed to the suddenness of the situation and her confusion.[41] Thus, the minor lapse in her testimony does not affect her credibility.

As his next defense, Nieva denies that he fired a gun towards Judy. Instead, he accuses Luna to have brought the gun, pointed it against him and together they grappled for the possession of the same until suddenly the gun fired. He pleads that the shooting of Judy is a mere accident; hence, he should be exempt from criminal liability.[42]

We disagree. It is well-entrenched in jurisprudence that denial is an intrinsically weak defense.[43] If not substantiated by clear and convincing evidence, denial is merely a negative and self-serving evidence which has no weight in law. It cannot prevail over the categorical and consistent positive identification of credible witnesses.[44] Here, Nieva's version of the story is not substantiated with proof other than his own bare assertions. Nieva's testimony cannot stand against the testimonies of Judy, Luna and Raymundo which are consistent in material points.

Nieva cannot also invoke the exempting circumstance of accident to free him from criminal liability. Article 12 (4), Book I of the

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[40] *Id.* at 827-828.

[41] *Rollo*, p. 100.

[42] *Id.* at 25-27.

[43] *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 672.

[44] *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847, citing *People v. Caisip*, G.R. No. 119757, May 21, 1998, 290 SCRA 451, 456.

Revised Penal Code of the Philippines[45] (Revised Penal Code) reads:

Art. 12. *Circumstances which exempt from criminal liability*. – The following are exempt from criminal liability:

x x x x x x x x x

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

The basis for exemption under the above-stated provision is the complete absence of negligence and intent. The accused commits a crime but there is no criminal liability. An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens.[46] It is an affirmative defense which the accused is burdened to prove by clear and convincing evidence.[47]

To successfully claim the defense of accident, the accused must show that the following circumstances are present: (1) a person is performing a lawful act; (2) with due care; (3) he causes an injury to another by mere accident; and (4) he had no fault in or intention of causing the injury.[48] **None of these circumstances are present in this case.**

To start, Nieva was not performing a lawful act when he drew a gun and pointed it at Judy. Thus, in *People v. Nepomuceno, Jr.*,[49] we ruled that drawing a weapon in the course of a quarrel, the

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[45] Act No. 3815 (1930).

[46] *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 104, citing *Jarco Marketing Corporation v. Court of Appeals*, G.R. No. 129792, December 21, 1999, 321 SCRA 375, 385.

[47] *People v. Castillo*, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 227, citing *Toledo v. People*, *supra* at 104.

[48] *People v. Castillo, supra*, at 227 citing *Toledo v. People*, *supra* note 46, at 105.

[49] G.R. No. 127818, November 11, 1998, 298 SCRA 450.

same not being in self-defense, is unlawful, as it at least constitutes light threats.[50] Subsequently, Nieva fired the gun several times. In his initial attempts, the bullet of the gun jammed; yet, Nieva did not stop until the gun finally fired and hit its target. This clearly shows that Nieva intentionally and persistently performed the act complained of in order to successfully maim Judy. He cannot now claim that he is without fault.

As his last defense, Nieva submits that he has no intent to kill Judy considering that the gun was pointed to the ground when it was fired and Judy's wound was not fatal.[51]

Nieva's contentions are untenable.

In *Rivera v. People*,[52] we explained that intent to kill may be proved by: (a) the means used by the malefactors; (b) the nature, location and number of wounds sustained by the victim; (c) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; (d) the circumstances under which the crime was committed; and (e) the motives of the accused.[53]

We concur with the findings of the CA that intent to kill was present.[54] It is undisputed that Nieva used a gun, a deadly weapon, in assaulting Judy. At that time, Judy was unarmed and could not have defended herself. Nieva fired the gun several times towards Judy. If the bullets had not jammed, Nieva could have killed Judy through multiple gunshot wounds. As it was, the gun's bullets jammed and the gun fired only once; albeit, leaving Judy with a wound on her upper right leg, which according to Dr. Serrano could have caused her death if not for the timely medical intervention at the MCU Hospital. Prior to the incident, Nieva also admitted that there had been several quarrels between him and Judy.[55] These

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[50] *People v. Nepomuceno, Jr., supra*, at 459.

[51] *Rollo*, pp. 27-31.

[52] G.R. No. 166326, January 25, 2006, 480 SCRA 188.

[53] *Rivera v. People*, *supra*, at 197, citing *People v. Delim*, G.R. No. 142773, January 28, 2003, 396 SCRA 386, 400.

[54] *Rollo*, p. 101.

[55] *Id.* at 25, 51.

circumstances showing the weapon used, the nature of the wound sustained by Judy, and the conduct of Nieva before and during the incident, manifest Nieva's intent to kill Judy.

Nieva repeatedly uses the testimony of Judy that the gun was aimed at the ground when it fired in order to exculpate him from liability. However, as we had explained earlier, Nieva fired the gun several times before the bullet finally went off. With the urgency and suddenness of the situation, minor lapses in Judy's testimony cannot be used against her.

In fine, the prosecution established beyond reasonable doubt the elements of frustrated homicide, which are: *first*, the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; *second*, the victim sustained a fatal or mortal wound but did not die because of timely medical assistance; and *third*, none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code, as amended, is present.[56]

Finally, in light of recent jurisprudence, we modify the award of damages granted by the RTC and affirmed by the CA. *People v. Jugueta*[57] teaches that where the crime of frustrated homicide is committed, moral damages as well as civil indemnity should be awarded to the victim in the amount of ₱30,000.00 each. Thus, we rule that Judy is entitled to recover civil indemnity in the amount of ₱30,000.00. However, we decrease the amount of moral damages given by the courts *a quo* from ₱40,000.00 to ₱30,000.00. The monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of this decision until fully paid.[58]

WHEREFORE, the petition is **DENIED** for lack of merit. The February 25, 2009 Decision and July 9, 2009 Resolution of the

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[56] *De Guzman, Jr. v. People*, G.R. No. 178512, November 26, 2014, 742 SCRA 501, 506-507, citing *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 339.

[57] G.R. No. 202124, April 5, 2016.

[58] *People v. Caballero*, G.R. No. 210673, June 29, 2016.

Court of Appeals in CA-G.R. CR No. 31336 are hereby **AFFIRMED** with **MODIFICATIONS** in that:

1. The award of moral damages is decreased from ₱40,000.00 to ₱30,000.00;
2. Judy Ignacio is awarded civil indemnity in the amount of ₱30,000.00; and
3. An interest of six percent (6%) *per annum* is imposed on all monetary awards from the date of the finality of this Decision until full payment.

SO ORDERED.

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

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

THIRD DIVISION

[G.R. No. 189077. November 16, 2016]

LINA M. BERNARDO, *petitioner, vs.* **HONORABLE COURT OF APPEALS (Former Fourth Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY AND IMMUTABILITY OF JUDGMENTS; A DECISION THAT HAS ACQUIRED FINALITY CAN NO LONGER BE MODIFIED IN ANY RESPECT EVEN BY THE HIGHEST COURT OF THE LAND.— Applying the Rules of Court and the IRCA, since

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

Bernardo neither moved for reconsideration nor appealed to this Court within the reglementary period, the CA Decision became final and executory. Thus, the CA is duty bound to enter it in the Book of Entries of Judgments. Accordingly, this petition is a futile attempt to reopen a case, which has been laid to rest since October 11, 2008. We have consistently ruled that a decision that has acquired finality can no longer be modified in any respect or attacked directly or indirectly, even by the highest court of the land. The doctrine of finality and immutability of judgments is grounded on the fundamental considerations of public policy and sound practice to the effect that, at the risk of occasional error, the judgments of the courts must become final at some definite date set by law.

2. ID.; RULES OF PROCEDURE; MAY BE RELAXED IN ORDER TO SERVE SUBSTANTIAL JUSTICE.— It is only in rare cases that this Court resolves to recall an entry of judgments such as for instance, to prevent a miscarriage of justice. We relax the rules of procedure in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. ***None of these circumstances obtain in this case.***

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; IT IS INCUMBENT UPON THE COUNSEL, CONSISTENT WITH HIS DUTY TO SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE, TO INQUIRE FROM THE COURT ABOUT THE STATUS OF THE CASE.— That a motion for reconsideration was filed belatedly due to the "simple inadvertence" of Polo is not a compelling reason to recall the entry of judgment, especially in the light of the admission of Atty. Ardaña that the notice of the CA Decision was duly received by the PAO on September 25, 2008; albeit, he did not know of it because the secretary did not inform him. We concur with the CA that Atty. Ardaña was negligent in failing to monitor the disposition of the case assigned to him. In *Ramos v. Lim,* we stated that notice to counsel is an effective notice to the client. It is incumbent upon the

counsel, consistent with his duty to serve his client with competence and diligence, to inquire from the court about the status of the case. Atty. Ardaña's mere reliance on Atty. Pontejo's inventory of cases falls short of the diligence required of him.

4. ID.; ID.; ID.; NEGLIGENCE AND MISTAKES OF THE COUNSEL ARE BINDING ON THE CLIENT EXCEPT WHEN SUCH COUNSEL'S NEGLIGENCE IS SO GROSS AND PALPABLE RESULTING TO A DENIAL OF DUE PROCESS TO HIS CLIENT.— Bernardo is bound by Atty. Ardaña's negligence. Settled is the rule that the negligence and mistakes of the counsel are binding on the client. The only exception, being when such counsel's negligence, is so gross and palpable resulting to a denial of due process to his client. Here, both elements are missing. Atty. Ardaña's negligence is not gross in character. In *Sofio v. Valenzuela*, we held that the failure of the counsel to file a motion for reconsideration amounts to simple negligence only. Further, Bernardo was not deprived of due process because she received a copy of the CA Decision through her former counsel. She was also given the opportunity to present her side of the story. She filed a Motion to Recall Entry of Judgment in the CA, coupled with a motion for reconsideration. Where a party is given the opportunity to be heard either in pleadings or oral arguments, there is no denial of due process.

APPEARANCES OF COUNSEL

The Office of the Solicitor General for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for *Certiorari*[1] of the September 22, 2008 Decision[2] and May 13, 2009 Resolution[3] of the Court of Appeals

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[1] Under Rule 65 of the Rules of Court. *Rollo*, pp. 9-31.

[2] Penned by Associate Justice Sesinando E. Villon with Associate Justices Andres B. Reyes, Jr. and Jose Catral Mendoza (now a Member of this Court), concurring. *Id.* at 68-76.

[3] *Id.* at 91-92.

(CA) in CA-G.R. CR No. 30290. The CA found petitioner Lina M. Bernardo (Bernardo) guilty beyond reasonable doubt in Criminal Case No. 02-120 for the crime of *estafa* by means of false pretenses or fraudulent acts penalized under paragraph 2(a) of Article 315 of the Revised Penal Code.[4] For failure to file a motion for reconsideration within the reglementary period, Bernardo's conviction became final and was entered in the Book of Entries of Judgments by the CA. Bernardo now comes before us asking that the entry of judgment in the case be recalled.

Facts

Bernardo was charged with three counts of *estafa* in the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 61, docketed as Criminal Case Nos. 02-120, 02-121 and 02-122.[5] The accusatory portions of the three Informations read:

[Criminal Case No. 02-120]

That sometime in the month of September, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused falsely pretending to possess credit, indorsed and rediscounted a Consumer Bank Check No. 0788549 dated December 31, 2000, in the amount of ₱50,000.00, which appears to have been issued by one Marcial S. Sadie, Jr., the accused falsely pretending that the said check was duly funded in her favor, and which representation was merely intended to induce the complainant to rediscount the corresponding amount of the check, as in fact, complainant did rediscount said check, and accused, once in possession of the said corresponding amount and far from complying with her obligation, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return or redeem the amount of the check, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in the

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[4] Act No. 3815 (1930).

[5] *Rollo*, pp. 68-70.

aforementioned amount of FIFTY THOUSAND (₱50,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.

[Criminal Case No. 02-121]

That sometime in the month of October, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretense, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused obtained a loan from complainant, LUCY R. TANCHIATCO, in the total amount of ₱75,000.00, by falsely pretending to possess properties in an affidavit dated November 27, 2000, given to the complainant for security of said loan, which affidavit states that accused was the owner of the stall and that the same could be transferred to any assignee, when in truth and in fact, signatures of transferor were forged/falsified, and which representation was merely intended to induce the complainant to allow accused to obtain a loan in the amount of ₱75,000.00, as in fact, complainant gave the amount of ₱75,000.00 to accused as loan, and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return the amount to complainant, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in an aforementioned amount of SEVENTY FIVE THOUSAND (₱75,000.00) PESOS, Philippine Currency.

CONTARARY TO LAW.

[Criminal Case No. 02-122]

That sometime in the month of November, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused obtained a loan from complainant, LUCY R. TANCHIATCO, in the amount of ₱200,000.00, by falsely pretending to possess property in an affidavit dated November 27, 2000, given to the complainant for security of said loan, which affidavit states that accused was the owner of the stall and that the same could be transferred to any assignee, when in truth and in fact, the signature of transferor was forged/falsified, and which

representation was merely intended to induce the complainant to allow accused to obtain a loan in the amount of ₱200,000.00, as in fact, complainant gave the amount of ₱200,000.00 to accused as a loan, and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return the amount to complainant, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in an amount of TWO HUNDRED THOUSAND (₱200,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.[6]

Bernardo pleaded "not guilty" to the offenses charged.[7] Trial then ensued. Four witnesses[8] testified for the prosecution, while the defense waived its right to present evidence.[9]

The testimony of the prosecution witnesses may be summarized as follows:

Complainant Lucy Tanchiatco (Tanchiatco) and Bernardo knew each other since 1982 or 1983, as they were neighbors. They became close friends sometime in the year 2000.[10] Tanchiatco usually buys from Bernardo in the Pampang Public Market, while Bernardo visits Tanchiatco in the former's house twice or four times in a week.[11]

On September 19, 2000, Bernardo went to the house of Tanchiatco to borrow money. As security for the loan, she offered the rediscounting of a Consumer Bank Check No. 00788549 in the amount of ₱50,000. The check dated December 31, 2000 was drawn from the account of a certain Marcial Sadie, Jr. (Sadie) and payable

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[6] *Id.*

[7] *Rollo*, p. 70.

[8] Complainant herself, Marcial Sadie, Carmelita Santos and Teresita Garcia, *id.* at 49-51.

[9] *Id.* at 51.

[10] *Id*. at 49.

[11] *Id.*

to the bearer. Tanchiatco did not personally know Sadie but upon the guarantee of Bernardo, she rediscounted the check and gave the money to Bernardo on the same day.[12] Later on, Bernardo introduced Sadie to her, but she did not inquire about the check.[13]

On October 10 and 12, 2000, Bernardo obtained loans from Tanchiatco, in the amount of ₱50,000 and ₱25,000, respectively. As security, Bernardo gave Tanchiatco two affidavits of waiver of market stalls purportedly executed by her sister Carmelita Santos (Carmerlita) and by Sadie. She promised Tanchiatco that in case she failed to pay her loan on December 31, 2000, the rights to the market stalls shall be transferred to the latter.[14] Bernardo further assured Tanchiatco that she will take care of everything as one of the market administrators is her friend.[15] Tanchiatco believed that Bernardo owns the market stalls although they were registered in the names of Sadie and Carmelita. There was a prohibition on owning more than one stall in the Pampang Public Market, hence, Bernardo has to put the stalls in the name of other persons.[16]

Then on November 20, 21 and 22, 2000, Bernardo again borrowed money from Tanchiatco totaling to ₱200,000. For the ₱170,000, she promised Tanchiatco that she would produce an affidavit of waiver of market stall in the name of a certain Teresita Garcia (Teresita).[17]

Bernardo defaulted in her loan obligations despite demands for her to pay. Expecting that the market stalls were already transferred in her name consistent with the affidavit of waivers given to her by Bernardo, Tanchiatco went to see the administrator of the Pampang Public Market. However, she learned that the market stalls were not transferred in her name. Sadie, Carmelita and Teresita also

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[12] *Rollo*, p. 71.

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

[14] *Id.* at 48.

[15] *Id.*

[16] *Rollo*, pp. 49-50.

[17] *Id.* at 48.

denied the execution of the affidavits of waiver.[18] Thus, Tanchiatco confronted Bernardo where the latter admitted that she was, in fact, the one who executed the affidavits.[19]

Tanchiatco filed a complaint against Bernardo in their barangay. However, no settlement was reached. Hence, she filed the present criminal complaints.[20]

During trial, Sadie testified that Bernardo was his co-vendor in the Pampang Public Market. He admitted that he owned the Consumer Bank check used as security for Bernardo's loan.[21] However, he asserted that the signature appearing on the check does not belong to him. In fact, he does not know how Bernardo came into possession of the check.[22] He added, that his account with Consumer Bank was already closed and that he did not issue the subject check.[23]

RTC Ruling

In its Decision[24] dated February 27, 2006, the RTC found that Bernardo never denied that the signature appearing at the dorsal side of the Consumer Bank check subject of Criminal Case No. 02-120 was hers.[25] It held that Bernardo offered that check for rediscounting knowing that it was a falsified check. The RTC declared that the rediscounting of the falsified check was done simultaneously with the parting of ₱50,000. Bernardo's assurance that the check was genuine and was issued by Sadie in her favor, caused Tanchiatco to part with her money to her own damage and prejudice,[26] which act constitutes *estafa* under Article 315,

[18] *Id.* at 49.

[19] *Id.*

[20] *Id.*

[21] *Rollo*, p. 50.

[22] *Id.*

[23] *Rollo*, pp. 50-51.

[24] *Id.* at 45-53, penned by Judge Bernardita Gabitan Erum.

[25] *Id.* at 51.

[26] *Id.* at 52.

paragraph 2(a), of the Revised Penal Code.[27] Thus, the RTC convicted Bernardo of *estafa* by means of false pretenses or fraudulent acts in Criminal Case No. 02-120.[28]

As to Criminal Case Nos. 02-121 and 02-122, the RTC acquitted Bernardo after finding that the affidavits of waiver were not given prior to or simultaneous with the parting of the sums of money.[29] It ruled that the liability incurred by Bernardo for non-payment of the loans secured by the affidavits of waiver was purely civil in nature.[30]

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[27] 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. No. 4885, approved on June 17, 1967.)

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house or apartment house after obtaining credit, food, refreshment or accommodation therein without paying for his food, refreshment or accommodation. (Emphasis supplied.)

[28] *Rollo*, p. 53.

[29] *Id.* at 52.

[30] *Id.*

Bernardo appealed her conviction to the CA. She took issue with the reliance of the RTC on the lone testimony of Sadie as regards the rediscounting of the Consumer Bank check.[31] She maintained that in order to merit credence, the testimony of Sadie should have been corroborated by other witnesses.[32] Bernardo also pleaded that rediscounting bills and notes is a legitimate transaction.[33] She alleged that she could not be convicted of *estafa* by means of false pretenses or fraudulent acts because the element of deceit was not proven. The prosecution failed to prove that the check presented for rediscounting was spurious.[34]

The Office of the Solicitor General (OSG) countered that the non-presentation of a corroborating witness is not fatal to the case because corroborative evidence is necessary only when there is a suspicion that the witness falsified the truth.[35] However, there is no reason to suspect the veracity of Sadie's testimony as it is clear and straightforward and Sadie does not harbor any ill feelings towards Bernardo. Hence, his testimony deserves full credit and belief.[36]

On the element of deceit, the OSG maintained that Bernardo's act of rediscounting a check that does not belong to her in order to get money from Tanchiatco is in itself pure and simple deceit.[37] While rediscounting is a legal transaction, the presence of deceit makes the act of the author illegal.[38]

CA Ruling

In its Decision dated September 22, 2008, the CA held that the uncorroborated testimony of Sadie is sufficient to sustain

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[31] *Rollo*, p. 41.

[32] *Id.* at 42.

[33] *Id.*

[34] *Id.*

[35] *Rollo*, pp. 61-62.

[36] *Id.* at 63.

[37] *Id.* at 63-64.

[38] *Id.* at 64.

Bernardo's conviction. Citing relevant jurisprudence, it stated that the number of witnesses has nothing to do with the credibility of a witness.[39] The CA ruled that Sadie is a credible witness having testified in a clear and straightforward manner, with no traces of ill motives against Bernardo.[40] Further, it was proven that the signature appearing on the right bottom of the Consumer Bank check was not Sadie's signature as he even wrote his customary signature three times in open court for comparison.[41] Thus, the CA affirmed the RTC's Decision *in toto* and adjudged that all the elements of *estafa* by means of false pretenses or fraudulent acts are present.

Bernardo, then represented by the Public Attorney's Office (PAO), received the notice of the CA Decision on September 25, 2008.[42] However, no motion for reconsideration was filed within the reglementary period. Hence, the CA Decision became final and executory on October 11, 2008. The PAO received an Entry of Judgment of the CA Decision on March 12, 2009.[43]

On April 9, 2009, Bernardo filed a Motion to Recall Entry of Judgment with attached Urgent Motion for Reconsideration[44] in the CA. Atty. Benju V. Ardaña (Atty. Ardaña), the new PAO lawyer assigned to the case of Bernardo, pleaded that he never received a copy of the CA Decision although the same was duly stamped as received by PAO on September 25, 2008. Hence, he was surprised that an Entry of Judgment was issued. Atty. Ardaña blamed Herminia Polo (Polo), a receiving and filing clerk at the PAO Special and Appealed Cases Service, as well as the secretary[45] of Atty. Joey Dolores Pontejos (Atty. Pontejos), the previous PAO

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[39] *Id.* at 72-73.

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

[41] *Id.*

[42] *Rollo*, p. 79.

[43] *Id.* at 77.

[44] *Id.* at 85-89.

[45] Affidavit of Herminia Polo attached as Annex A to the Motion to Recall Entry of Judgment, *id.* at 83-84.

lawyer handling the case, for taking upon herself to place a copy of the CA Decision inside its case folder without informing him that there was already a decision.[46] He alleged that the omission was unintentional and was a simple inadvertence on the part of Polo as she was busy preparing for the official transfer of Atty. Pontejos, who was reassigned to the PAO-Tacloban District Office.[47] Atty. Ardaña claimed that he relied on the status of the case reflected in the "Inventory of Cases" submitted by Atty. Pontejos, which showed that the case was "submitted for decision" in the CA. He asked for the CA's indulgence "in behalf of the erring staff."[48]

Meanwhile, the attached Urgent Motion for Reconsideration merely reiterated the arguments that Bernardo raised in his Appellant's Brief.

In its Resolution dated May 13, 2009, the CA found that the Urgent Motion for Reconsideration was filed 194 days from the PAO's receipt of the CA Decision.[49] The considerable lapse of time was attributable not only to the negligence of Polo, but also to Atty. Ardaña, whose duty included the proper disposition of the cases assigned to him.[50] On the merits of the case, the CA held that the grounds relied upon by Bernardo in the Urgent Motion for Reconsideration was just a rehash of the issues raised in the petition.[51] Accordingly, the CA denied the Motion to Recall Entry of Judgment and the Urgent Motion for Reconsideration.

Hence, this petition, where Bernardo in her own behalf, raises the following issues:

1. Whether the CA erred in denying the Motion to Recall Entry of Judgment; and

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[46] *Id.* at 79.

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

[48] *Id.* at 80.

[49] *Id.* at 91.

[50] *Id.* at 92.

[51] *Id.*

2. Whether Bernardo should be convicted of the crime of *estafa* by means of false pretenses or fraudulent acts.

Our Ruling

Bernardo ascribes grave abuse of discretion to the CA for denying her Motion to Recall Entry of Judgment and Urgent Motion for Reconsideration on the ground of technicality. She claims that strict adherence to the rules will definitely cause her injustice.[52] She alleges that the CA completely disregarded the explanation of her then PAO counsel that the late filing of the motion for reconsideration was due to the simple inadvertence of the lawyer's secretary.[53] For the sound administration of justice, Bernardo prays that the case be decided on its merit.

The OSG counters that Bernardo has no ground to move for the recall of the entry of judgment because she received a copy of the Decision through her former counsel. It would have been different if her counsel was not furnished at all with the copy of the Decision, which would be tantamount to denial of due process.[54]

We find Bernardo's contentions without merit and deny the petition.

Section 2, Rule 36 and Section 8, Rule 120 of the Rules of Court, respectively, state:

Rule 36. x x x

Sec. 2. *Entry of judgments and final orders*. — **If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments**. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

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[52] *Rollo,* p. 20.

[53] *Id.* at 21.

[54] *Id.* at 106.

x x x x x x x x x

Rule 120. x x x

Sec. 8. *Entry of judgment*. — After a judgment has become final, it shall be entered in accordance with Rule 36. (Emphasis supplied.)

Substantially the same rules are found in Sections 1 and 5, Rule VII of the 2002 Internal Rules of Procedure of the CA (IRCA), to wit:

Sec. 1. *Entry of Judgment.* — **Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.**

(a) With respect to the criminal aspect, entry of judgment in criminal cases shall be made immediately when the accused is acquitted or his withdrawal of appeal is granted. However, if the motion withdrawing an appeal is signed by the appellant only, the Court shall first take steps to ensure that the motion is made voluntarily, intelligently and knowingly or may require his counsel to comment thereon.

When there are several accused in a case, some of whom appealed and others did not, entry of judgment shall be made only as to those who did not appeal. The same rule shall apply where there are several accused in a case, some of whom withdrew their appeal and others did not.

(b) Entry of Judgment in civil cases shall be made immediately when an appeal is withdrawn or when a decision based on a compromise agreement is rendered. (Secs. 1 and 7, Rule 11, RIRCA [a])

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Sec. 5. *Entry of Judgment and Final Resolution.* **– If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments.** The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and

shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory. (Emphasis supplied.)

Applying the Rules of Court and the IRCA, since Bernardo neither moved for reconsideration nor appealed to this Court within the reglementary period, the CA Decision became final and executory. Thus, the CA is duty bound to enter it in the Book of Entries of Judgments. Accordingly, this petition is a futile attempt to reopen a case, which has been laid to rest since October 11, 2008.

We have consistently ruled that a decision that has acquired finality can no longer be modified in any respect or attacked directly or indirectly, even by the highest court of the land. The doctrine of finality and immutability of judgments is grounded on the fundamental considerations of public policy and sound practice to the effect that, at the risk of occasional error, the judgments of the courts must become final at some definite date set by law.[55]

It is only in rare cases that this Court resolves to recall an entry of judgment such as for instance, to prevent a miscarriage of justice.[56] We relax the rules of procedure in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[57] ***None of these circumstances obtain in this case.***

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[55] *Sofio v. Valenzuela*, G.R. No. 157810, February 15, 2012, 666 SCRA 55, 65, citing *Bañares II v. Balising*, G.R. No. 132624, March 13, 2000, 328 SCRA 36, 49-50.

[56] See *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117, October 17, 2013, 707 SCRA 646, 667.

[57] *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687, citing *Sanchez v. Court of Appeals*, G.R. No. 152766, June 20, 2003, 404 SCRA 540, 546.

That a motion for reconsideration was filed belatedly due to the "simple inadvertence" of Polo is not a compelling reason to recall the entry of judgment, especially in the light of the admission of Atty. Ardaña that the notice of the CA Decision was duly received by the PAO on September 25, 2008; albeit, he did not know of it because the secretary did not inform him. We concur with the CA that Atty. Ardaña was negligent in failing to monitor the disposition of the case assigned to him. In *Ramos v. Lim*,[58] we stated that notice to counsel is an effective notice to the client.[59] It is incumbent upon the counsel, consistent with his duty to serve his client with competence and diligence, to inquire from the court about the status of the case.[60] Atty. Ardaña's mere reliance on Atty. Pontejo's inventory of cases falls short of the diligence required of him.

Notably, Bernardo is bound by Atty. Ardaña's negligence. Settled is the rule that the negligence and mistakes of the counsel are binding on the client.[61] The only exception, being when such counsel's negligence, is so gross and palpable resulting to a denial of due process to his client.[62] Here, both elements are missing. Atty. Ardaña's negligence is not gross in character. In *Sofio v. Valenzuela*,[63] we held that the failure of the counsel

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[58] G.R. No. 133496, May 9, 2005, 458 SCRA 238.

[59] *Ramos v. Lim, supra,* at 244, citing *Lincoln Gerard, Inc. v. National Labor Relations Commission,* G.R. No. 85295, July 23, 1990, 187 SCRA 701.

[60] *Ramos v. Lim, supra* note 58, at 247.

[61] *Lagua v. Court of Appeals*, G.R. No. 173390, June 27, 2012, 675 SCRA 176, 182, citing *Sapad v. Court of Appeals*, G.R. No. 132153, December 15, 2000, 348 SCRA 304.

[62] *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 147, citing *Grande v. University of the Philippines*, G.R. No. 148456, September 15, 2006, 502 SCRA 67, 74; *Juani v. Alarcon,* G.R. No. 166849, September 5, 2006, 501 SCRA 135, 154; *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 562-563; *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 361.

[63] *Supra* note 55.

to file a motion for reconsideration amounts to simple negligence only.[64] Further, Bernardo was not deprived of due process because she received a copy of the CA Decision through her former counsel. She was also given the opportunity to present her side of the story. She filed a Motion to Recall Entry of Judgment in the CA, coupled with a motion for reconsideration. Where a party is given the opportunity to be heard either in pleadings or oral arguments, there is no denial of due process.[65]

Meanwhile, Bernardo also had herself to blame. The record of the case is bereft of showing that she made inquiries or follow-ups from Atty. Ardaña about the status of her case. It is the duty of Bernardo to be in touch with her counsel as to the progress of the case. She cannot just sit back, relax, and wait for the outcome of the case.[66]

The 194 days delay in the filing of the motion for reconsideration of the CA Decision[67] is too long a delay to merit the liberality of this Court. Since the counsel of Bernardo received the notice of the CA Decision on September 25, 2008 and no motion for reconsideration or appeal to this Court was filed within 15 days from receipt of the notice, the Decision inevitably reached its finality on October 11, 2008. Thus, no grave abuse of discretion was committed by the CA when it denied the Motion to Recall Entry of Judgment and the motion for reconsideration. In fine, the finality of a decision is a jurisdictional event, which cannot be made to depend on the convenience of a party.[68]

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[64] *Id.* at 68, citing *Pasiona, Jr. v. Court of Appeals, supra* note 62.

[65] *Pasiona, Jr. v. Court of Appeals*, *supra*, at 148, citing *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 194-195.

[66] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 148, citing *GCP-Manny Transport Services, Inc. v. Principe*, *supra* note 62, at 563-564.

[67] See the May 13, 2009 Resolution of the CA, *rollo*, p. 91.

[68] *NIAConsult, Inc. v. National Labor Relations Commission*, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22-23.

Having affirmed the finality of the CA Decision, we shall no longer delve into the second issue raised. Passing upon the propriety of Bernardo's conviction would be inconsistent with our declaration of the finality and immutability of the CA Decision.

WHEREFORE, the petition is **DISMISSED** for lack of merit. The September 22, 2008 Decision and May 13, 2009 Resolution of the Court of Appeals in CA-G.R. CR No. 30290 are hereby **AFFIRMED.**

SO ORDERED.

Peralta[*] *(Acting Chairperson), Perez,* and *Reyes, JJ.,* concur.

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

THIRD DIVISION

[G.R. No. 190385. November 16, 2016]

UCPB GENERAL INSURANCE COMPANY, INC. *petitioner, vs.* **HUGHES ELECTRONICS CORPORATION**, *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; IN UNDERSTANDING THE LANGUAGE OF CONTRACTS, THE COURT RECOGNIZES THE STATUTORY PRINCIPLES AS EFFICIENT TOOLS AND IT ALSO TAKES COGNIZANCE OF THE INTENT OF THE

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

PARTIES IN CRAFTING THE STIPULATION OF THE CONTRACT.— [T]he first sentence of Section A of Title XIII specifically leans towards out of court settlement. x x x [W]e find that Hughes Electronics failed to exercise good faith in resolving its dispute and differences with OVC over the latter's complaint for wrongful installation of the contracted system and its subsequent failure to comply with the schedule of payment. x x x Hughes Electronics, following the letter of the contract, should have made efforts to settle the dispute with OVC amicably instead of directly resorting to a judicial action. Another indication of the primacy of the recourse alternative to a court suit is revealed in the second part of Title XIII. x x x [W]hile this Court recognizes the statutory principles as efficient tools in understanding the language of contracts, we also take cognizance of the intent of the parties in crafting the stipulations of the contract. This is especially true when one part on dispute resolution provides for a cordial out-of-court settlement couched in mandatory language and the other part implies a permissive referral to arbitration. The fact of the matter is that the waiver of negotiation as the settlement process is through election by both parties in writing. Noting further, there is nothing in the contract which points out a concrete standard to determine irrevocable harm to the other party which would warrant the waiver of arbitration. No proof was adduced in this case that Hughes Electronics will suffer irrevocable harm for the delay. It was an error for the CA to consider that delay necessarily results in irrevocable harm.

2. ID.; ID.; ID.; THE VARIOUS STIPULATIONS OF A CONTRACT SHALL BE INTERPRETED TOGETHER, ATTRIBUTING TO THE DOUBTFUL ONES THAT SENSE WHICH MAY RESULT FROM ALL OF THEM TAKEN JOINTLY.— It is standing jurisprudence that in interpreting a contract, its provisions should not be read in isolation but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. This principle aptly applies the provisions on interpretation of contract in the Civil Code. Art. 1370 of the Code states that if the terms

of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. However, it is clearly added that if the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. Further on this, Art. 1374 states that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. x x x Thus, upon meticulous review of the entire stipulations on dispute resolution in the contract and taking into consideration the intention of the parties, it is necessary that arbitration proceedings be complied before resorting to court action. This is especially true since arbitration is essential in the settlement of commercial disputes involving issues technical in nature such as installation of *burroughs protocol* which can be more appropriately resolved through arbitration where technical knowledge and expertise are the settlement points.

APPEARANCES OF COUNSEL

Divina Law for petitioner.
Justiano Adviento for respondents OVC and Mel Velarde.
Quasha Ancheta Pena & Nolasco for respondent Hughes.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed by UCPB General Insurance Company, Inc. (UCPB Insurance), assailing the 19 March 2009 Decision[2] and 23 November 2009 Resolution[3] of the Court of Appeals (CA) in

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[1] *Rollo*, pp. 11-40.

[2] *Id*. at 46-61; penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Arcangelita M. Romilla-Lontok and Romeo F. Barza, concurring.

[3] *Id.* at 64-65; *id*.

CA-G.R. CV No. 89788 upholding the 15 March 2007 Decision[4] of the Regional Trial Court (RTC) of Makati City, Branch 137 ordering UCPB Insurance to pay the respondent Hughes Electronics Corporation (Hughes Electronics) the amount of US$683,457.95 less the amount of US$60,000.00 plus interest, subject to indemnification from One Virtual Corporation (OVC) and Mel V. Velarde (Velarde).[5]

The facts, as we gathered from the records, are:

On 30 September 1998, the Philippine Charity Sweepstakes Office (PCSO) issued Resolution No. 1438 approving the use in its lottery operations a facility called Very Small Aperture Terminal lines (VSAT lines) being offered by domestic corporation One Virtual Corporation (OVC), then called as Sun-O-Telecom.[6]

Hughes Electronics, upon acquiring knowledge of PCSO's resolution, offered OVC its VSAT equipment and services. To formalize their transaction, Hughes Electronics and OVC, on March 26, 1999, entered into a contract whereby Hughes Electronics agreed to provide the latter with the equipment and services necessary to establish, install and commission a Ku-band Satellite Communication Network (the Integrated Satellite Business Network or ISBN) consisting of a hub earth station, hub baseband equipment and Buyer-specified number of Personal Earth Stations (PESs). The ISBN will consist of all hardware, software and services required to establish a complete operational system that meets the technical and functional specifications set forth in the Technical Specifications to the contract.[7] By way of payment, Hughes Electronics and OVC agreed that the

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[4] CA *rollo*, pp. 121-135.

[5] *Supra* note 1, Petition for Review on *Certiorari;* and *supra* note 2, CA Decision.

[6] *Rollo* p. 58; CA Decision.

[7] *Id.* at 90; Scope of Work, Annex A-2 of the Contract; CA *rollo*, pp. 121-122; RTC Decision.

consideration will be US$743,457.95 secured by OVC's standby letter of credit issued in favor of Hughes Electronics.

On 26 March 1999, the terms of payment were modified upon issuance of a surety bond with OVC as principal and UCPB Insurance as surety in favor of Hughes Electronics. The surety bond guaranteed the payment of 95% of the purchase price of the ISBN. To further secure the payment, Mel V. Velarde, the Chairman and CEO of OVC, executed an Agreement of Counter-Guaranty[8] in his personal capacity in favor of UCPB Insurance. In the said counter-guaranty, he and OVC jointly and severally undertook to indemnify UCPB Insurance for any damages, prejudice, loss, cost, payment advances and expenses of whatever kind and nature, including a twelve percent interest (12%) per *annum* from judicial or extra-judicial demand and attorney's fees which the latter may, at any time, sustain or incur as a consequence of having executed said surety bond. The said indemnity will be paid to UCPB Insurance as soon as demand is received from the obligee, or as soon as it becomes liable to make payment of any sum under the terms of the surety bond.[9]

By way of down payment, OVC paid Hughes Electronics the amount of US$60,000.00. However, subsequent schedules of payment were not complied with.

On 7 October 1999, OVC requested for a revision of the terms of payment which Hughes Electronics granted subject to the condition that the revised terms would become effective upon issuance of a revised surety bond. On 25 October 1999, UCPB Insurance sent a letter to Hughes Electronics manifesting its conformity with the revised terms, as follow.[10]

1. The US$294,923.04 will not be paid on October 26, 1999.
2. Agreed revisions shall have the payment amounts on the following dates:

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[8] *Id*. at 122-124; Annex G.

[9] *Rollo*, pp. 194-195; RTC Decision.

[10] *Id.* at 16; Petition for Review on *Certiorari*.

a. October 30, 1999	US$30,000.00
b. November 30, 1999	50,000.00
c. December 15, 1999	67,461.52[11]

3. The balance of US$147,461.52 plus interest at LIBOR[12] plus 3% shall be added to the scheduled April 2000 semestral payment.[13]

On 21 December 1999, before the expiration of the warranties in the contract, OVC informed Hughes Electronics that the ISBN system currently installed at its Napa hub facility did not support the *Burroughs poll/select protocol*. Thus, it demanded from Hughes Electronics an explanation and immediate solution of the problem.[14]

Meanwhile, OVC failed to pay Hughes Electronics in accordance with the revised payment terms. As a result, Hughes Electronics sent a letter to UCPB Insurance on 11 October 2000, demanding for the value of surety bond which, less the down payment of US$60,000.00 amounting to US$683,457.95. Upon failure to heed its demand, Hughes Electronics sent another demand letter to UCPB Insurance on 17 October 2000.[15]

Still, upon OVC's failure to pay, Hughes Electronics, on November 10, 2000, filed a Complaint for Sum of Money with Damages against OVC as the principal and UCPB Insurance based on the surety bond it issued to guaranty the payment of the obligation of the principal OVC.[16] In the said complaint, Hughes Electronics prayed for the following:

[a.] For the amount of US$683,457.95, representing the balance of the contract price as stipulated in the contract and under

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[11] *Id.* at 195; RTC Decision.

[12] London Interbank Offered Rate.

[13] *Supra* note 11.

[14] *Id*.

[15] *Id*. at 195-196.

[16] CA *rollo*, p. 75; UCPB Insurance' Brief.

the surety bond, plus interest twice the ceiling prescribed by the Monetary Board from the date of demand[;]

[b.] The amount of [US$100,000.00] as exemplary damages.

[c.] The amount of [US$5,000.00] and 10% of all amounts recovered as and by way of attorney's fees.

[d.] To pay the costs of suit.[17]

On 11 December 2000, UCPB Insurance filed its Answer with Special and Affirmative Defenses, Cross-Claim and Compulsory Counterclaim. In its special and affirmative defenses, UCPB Insurance alleged that it is not liable for any contingent liability under the surety bond since both Hughes Electronics and OVC deviated from the terms and conditions of the contract and of surety bond without its written consent. It further alleged the failure of Hughes Electronics to provide OVC the equipment and components needed to conform to the system for which the said materials were purposely purchased. In its Cross-Claim, UCPB prayed that, in case of unfavorable judgment, OVC and Velarde be directed to indemnify the company of whatever amount it may be ordered to pay Hughes Electronics. Finally, by way of compulsory counterclaim, UCPB Insurance prayed for recovery of corrective and exemplary damages.[18]

In the amendment of its Answer, UCPB Insurance filed a Third-Party Complaint against Velarde based on the Agreement of Counter-Guaranty.[19] It also argued that the contract stipulated an arbitration clause and Hughes Electronics overlooked said condition of the agreement before filing a case in court. UCPB Insurance alleged that:

26. Further, the contract, Annex "A" stipulates an arbitration clause; and it appears plaintiff has overlooked said condition of the agreement; and since the instant action directly involves the issue of whether or not [the] plaintiff had clearly complied with its undertaking

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

[18] *Rollo*, p. 196; RTC Decision.

[19] *Id*. at 197; RTC Decision; *Rollo*, pp. 51-52; CA Decision.

under the agreement, Annex "A" to complaint, said basic issue should first be resolved before the instant action is given due course. Therefore, the instant action is premature and should be dismiss[ed]. Even assuming that it was seasonably filed, the parties in this case should consider the arbitration clause, otherwise, plaintiff's filing the instant case could be construed as waiving the arbitration process[.][20]

On 27 December 2000, OVC filed a Motion to Dismiss and argued that Hughes Electronics had neither legal capacity to sue nor cause of action to file a complaint and that the condition precedent for filing the claim, which is the referral to arbitration has not been complied with. The motion was denied on March 6, 2001. OVC then moved for reconsideration, but the same was denied on August 10, 2001.[21] The denial was elevated to the CA through a Petition for *Certiorari*.

On 11 September 2001, OVC filed its Answer reiterating its arguments in the Motion to Dismiss. By way of compulsory counterclaims, OVC alleged that since Hughes Electronics committed a breach of contract, the contract should be rescinded and the US$60,000.00 it had already paid be reimbursed. Further, it sought for moral and exemplary damages, attorney's and appearance fees in the amount of ₱300,000.00, ₱100,000.00, ₱100,000.00 and ₱1,500.00 per hearing, respectively, against Hughes Electronics.[22]

Meanwhile, the Petition for *Certiorari* previously filed before the appellate court was denied on November 19, 2001 due to some formal defects.[23]

On 5 April 2002, Velarde filed his Answer to the Third-Party Complaint and argued that UCPB Insurance has no cause of action against him. He also alleged that the third-party complaint was premature and the true agreement between him

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[20] CA *rollo*, pp. 77-78.

[21] *Rollo*, pp. 196-197; RTC Decision; CA *rollo*, pp. 126-127.

[22] *Id.* at 197; *id*. at 127.

[23] *Id*.; *id.*

and UCPB Insurance was to require an exhaustion of remedies against OVC before any suit in court can be filed.[24]

After the trial on the merits, the trial court, on 15 March 2007 rendered its decision in favor of Hughes Electronics, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered:
>
> (1) Ordering defendant/third-party plaintiff UCPB General Insurance Company Inc., to pay plaintiff Hughes Electronics Corporation the amount of US$683,457.95, representing the value of the Surety Bond, less the amount of US$60,000.00 previously paid to the plaintiff by defendant/cross-defendant One Virtual Corporation plus interest to be reckoned in accordance with the stipulations in the Contract between HEC and One Virtual Corporation, particularly under Section IV (B);
>
> (2) Ordering defendant/cross-defendant One Virtual Corporation and third-party defendant Mel V. Velarde to indemnify, jointly and severally, defendant/third-party plaintiff UCPB General Insurance Company, Inc. of whatever amount the latter may pay plaintiff Hughes Electronics Corporation, plus interest at the rate of 12% per annum reckoned from the date when UCPB filed its Cross-Claim against One Virtual Corporation and the Third-Party Complaint against Velarde; attorney's fees of ₱250,000.00; and costs of litigation in the amount of ₱50,000.00.
>
> SO ORDERED.[25]

Aggrieved, UCPB Insurance filed a Notice of Appeal to reverse the decision of the trial court.[26] In its Appellant's Brief, it alleged several assignment of errors primarily arguing that the trial court erred in not dismissing the case for being premature since Hughes Electronics disregarded a stipulated agreement to submit all disputes arising from the contract to arbitration.

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[24] *Id*. at 198; *id*. at 128.

[25] *Rollo*, pp. 204-205; RTC Decision; CA *rollo*, pp. 134-135.

[26] CA *rollo*, pp. 29-30.

Further, it submitted that the trial court erred when it failed to consider that since Hughes Electronics failed to comply with its obligation to deliver a functioning equipment, its right to demand payment from OVC was premature. Finally, UCPB Insurance alleged deviation in the terms and conditions of the surety contract, resulting in the discharge of its obligation to pay.[27]

In its Appellee's Brief, Hughes Electronics refuted the claim of UCPB Insurance. It alleged that referral to arbitration was not a condition precedent to any judicial action. Further, it denied that the contract required the company to deliver *burroughs protocol* or the PCSO lotto protocol. Finally, Hughes Electronics insisted that since UCPB Insurance bound itself to be solidarily liable with OVC, it cannot deny its obligation to pay in case of OVC's default.[28]

On 19 March 2009, the CA affirmed *in toto* the challenged decision of the trial court.[29]

In dismissing the appeal, the CA relied on its finding that the arbitration clause in the contract is permissive in character. It also affirmed the argument of Hughes Electronics that nothing in the contract expressly stipulated that ISBN should specifically support the *burroughs protocol* of the PCSO before the obligation of the OVC to pay the balance of the purchase price arises. Further, it ruled that OVC cannot unilaterally suspend the payment of the balance of the purchase price without recourse to the provisions of the Civil Code on the rescission of contracts. Finally, it affirmed the findings of the lower court that a surety contract, though an accessory one, binds the surety UCPB Insurance solidarily.[30]

UCPB Insurance before this Court presented the following issues:

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[27] *Id*. at 84; Appellant's Brief.

[28] *Id*. at 161-188; Appellee's Brief.

[29] *Rollo*, pp. 46-61.

[30] *Id*. at 54-60.

I. Whether or not the arbitration clause in a contract is a condition precedent to be complied with before resort to legal action;

II. Whether or not the failure of the Seller to comply with the provisions of the Contract relieves the surety of its obligation under the suretyship;

III. Whether or not deviations from the principal contract will relieve the bondsman from its suretyship obligation.

At the outset, we note that the contract between Hughes Electronics and OVC provided a specific provision on dispute resolution to govern the parties in case of disagreement or any breach of contract. As provided under Title XIII thereof:

XIII. DISPUTE RESOLUTION

Any and all disputes arising under or in connection with this Agreement or any breach hereof shall be resolved in accordance with this Section.

A. Negotiation

The Parties shall attempt to resolve any dispute, controversy or difference, which may arise between them through good faith negotiations. In the event the Parties fail to reach resolution of such dispute within sixty (60) days of entering into negotiations, either Party may refer such dispute to arbitration pursuant to the provisions of Sec. B, below. Notwithstanding the above, the Parties may elect to waive applicability of this section if (i) both Parties agree in writing that the nature of their dispute is such that it cannot be resolved through negotiations or (ii) if a Party shall suffer irrevocable harm by such delay.

B. Arbitration

Arbitration shall be conducted in accordance with the International Arbitration Rules of the International Chamber of Commerce (ICC) in effect at the time of the arbitration. The arbitration shall be in accordance with the following guidelines except to the extent the Parties to arbitration shall agree otherwise:

1. The place of arbitration shall be mutually agreed upon the Parties.

2. The arbitration panel shall be composed of three arbitrators.

Each Party shall appoint one arbitrator. The two arbitrators appointed by the Parties shall attempt to agree on a third arbitrator, who will act as chairman of the panel. If said two arbitrators fall to nominate a third arbitrator within thirty (30) days from the date of appointment of the latter arbitrator, any Party may refer such selection to the ICC.

3. The proceeding shall be conducted and transcribed in English. Any document submitted in a language other than English shall be accompanied by an English translation.

4. All testimony and evidence related to confidential information or trade secrets shall be safeguarded and maintained as confidential, with access to such evidence to be only on a need-to-know basis and subject to all reasonable precautions so as not to jeopardize the confidential information of any Party.

5. The Parties hereby accept jurisdiction of the arbitral tribunal over the Parties over the subject matter of the dispute.

C. Continuation of Performance

During the arbitration, the Parties shall continue to perform their obligations under this Agreement to the extent such performance is not precluded by the subject matter of the dispute.[31]

Based on the cited provision, UCPB Insurance raised the issue of premature filing of complaint without resorting first to the guidelines of dispute resolution.

We grant the petition.

Reading closely, the first sentence of Section A of Title XIII specifically leans towards out of court settlement. It states that:

A. Negotiation

"The Parties shall attempt to resolve any dispute, controversy or difference, which may arise between them through good faith negotiations. xxx." (Emphasis supplied)

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[31] *Id.* at 85.

Jurisprudence and statutory construction teach us that the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.[32]

On the other hand, "good faith" is defined as an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. Furthermore, the essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another.[33]

Applying the above parameters, we find that Hughes Electronics failed to exercise good faith in resolving its dispute and differences with OVC over the latter's complaint for wrongful installation of the contracted system and its subsequent failure to comply with the schedule of payment. Instead, what Hughes Electronics did was to go against UCPB Insurance and demand from the insurance company the remaining monetary obligation instead of exercising good faith negotiation with OVC. Upon unfavorable response to its demand letters, Hughes Electronics immediately filed a court action against UCPB Insurance demanding payment. Hughes Electronics, following the letter of the contract, should have made efforts to settle the dispute with OVC amicably instead of directly resorting to a judicial action.

Another indication of the primacy of the recourse alternative to a court suit is revealed in the second part of Title XIII. It states that, in case of failure of the parties to resolve the dispute amicably, the parties may proceed to arbitration subject to the following exceptions:

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[32] *Enriquez v. Enriquez*, 505 Phil. 193, 199 (2005).

[33] *Ochoa v. Apeta*, 559 Phil. 650, 655-656 (2007).

xxx "In the event the Parties fail to reach resolution of such dispute within sixty (60) days of entering into negotiations, either Party may refer such dispute to arbitration pursuant to the provisions of Sec. B, below. Notwithstanding the above, the Parties may elect to waive applicability of this section if (i) both Parties agree in writing that the nature of their dispute is such that it cannot be resolved through negotiations or (ii) if a Party shall suffer irrevocable harm by such delay." (Emphases supplied)

The CA points out that the stipulation discloses the permissive character of the availment of arbitration proceeding. Also, the word "may," as alleged by Hughes Electronics, justified its direct recourse to court without resorting to arbitration. Furthermore, it is contended that the phrase, "*Notwithstanding the above, the Parties may elect to waive applicability of this section,"* is a catch-all clause which means that both negotiation and arbitration may be waived if certain conditions occur. Following this line of reasoning, Hughes Electronics waived the applicability of the arbitration clause and brought the dispute in court based on the second exception that it was suffering irrevocable harm.

We do not agree.

Statutory construction instructs us that the word "may" implies that it is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.[34] However, while this Court recognizes the statutory principles as efficient tools in understanding the language of contracts, we also take cognizance of the intent of the parties in crafting the stipulations of the contract. This is especially true when one part on dispute resolution provides for a cordial out-of-court settlement couched in mandatory language and the other part implies a permissive referral to arbitration. The fact of the matter is that the waiver of negotiation as the settlement process is through election by both parties in writing. Noting

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[34] *Demaala v. Commission on Audit*, G.R. No. 199752, February 17, 2015, 750 SCRA 612, 628.

further, there is nothing in the contract which points out a concrete standard to determine irrevocable harm to the other party which would warrant the waiver of arbitration. No proof was adduced in this case that Hughes Electronics will suffer irrevocable harm for the delay. It was an error for the CA to consider that delay necessarily results in irrevocable harm.

It is standing jurisprudence that in interpreting a contract, its provisions should not be read in isolation but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[35]

This principle aptly applies the provisions on interpretation of contract in the Civil Code. Art. 1370 of the Code states that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. However, it is clearly added that if the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. Further on this, Art. 1374 states that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

Apropos is the case of *Adelfa Properties, Inc. v. CA:*[36]

> The important task in contract interpretation is always the ascertainment of the intention of the contracting parties and that task is, of course, to be discharged by looking to the words they used to project that intention in their contract, all the words not just a particular word or two, and words in context not words standing alone. xxx.[37]

Thus, upon meticulous review of the entire stipulations on dispute resolution in the contract and taking into consideration

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[35] *Sps. Juico v. China Banking Corporation*, 708 Phil. 495, 514 (2013); citing *Bangko Sentral ng Pilipinas v. Santamaria*, 443 Phil. 108-119 (2003).

[36] 310 Phil. 623 (1995).

[37] *Id*. at 639.

the intention of the parties, it is necessary that arbitration proceedings be complied before resorting to court action. This is especially true since arbitration is essential in the settlement of commercial disputes involving issues technical in nature such as installation of *burroughs protocol* which can be more appropriately resolved through arbitration where technical knowledge and expertise are the settlement points.

In the case of *Koppel, Inc. v. Makati Rotary Club Foundation, Inc.*,[38] we emphasized the autonomy of the parties to stipulate arbitration clause in their contract and the spirit behind its stipulation:

> A pivotal feature of arbitration as an alternative mode of dispute resolution is that it is, first and foremost, a product of party autonomy or the freedom of the parties to "make their own arrangements to resolve their own disputes." Arbitration agreements manifest not only the desire of the parties in conflict for an expeditious resolution of their dispute. They also represent, if not more so, the parties' mutual aspiration to achieve such resolution outside of judicial auspices, in a more informal and less antagonistic environment under the terms of their choosing. xxx. (Italics and citation omitted)

To emphasize, in a contract containing a condition precedent, no right or action is given or acquired until such condition is complied with; before the compliance with the condition is accomplished there exists nothing but hope of acquiring such right x x x.[39] All in all, this case needs to be referred to arbitration proceedings in accordance with the Rules provided in paragraph B of Title XIII entitled Dispute Resolution of Annex A made part of the Contract between the parties.

Having thus ruled, we find no need to go into the other assigned errors.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision and Resolution of the Court of Appeals, dated 19 March 2009 and 23 November 2009, respectively upholding

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[38] 717 Phil. 337, 361 (2013).

[39] *Barretto v. City of Manila*, G.R. No. 3148, March 5, 1907.

the 15 March 2007 Decision of the Regional Trial Court of Makati City, are hereby **REVERSED** and **SET ASIDE** and the parties are hereby ordered to refer the case to arbitration in accordance with the International Rules of the International Chamber of Commerce in effect at the time of arbitration and following the guidelines provided by Section B of Title XIII of Annex A made part of the Contract between the parties.

SO ORDERED.

Peralta (Acting Chairperson), Bersamin,[*] and *Reyes, JJ.,* concur.

Velasco, Jr., J., on wellness leave.

FIRST DIVISION

[G.R. No. 194412. November 16, 2016]

SAMSODEN PANGCATAN, *petitioner, vs.* **ALEXANDRO "DODONG" MAGHUYOP and BELINDO BANKIAO,** *respondents.*

[G.R. No. 194566. November 16, 2016]

ALEXANDRO "DODONG" MAGHUYOP and BELINDO BANKIAO, *petitioners, vs.* **SAMSODEN PANGCATAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COMPLAINANT FILED IN COURT MUST BE ACCOMPANIED BY THE PAYMENT OF THE

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[*] Designated as Additonal Member in lieu of Associate Justice Francis H. Jardeleza, who takes no part per Raffle dated June 13, 2016.

REQUISITE DOCKET AND FILING FEES.— The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees. Section 1, Rule 141 of the *Rules of Court* expressly requires that upon the filing of the pleading or other application that initiates an action or proceeding, the prescribed fees for such action or proceeding shall be paid in full. If the complaint is filed but the prescribed fees are not paid at the time of filing, the courts acquire jurisdiction only upon the full payment of such fees within a reasonable time as the courts may grant, barring prescription.

2. POLITICAL LAW; CONSTITUTION; BILL OF RIGHTS; FREE ACCESS TO THE COURTS; CASE OF *ALGURA V. THE LOCAL GOVERNMENT UNIT OF THE CITY OF NAGA* SYNTHESIZING THE PROCEDURE GOVERNING AN APPICATION FOR AUTHORITY TO LITIGATE AS AN INDIGENT PARTY AS PROVIDED UNDER THE RULES OF COURT.— Nonetheless, Section 11, Article III of the Constitution has guaranteed free access to the courts, to wit: Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. This guarantee of free access to the courts is extended to litigants who may be indigent by exempting them from the obligation to pay docket and filing fees. But not everyone who claims to be indigent may demand free access to the courts. In *Re: Query of Mr. Roger C. Prioreschi Re Exemption from Legal and Filing Fees of the Good Shepherd Foundation, Inc.*, the Court has declared that the exemption may be extended only to natural party litigants; the exemption may not be extended to juridical persons even if they worked for indigent and underprivileged people because the Constitution has explicitly premised the free access clause on a person's poverty, a condition that only a natural person can suffer. To prevent the abuse of the exemption, therefore, the Court has incorporated Section 21, Rule 3 and Section 19, Rule 141 in the *Rules of Court* set the guidelines implementing as well as regulating the exercise of the right of free access to the courts. The procedure governing an application for authority to litigate as an indigent party as provided under Section 21, Rule 3 and Section 19, Rule 141 of the *Rules of Court* have been synthesized in *Algura v. The Local Government Unit of the City of Naga*.

Algura stipulates that when the application to litigate as an indigent litigant is filed, the trial court shall scrutinize the affidavits and supporting documents submitted by the applicant to determine if he complies with the income and property standards prescribed in the present Section 19 of Rule 141 — that his gross income and that of his immediate family do not exceed an amount double the monthly minimum wage of an employee; and that he does not own real property with a fair market value of more than ₱300,000.00; that if the trial court finds that he meets the income and property requirements, the authority to litigate as indigent litigant is automatically granted, and the grant is a matter of right; that, however, if the trial court finds that one or both requirements have not been met, it should then set a hearing to enable the applicant to prove that he has "no money or property sufficient and available for food, shelter and basic necessities for himself and his family;" that in that hearing, the adverse party may adduce countervailing evidence to disprove the evidence presented by the applicant; that, afterwards, the trial court will rule on the application depending on the evidence adduced; that, in addition, Section 21 of Rule 3 provides that the adverse party may later still contest the grant of such authority at any time before judgment is rendered by the trial court, possibly based on newly discovered evidence not obtained at the time the application was heard; that, if the trial court determines after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court; and that if payment is not made within the time fixed by the trial court, execution shall issue or the payment of the prescribed fees shall be made, without prejudice to other sanctions that the trial court may impose.

3. ID.; ADMINISTRATIVE LAW; AN ACT REORGANIZING AND STRENGTENING THE PUBLIC ATTORNEY'S OFFICE (RA NO. 9406); EXEMPTION FROM PAYMENT OF THE LEGAL FEES; DISCUSSION.— Pangcatan was represented from the start by the Public Attorney's Office (PAO). The exemption of the clients of the PAO like him from the payment of the legal fees was expressly declared by law for the first time in Republic Act No. 9406, particularly its amendment of Section 16-D of the *Administrative Code of 1987*, as follows: Section 16-D. Exemption from Fees and Costs of the Suit. — **The clients of the PAO shall be exempt from**

payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal. The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO. Such exemption by virtue of Republic Act No. 9406 was recognized by the Court Administrator through OCA Circular No. 67-2007, but the clients of the PAO remained required to submit relevant documentation to comply with the conditions prescribed by Section 19, Rule 141 of the *Rules of Court*. Later on, the Court Administrator removed the conditions prescribed under OCA Circular No. 67-2007 by issuing Circular No. 121-2007. Since then until the present, all clients of the PAO have been exempt from the payment of docket and other fees incidental to instituting an action in court whether as an original proceeding or on appeal. It is notable that the Court has pointed out in its ruling in *Re: Petition for Recognition of the Exemption of the Government Service Insurance System from payment of Legal Fees* that its acknowlwdgement of the exemption allowed to the clients of the PAO pursuant to Section 16D of the *Administrative Code of 1987*, as amended by Republic Act No. 9406, was not an abdication of its rule-making power but simply its recognition of the limits of that power; and that, in particular, such acknoeledgement reflected a keen awareness that, in the exercise of its rule-making power, it may not dilute or defeat the right of access to justice of indigent litigants. The exemption of clients of the PAO from the payment of the legal fees under Republic Act No. 9406 and OCA Circular No. 121-2007 was not yet a matter of law at the time Pangcatan initiated Civil Case No. 1888-02 on September 4, 2002. Yet, we cannot avoid applying the exemption in his favor for purposes of this case. The remand to the RTC for the purpose of determining the factual basis for the exemption would be superfluous. To start with, the exemption, being a matter of procedure, can be retrospectively applied to his case. It is fundamental wisdom, indeed, that procedural laws do not come within the legal conception of a retroactive law, or the general law against the retroactive operation of statutes, and, as such, they may be given retroactive effect on actions pending and undetermined at the time of their passage. Doing so will not violate any right of a person who may feel that he is adversely affected, inasmuch

as there are no vested rights in rules of procedure. And, secondly, if the ultimate objective to be served by all courts is the administration of justice, the remand of the case after the trial by the RTC would be unreasonable and burdensome on all the parties as well as on the trial court. Instead, the judgment of the RTC in favor of Pangcatan and against Maghuyop and Bankiao should be allowed to stand. This appeal to the Court by the latter, which also delves into the merits of the judgment against them, should fail as to them for lack of any arguable error committed by the trial court. The records contain no evidence adduced by them considering that they had waived their evidence on any legitimate defenses they might have raised due to their being declared in default for non-filing of their answer. It would be futile to still defer the judgment rendered upon Pangcatan's evidence in order to still hear them thereafter. A party in default — of which both of them were — could lift the default only by filing a motion to set aside the default before judgment is rendered. Their right to appeal the judgment by default notwithstanding, their chances of reversing the adverse judgment are nil, for in the first place they had no answer whereby they would have controverted the allegations of fact against them, and, necessarily, they had no evidence with which to defeat the claim against them.

APPEARANCES OF COUNSEL

Public Attorney's Office for Samsoden Pangcatan.

P.M.Moron F.S. Villamero J.S. Duhaylongsod W.S. Moron R.J. Santos & Associates for A. Maghuyop & B. Bankiao.

D E C I S I O N

BERSAMIN, *J.*:

The issue is whether or not the Court of Appeals (CA) justifiably annulled and set aside the judgment of the Regional Trial Court (RT) in favor of the plaintiff on the ground that the RTC had not received evidence showing said party's being an indigent litigant exempt from the payment of filing fees.

The Cases

G.R. No. 194412[1] is the appeal brought by Samsoden Pangcatan, the plaintiff in Civil Case No. 1888-02 entitled *Samsoden Pangcatan v. Alexandro "Dodong" Maghuyop, Belindo Bankiao, Engr. Arnulfo Garcia and Eldefonso Densing,* to reverse and set aside the decision promulgated on December 18, 2009,[2] whereby the Court of Appeals (CA), in C.A.-G.R. CV No. 01251-MIN, annulled and set aside the decision[3] rendered on February 9, 2007 by the Regional Trial Court (RTC), Branch 8, in Marawi City on the ground that the RTC had improperly allowed the filing of the suit on the basis of his being an indigent litigant despite not having received evidence of his indigency pursuant to the guidelines and standards set and defined by Section 21, Rule 3 and Section 19, Rule 141 of the *Rules of Court*. The nullification of the decision of the RTC notwithstanding, the CA remanded the case, and required the RTC to hear and resolve the plaintiff's *Ex Parte Motion for Leave to File Case as Pauper Litigant* in accordance with said guidelines and standards.

G.R. No. 194566[4] is the appeal brought by the defendants in Civil Case No. 1888-02 to reverse the remand of the case to the RTC pursuant to the same decision of December 18, 2009 promulgated in CA-G.R. CV No. 01251-MIN on the ground of such remand being a deviation from the rulings of the Court to the effect that the courts would acquire jurisdiction over cases only upon the payment of the prescribed docket fees.

Antecedents

Pangcatan commenced Civil Case No. 1888-02 in the RTC to recover various damages he had suffered in April 2002 from

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[1] *Rollo* (G.R. No. 194412), pp. 10-29.

[2] *Id.* at 68-76; and *rollo* (G.R. No. 194566), pp. 11-19; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justice Edgardo T. Lloren and Associate Justice Leoncia R. Dimagiba.

[3] *Rollo* (G.R. No. 194412), pp. 41-47; penned by Judge Santos B. Adiong.

[4] *Rollo* (G.R. No. 194566), pp. 4-8.

the vehicular accident caused by the negligence of the defendants. Defendants Alexandro "Dodong" Maghuyop and Belindo Bankiao, the petitioners in G.R. No. 194568, were respectively the owner and driver of the passenger van that Pangcatan had hired to transport himself and the goods he had purchased in Pagadian City to his store in Margosatubig, Zamboanga del Sur. Based on the police report on the vehicular accident,[5] Bankiao had stopped his vehicle in the middle of the right lane of the highway in order to call for more passengers when the dump truck of defendant Engr. Arnulfo Garcia then driven by defendant Eldefonso Densing suddenly bumped the rear of the van, causing Pangcatan to lose consciousness. After Pangcatan regained consciousness in the hospital, he discovered that his right leg had been fractured, and that he had lost all the goods he had bought in Pagadian City.[6]

Pangcatan's complaint alleged that his estimated daily income before the accident was ₱400.00/day; that because of his injury, he could never sell again or engage in any other business; and that his medical bills and the costs of his surgical operation would easily run up to ₱500,000.00.[7] When he filed his complaint in September 2002, Pangcatan also filed his *Ex Parte Motion for Leave to File Case as Pauper Litigant*, which the RTC granted through its order of September 4, 2002 under the condition that the filing fees would constitute a first lien on any favorable monetary judgment that he would recover from the suit.

Instead of filing their answer, Maghuyop and Bankiao moved to dismiss the complaint based on several grounds, namely: (1) that the venue was improperly laid; (2) that the complaint stated no cause of action against them; (3) that the claim or demand had been paid or otherwise extinguished; (4) that the plaintiff was estopped from filing the case; (5) that the plaintiff did not comply with a condition precedent; and (6) that the plaintiff, a well known businessman and resident of Margosatubig, Zamboanga del Sur, was not an indigent litigant.[8]

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[5] RTC *rollo*, pp. 41-42.

[6] *Rollo* (G.R. No. 194412), p. 69.

[7] *Id*.

[8] *Id*. at 70.

On January 27, 2003, the RTC denied the motion to dismiss because the movants did not substantiate the grounds of the motion on the day of the hearing thereof.[9]

Maghuyop and Bakiao did not file their answer subsequently, and were declared in default as a consequence. Pangcatan then presented *ex parte* his evidence against them. Later on, they submitted their *Comment and Opposition to Plaintiff's Formal Offer of Evidence with Motion to Strike Out All Pleadings filed by the Plaintiff*,[10] whereby they maintained that Pangcatan was not an indigent litigant based on his offer of documentary evidence and his pleadings, and that, as such, he was not entitled to the services and representation of any lawyer from the Public Attorney's Office; that the RTC did not acquire jurisdiction over the case by virtue of the non-payment of the required docket fees; and that the complaint should be expunged from the records.

The RTC denied the *Motion to Strike Out All Pleadings filed by the Plaintiff* through the order of August 22, 2006.[11]

It is noted that the RTC dismissed the complaint against Engr. Garcia and Densing because they had entered into a compromise with Pangcatan.[12]

Judgment of the RTC

On February 9, 2007, the RTC rendered judgment in favor of Pangcatan and against Maghuyop and Bankiao,[13] disposing thusly:

> Defendants Alexandro Maghuyop and Belindo Bankiao are ordered to pay the plaintiff (Pangcatan) jointly and severally the following amounts:
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> 1) ₱50,000.00 as medical expenses incurred from April to August 2002;

[9] *Id*.

[10] *Id.* at 71.

[11] *Id*. at 143.

[12] *Id.* at 70.

[13] *Id.*at 41-47.

2) ₱34,465.00 for the cost of the lost goods;

3) the unrealized profit of ₱400.00 a day counting from April 5, 2002 up to the present;

4) ₱10,000.00 as transportation expenses incurred;

5) ₱200,000.00 as moral damages;

6) ₱100,000.00 as exemplary damages; and

7) To pay the costs.

SO ORDERED.

Decision of the CA

Maghuyop and Bankiao appealed, contending that the RTC erred in acquiring jurisdiction over the claim of Pangcatan; and that the RTC further erred in rendering judgment in favor of Pangcatan and against them.

As stated, on December 18, 2009, the CA promulgated the now assailed decision,[14] *viz.*:

ACCORDINGLY, the appealed decision in Civil Case No. 1888-02 before the Marawi City RTC, Branch 8, is ANNULLED and SET ASIDE. The case is REMANDED to the RTC *a quo* which is ordered to hear the plaintiff-appellee's Ex-Parte Motion for Leave to File Case as Pauper Litigant, applying Rule 3, Section 21 of the Rules of Court to determine whether plaintiff-appellee can qualify as an indigent litigant; and, after which to decide the case on the merits with dispatch.

SO ORDERED.

Hence, the appeals now under consideration.

Issues

Pangcatan submits that the CA erred because he was exempt from the payment of docket fees by virtue of his being a client of the Public Attorney's Office (PAO), the exemption being pursuant to Republic Act No. 9406 and OCA Circular No. 121-

[14] *Id.* at 68-76; also, *rollo* (G.R. No. 194566), pp. 11-19.

2007,[15] under which the clients of the PAO were exempt from the payment of docket and other fees incidental to the filing of actions in court, whether as original or appellate proceedings. He argues that OCA Circular No. 121-2007 revoked OCA Circular No. 67-2007;[16] that his having passed the indigency test of the PAO entitled him to the exemption; that although Republic Act No. 9406 was not yet enacted at the time of the filing of his complaint in the RTC, the manner of a PAO client establishing his indigency was procedural in nature, and, therefore, Republic Act No. 9406 retroactively applied to him; and that the order of the CA remanding his case to the RTC for determination of his indigency was not only contrary to law but also impractical.

On their part, Maghuyop and Bankiao mainly contend that Pangcatan was not a indigent litigant because his estimated daily earnings had amounted to ₱400.00; that he had been considered as a pauper litigant by the PAO without complying with the requirements of Section 19, Rule 141 of the *Rules of Court*, like the submission of the affidavit stating: (1) that his gross income and that of his immediate family did not exceed an amount double the monthly minimum wage of an employee; and (2) that he did not own real property with a fair market value of more than ₱300,000.00, as stated in the appended current tax declaration; that such affidavit of the indigent client was required to be corroborated by the affidavit of a disinterested person attesting to the truth of the former, but such corroborating affidavit he also did not submit; and that the RTC did not acquire jurisdiction over the case because Pangcatan did not pay docket fees.

Did the CA err in setting aside the judgment of the RTC, and in remanding the case to the RTC for the determination of whether or not Pangcatan was exempt from the payment of filing and docket fees as an indigent litigant?

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[15] *Exemption of the Indigent Clients of the Public Attorney's Office (PAO) from the Payment of Docket and Other Fees.*

[16] *Exemption of the Indigent Clients of the Public Attorney's Office (PAO) from the Payment of Docket and Other Fees.*

Ruling of the Court

The petition for review in G.R. No. 194412 is granted, but the petition for review in G.R. No. 194566 is denied.

The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees.[17] Section 1, Rule 141[18] of the *Rules of Court* expressly requires that upon the filing of the pleading or other application that initiates an action or proceeding, the prescribed fees for such action or proceeding shall be paid in full. If the complaint is filed but the prescribed fees are not paid at the time of filing, the courts acquire jurisdiction only upon the full payment of such fees within a reasonable time as the courts may grant, barring prescription.[19]

Nonetheless, Section 11, Article III of the Constitution has guaranteed free access to the courts, to wit:

> Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

This guarantee of free access to the courts is extended to litigants who may be indigent by exempting them from the obligation to pay docket and filing fees. But not everyone who claims to be indigent may demand free access to the courts. In *Re: Query of Mr. Roger C. Prioreschi Re Exemption from Legal and Filing Fees of the Good Shepherd Foundation, Inc.*,[20] the

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[17] *Ballatan v. Court of Appeals*, G.R. No. 125683, March 2, 1999, 304 SCRA 34, 42; *Tacay v. Regional Trial Court of Tagum, Davao del Norte*, G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433, 444; *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285; *Manchester Development Corporation v. Court of Appeals*, No. G.R. No. 75919, May 7, 1987, 149 SCRA 562, 568-569.

[18] As revised by the Resolution dated February 17, 2000 issued in A.M. No. 00-2-01-SC amending Rule 141 of the *Rules of Court*, effective March 1, 2000.

[19] *Tacay v. RTC of Tagum, Davao del Norte*, *supra* note 17.

[20] A.M. No. 09-6-9-SC, August 19, 2009, 596 SCRA 401.

Court has declared that the exemption may be extended only to natural party litigants;[21] the exemption may not be extended to juridical persons even if they worked for indigent and underprivileged people because the Constitution has explicitly premised the free access clause on a person's poverty, a condition that only a natural person can suffer.[22] To prevent the abuse of the exemption, therefore, the Court has incorporated Section 21, Rule 3 and Section 19, Rule 141 in the *Rules of Court* in order to set the guidelines implementing as well as regulating the exercise of the right of free access to the courts. The procedure governing an application for authority to litigate as an indigent party as provided under Section 21, Rule 3 and Section 19, Rule 141 of the *Rules of Court* have been synthesized in *Algura v. The Local Government Unit of the City of Naga*.[23]

Algura stipulates that when the application to litigate as an indigent litigant is filed, the trial court shall scrutinize the affidavits and supporting documents submitted by the applicant to determine if he complies with the income and property standards prescribed in the present Section 19 of Rule 141—that his gross income and that of his immediate family do not exceed an amount double the monthly minimum wage of an employee; and that he does not own real property with a fair market value of more than ₱300,000.00; that if the trial court finds that he meets the income and property requirements, the authority to litigate as indigent litigant is automatically granted, and the grant is a matter of right; that, however, if the trial court finds that one or both requirements have not been met, it should then set a hearing to enable the applicant to prove that he has "no money or property sufficient and available for food, shelter and basic necessities for himself and his family;" that in that hearing, the adverse party may adduce countervailing evidence to disprove the evidence presented by the applicant; that, afterwards, the trial court will rule on the application depending on the evidence adduced; that, in addition, Section

[21] *Id*. at 405.

[22] *Id*. at 405-406.

[23] G.R. No. 150135, October 30, 2006, 506 SCRA 81.

21 of Rule 3 provides that the adverse party may later still contest the grant of such authority at any time before judgment is rendered by the trial court, possibly based on newly discovered evidence not obtained at the time the application was heard; that, if the trial court determines after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court; and that if payment is not made within the time fixed by the trial court, execution shall issue or the payment of the prescribed fees shall be made, without prejudice to other sanctions that the trial court may impose.

The RTC allowed Pangcatan to litigate as an indigent party at the start of the case by approving his *Ex Parte Motion for Leave to File Case as Pauper Litigant.* The RTC dismissed the objections interposed by Maghuyop and Bankiao in their motion to dismiss, which included his not being an indigent litigant, because they did not substantiate the grounds of their motion on the day of the hearing of the motion.[24] On appeal to the CA, Maghuyop and Bankiao reiterated their objection based on Pangcatan's not being an indigent litigant, and submitted that the CA did not consequently acquire jurisdiction over his claim against them.

As earlier mentioned, the CA promulgated its now assailed decision annulling and setting aside the judgment of the RTC based on the non-payment of the filing fees although it remanded the case for the purpose of receiving evidence from Pangcatan upon which the RTC could determine if he was exempt therefrom as an indigent litigant, or not. It opined as follows:

> In the instant case, defendants-appellants maintain that plaintiff-appellee's *ex parte* motion to litigate as an indigent is defective since it was not accompanied or supported by the required affidavits executed by the latter attesting that he and his immediate family do not earn the gross income of PhP3,000.00, and that they do not own any real property with an assessed value of more than PhP300,000.00, and by a disinterested person attesting to the truth of his affidavit.
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> The argument is well taken. Section 19 clearly states that the litigant shall execute the required affidavits in order to support by sufficient

[24] Records, p. 62.

evidence his indigent status. It appears from the record that plaintiff-appellee was exempted from payment of legal fees on account of his alleged poverty. Yet there is scant evidence of that. Samsoden failed to meet the evidentiary requirements for prosecuting a motion to litigate as an indigent party. What he has presented before the court *a quo* was only a Certification from the Office of the Provincial Assessor's Office that he has no land holdings or real properties. Quite clearly, the court *a quo* has erroneously allowed the suit in *forma pauperis* without following the requirement of the Rules. But just because the court below has so erred does not mean We should at once castigate plaintiff-appellee by outrightly dismissing his complaint outright (sic) for non-payment of the docket fees.

Examining the pertinent rules, We note that while Rule 141, Section 19 lays down specific standards, Rule 3, Section 21 does not clearly draw the parameters for exemption from payment of fees in case of an indigent party. Knowing that litigants may abuse the grant of authority, the trial court must use sound discretion and scrutinize evidence strictly in granting exemptions in order to determine whether the applicant has hurdled the precise standards under Rule 141. The trial court must also guard against abuse and misuse of the privilege to litigate as an indigent litigant to prevent the filing of exorbitant claims which would otherwise be regulated by a legal fee requirement.

Thus, a remand of the case is warranted for the trial court to determine whether plaintiff-appellee can be considered as an indigent litigant using the standards set in Rule 3, Section 21. Plaintiff-appellee must produce affidavits and supporting documents showing that he satisfies the twin requirements on gross monthly income and ownership of real property under Rule 141. Otherwise, the trial court should call a hearing as required by Rule 3, Section 21 to enable plaintiff-appellee to adduce evidence to show that he does not have property and money sufficient and available for food, shelter, and basic necessities for him and his family. In that hearing, the defendants-appellants would have the right to also present evidence to refute the allegations and evidence in support of the application of plaintiff-appellee to litigate as an indigent litigant.

To recapitulate the rules on indigent litigants, if the applicant for exemption meets the salary and property requirements under Section 19 of Rule 141, then the grant of his application is mandatory. On the other hand, when the application does not satisfy one or both requirements, then the application should not be denied outright; instead, the court should apply the *indigency test* under Section 21 of Rule 3 and use its sound discretion in determining the merits of the prayer for exemption.

The Constitution holds sacrosanct the access to justice by the impoverished. Without doubt, the unhampered access to the justice system by the poor, the underprivileged, and the marginalized is one of the most precious rights which must be shielded and secured.

With the above discussion, the Court finds it unnecessary to delve on the second issue raised.

ACCORDINGLY, the appealed decision in Civil Case No. 1888-02 before the Marawi City RTC, Branch 8, is ANNULLED and SET ASIDE. The case is REMANDED to the RTC *a quo* which is ordered to hear the plaintiff-appellee's Ex-Parte Motion for Leave to File Case as Pauper Litigant, applying Rule 3, Section 21 of the Rules of Court to determine whether plaintiff-appellee can qualify as an indigent litigant; and, after which, to decide the case on the merits with dispatch.

SO ORDERED.[25]

Under the circumstances, the CA grossly erred in annulling and setting aside the judgment of the RTC based solely on the non-payment of the filing fees. If the RTC had incorrectly granted Pangcatan's *Ex Parte Motion for Leave to File Case as Pauper Litigant*, the grant was not jurisdictional but an error of judgment on its part as the trial court. It can hardly be disputed that the RTC apparently believed based on its erroneous application of the aforementioned guidelines set by the *Rules of Court* that Pangcatan was entitled to be exempted from the payment of the filing fees because his daily income was ₱400.00.

It is true that the non-payment of the filing fees usually prevents the trial court from acquiring jurisdiction over the claim stated in the complaint. But for the CA to annul the judgment rendered after trial based solely on such non-payment was not right and just considering that the non-payment of the filing fees had not been entirely attributable to the plaintiff alone. The trial court was more, if not exclusively, to blame for the omission. For sure, all that Pangcatan had done was to apply for the exemption, leaving to the RTC the decision whether or not to grant his application. Moreover, the CA disregarded the fact that the RTC, through its order of September 4, 2002,[26]

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[25] *Rollo* (G.R. No. 194412), pp. 73-76.

[26] Records, p. 21.

had granted his *Ex Parte Motion for Leave to File Case as Pauper Litigant* and had allowed him to litigate as an indigent party subject to the condition that the legal fees would constitute a first lien on the monetary judgment to be rendered after trial.

At any rate, Pangcatan was represented from the start by the Public Attorney's Office (PAO). The exemption of the clients of the PAO like him from the payment of the legal fees was expressly declared by law for the first time in Republic Act No. 9406,[27] particularly its amendment of Section 16-D of the *Administrative Code of 1987*, as follows:

> Section 16-D. Exemption from Fees and Costs of the Suit.— **The clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.** The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.

Such exemption by virtue of Republic Act No. 9406 was recognized by the Court Administrator through OCA Circular No. 67-2007,[28] but the clients of the PAO remained required to submit relevant documentation to comply with the conditions prescribed by Section 19, Rule 141 of the *Rules of Court*. Later on, the Court Administrator removed the conditions prescribed under OCA Circular No. 67-2007 by issuing Circular No. 121-2007.[29]

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[27] *An Act Reorganizing And Strengthening The Public Attorney's Office (PAO), Amending For The Purpose Pertinent Provisions Of Executive Order No.292, Otherwise Known As The "ADMINISTRATIVE Code Of 1987", As Amended, Granting Special Allowance To PAO Officials And Lawyers, And Providing Funds Therefor*. Approved on March 23, 2007.

[28] *Exemption of the Indigent Clients of the Public Attorney's Office (PAO) from the Payment of Docket and Other Fees*, issued by Court Administrator Christopher O. Lock, effective on July 12, 2007.

[29] *Exemption of the Indigent Clients of the Public Attorney's Office (PAO) from the Payment of Docket and Other Fees*, issued by Court Administrator Zenaida N. Elepaño, effective on December 11, 2007.

Since then until the present, all clients of the PAO have been exempt from the payment of docket and other fees incidental to instituting an action in court whether as an original proceeding or on appeal.

It is notable that the Court has pointed out in its ruling in *Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*[30] that its acknowledgment of the exemption Bowed to the clients of the PAO pursuant to Section 16D of the *Administrative Code of 1987*, as amended by Republic Act No. 9406, was not an abdication of its rule-making power but simply its recognition of the limits of that power; and that, in particular, such acknowledgment reflected a keen awareness that, in the exercise of its rule-making power, it may not dilute or defeat the right of access to justice of indigent litigants.

The exemption of clients of the PAO from the payment of the legal fees under Republic Act No. 9406 and OCA Circular No. 121-2007 was not yet a matter of law at the time Pangcatan initiated Civil Case No. 1888-02 on September 4, 2002. Yet, we cannot avoid applying the exemption in his favor for purposes of this case. The remand to the RTC for the purpose of determining the factual basis for the exemption would be superfluous. To start with, the exemption, being a matter of procedure, can be retrospectively applied to his case. It is fundamental wisdom, indeed, that procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes, and, as such, they may be given retroactive effect on actions pending and undetermined at the time of their passage. Doing so will not violate any right of a person who may feel that he is adversely affected, inasmuch as there are no vested rights in rules of procedure.[31] And, secondly, if the ultimate objective to be served by all courts is the administration of justice, the remand of the case after the trial by the RTC would be unreasonable and burdensome on all the parties as well as on the trial court.

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[30] A.M. No. 08-2-01-0, February 11, 2010; 612 SCRA 193, 210.

[31] See *De los Santos v. Vda. de Mangubat*, G.R. No. 149508, 10 October 2007, 535 SCRA 411, 423.

Instead, the judgment of the RTC in favor of Pangcatan and against Maghuyop and Bankiao should be allowed to stand. This appeal to the Court by the latter, which also delves into the merits of the judgment against them, should fail as to them for lack of any arguable error committed by the trial court. The records contain no evidence adduced by them considering that they had waived their evidence on any legitimate defenses they might have raised due to their being declared in default for non-filing of their answer.[32] it would be futile to still defer the judgment rendered upon Pangcatan's evidence in order to still hear them thereafter. A party in default – of which both of them were – could lift the default only by filing a motion to set aside the default before the judgment is rendered.[33] Their right to appeal the judgment by default notwithstanding, their chances of reversing the adverse judgment are nil, for in the first place they had no answer whereby they would have controverted the allegations of fact against them, and, necessarily they had no evidence with which to defeat the claim against them.

Accordingly, we affirm the judgment rendered in favor of Pangcatan.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari* in G.R. No. 194412, but **DENIES** the petition for review on *certiorari* in G.R. No. 194566; **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals in CA-G.R. CV No. 01251-MIN, and, accordingly, **REINSTATES** the decision rendered on February 9, 2007 by the Regional Trial Court in Civil Case No. 1888-02, ordering the respondents in

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[32] See Section 3, Rule 9 the Rules of Court, which states:

Sec. 3. *Default; Declaration of.*— If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. **Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.(1a,R18)**

[33] Section 3(b), Rule 9 of the Rules of Court.

GR. No. 194412, namely: Alexandra Maghuyop and Belindo Bankiao, liable jointly and severally to pay petitioner Samsoden Pangcatan as follows: (1) ₱50,000.00 as medical expenses; (2) ₱34,465.00 for the cost of the lost goods; (3) ₱10,000.00 as transportation expenses; (4) ₱60,000.00 as temperate damages; (5) ₱50,000.00 moral damages; (6) ₱20,000.00 as exemplary damages; (7) Interest at the legal rate of 6% *per annum* on each of the foregoing amounts stated in items (1) to (6), inclusive, from the finality of this decision until fully paid; and (8) Costs of suit.

SO ORDERED.

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

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 201883. November 16, 2016]

SPOUSES DESIDERIO and TERESA DOMINGO, *petitioners, vs.* **SPOUSES EMMANUEL and TITA MANZANO, FRANKLIN ESTABILLO, and CARMELITA AQUINO,** *respondents.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; DOUBLE SALE; THERE IS NO DOUBLE SALE WHERE IT INVOLVES A CONTRACT TO SELL WITH PURCHASE PRICE NOT

PAID IN FULL.— Petitioners' main contention is that while their agreement with the Manzanos was admittedly a mere contract to sell where title is retained by the latter until full payment of the price, they nonetheless have a superior right over the subject property, as against Aquino, by virtue of the applicability of Article 1544 and the fact that Aquino was a buyer in bad faith. This Court, however, agrees with the CA's pronouncement that Article 1544 cannot apply to the present case. x x x This *ponente* has had the occasion to rule that in a contract to sell, payment of the price is a positive suspensive condition, failure of which is not a breach of contract warranting rescission but rather just an event that prevents the prospective buyer from compelling the prospective seller to convey title. In other words, the non-fulfillment of the condition of full payment renders the contract to sell ineffective and without force and effect. x x x And it is precisely for the above reason that Article 1544 of the Civil Code cannot apply. Since failure to pay the price in full in a contract to sell renders the same ineffective and without force and effect, then there is no sale to speak of. x x x Thus, as between the parties to the instant case, there could be no double sale which would justify the application of Article 1544. Petitioners failed to pay the purchase price in full, while Aquino did, and thereafter she was able to register her purchase and obtain a new certificate of title in her name. As far as this Court is concerned, there is only one sale – and that is, the one in Aquino's favor.

APPEARANCES OF COUNSEL

Emmanuel M. Basa for petitioners.
Johween D. Atienza for respondent Carmelita Aquino.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside: a) the January 4, 2012 Decision[2] of the Court of Appeals (CA)

[1] *Rollo*, pp. 9-46.

[2] *Id.* at 104-122; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Leoncia R. Dimagiba.

in CA-G.R. CV No. 93662 which reversed the May 22, 2009 Decision[3] of the Regional Trial Court (RTC) of Caloocan City, Branch 128 in Civil Case No. C-20102; and b) the CA's May 18, 2012 Resolution[4] denying herein petitioners' Motion for Reconsideration.

Factual Antecedents

Respondents Emmanuel and Tita Manzano (the Manzanos) were the registered owners of a 35,281-square meter parcel of land with improvements in Bagong Barrio, Caloocan City (subject property), covered by Transfer Certificate of Title (TCT) No. 160752.

On June 1, 2001, the Manzanos, through their duly appointed attorney-in-fact and herein co-respondent Franklin Estabillo (Estabillo), executed a notarized agreement[5] with petitioners Desiderio and Teresa Domingo which provided, among others, that –

> Ako, si Desiderio Domingo na nakatira sa 188 Gen. Mascardo St. Bagong Barrio Kalookan City. Na bibilhin ko ang lupa at bahay ni Tita Manzano sa 168 Gen. Mascardo St. Bagong Barrio Kalookan City. Na ang may Special Power of Attorney si Franklin Estabillo sa halagang (₱900,000.00) nine hundred thousand pesos. Sa aming napagkasunduan ako ay magbibigay ng halagang (₱100,000.00) one hundred thousand pesos para sa Reservision [sic] Fee.
>
> Ayon sa aming napagkasunduan ililipat lamang ang Titulo ng lupa na may no. 160752 at bahay pag nabayaran ko ng lahat ang (₱900,000.00) Nine Hundred Thousand Pesos hanggang Marso ng 2001. Kami ay maghahati sa Gain Tax at documentary stamps na babayaran sa B.I.R. ayon sa aming napagkasunduan.
>
> Kalakip nito ang xerox title ng titulo ng lupa at bahay.[6]

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[3] *Id.* at 92-102; penned by Judge Eleanor R. Kwong.

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

[5] *Id.* at 55.

[6] *Id.*

Petitioners paid the ₱100,000.00 reservation fee upon the execution of the agreement. Thereafter, they also made payments on several occasions, amounting to ₱160,000.00. However, they failed to tender full payment of the balance when the March 2001 deadline came. Even then, Estabillo advised petitioners to continue their payments; thus, they made additional payments totaling ₱85,000.00. All in all, as of November 2001, petitioners had made payment in the amount of ₱345,000.00.

All this time, the Manzanos remained in possession of the subject property.

In December 2001, petitioners offered to pay the remaining ₱555,000.00 balance, but Estabillo refused to accept payment; instead, he advised petitioners to await respondent Tita Manzano's (Tita) arrival from abroad.

When Tita arrived, petitioners tendered payment of the balance, but the former refused to accept it. Instead, she told them that the property was no longer for sale and she was forfeiting their payments. For this reason, petitioners caused the annotation of an affidavit of adverse claim[7] upon TCT No. 160752.

Soon thereafter, petitioners discovered that respondent Carmelita Aquino (Aquino) bought the subject property on May 7, 2002, and a new title –TCT No. C-359293 – had been issued in her name. Their adverse claim was nevertheless carried over to Aquino's new title.

Ruling of the Regional Trial Court

On May 23, 2002, petitioners filed a Complaint for specific performance and damages with injunctive relief against respondents. The case was docketed as Civil Case No. C-20102 and assigned to Branch 128 of the RTC of Caloocan City. Petitioners sought to compel the Manzanos to accept payment of the remaining balance, execute a deed of sale over the subject property in their favor, and restrain the sale in favor of Aquino.

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

Petitioners later filed an Amended Complaint,[8] praying further that Aquino's new title – TCT No. C-359293 – be cancelled and annulled, and that instead, the Manzanos' TCT No. 160752 be reinstated, or alternatively, that a new title be issued in their name upon confirmation of the sale in their favor and payment of the outstanding balance.

In their respective Answers,[9] Aquino and Estabillo alleged essentially that there was no sale between petitioners and the Manzanos, but a mere offer to buy from petitioners, which was refused due to late payment; that the case was premature for failure to resort to conciliation; and that Aquino's new title was indefeasible and may not be collaterally attacked. The Manzanos, who appear to be living in the United States of America, did not file a responsive pleading, for which reason they were declared in default.

After the issues were joined, trial proceeded.

On May 22, 2009, the RTC issued a Decision declaring that, as against Aquino, petitioners have a prior right over the subject property. It held that the agreement between petitioners and the Manzanos was a contract of sale. Applying Article 1544 of the Civil Code,[10] the RTC held that Aquino was a buyer in bad faith, as she knew of petitioners' prior purchase and registered adverse claim – and such knowledge was equivalent to registration, and thus, the registration of her sale was done in bad faith. Thus, the trial court decreed:

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[8] *Id.* at 61-68.

[9] *Id.* at 80-91.

[10] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants as follows:

1. The defendant Spouses Emmanuel and Tita Manzano are hereby ordered to execute a Deed of Absolute [sic] over a house and lot covered by Transfer Certificate of Title No. 160752 of the Registry of Deeds of Kalookan City upon the tender of payment by the plaintiffs in the amount of Php555,000.00.

2. The Registry of Deeds is hereby ordered to cancel Transfer Certificate of Title No. C-35[9]293 issued in favor defendant [sic] Carmelita Aquino and Transfer Certificate of Title No. 160752 is ordered reinstated.

3. The defendant Carmelita Aquino is hereby ordered to surrender possession of the property to the plaintiffs upon the execution of the necessary deed of absolute sale.

4. The defendants Spouses Manzano and defendant Franklin Estabillo are hereby ordered to pay, jointly and severally, the plaintiffs the sum of Php30,000.00 as reasonable attorney's fees.

5. The defendants Spouses Manzano and defendant Estabillo are likewise ordered to pay, jointly and severally, the costs of this suit.

SO ORDERED.[11]

Ruling of the Court of Appeals

Aquino filed an appeal before the CA, docketed as CA-G.R. CV No. 93662. The appellate court initially referred the case for mediation, but the parties failed to settle amicably.

On January 4, 2012, the CA rendered the assailed Decision containing the following pronouncement:

We find for appellant.[12]

The crux of the instant petition is whether the agreement between the spouses Manzano and appellees[13] is a contract of sale, as the RTC ruled, or a contract to sell, as appellant proposed. If it is a

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

[12] Herein respondent Aquino.

[13] Herein petitioners.

contract of sale, then Article 1544 of the Civil Code applies, and the RTC's Decision stands on firm ground. However, if the contract is merely a contract to sell, the propriety of applying Art. 1544 falters, and appellant's principal thrust in her Brief deserves discussion. Thus, the resolution of this issue is decisive.

x x x x x x x x x

We have applied the distinctions above and examined the contract between the parties. In this regard, We differ from the RTC and find that the Manzanos and appellees entered into a mere contract to sell.

We quote the following provision from the contract, which is particularly revealing of the contract's true nature:

> 'Ayon sa aming napagkasunduan, ililipat lamang ang Titulo ng lupa na may no. 160752 at bahay pag nabayaran ko ng lahat ng (₱900,000.00) Nine Hundred thousand pesos hanggang Marso ng 2001.'
>
> [Translated as: *According to our agreement, the title of the land with no. 160752 and the house shall only be transferred when I have completely paid the ₱900,000.00 by March 2001*.]

The above passage clearly indicates that first, the ownership is reserved to the vendors, and second, that the title of the subject property passes to the buyers only upon full payment of Php900,000.00 [in] March 2001. Additionally, appellees have never even granted possession of the subject property, and that no deed of sale, absolute or conditional, has been executed in their favor. All have been held as indications that the contracting parties have entered into a contract to sell.

Thus, with our determination of that character of the parties' agreement as a contract to sell, We now proceed to illuminate whether Art. 1544 indeed applies to the situation at bar.

Applicability of Art. 1544 to Contracts to Sell

Relevant cases affirm an indubitable rule: Article 1544 only applies to instances of double sales, and not where one contract is some other transaction, such as a contract to sell, even if the latter concurs with a contract of sale over the same realty.

In *Cheng v. Genato, et al.*,[14] the Court succinctly clarified and explained the reason behind such inapplicability, to wit:

> 'However, a meticulous reading of the aforequoted provision (Art. 1544, Civil Code) shows that said law is not apropos to the instant case. This provision connotes that the following circumstances must concur:
>
> '(a) The two (or more) sales transactions in the issue must pertain to exactly the same subject matter, and must be valid sales transactions. (b) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller.'
>
> These situations obviously are lacking in a contract to sell for neither a transfer of ownership nor a sales transaction has been consummated. The contract to be binding upon the obligee or the vendor depends upon the fulfillment or non-fulfillment of an event.'

Later jurisprudence would then echo the above doctrine. Especially persuasive is the ruling in *Spouses Nabus and Tolero v. Spouses Pacson*,[15] as its facts closely resemble those at bar. Distilled, those facts show that the Nabuses (the sellers) entered into a contract with the Pacsons (the prospective buyers) over a parcel of land. But the Pacsons failed to pay on time; this notwithstanding, the Nabuses still accepted their late payments. The Nabuses, however, failed to appear on the designated date for the delivery of the final payment to them.

Later, the Pacsons heard that the land had been sold to Betty Tolero, a third party, later adjudged found to be buyer in bad faith. Tolero obtained a new title over the property pursuant to the sale to her.

Thus, the Pacsons filed for the annulment of the deeds of sale, the cancellation of the titles issued in favor of the buyer Betty Tolero, and for damages. The RTC and the CA ruled for the Pacsons, and against Betty Tolero.

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[14] 360 Phil. 891, 909-910 (1998).

[15] 620 Phil. 344 (2009).

The Supreme Court, however, disagreed, and upheld the rights from the latter contract of sale. The Court ruled:

> 'Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:
>
> a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
>
> b) Determinate subject matter; and
>
> c) Price certain in money or its equivalent.
>
> Under this definition, a Contract to Sell may not be considered as a Contract of Sale because the first essential element is lacking. In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.'

The Court found that the Pacsons could have consigned the amount to be paid to the Pacsons [sic], which would have produced the effect of payment and fulfilled the suspensive condition in a contract to sell, hence obligating the prospective seller to transfer the title to the prospective buyers. The Pacsons, however, failed to do so. In this case, appellees unfortunately committed the same error.

In any case, the foregoing principles result in the rule that in contracts to sell, specific performance is therefore an improper remedy to compel the seller to execute the deed of sale before full payment of the purchase price. Thus, in the *Nabus* case, the Court held:

> 'Evidently, before the remedy of specific performance may be availed of, there must be a breach of the contract.

> Under a contract to sell, the title of the thing to be sold is retained by the seller until the purchaser makes full payment of the agreed purchase price. Such payment is a positive suspensive condition, the non-fulfillment of which is not a breach of contract but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Thus, a cause of action, for specific performance does not arise.'

As regards a subsequent 'buyer in bad faith' affecting prior contracts to sell, the peculiarities of a contract to sell, emphasized above, culminate in the unique doctrine that in case a third person purchases a property subject of a prior contract to sell, such buyer is protected from the taint of bad faith under Article 1544. Here the ruling in *Spouses Cruz and Cruz v. Spouses Fernando and Fernando*,[16] citing *Coronel v. Court of Appeals*[17] enlightens, to wit:

> 'In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-seller's title *per se*, but the latter, of course, may be sued for damages by the intending buyer.'

Considering these well-settled precedents, We rule that: first, the contract between the parties was a contract to sell; second, that since there are no double sales over the same realty, Art. 1544 of the Civil Code is therefore inapplicable to the instant case; third, that because the contract between the Manzanos and the appellees was a contract to sell, and appellees have not paid the full purchase price by full payment or consignment, specific performance does not lie for a reconveyance of the property; and fourth, that by virtue of the inapplicability of Art. 1544 and the nature of a contract to sell, appellant cannot be deemed in bad faith.

We find that such ruling soundly disposes of the other issues raised by appellant in her favor, thereby needing no further discussion.

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[16] 513 Phil. 280, 292 (2005).

[17] 331 Phil. 294, 311 (1996).

In rendering Our pronouncement, We clarify that We are not unmindful of *Filinvest Development Corporation v. Golden Haven Memorial Park*[18] which appellees invoked in their Brief. In the *Filinvest* case, where rights from a contract to sell clashed with those from a contract of sale over the same realty, indeed the Court applied the principle of a "bad faith buyer" in a manner closely resembling an application of Art. 1544. However, the facts of that case present a crucial difference. In *Filinvest,* no titles were yet issued in the subsequent buyer's name; the subsequent buyer merely sought to annotate his sales. As such, the holding in *Spouses Cruz v. Fernando*, i.e., that title to the property will transfer *upon registration without the third person purchaser being held in bad faith*, has not yet, so to speak, locked in place against the intending buyer in the earlier contract to sell. Thus, before registration of the sale, the vendee may still be held in bad faith and the sale to him annulled; but after registration, title will issue and the slighted intending buyer can only recover damages from the seller, because, as the *Spouses Cruz v. Fernando* case emphasized, the owner-seller's title suffers no defect *per se*.

This is not, however, to say that appellees are deprived of remedies. As found in the *Nabus* case, appellees are entitled to the reimbursement of the sums they have paid, if only to prevent the defendants' unjust enrichment. Appellees are also entitled to nominal damages against the defendants Manzanos and Estabillo. x x x

x x x x x x x x x

In the matter of reimbursements, it bears stating that we are also aware that the appellees paid less than two years' installments on their contract. It is thus relevant to discuss R.A. 6552, or the 'Realty Installment Buyer Act' which has been held applicable to contracts to sell realty on installments.

Significantly, in *Rillo v. Court of Appeals*,[19] the Court did not grant reimbursements under the law to the prospective buyer because the buyer paid less than two year's installments. However, we find that this holding is inapplicable. In *Rillo*, the prospective buyer claimed reimbursement under Sec. 4 of RA 6552. However, a reading of the

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[18] 649 Phil. 662 (2010).

[19] 340 Phil. 570 (1997).

law clarifies that Sec. 4[20] must be read in connection with Sec. 3, which provides:

> 'Sec. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments: x x x'

Clearly, the above provision and Sec. 4 apply only when the buyer defaults in payment. In case the defaulting buyer paid less than two years' installments, R.A. 6552 grants him no right to recover his installments. But appellees were not in default. The acceptance by Estabillo of their late installments waived the original period for payment, following *Angeles v. Calasanz*.[21] We find that Estabillo's acceptance also bound his principals, the Manzanos, who accepted the late payments, amounting to a tacit ratification of the agent's acts, and obligated the Manzanos to comply with its consequences. Therefore, the period to pay the balance has not yet lapsed and appellees were not in default.

Finally, we affirm the RTC's grant of attorney's fees and costs, as defendants' unilateral cancellation of the contract and subsequent sale to appellant, without reimbursing appellees of their payments, constrained appellees to institute the present action to protect their interests.

WHEREFORE, the Petition is GRANTED. The Decision of the Regional Trial Court in Civil Case No. C-20102 dated 22 May 2009

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[20] Which provides:

> In cases where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.
>
> If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

[21] 220 Phil. 10 (1985).

is REVERSED and SET ASIDE. Judgment is hereby rendered upholding the validity of the sale of the subject property made by defendants Emmanuel Manzano and Tita Manzano in favor of appellant Carmelita Aquino, as well as the validity of Transfer Certificate of Title No. 359293 issued in the name of Carmelita Aquino. Defendants Emmanuel Manzano and Tita Manzano and defendant Franklin Estabillo are ordered to reimburse appellees Spouses Desiderio and Teresa Domingo the sum of Three Hundred and Forty Five Thousand Pesos (₱345,000.00) corresponding to the installment payments they have paid on the subject property, with annual interest of twelve percent (12%) until fully paid. Defendants Emmanuel Manzano, Tita Manzano, and Franklin Estabillo are likewise ordered jointly and severally to pay spouses Desiderio and Teresa Domingo nominal damages in the amount of Ten Thousand Pesos (₱10,000.00) and reasonable attorney's fees amounting to Thirty Thousand Pesos (₱30,000.00) each with annual interest of twelve percent (12%) until fully paid. Costs against defendants Emmanuel Manzano, Tita Manzano, and Franklin Estabillo.

SO ORDERED.[22]

Petitioners filed a Motion for Reconsideration, which the CA denied in its subsequent May 18, 2012 Resolution. Hence, the present Petition.

Issues

In a March 24, 2014 Resolution,[23] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

1. THE COURT OF APPEALS ERRED IN NOT DISREGARDING THE ISSUE RAISED BY RESPONDENT AQUINO FOR THE FIRST TIME ON APPEAL THAT ARTICLE 1544 OF THE CIVIL CODE IS NOT APPLICABLE TO THIS CASE.
2. THE COURT OF APPEALS ERRED IN HOLDING THAT ARTICLE 1544 IS NOT APPLICABLE TO THIS CASE.

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[22] *Rollo*, pp. 113-121.

[23] *Id.* at 218-219.

3. THE COURT OF APPEALS ERRED IN NOT AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT OF CALOOCAN CITY.[24]

Petitioners' Arguments

In their Petition and Reply,[25] petitioners contend that respondents Aquino and Estabillo are not entitled to the defense that Article 1544 is not applicable in this case, since they did not include the same in their answers below; that the CA erred in not applying said Article 1544, in light of previous Supreme Court rulings (*Abarquez v. Court of Appeals*[26] and *Filinvest Development Corporation v. Golden Haven Memorial Park, Inc*.[27]) to the effect that Article 1544 applies even when one of the double sale transactions involved is a mere contract to sell; that Aquino was a purchaser in bad faith as she clearly knew of the prior sale in their favor through the adverse claim annotated on TCT No. 160752; and that their annotation of an adverse claim on TCT No. 160752 is equivalent to registration of ownership.[28]

Respondent Aquino's Arguments

Pleading affirmance, Aquino argues in her Comment (With Manifestation)[29] that as correctly ruled by the CA, Article 1544 does not apply, and she is not barred from arguing so to refute petitioners' insistence that the said provision applies; that it was the RTC that introduced the applicability of Article 1544 to the case through its May 22, 2009 Decision – thus, the necessity of arguing against it arose only on appeal; and that the agreement between the Manzanos and petitioners being a contract to sell, Article 1544 cannot apply since as between them, no sale or

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[24] *Id*. at 26-27.

[25] *Id*. at 189-204.

[26] 288 Phil. 296 (1992).

[27] *Supra* note 18.

[28] Citing *Balatbat v. Court of Appeals*, 329 Phil. 858 (1996).

[29] *Rollo*, pp. 143-162.

transfer of ownership occurred, and when petitioners failed to pay the purchase price in full, no breach of contract necessarily occurred, but the agreement between them simply became ineffective and without force and effect. Finally, Aquino contends that the cited cases of *Abarquez v. Court of Appeals* and *Filinvest Development Corporation v. Golden Haven Memorial Park, Inc*. are not applicable in this case, as misrepresented by petitioners: *Abarquez* does not involve a contract to sell, while the Court clearly did not apply Article 1544 in *Filinvest*.

Our Ruling

The Court denies the Petition.

On petitioners' contention that respondent Aquino may not raise the issue pertaining to Article 1544 for the first time on appeal, this Court holds that – as correctly noted by Aquino – since the relevance of Article 1544 was tackled only in the RTC's Decision, then it is understandable why she should refute its applicability only on appeal.

Petitioners' main contention is that while their agreement with the Manzanos was admittedly a mere contract to sell where title is retained by the latter until full payment of the price, they nonetheless have a superior right over the subject property, as against Aquino, by virtue of the applicability of Article 1544 and the fact that Aquino was a buyer in bad faith.

This Court, however, agrees with the CA's pronouncement that Article 1544 cannot apply to the present case. The appellate court's disquisition is succinct; nothing more can be added to what it has said. Just the same, the treatment and disposition of cases of this nature is quite settled.

This *ponente* has had the occasion to rule that in a contract to sell, payment of the price is a positive suspensive condition, failure of which is not a breach of contract warranting rescission but rather just an event that prevents the prospective buyer from compelling the prospective seller to convey title. In other words,

the non-fulfillment of the condition of full payment renders the contract to sell ineffective and without force and effect.[30]

> x x x A contract to sell is one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. 'In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.' x x x[31]

And it is precisely for the above reason that Article 1544 of the Civil Code cannot apply. Since failure to pay the price in full in a contract to sell renders the same ineffective and without force and effect, then there is no sale to speak of. Even petitioners' posture that their annotation of an adverse claim on TCT No. 160752 is equivalent to registration or claim of ownership necessarily fails, on account of the fact that there was never a sale in their favor – and without a sale in their favor, they could not register or claim ownership of the subject property. Thus, as between the parties to the instant case, there could be no double sale which would justify the application of Article 1544. Petitioners failed to pay the purchase price in full, while Aquino did, and thereafter she was able to register her purchase and obtain a new certificate of title in her name. As far as this Court is concerned, there is only one sale – and that is, the one in Aquino's favor. "Since there is only one valid sale, the rule on double sales under Article 1544 of the Civil Code does not apply."[32]

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[30] *Union Bank of the Philippines v. Philippine Rabbit Bus Lines, Inc.*, G.R. No. 205951, July 4, 2016; *Spouses Bonrostro v. Spouses Luna*, 715 Phil. 1 (2013); *Diego v. Diego*, 704 Phil. 373 (2013); *Luzon Development Bank v. Enriquez*, 654 Phil. 315 (2011).

[31] *Luzon Development Bank v. Enriquez*, *id*. at 332.

[32] *Cabrera v. Ysaac*, G.R. No. 166790, November 19, 2014, 740 SCRA 612, 637.

With regard to the cases cited by petitioners, *Abarquez v. Court of Appeals* and *Filinvest Development Corporation v. Golden Haven Memorial Park, Inc*., suffice it to state that they do not apply. In *Abarquez*, while the agreement entered into was a contract to sell, the land subject of the sale was nonetheless delivered to the buyer, who took possession thereof and even constructed a house thereon. In the present case, the subject property was never surrendered to petitioners and they were never in possession thereof. There is a difference in the factual milieu. On the other hand, the *Filinvest* case is not one involving Article 1544; and while the Court therein held that a notice of adverse claim is a "warning to third parties dealing with the property that someone claims an interest in it or asserts a better right than the registered owner,"[33] this is not true as regards petitioners. As already stated, petitioners' failure to pay the price in full rendered their contract to sell ineffective and without force and effect, thus nullifying any claim or better right they may have had.

WHEREFORE, the Petition is **DENIED**. The January 4, 2012 Decision and May 18, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93662 are **AFFIRMED with MODIFICATION**, in that the monetary awards shall earn interest at the rate of 12% *per annum* up to June 30, 2013; thereafter, the rate of interest shall be 6% *per annum* until judgment is fully satisfied.[34]

SO ORDERED.

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

Mendoza, J., on leave.

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[33] *Filinvest Development Corporation v. Golden Haven Memorial Park, Inc*., *supra* note 18 at 667.

[34] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

SECOND DIVISION

[G.R. No. 205035. November 16, 2016]

SPOUSES GEMINO C. MIANO, JR. and JULIET MIANO, *petitioners, vs.* **MANILA ELECTRIC COMPANY [MERALCO],** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS.— The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts. x x x However, the general rule for petitions filed under Rule 45 admits exceptions. *Medina v. Mayor Asistio, Jr.* lists down the recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. These exceptions similarly apply in petitions for review filed before this Court involving civil, labor, tax, or criminal cases. x x x *Pascual v. Burgos* instructs that parties must demonstrate by convincing evidence that the case clearly falls under the exceptions to the rule.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— Prevailing jurisprudence uniformly holds that findings of facts of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to analyze or weigh such evidence all over again. It is only in exceptional cases where this Court may review findings of fact of the Court of Appeals.

APPEARANCES OF COUNSEL

Bihag Fetizanan Gandia & Associates Law Office for petitioners.

Christopher B. Arpon for respondent.

D E C I S I O N

LEONEN, *J.*:

The review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion."[1] The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.

Factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.

This resolves the Petition for Review on Certiorari[2] filed by Spouses Gemino and Juliet Miano (Spouses Miano), assailing the Decision[3] dated December 18, 2012 of the Court of Appeals, which partly granted Spouses Miano's appeal from the Decision[4]

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[1] RULES OF COURT, Rule 45, Sec. 6.

[2] *Rollo*, pp. 28-69.

[3] *Id*. at 8-26. The Decision was penned by Associate Justice Marlene Gonzales-Sison, and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon of the Sixth Division, Court of Appeals Manila.

[4] *Id*. at 90-96. The Decision was penned by Judge Franco T. Falcon of Branch 71, Regional Trial Court of Pasig.

dated February 17, 2011 of Branch 71 of the Regional Trial Court of Pasig City.

Spouses Miano are users of the electric service provided by the Manila Electric Company (MERALCO). In 1996, their first electric meter with Service ID No. 551211301 was installed to service their residence.[5] In 2002, their second electric meter with Service ID No. 911978601 was installed to service their *sari-sari* store.[6]

On March 7, 2002, MERALCO personnel conducted an inspection of Spouses Miano's electric meters and discovered that there were two jumpers on their meter service connection.[7]

MERALCO disconnected the electrical service for Spouses Miano's residence (Service ID No. 551211301) and issued a billing differential in the amount of ₱422,185.20, representing the unbilled amount of electricity consumed due to the jumpers.[8]

On December 18, 2002, MERALCO also disconnected the electrical service for Spouses Miano's *sari-sari* store (Service ID No. 911978601) because of "illegal/flying service connection."[9] MERALCO found that Spouses Miano drew electricity from their *sari-sari* store to service their residence.[10]

MERALCO refused to reconnect Spouses Miano's electricity service due to their non-payment of the billing differential.[11]

On January 10, 2003, Spouses Miano filed a Complaint for damages and injunction with Urgent Prayer for Preliminary Mandatory Injunction against MERALCO.[12]

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[5] *Id.* at 9.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 9-10.

[11] *Id.* at 10.

[12] *Id.*

On February 17, 2011, the Regional Trial Court dismissed the Complaint filed by Spouses Miano and ordered them to settle the billing differential being collected by MERALCO:

> WHEREFORE, in view of the foregoing, the instant complaint is hereby DISMISSED. The plaintiffs are hereby directed to settle the differential billing being collected by the defendant.[13]

On appeal, the Court of Appeals modified the Regional Trial Court's Decision and ruled that due to MERALCO's failure to notify Spouses Miano prior to disconnection, MERALCO should pay Spouses Miano ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees.[14] MERALCO was also ordered to restore their electricity connection.[15]

Nonetheless, the Court of Appeals ordered Spouses Miano to pay the billing differential.[16] The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, the Appeal is hereby PARTLY GRANTED. Appellants are ORDERED to pay appellee the billing differential of Php422,185.20; while appellee is ordered to pay appellants Php100,000 as moral damages, Php50,000 as exemplary damages and Php50,000 as attorney's fees and cost of suit. Further, MERALCO is ordered to restore to plaintiffs-appellants at their residence at 2650 Guyabano Street, Pangarap Village, Tala, Caloocan City their electric power connection and/or service.
>
> SO ORDERED.[17]

In their Petition for Review on Certiorari,[18] Spouses Miano pray that the portion of the Court of Appeals Decision ordering them to pay the billing differential of ₱422,185.20 be reversed and set aside.

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[13] *Id*. at 96.

[14] *Id*. at 25.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 28-65.

The only issue brought before this Court for resolution is whether the Court of Appeals erred in ordering Spouses Miano to pay the billing differential of ₱422,185.20.

The petition lacks merit.

I

The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion."[19] The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45[20] since factual questions are not the proper subject of an appeal by certiorari. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.[21]

Bases Conversion Development Authority v. Reyes[22] distinguished a question of law from a question of fact:

> Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[23]

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[19] RULES OF COURT, Rule 45, Sec. 6.

[20] RULES OF COURT, Rule 45, Sec. 1.

[21] *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014) [Per *J.* Velasco, Third Division] (citations omitted).

[22] 711 Phil. 631 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[23] *Id*. at 638-639 citing *Land Bank of the Philippines v. Ramos*, 698

However, the general rule for petitions filed under Rule 45 admits exceptions. *Medina v. Mayor Asistio, Jr.*[24] lists down the recognized exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[25]

These exceptions similarly apply in petitions for review filed before this Court involving civil,[26] labor,[27] tax,[28] or criminal[29] cases.

Petitioners ask this Court to review the billing differential of ₱422,185.20:

Phil. 725, 732 (2012) [Per J. Villarama, First Division]; *Heirs of Nicolas S. Cabigas v. Limbaco*, 670 Phil. 274, 285-286 (2011) [Per J. Brion, Second Division]; and *Cucueco v. Court of Appeals*, 484 Phil. 254, 264-265 [Per J. Austria-Martinez, Second Division].

[24] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[25] *Id.* at 232.

[26] *Dichoso, Jr. v. Marcos*, 663 Phil. 48, 54 (2011) [Per J. Nachura, Second Division] and *Spouses Caoili v. Court of Appeals*, 373 Phil. 11, 132 (1999) [Per J. Gonzaga-Reyes, Third Division].

[27] *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per J. Ynares-Santiago, First Division] and *Arriola v. Pilipino Star Ngayon, Inc.*, 741 Phil. 171, 185-187 (2014) [Per J. Leonen, Third Division].

[28] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546-547 (1999) [Per J. Pardo, First Division].

[29] *Macayan, Jr. v. People*, G.R. No. 175842, March 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/175842.pdf> [Per J. Leonen, Second Division] and *Benito*

4.1. Considering that the lone issue in this appeal pertains only to the billing differential of Php422,185.20 allegedly due to MERALCO, petitioners will reiterate the narration of facts of the trial court and the Honorable Court of Appeals related to the said issue and determine if the same is in accordance with the evidence presented by the parties.[30]

Petitioners admit that the only issue for resolution before this Court is a question of fact, yet they claim that the present Petition falls under the exceptions to the general rule.[31]

II

Pascual v. Burgos[32] instructs that parties must demonstrate by convincing evidence that the case clearly falls under the exceptions to the rule:

Parties praying that this court review the factual findings of the Court of Appeals must demonstrate and prove that the case clearly falls under the exceptions to the rule. They have the burden of proving to this court that a review of the factual findings is necessary. Mere assertion and claim that the case falls under the exceptions do not suffice.[33]

Petitioners assert that their Petition falls under the established exceptions because the judgment of the Court of Appeals is premised on a misappreciation of facts, or on the supposed absence of evidence that is contradicted by the evidence on record.[34]

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v. People, G.R. No. 204644, February 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/204644.pdf> [Per *J.* Leonen, Second Division].

[30] *Rollo*, p. 30.

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

[32] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> [Per *J.* Leonen, Second Division].

[33] *Id.* at 12.

[34] *Rollo*, pp. 35-36.

III

Prevailing jurisprudence uniformly holds that findings of facts of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. It is not the function of this Court to analyze or weigh such evidence all over again. It is only in exceptional cases where this Court may review findings of fact of the Court of Appeals.[35]

While there are well-settled exceptions[36] to the general rule, none of the exceptions to justify the re-evaluation of the findings of fact of both the trial court and the Court of Appeals are present in this case. On the contrary, the findings of fact by the lower court are well-supported by the evidence on record.

The trial court found that the disconnection of Spouses Miano's electricity supply was based on sufficient and reasonable grounds. The trial court ruled that Spouses Miano failed to controvert charges of violations and differential billings against them, since they were not able to overturn the presumption of regularity in the performance of official duty with their mere denials:

> The discovery of said violations was never controverted by the required quantum of evidence adduced by [Spouses Miano]. While there may be some discrepancies in the conduct of inspection made by defendant's personnel when the alleged discovery of the two line permanent jumper was made, the presumption of regularity in the performance of official duty prevails over the mere denial by the plaintiffs of the existence of said violation. The same also holds

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[35] *Castillo v. Court of Appeals*, 329 Phil. 150, 159-160 (1996) [Per *J.* Panganiban, Third Division]; *NGEI Multi-Purpose Cooperative Inc. v. Filipinas Palmoil Plantation Inc.*, 697 Phil. 433, 443-444 (2012) [Per *J.* Mendoza, Third Division]; *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014) [Per *J.* Velasco, Third Division].

[36] *Virtucio v. Alegarbes*, 693 Phil. 567, 573-574 (2012) [Per *J.* Mendoza, Third Division]; *Surigao Del Norte Electric Cooperative v. Gonzaga*, 710 Phil. 676, 687 (2013) [Per *J.* Perlas-Bernabe, Second Division]; *Republic v. Pasicolan*, G.R. No. 198543, April 15, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/198543.pdf> [Per *J.* del Castillo, Second Division].

true on the issue of differential billings. With respect to the plying (sic) connection, the existence of the same was never denied by the plaintiffs.[37]

The Court of Appeals modified the trial court's Decision by awarding damages, since MERALCO failed to follow the proper procedure required by the law in disconnecting Spouses Miano's power supply.[38] However, the Court of Appeals upheld the trial court's finding that MERALCO was entitled to the billing differential:

> Despite the basis for the award of damages – the lack of due process in immediately disconnecting plaintiffs-appellants' electrical supply – defendant's claim for the billing differential is still proper.
>
> MERALCO should be given what it rightfully deserves. MERALCO's Senior Billing Staff Enrique Katipunan testified how he computed the differential billing being suffered by MERALCO on account of the jumper being used by plaintiffs-appellants.
>
> *Direct Examination of Enrique E. Katipunan:*
>
> Q: What do you mean by differential billing, Mr. Witness?
>
> A: Differential billing is the billing rendered by the MERALCO representing the actual electrical energy consumed by the customer which was not registered on the meter on account of jumper, sir.
>
> . . . . . .
>
> Q: What do you mean by connected load?
>
> A: Connected loads are the total electrical loads like appliances, lights, TV and other electrical equipment which were found during inspection.
>
> Q: Likewise, Mr. Witness, we noticed some notation after affected period, "03-16-1998 to 03-07-2002." What do you mean by that?
>
> A: That is the affected period, the March 16, 1998 up to March 7, 2002, which was the discovery of the said jumper.

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[37] *Rollo*, pp. 95-96.

[38] *Id*. at 14-18.

Q: What do this affected period represent?

A: Affected period is the period where there was an alleged jumper found during inspection.

. . . . . .

Q: What is your basis in this affected period?

A: The legal basis I used was Republic Act 7832.

. . . . . .

Q: What do you call the difference between the original bill and the corrected bill?

A: Corrected bills minus original bills is the total differential amount of the customer for (sic) simply the losses of MERALCO.

Q: How much is the totality of the original bills?

A: The total amount of the original bills which has been paid by the customer was ₱40,707.95.

Q: How about the totality of the corrected bills?

A: ₱462,893.15.

Q: What is the difference between ₱462,893.15 and ₱40,707.95.

A: The total differential amount was ₱422,185.20.

Significantly, his testimony was corroborated by documentary evidence, particularly, the meter/socket inspection report and the computation worksheet.[39] (Emphasis supplied)

In conclusion, we do not find any compelling reason to reverse the findings of the Court of Appeals.

WHEREFORE, the Petition for Review on Certiorari is **DENIED.**

SO ORDERED.

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

Mendoza, J., on official leave.

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[39] *Id.* at 23-24.

SECOND DIVISION

[G.R. No. 205148. November 16, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAMIL PRUDENCIO *y* BAJAMONDE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. On the other hand, a case of illegal possession of dangerous drugs will prosper if the following elements are present: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

2. ID.; ID.; CHAIN OF CUSTODY RULE; PERFORMS THE FUNCTION OF ENSURING THAT UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF THE EVIDENCE ARE REMOVED.— In both cases of illegal sale and illegal possession of dangerous drugs, it is important for the prosecution to show the chain of custody over the dangerous drug in order to establish the *corpus delicti*. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession or for sale fails. The chain of custody rule performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.

3. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY THAT MUST BE ESTABLISHED IN A BUY-BUST SITUATION.— In *People v. Kamad,* we recognized the following links in the chain of custody that must be established 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.

4. ID.; ID.; ID.; ID.; MARKING OF THE SEIZED DRUGS OR OTHER RELATED ITEMS IMMEDIATELY AFTER THE SEIZURE; REQUIRES THE SPECIFICS ON HOW, WHEN, AND WHERE THE MARKING WAS DONE AND WHO WITNESSED THE MARKING PROCEDURE.— In *People v. Nuarin*, we explained that a crucial step in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked 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. x x x PO1 Magora's testimony above — which constitutes the totality of the prosecution's evidence regarding the marking and seizing of the illegal drugs — failed to disclose the details as to the procedure followed by the apprehending officers in marking the plastic sachets allegedly taken from Prudencio. In the absence of specifics on *how*, *when*, and *where* this marking was done and *who* witnessed the marking procedure, we cannot accept this marking as compliance with the chain of custody requirement.

5. ID.; ID.; ID.; PROPER PROCEDURE TO BE FOLLOWED IN THE SEIZURE AND CUSTODY OF ILLEGAL DRUGS.— Section 21 (1), Article II of R.A. No. 9165 prescribes

the proper procedure to be followed by the apprehending officers in the seizure and custody of illegal drugs, to *wit:* 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; x x x** While the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides for a saving mechanism by which substantial compliance is permitted, it is only allowed "under justifiable grounds," and "as long as the *integrity and the evidentiary value* of the seized items *are properly preserved* by the apprehending officer/team."

6. ID.; ID.; ID.; SERIOUS LAPSES IN THE HANDLING OF THE SEIZED SHABU AS WELL AS THE EVIDENTIARY GAPS IN THE CHAIN OF CUSTODY CREATE REASONABLE DOUBT ON THE CRIMINAL LIABILITY OF ACCUSED.— *As to the Second Link: Turnover of the illegal drug by the apprehending officer to the investigating officer* x x x [*and]the third and Fourth Links: Turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination and eventually to the court.* x x x serious lapses in the handling of the seized *shabu* as well as the evidentiary gaps or breaks in the chain of custody are fatal to the prosecution's cause. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused.

7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; STANDS ONLY WHEN NO REASON EXISTS IN THE RECORDS TO DOUBT THE SAME.—The courts *a quo* erroneously relied on the presumption of regularity accorded to public officers in the conduct of official duties. The procedural lapses pointed out above negate the existence of the presumption. The presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity

will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused to be presumed innocent.

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 Ramil Prudencio *y* Bajamonde (*Prudencio*) assailing the March 22, 2012 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 03748. The CA decision essentially affirmed the November 20, 2008 decision[2] of the Regional Trial Court (*RTC*), Branch 18, City of Malolos, Bulacan, finding Prudencio guilty beyond reasonable doubt of violating Sections 5, 11, and 15. Article II of Republic Act (*R.A.*) No. 9165.[3]

The Case

The prosecution charged Prudencio for illegal sale, possession, and use of dangerous drugs in three separate informations, docketed as Criminal Case Nos. 668-M-2006 to 670-M-2006. On arraignment, Prudencio pleaded not guilty to all charges. Joint trial on the merits followed.

The prosecution presented Police Officer I Edgardo R. Magora (*PO1 Magora*) as its main witness. The parties stipulated on

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[1] *Rollo*, pp. 3-30 penned by Associate Justice Leoncia R. Dimagiba, and concurred in by Associate Justice Hakim S. Abdulwahid and Associate Justice Marlene Gonzales-Sison.

[2] CA *rollo*, pp. 14-27; by Presiding Judge Victoria C. Fernandez-Bernardo.

[3] Otherwise known as the Dangerous Drugs Act of 2002.

the testimony of Police Senior Inspector Nelson C. Sta. Maria (*P/Sr. Insp. Sta. Maria*) and agreed that he would identify the request for laboratory examination, the request for drug test, the subject sachets of *shabu*, and the chemistry reports.[4]

PO1 Magora testified that at about 11:00 P.M. on February 15, 2006, while he was in his office at the Bocaue Police Station, he received information from a confidential informant regarding the illegal drug activities of one alias Puronggoy, a resident of Kalye Buntisan, *Barangay* Lolomboy, Bocaue, Bulacan.[5]

At around 1:00 A.M. of the following day, PO1 Magora and his partner, together with the confidential informant, proceeded to the target area to conduct a buy-bust operation.[6]

When they arrived, the informant pointed out to them Puronggoy, who was sitting on a bench in front of a computer shop talking with some people.[7] After about an hour of surveillance, they saw Puronggoy talk with a group of men aboard a tricycle.[8]When the team saw Puronggoy hand something to the men on board the tricycle, their suspicions were aroused.[9]

PO1 Magora, acting as a poseur-buyer and accompanied by the informant, approached Puronggoy;[10] the informant introduced PO1 Magora as a friend. When Puronggoy asked how much he wanted, PO1 Magora replied, "*Dos lang, pang chika babes lang*."[11] Puronggoy said that he had three (3) pieces left, which he offered for ₱500.00; but PO1 Magora insisted on buying just one, saying that he only had ₱200.00 with him.[12]

PO1 Magora handed two (2) ₱100 bills and Puronggoy, in turn, gave him a small sachet which he took from his right

[4] Records, p. 30.

[5] TSN, August 16, 2006, p. 4.

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

[7] *Id*.

[8] TSN, August 23, 2006, p. 3.

[9] *Id*.

[10] *Id*. at pp. 3-4.

[11] *Id*.

[12] *Id*.

pocket.[13] Thereafter, PO1 Magora gave the pre-arranged signal so his partner could approach them while PO1 Magora arrested Puronggoy.[14] A search on Puronggoy's person revealed the two (2) pre-marked ₱100 bills as well as two (2) other plastic sachets containing a white crystalline substance.[15]

PO1 Magora said that he marked the plastic sachet handed to him in the buy-bust as "EMBB" and the two (2) plastic sachets recovered from Puronggoy's person as "P-1" and "P-2."[16]

The team brought Puronggoy to the police station where they learned that his true name is Prudencio.[17] The officer-in-charge, Police Superintendent Buenaventura M. Viray, Jr. (*P/Supt. Viray*), prepared requests for a laboratory examination and a drug test.[18]

The Forensic Chemical Officer, P/Sr. Insp. Sta. Maria, issued Chemistry Report Nos. D-038-2006 and DTC-052-2006, both dated February 16, 2006, finding the specimens taken from the plastic sachets and the urine sample of the accused to be positive for the presence of *methamphetamine hydrochloride*, a dangerous drug otherwise known as *shabu*.[19]

The defense, on the other hand, presented a different version of what transpired. At the time of his arrest, Prudencio was a 17-year-old, out-of- school youth.[20] On the night of February 15, 2006, Prudencio played games with a friend in a computer shop in Bolina St., Bocaue, Bulacan.[21] Afterwards, Prudencio,

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[13] *Id*.

[14] *Id*. at p. 5.

[15] *Id*.

[16] CA Decision, CA *rollo*, p. 8.

[17] *Supra* note 9, at 6.

[18] Records, pp. 65 & 67.

[19] *Id*. at 64 & 66.

[20] See Social Case Study Report, Records, pp. 111-114; *See also* the request for drug test dated February 16, 2006 made by P/Supt. Viray where he indicated the age of Prudencio as 17 years old, Records, p. 10, and the three informations charging him, Records, p. 2.

[21] TSN, June 18, 2007, p. 3.

his friend, and a certain Bryan, went outside and stayed in front of the computer shop.[22]

While they were standing there, four men arrived and arrested Prudencio and Bryan.[23] Prudencio claimed that he did not sell or possess any sachets of *shabu*; that he was shown sachets only after their arrest; and that these sachets were smaller than the sachets presented in court.[24]

Prudencio also testified that he had tasted *shabu* a day before his arrest but that when a sample of his urine was taken, he was never informed of the results of the urine test.[25]

In its decision, the RTC found Prudencio guilty beyond reasonable doubt of the crimes charged. The RTC ruled that the testimony of PO1 Magora sufficiently established the buyer, seller, and object of the transaction, as well as the delivery of the object and payment thereof. It added that the accused's denial of the transaction taking place is a weak defense especially when unsubstantiated by clear and convincing evidence.

Accordingly, the RTC sentenced Prudencio to suffer the penalty of *reclusion perpetua* and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) for the illegal sale of *shabu*, and the penalty of imprisonment for twelve (12) years and one (1) day to twenty (20) years and a fine of Three Hundred Thousand Pesos (₱300,000.00) for the illegal possession of *shabu*. The RTC did not penalize Prudencio for illegal use of *shabu* as he was also found to have possessed the dangerous drug.

On appeal, the CA affirmed with modifications the RTC decision convicting Prudencio for the illegal possession, sale, and use of *shabu*. The CA found that the RTC's findings were supported by the records of the case. It observed that the prosecution satisfactorily established an unbroken chain of custody through the testimony of PO1 Magora.

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[22] *Ibid*. See also TSN, November 19, 2007, p. 10.

[23] *Ibid*.

[24] *Supra* note 22, at 6-7.

[25] TSN, November 19, 2007, pp. 13-14.

The CA ruled that the twin defenses of frame-up and denial are inferior to the presumption of regularity accorded to acts of public officials in the absence of clear and convincing evidence.

The CA, however, pointed out that the RTC failed to appreciate the privileged mitigating circumstance of minority in imposing the appropriate penalty. Thus, the CA reduced the penalties imposed to ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, for the illegal sale of *shabu*; and five (5) years and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, for the illegal possession of *shabu*. It also reduced the fine to ₱500,000.00 and ₱300,000.00 for illegal sale and possession of *shabu*, respectively.

Hence, this appeal.

Our Ruling

After due consideration, we resolve to **ACQUIT** Prudencio because the prosecution failed to prove his guilt beyond reasonable doubt.

In illegal drugs cases, the prosecution must establish all the elements of the offenses charged, as well as the corpus delicti itself.

In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[26] On the other hand, a case of illegal possession of dangerous drugs will prosper if the following elements are present: (1) the accused is in possession of an item or object which is identified to be

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[26] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654.

a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[27]

In both cases of illegal sale and illegal possession of dangerous drugs, it is important for the prosecution to show the chain of custody over the dangerous drug in order to establish the *corpus delicti*[28] This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[29]

Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession or for sale fails.[30] The chain of custody rule[31] performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[32]

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[27] *People v. Remigio*, G.R. No. 18277, December 5, 2012, 687 SCRA 336, citing *People v. Alcuizar*, G.R. No. 189980, April 06, 2011, 647 SCRA 431, 445.

[28] *Id*., citing *People v. Climaco*, G.R. No. 199403, June 13, 2012, 672 SCRA 631, 641.

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

[30] *Id.* at 99.

[31] Defined under Rules and Regulations Implementing the Comprehensive Dangerous Drugs Act of 2002, § 1(b). This section provides:
"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

[32] *People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233-234.

The prosecution has the burden of establishing the chain of custody of the dangerous drugs from the time it was confiscated to the time it was presented in court.

In *People v. Kamad*,[33] we recognized the following links in the chain of custody that must be established 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.[34]

Our examination of the records shows that the chain of custody over the seized drugs had been broken, as shown by the following circumstances: *first*, there was no evidence to show when, where, and how these sachets of *shabu* were marked by PO1 Magora; *second*, there is an utter absence of evidence indicating the identities of the persons who took hold of the seized drugs from the time it was seized until it was handed to the investigator; *third*, the circumstances in which the investigating officer turned over the confiscated drugs to forensic chemist were not shown; and *finally*, the stipulation between the prosecution and the defense as to the forensic chemist's testimony did not establish how the confiscated drugs were handled while in his custody and before its presentation in court. As will be explained below, each of these circumstances amounted to a break in the links of the chain of custody.

(a) First Link: the marking, inventory and photograph requirements

[33] G.R. No. 174198, January 19, 2010, 610 SCRA 295.

[34] *Id*. at 307-308.

In *People v. Nuarin*,[35] we explained that a crucial step in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.[36] Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.[37]

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.[38]

The records of this case are bereft of any evidence showing that the apprehending officers properly marked the seized drugs. True, the CA in its decision found that the prosecution's lone witness, PO1 Magora, had marked the plastic sachets involved in the buy-bust.[39] A review of the records reveal, however, that PO1 Magora merely identified the sachets containing *shabu* and indicated that he was the one who had marked the same, thus:

Q: What did he get from his right pocket?

A: He got something from his right pocket and he gave me a small plastic sachet.

Q: **If that small plastic sachet will be shown to you[,] which according to you was handed over to you by alias Puronggoy, will you be able to identify the same?**

A: **Yes, ma'am, because I have a marking.**

Q: And what marking did you place?

A: EM BB, ma'am.

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[35] G.R. No. 188698, July 22, 2015, 763 SCRA 504.

[36] *Id.* at 511.

[37] *Ibid.*

[38] *Ibid.*

[39] *Supra* note 17.

Q: I am showing to you several plastic sachets, one medium size with several plastic sachets inside. [W]ill you pick up from the items the one that was handed over to you by alias Puronggoy?

A: This one "BB" means "buy bust" and "EM," my initials.

x x x x x x x x x

Q: When you arrested the person of alias Puronggoy, what did you do to his person?

A: I looked for the marked money and I was able to find the 2-₱100 bill money from his left pocket and from his right pocket I found another two (2) pieces of plastic sachet.

Q: **If that two pieces of plastic sachet will be shown to you, will you be able to identify the same?**

A: **Yes, ma'am.**

Q: **Why will you be able to identify the same?**

A: **Because I also put my markings, ma'am.**

Q: Now I am showing to you two (2) pieces of plastic sachet, will you identify your marks?

A: [These are] my markings, ma'am[.] P-1 means possession [1] and P-2 means possession 2.[40]

PO1 Magora's testimony above — which constitutes the totality of the prosecution's evidence regarding the marking and seizing of the illegal drugs failed to disclose the details as to the procedure followed by the apprehending officers in marking the plastic sachets allegedly taken from Prudencio. In the absence of specifics on *how*, *when*, and *where* this marking was done and *who* witnessed the marking procedure, we cannot accept this marking as compliance with the chain of custody requirement.

In this connection, Section 21(1), Article II of R.A. No. 9165 prescribes the proper procedure to be followed by the apprehending officers in the seizure and custody of illegal drugs, to *wit*:

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[40] *Supra* note 10, at 4-5.

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**; x x x. (emphasis supplied)

The records likewise do not show that the police conducted an inventory and photographed the seized drugs. While the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides for a saving mechanism by which substantial compliance is permitted,[41] it is only allowed "under justifiable grounds," and "as long as the **integrity and the evidentiary value** of the seized items **are properly preserved** by the apprehending officer/ team."

In *People v. Gonzales*,[42] we ruled that non compliance with the procedures delineated in R.A. No. 9165 and its IRR, to be excusable, must have to be justified by the State's agents themselves.[43] In the present case, PO1 Magora never testified on the making of an inventory and taking of photographs, nor do the records disclose any inventory receipt or photographs of the seized drugs. This can only lead to the conclusion that none were made and emphasizes the first break in the chain of custody.

(b)Second Link: Turnover of the illegal drug by the apprehending officer to the investigating officer

PO1 Magora's testimony failed to establish that he turned over the drugs to a police investigator. He only testified that after they arrested Prudencio, the latter was brought to their

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[41] Rules and Regulations Implementing the Comprehensive Dangerous Drugs Act of 2002, § 21(a).

[42] G.R. No. 182417, April 3, 2013, 695 SCRA 123.

[43] *Id*. at 136.

police station and that requests for laboratory examination and for drug test were made.[44] No detail was ever given on what happened to the seized drugs from the time they were taken from Prudencio to the time the results of the laboratory examinations came back as positive for the presence of *shabu*.

Although the requests for laboratory examination and for the drug test were prepared and signed by P/Supt Viray,[45] this did not establish his identity as the police investigator to whom PO1 Magora turned over the seized drugs.[46]

Thus, a gap exists between who had custody and possession of the *shabu* prior to, during, and immediately after the police investigation, and how the *shabu* was stored, preserved, labeled, and recorded from the time of its seizure up to its receipt by the forensic laboratory.[47]

(c) Third and Fourth Links: Turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination and eventually to the court.

As mentioned previously, PO1 Magora's testimony never touched upon the details on how the seized drugs were turned over to the investigating officer, nor on how it was turned over to the forensic chemist, P/Sr. Insp. Sta. Maria, for laboratory examination. The only pieces of evidence representing the third link in the chain consisted of the letter-requests for laboratory examination and for drug test, and the corresponding chemistry reports issued by P/Sr. Insp. Sta. Maria.

As to the fourth link, when P/Sr. Insp. Sta. Maria was called to the witness stand, the prosecution and the defense decided to enter into a stipulation regarding what P/Sr. Insp. Sta. Maria would be testifying on if he were presented. Yet, all they

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[44] *Supra* note l0, at 6.

[45] *Supra* note 20

[46] See *Sanchez v. People*, G.R. No. 204589, November 19, 2014, 741 SCRA 294, 318.

[47] See *People v. Kamad, supra* note 36.

stipulated was that he would identity the request for laboratory examination, request for drug test, the subject sachets of *shabu*, and the chemistry reports.

These pieces of evidence failed to identify the person who personally brought the seized *shabu* to the Bulacan Provincial Crime Laboratory Office. It also failed to identify who received the *shabu* at the crime laboratory and who exercised custody and possession before and after it was examined. Neither was there evidence to show how the seized *shabu* were handled, stored, and safeguarded pending its presentation in court.

Notably, Section 6, Paragraph 8 of Dangerous Drugs Board Regulation No. 2, Series of 2003[48] requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed; it also requires the identification of the individuals participating in the chain. The records are silent regarding compliance with this regulation.

Simply put, serious lapses in the handling of the seized *shabu* as well as the evidentiary gaps or breaks in the chain of custody are fatal to the prosecution's cause. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused.[49]

We again remind law enforcement authorities to exert greater effort in observing the rules and procedures governing the custody, control, and handling of seized drugs. We reiterate our pronouncement in *Malillin v. People*,[50] where we explained how the chain of custody should be maintained and what constitutes sufficient compliance with the rule, *viz*:

"As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the

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[48] Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines.

[49] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 277.

[50] G.R. No. 172953, April 30, 2008, 553 SCRA 619.

proponent claims it to be. **It would include testimony about every link in the chain**, from the moment the item was picked up to the time it is offered into evidence,**in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain**. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same."[51]

No Presumption of Regularity

The courts *a quo* erroneously relied on the presumption of regularity accorded to public officers in the conduct of official duties. The procedural lapses pointed out above negate the existence of the presumption. The presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused to be presumed innocent.[52]

Conclusion

In sum, we hold that the lapses in procedure and breaks in the chain of custody led to the failure of the prosecution to adequately prove the *corpus delicti* of the crime charged. Taken all together, it raises doubts on whether the *shabu* presented in court were the exact same *shabu* taken from Prudencio at the time of his arrest. True enough, upon examination of the original records of this case, to where the sachets of *shabu* were still attached, all we found were empty plastic sachets.[53]

In these lights, Prudencio's acquittal must necessarily follow.

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[51] *Id*. at 632-633 [emphasis supplied].

[52] *People v. Dahil, supra* note 36, at 248, citing *People v. Mendoza*, G.R. No. 192432, June 23, 2014, 727 SCRA 113, 116.

[53] Records, p. 61.

The campaign against drugs deserves the full support and encouragement from this Court. However, compliance with the procedures laid down by law, such as that involving the chain of custody of the illegal drugs, must be complied with. This is necessary in order to remove all doubts about the legality of the actions of the police authorities, particularly in buy-bust operations where the standard defense has been denial and the alleged frame-up of the accused. It may not be amiss to suggest that, not only the police, but the prosecutors, as well, should be fully aware of the repercussions of the lapses in the chain of custody.

WHEREFORE, in the light of the foregoing, we **REVERSE** and **SET ASIDE** the March 22, 2012 decision of the Court of Appeals in CA- G.R. CR HC No. 03748. Accused-appellant Ramil Prudencio *y* Bajamonde is hereby **ACQUITTED** for failure of the prosecutjon to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention unless otherwise legally confined for another cause.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

Mendoza, J., on leave.

THIRD DIVISION

[G.R. No. 212008. November 16, 2016]

WILLIAM ENRIQUEZ and NELIA-VELA ENRIQUEZ, *petitioners, vs.* **ISAROG LINE TRANSPORT, INC. and VICTOR SEDENIO,** *respondents.*

SYLLABUS

1. CIVIL; LAW; DAMAGES; INDEMNITY FOR LOSS OF EARNING CAPACITY SHOULD BE ESTABLISHED BY DOCUMENTARY EVIDENCE; EXCEPTIONS.— Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity, x x x Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased was self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased was employed as a daily wage worker earning less than the minimum wage under current labor laws.

2. REMEDIAL LAW; EVIDENCE; EVIDENCE NOT OBJECTED TO IS DEEMED ADMITTED AND MAY BE VALIDLY CONSIDERED BY THE COURT IN ARRIVING AT ITS JUDGMENT.— Contrary to the CA's pronouncement, the Spouses Enriquez were able to present competent proof and the best obtainable evidence of their departed son's income. There is no showing that the defense objected when they presented the certification from ASLAN Security Systems, Inc. (*ASLAN*) during the trial. x x x The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment, as what the RTC in

this case aptly did, since it was indubitably in a better position to assess and weigh the evidence presented during trial.

3. CIVIL LAW; DAMAGES; LOSS OF EARNING CAPACITY; FORMULA FOR COMPUTATION THEREOF.—Using the settled formula, the amount of damages for loss of earning capacity is ₱1,038,960.00, thus: Net Earning Capacity = Life expectancy x Gross Annual Income – Living Expenses = [2/3 (80 – age at death)] x GAI – [50% of GAI] = [2/3 (80 – 26)] x ₱57,720.00 – ₱28,860.00 = [2/3 (54)] x ₱28,860.00 = 36 x ₱28,860.00 Net Earning Capacity = ₱1,038,960.00.

APPEARANCES OF COUNSEL

Demetrio C. Bolante for petitioners.

Epifanio Ma. J. Terbio, Jr. for respondent Isarog Line Transport, Inc.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review which petitioners William Enriquez and Nelia Vela-Enriquez filed assailing the Court of Appeals (*CA*) Decision[1] dated June 13, 2013 and Resolution[2] dated March 4, 2014 in CA-G.R. CV No. 97376.

The pertinent antecedents of the case as disclosed by the records are as follows:

Sonny Enriquez was a passenger of a bus owned and operated by respondent Isarog Line Express Transport, Inc. (*Isarog Line*) driven by Victor Sedenio on July 7, 1998. While traversing the diversion road at Silangang Malicboy, Pagbilao, Quezon, said bus collided with another bus owned by Philtranco Service Enterprises, Inc. (*Philtranco*) which was being driven by Primitivo Aya-ay. As a result of the impact between the two

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[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso, and Eduardo B. Peralta, Jr.; concurring; *rollo*, pp. 24-37.

[2] *Id*. at 47-48.

(2) buses, several passengers died, including Sonny, who was twenty-six (26) years old at that time.

On September 7, 1999, Sonny's parents, petitioners William Enriquez and Nelia Vela-Enriquez (*the Spouses Enriquez*), filed a complaint for damages against Isarog Line and Philtranco as well as their drivers before the Regional Trial Court (*RTC*) of Libmanan, Camarines Sur.

On February 24, 2011, the RTC rendered a Decision finding Isarog Line, Sedenio, Philtranco, and Aya-ay solidarily liable for Sonny's death, thus:

> WHEREFORE, premises considered, decision is hereby rendered in favor of the plaintiffs, William Enriquez and Nelia Vela-Enriquez, and against defendants Isarog Line Express Transport, Inc., Victor Sedenio, Philtranco Service Enterprises, Inc., and Primitivo Aya-ay. Said defendants are hereby declared SOLIDARILY liable to the plaintiffs in the following amounts:
>
> a) PHP 50,000.00 - as civil indemnity for the death of Sonny Enriquez;
> b) PHP 1,038,960.00 - for unrealized income;
> c) PHP 100,000.00 - for moral damages;
> d) PHP 25,000.00 - for exemplary damages;
> e) PHP 25,000.00 - for attorney's fees.
>
> The total amount adjudged shall earn interest at the rate of 6% per *annum* from the date of this judgment until finality; thereafter, 12% per *annum* until the judgment is satisfied.
>
> Costs against the defendants.
>
> SO ORDERED.[3]

Isarog Line then appealed before the CA. On June 13, 2013, the appellate court affirmed the RTC Decision, with modification, thus:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit. **ACCORDINGLY**, the challenged Decision dated 24 February 2011 and Resolution dated 02 June 2011 of the RTC, Branch 29, Libmanan, Camarines Sur are **AFFIRMED**

[3] *Rollo*, pp. 68-69.

with the **MODIFICATION** in that the monetary award in the amount of ₱1,038,960.00 by way of unrealized income is **DELETED**; and that Appellant is ordered to pay Appellees the amount of ₱25,000.00 as temperate damages.

SO ORDERED.[4]

The Spouses Enriquez then filed a Motion for Partial Reconsideration, which the CA denied.[5]

Hence, the instant petition.

The sole issue left to be resolved is whether or not the Spouses Enriquez are entitled to the amount of ₱1,038,960.00 as damages for their son's loss of earning capacity.

Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity, thus:

> Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
>
> > (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
>
> x x x x x x x x x

Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased

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[4] *Id*. at 36. (Emphasis in the original)

[5] *Id*. at 47-48.

was self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased was employed as a daily wage worker earning less than the minimum wage under current labor laws.[6]

Here, contrary to the CA's pronouncement, the Spouses Enriquez were able to present competent proof and the best obtainable evidence of their departed son's income. There is no showing that the defense objected when they presented the certification from ASLAN Security Systems, Inc. (*ASLAN*) during the trial. In *People v. Lopez*,[7] the Court ruled that documentary evidence should be presented to substantiate a claim for loss of earning capacity. The claimant presented a similar certification from Tanod Publishing, showing that the deceased was a photo correspondent for Tanod Newspaper and that his monthly salary ranges from ₱1,780.00 to ₱3,570.00 on per story basis. The Court noted that since the defense did not object when the prosecution presented said document, it was deemed admitted and could be validly utilized by the trial court.

In the case at bar, while the CA itself ruled that the certification from ASLAN stating that Sonny was earning ₱185.00 per day as a security guard is admissible in evidence, it held that the same has no probative value since the signatory was never presented to testify. However, the rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment,[8] as what the RTC in this case aptly did, since it was indubitably in a better position to assess and weigh the evidence presented during trial.[9]

Serra v. Mumar,[10] as relied upon by the appellate court, does not apply because in said case they only presented

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[6] *People v. Villar*, G.R. No. 202708, April 13, 2015, 755 SCRA 346, 356.

[7] 658 Phil. 647 (2011).

[8] *Id.* at 651.

[9] *People v. Bautista*, 665 Phil. 815, 827 (2011).

[10] 684 Phil. 363 (2012).

testimonial evidence to prove damages for loss of earning capacity. No documentary evidence was submitted. The Court ruled that damages for loss of earning capacity is in the nature of actual damages, which must be duly proven by documentary evidence, not merely by the widow's self-serving testimony. Also, in *People v. Villar*,[11] the prosecution merely relied on the widow's self-serving statement on her deceased husband's monthly earning. Here, however, there is actual documentary evidence to support the claim. The Spouses Enriquez presented a certification from Sonny's employer to duly prove his income.

Using the settled formula,[12] the amount of damages for loss of earning capacity is ₱1,038,960.00, thus:

Net Earning Capacity = Life expectancy x Gross Annual Income[13] – Living Expenses
= [2/3 (80 – age at death)] x GAI – [50% of GAI]
= [2/3 (80 – 26)] x ₱57,720.00 – ₱28,860.00
= [2/3 (54)] x ₱28,860.00
= 36 x ₱28,860.00
Net Earning Capacity = ₱1,038,960.00

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **GRANTS** the petition and **SETS ASIDE** the Decision of the Court of Appeals dated June 13, 2013 and Resolution dated March 4, 2014 in CA-G.R. CV No. 97376, and **REINSTATES** the Decision of the Regional Trial Court of Libmanan, Camarines Sur, Branch 29 dated February 24, 2011 in Civil Case No. L-896, with interest at six percent (6%)[14] *per*

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[11] *Supra* note 6.

[12] *Supra* note 7.

[13] GAI = Daily wage x Number of working days in a week x Number of weeks in a year
= ₱185.00 x 6 x 52
= ₱57,720.00

[14] Pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

annum of the amount of damages awarded from the time of the finality of this Decision until its full satisfaction.

SO ORDERED.

Perez, Reyes, and *Jardeleza, JJ.*, concur.

Velasco, Jr. , on official leave.

SECOND DIVISION

[G.R. No. 215943. November 16, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RANDY CLOMA *y* CABANA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— For the successful prosecution of the offense of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it. The prosecution must establish proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. x x x *In People v. Gaspar*, we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.

2. REMEDIAL LAW; EVIDENCE; DENIAL; FAILS AS AGAINST POSITIVE TESTIMONIES.— For his defense,

Cloma denied the allegations of the prosecution. We find Cloma's defense self-serving. The defense of denial has been viewed with disfavor for it can be easily concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; CHAIN OF CUSTODY RULE; FOUR LINKS OF CUSTODY THAT MUST BE PROVEN.— To establish guilt of the accused beyond reasonable doubt in cases involving dangerous drugs, it is important that the substance illegally possessed in the first place be the same substance offered in court as exhibit. *People v. Kamad* explained the four links of custody that must be proven by the prosecution: [1] The seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; [2] The turnover of the illegal drug seized by the apprehending officer to the investigating officer; [3] the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and [4] the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— It is a fundamental rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded respect, when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 29 September 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00629-MIN. The CA affirmed the Judgment[2] dated 19 November 2007 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, in Criminal Case No. 2005-598, convicting appellant Randy Cloma y Cabana (Cloma) of violating Section 5, Article II of Republic Act No. 9165 (RA 9165),[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On 6 September 2005, an Information for violation of Section 5, Article II of RA 9165 was filed with the RTC against Cloma. The Information states:

That on or about August 25, 2005, at about 3:30 in the afternoon, at Isla Delta, Consolacion, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, willfully, unlawfully, and feloniously sell, deliver and give away one (1) small heat-sealed transparent plastic sachet of

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[1] *Rollo*, pp. 3-14. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting concurring.

[2] CA *rollo*, pp. 119-124. Penned by Judge Noli T. Catli.

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

x x x x x x x x x

methamphetamine hydrochloride locally known as shabu weighing 0.10 gram, a dangerous drug, in consideration of ₱500.00 bearing Serial No. PB789713.

Contrary to and in violation of Section 5, Article 2 of RA 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.[4]

Upon arraignment, Cloma entered a plea of not guilty. Trial ensued.

The prosecution presented SPO1 Efren T. Ellevera (SPO1 Ellevera) and PO2 Michael R. Daleon (PO2 Daleon), members of the buy-bust team. According to them, on 25 August 2005, at 3:30 p.m., elements of the City Mobile Group ("CMG") of the Cagayan de Oro City Police Office proceeded to Isla Delta, Consolacion, Cagayan de Oro City to conduct an entrapment operation against Cloma. SPO1 Ellevera was assigned as poseur-buyer. During the operation, SPO1 Ellevera approached Cloma and negotiated for the purchase of *shabu* worth five hundred pesos (₱500). SPO1 Ellevera then handed Cloma the marked money with serial number PB789713 and the latter handed a transparent sachet to him. The sachet contained a white crystalline substance.

After the sale, SPO1 Ellevera introduced himself as a police officer but Cloma resisted arrest and jumped into a nearby river. As Cloma swam towards the Kauswagan riverbank, he was intercepted by PO2 Daleon and PO2 Andres C. Alvarez (PO2 Alvarez). After Cloma was arrested and informed of his rights, he was brought to the Office of the CMG at Maharlika Headquarters, Carmen, Cagayan de Oro City for booking and identification. SPO1 Ellevera marked the sachet with the letter "A" in Isla Delta. He surrendered the sachet to PO2 Daleon in Maharlika Headquarters where he affixed his signature on the sachet.

The sachet was brought to the Philippine National Police (PNP) Crime Laboratory for testing. The substance tested positive for Methamphetamine Hydrochloride (*shabu*), a dangerous drug. The urine sample taken from Cloma also tested

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[4] *Rollo*, p. 4.

positive for *shabu*.[5] The Chemistry Report showing the positive result of the substance and urine was presented during trial.[6] In addition, an affidavit of the Forensic Chemical Officer confirming the findings in the Chemistry Report was shown.[7]

The defense denied all the allegations of the prosecution and presented Cloma as sole witness. Cloma testified that there was no buy-bust operation. He claimed he never sold any *shabu* and the buy-bust team violated his rights under Republic Act No. 7438.[8] Consequently, all evidence seized from him were inadmissible for being the fruit of the poisonous tree. Lastly, he claimed that the procedure for the handling and custody of evidence prescribed in RA 9165 was not followed.

In its Judgment dated 19 November 2007, the RTC found Cloma guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The RTC gave credence to the testimonies of the arresting officer and poseur-buyer. The RTC ruled that Cloma was arrested pursuant to an entrapment operation. Hence, there was probable cause to conduct a warrantless arrest and the evidence seized from him was admissible.

The RTC also found that, in the absence of ill motive, the positive testimony of the arresting officer is stronger than the negative self-serving denial by Cloma.

The Judgment listed the elements of the offense that were present, to wit:

> The following elements of the crime of an illegal sale of dangerous drugs were all proven:
>
> a) The sachet of *shabu* (Exhibit "B") is a dangerous drug as shown by (Exhibit "C") Chemistry Report No. [D-]259-2005 made and prepared

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[5] *Id*. at 5.

[6] *Id*. at 7.

[7] *Id.*

[8] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof.

by Police [Senior] Inspector April G. Carbajal-Madroño, Forensic Chemist of the crime laboratory;

b) That the seller Randy Cloma y Cabana [had] no legal authority to make the sale;

c) That Randy Cloma y Cabana had sold and delivered a dangerous drug to a police poseur-buyer;

d) That at the time he had sold and delivered the sachet of *shabu* (Exhibit "B") he knew that what he sold and delivered was a dangerous drug;

e) The seller and the buyer were both identified;

f) The *corpus delicti* (Exhibit "B") was presented in Court.[9]

The dispositive portion of the Judgment of the RTC reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered finding accused Randy Cloma y Cabana guilty beyond reasonable doubt of the crime charged in the information and hereby sentences accused to Life Imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) pesos.

The accused Randy Cloma y Cabana who has undergone preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except those disqualified by law.

Exhibit "B" sachet of *shabu* bought from accused is ordered confiscated and forfeited in favor of the government to be disposed in accordance with law.

SO ORDERED.[10]

On appeal, Cloma argued that the RTC erred in convicting him despite the absence of the Transcript of Stenographic Notes of his testimony and the testimony of the prosecution witness Police Senior Inspector April G. Carbajal-Madroño. Moreover, he contended that the prosecution failed to prove his guilt beyond reasonable doubt.

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[9] CA *rollo*, pp. 121-122.

[10] *Id.* at 124.

The Ruling of the Court of Appeals

In its Decision dated 29 September 2014, the CA affirmed the RTC's Judgment finding Cloma guilty beyond reasonable doubt of the offense charged. The CA ruled that the essence of any criminal proceeding is that the accused was afforded the opportunity to be heard, to present his side, and to defend his innocence. In the absence of any fact or circumstance that would show that his rights were disregarded, or that the outlined criminal procedure was not followed, the findings of the lower court are usually accorded respect, even to the point of finality.[11] The CA found that there was no fact or circumstance present to overturn the findings of the RTC.

The dispositive portion of the Decision of the CA states:

WHEREFORE, premises considered, the appeal is DENIED. The Decision of Branch 25 of the Regional Trial Court, Cagayan de Oro City, in Criminal Case No. 2005-598 is hereby AFFIRMED *in toto*.

SO ORDERED.[12]

Hence, this appeal.

The Issue

The principal issue to be resolved in this appeal is whether or not Cloma is guilty beyond reasonable doubt of the offense charged.

The Ruling of the Court

After a careful review of the records, the Court finds this appeal to be without merit. Both the RTC and the CA correctly found Cloma guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165.

For the successful prosecution of the offense of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it.[13] The prosecution must

[11] *Rollo*, p. 9.

[12] *Id.* at 14.

[13] *People v. De Guzman*, 564 Phil. 282 (2007), citing *People v. Nicolas*, 544 Phil. 123 (2007).

establish proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.[14]

All the required elements are present in this case. SPO1 Ellevera testified that he was the poseur-buyer in the buy-bust operation. He identified Cloma as the seller of the *shabu*. SPO1 Ellevera confirmed the exchange of the five hundred peso (₱500) marked money and *shabu*. Hence, the illegal sale of drugs was consummated. *In People v. Gaspar*,[15] we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.[16]

For his defense, Cloma denied the allegations of the prosecution. We find Cloma's defense self-serving. The defense of denial has been viewed with disfavor for it can be easily concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[17] As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[18]

Next, Cloma contends that the procedure for the handling and custody of evidence was not followed. Section 21(a) of the Implementing Rules and Regulations of RA 9165 states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/

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[14] *Id.*

[15] 669 Phil. 122 (2011).

[16] *Id.* at 135, citing *People v. Encila*, 598 Phil. 165 (2009).

[17] *People v. De Guzman, supra* note 13.

[18] *Zalameda v. People*, 614 Phil. 710 (2009).

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.** (Emphasis supplied)

To establish guilt of the accused beyond reasonable doubt in cases involving dangerous drugs, it is important that the substance illegally possessed in the first place be the same substance offered in court as exhibit.[19] *People v. Kamad*[20] explained the four links of custody that must be proven by the prosecution:

[1] The seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

[2] The turnover of the illegal drug seized by the apprehending officer to the investigating officer;

[3] the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

[4] the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[21]

In this case, the proper chain of custody was established. Firstly, SPO1 Ellevera, the poseur-buyer, marked the sachet after seizure from Cloma. We quote his testimony from the records:

Q: Now, Officer, at Maharlika, you said you made the marking on the sachet. Is [this] correct?
A: I did not make the marking at x x x Maharlika but right at the crime scene.

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[19] *People v. Climaco*, 687 Phil. 593 (2012), citing *Mallillin v. People*, 576 Phil. 576 (2008).

[20] 624 Phil. 289 (2010).

[21] *Id*. at 304.

Q: Which has a masking tape?
A: Yes, Ma'am.

Q: So you brought a masking tape with you?
A: Yes, Ma'am.

Q: Including a pentel pen and scissor[s]?
A: Yes, Ma'am.[22]

Secondly, SPO1 Ellevera turned the sachet over to PO2 Daleon and the members of the buy-bust team. The members then made a request to the PNP Crime Laboratory for the drug dependency test of Cloma and examination of the sachet. We quote PO2 Daleon's testimony:

Q: You said you brought the accused to the PNP Crime Lab which I am showing to you this request for the laboratory examination, please tell us whether this is [the] one you submitted to the PNP Crime Laboratory?
A: Yes, sir, this is the one.

x x x x x x x x x

Q: And it is mentioned here that you submitted a triangular sachet which I am going to show to you, is this the one you submitted to the PNP Crime Lab?
A: Yes, sir, this is the one.

Q: From whom did you get this sachet?
A: From Randy Cloma, sir.

Q: Who got this sachet?
A: SPO1 Ellevera.

Q: The poseur-buyer?
A: Yes, sir.[23]

On cross examination, PO2 Daleon confirmed that he, together with PO1 Tabalon and PO2 Alvarez, personally handled and turned over the sachet to the PNP Crime Laboratory:

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[22] TSN, 20 February 2006, pp. 14-15.

[23] TSN, 31 July 2006, pp. 6-7.

Q: But it was not you who brought the request to the PNP Crime Lab?
A: It was me, Tabalon and Andres Alvarez who brought the request to the PNP Crime Lab.

Q: When for the first time did you see this particular sachet?
A: I saw it for the first time after Ellevera gave it to me.

Q: At your office?
A: Yes, Ma'am.

Q: And after he gave it to you, you gave it to somebody else?
A: No, Ma'am. We brought it to the PNP Crime Lab but it was Tabalon who gave [it] to the [person-in-charge].[24]

Thirdly, the Forensic Chemical Officer, Police Senior Inspector April G. Carbajal-Madroño, confirmed that the same marked sachet she received from the buy-bust team tested positive for Methamphetamine Hydrochloride. We quote the records:

Q: What was your finding on the laboratory examination of the specimen requested?

A: Qualitative examination conducted on the specimen (Exhibit "B") gave positive result to the test for the presence of Methamphetamine Hydrochloride, a dangerous drug and the finding is contained in Chemistry Report No. D-259-200[5] (Exhibit "C").[25]

Fourthly, the marked sachet was identified by SPO1 Ellevera in open court:

Q: I am showing to you this laboratory request marked as Exhibit "A" please tell us whether this is the one you prepared?
A: This is the same request that I prepared signed by PCI Tumanda in my presence.

Q: It mentioned here a sachet for laboratory examination (Exhibit "B"), is this the one that you bought from the accused and presented to the PNP Crime Lab?
A: **Yes, sir, this is the same sachet.**

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[24] TSN, 31 July 2006, p. 12.

[25] Records, p. 98.

Q: Why [do] you say that this is the one?
A: **Because it bears my marking and signature.**

COURT:
Q: What is the marking?
A: Capital letter "A" with my signature, Your Honor.[26] (Emphasis supplied)

Considering the prosecution's evidence on the links of custody, we find that the chain of custody was observed. The integrity and evidentiary value of the seized drugs were preserved beyond reasonable doubt.

Finally, it is a fundamental rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded respect, when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings.[27] This Court sees no reason to disturb the findings of the RTC and the CA. Cloma was correctly found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

WHEREFORE, we **DISMISS** the appeal. We **AFFIRM** the Decision dated 29 September 2014 of the Court of Appeals in CA-G.R. CR-HC No. 00629-MIN.

SO ORDERED.

Brion, del Castillo, and *Leonen, JJ.,* concur.

Mendoza, J., on official leave.

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[26] TSN, 20 February 2006, pp. 7-8.

[27] *People v. De Guzman*, *supra* note 13.

THIRD DIVISION

[G.R. No. 217956. November 16, 2016]

REPUBLIC OF THE PHILIPPINES, represented by MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), *petitioner, vs.* **LIMBONHAI AND SONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE LOWER COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— The Court has consistently held that the lower court's findings of fact, particularly when affirmed by the CA, are final and conclusive upon the Court. In this, as well as in other appeals, the Court, not being a trier of facts, does not review their findings, especially when they are supported by the records or based on substantial evidence. It is not the function of the Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower courts are absolutely devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.

2. POLITICAL LAW; POWER OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; WITHOUT FULL PAYMENT OF JUST COMPENSATION, THERE CAN BE NO TRANSFER OF TITLE FROM THE LANDOWNER TO THE EXPROPRIATOR.— The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. x x x The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained. Corollarily, the Government, which is the condemnor, has the burden of proving all the essentials necessary to show the right of condemnation. It has the burden of proof to establish that it has complied with all the requirements provided by law for

the valid exercise of the power of eminent domain such as the payment of just compensation. x x x Needless to say that in an expropriation case, an essential element of due process is that there must be just compensation whenever private property is to be taken for public use. Accordingly, Section 9, Article III, of our Constitution mandates: "*Private property shall not be taken for public use without just compensation.*" Clearly, without full payment of just compensation, there can be no transfer of title from the landowner to the expropriator.

3. ID.; ID.; ID.; ID.; NOT ONLY MUST THE PAYMENT BE FAIR AND CORRECTLY DETERMINED, BUT ALSO, THE PAYMENT SHOULD BE MADE WITHIN A "REASONABLE TIME" FROM THE TAKING OF THE PROPERTY.— In the case of *APO Fruits Corporation, et al. v. Land Bank of the Philippines,* just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator." **However, in order for the payment to be "just," it must be real, substantial, full, and ample**. The Court, in *Estate of Salud Jimenez v. Philippine Export Processing Zone,* stressed that **not only must the payment be fair and correctly determined, but also, the payment should be made within a "reasonable time" from the taking of the property**. It succinctly explained that without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of the land while being made to wait for a decade or more before actually receiving the amount necessary to cope with the loss. Thus, once just compensation is finally determined, the expropriator must immediately pay the amount to the lot owner. Clearly, in this case, the government's delay in the payment of the just compensation for over 30 years is no longer reasonable as contemplated by the law.

4. CIVIL LAW; PRINCIPLE OF LACHES; THE INACTION OF PETITIONER FOR OVER 30 YEARS HAS REDUCED ITS RIGHT TO REGAIN POSSESSION OF THE SUBJECT PROPERTY TO A STALE DEMAND.— Laches is the failure or neglect, for an unreasonable length of time to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a

reasonable time warranting a presumption that the party entitled to assert it has either abandoned it or has declined to assert it. It has also been defined as such neglect or omission to assert a right taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. x x x The application of laches is addressed to the sound discretion of the court as its application is controlled by equitable considerations. In the instant case, with the foregoing considerations, it is but just for MCIAA to face the consequence of its negligence or passivity after it had slept on its rights for more than 30 years. Clearly, the inaction of MCIAA for over 30 years has reduced its right to regain possession of the subject property to a stale demand. Indeed, the law helps the vigilant but not those who sleep on their rights. For time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights.

5. ID; SPECIAL CONTRACTS; SALES; INNOCENT PURCHASER FOR VALUE; DILIGENT BUYER OF REAL PROPERTY WHO FOUND THE TITLE AND STATUS OF THE PROPERTY CLEAN AFTER VERIFICATION AND WHO IS A PURCHASER WITHOUT EVIDENCE OF BAD FAITH.— In *Cabuhat v. Court of Appeals,* We have said that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value. Thus, where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property the court cannot disregard such rights and order the total cancellation of the certificate. x x x During cross-examination, Tirso S. Limbonhai diligently sought to inquire, investigate and verify the status of the subject property, and conducted an ocular inspection of the subject property. He found the title and the subject property to be clean. x x x Also, nowhere in the records does it show that the respondent was in bad faith. We have held that the determination of bad faith is evidentiary in nature. Thus, an allegation of bad faith must be substantiated by clear and convincing evidence as jurisprudence dictates that bad faith cannot be presumed.

6. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE REQUIRED IN CIVIL CASES.— Verily, in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. Preponderance of evidence is a phrase that means, in the last analysis, probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Teogenes X. Velez for respondent.

D E C I S I O N

PERALTA,[*] *J.*:

Before us is a petition for review on *certiorari* of the Court of Appeals Decision[1] dated April 10, 2014 and its Resolution[2] dated March 19, 2015, affirming the Decision[3] of the Regional Trial Court of Lapu-Lapu City, Branch 53, which dismissed the complaint for cancellation of title in Civil Case No. 4575-L, entitled "*Republic of the Philippines, represented by Mactan-Cebu International Airport Authority v. Limbonhai and Sons Corporation*."

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

[1] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez, concurring.

[2] *Rollo*, pp. 44-45.

[3] Records, pp. 156-161.

The facts are as follows:

Isidro Godinez (*Godinez*) was the original owner of Lot No. 2498, a 6,343-square-meter property situated in Barrio Pusok, Lapu-Lapu City. Sometime in the 1960s, the said lot was among 27 lots, covering more or less 36 hectares, which were the subjects of an expropriation case filed before the then Court of First Instance (*CFI*) of Cebu by the government against several lot owners in Civil Case No. R-8103 entitled "*Republic of the Philippines, plaintiff v. Amparo Zosa, et al.*"[4]

In an Order[5] dated July 8, 1964, the CFI ordered the government to take possession of the subject property upon deposit of the amount provisionally fixed by the court at ₱32,869.17, representing partial payment of the expropriated lots. The court further stated that the sum is subject to amendment or increase based on the report of the commissioners appointed by the court to appraise the value of the lots. Subsequently, on January 7, 1967, the CFI issued an Order[6] fixing the reasonable value of the lots, including Lot No. 2498, at ₱1.50 per square meter.

Sometime in 1967, however, Godinez caused the judicial reconstitution of the Original Certificate of Title (*OCT*) covering Lot No. 2498. Consequently, OCT No. RO-0608 was issued in the name of Godinez.[7] Later, Godinez sold the property to Tirso S. Limbonhai under his former name Sy Tiong. Thus, on May 17, 1967, OCT No. RO-0608 was cancelled and Transfer Certificate of Title (*TCT*) No. T-1317[8] was issued in the name of Tirso S. Limbonhai, under his former name Sy Tiong. After a decade, Tirso S. Limbonhai, transferred the property to respondent corporation, Limbonhai and Sons. As a consequence,

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[4] *Id.* at 158.

[5] *Id.* at 92-93.

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

[7] Records, p. 11.

[8] *Id.* at 13.

TCT No. T-1317 was cancelled, and in lieu thereof, TCT No. 8278[9] was issued in the name of respondent corporation.

Thereafter, in 1996 petitioner filed a Complaint for Cancellation of Title[10] before the Regional Trial Court (*RTC*), Lapu-Lapu City, claiming that it was the transferee and owner of subject Lot No. 2498 because it was one of the several parcels of land allegedly expropriated by the government for airport purposes in Civil Case No. 8103 entitled "*Republic of the Philippines, plaintiff v. Amparo Zosa, et al*." It also averred that its predecessor-in-interest had been in the material, continuous and uninterrupted and adverse possession of said lot, which was later transferred to Mactan-Cebu International Airport Authority (*MCIAA*), by virtue of its charter, Republic Act No. (*RA*) 6958.[11]

MCIAA insisted that respondent corporation's claim of ownership over Lot No. 2498 has no basis in fact and law because the same lot had already been expropriated by the government as early as 1967. It added that the corporation merely holds the certificate of title in trust and is under legal obligation to surrender the same for cancellation so that a new certificate of title can be issued in the name of the MCIAA.

For its part, respondent corporation countered, among other things, that there was no valid expropriation of Lot No. 2498 since even after more than Twenty-Nine (29) years from the order of expropriation became final and executory, no payment of just compensation was ever made, and the same lot was never used for the purpose for which it was intended. It, likewise, insisted that the reconstitution of the title of Lot No. 2498 in

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[9] *Id.* at p. 15.

[10] *Id.* at 1-6.

[11] *AN ACT CREATING THE MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, TRANSFERRING EXISTING ASSETS OF THE MACTAN INTERNATIONAL AIRPORT AND THE LAHUG AIRPORT TO THE AUTHORITY, VESTING THE AUTHORITY WITH POWER TO ADMINISTER AND OPERATE THE MACTAN INTERNATIONAL AIRPORT AND THE LAHUG AIRPORT, AND FOR OTHER PURPOSES.*

favor of its predecessor-in-interest is valid, and cannot be disturbed without violating the principle of *res judicata*. Respondent also claimed that the reconstituted title cannot be disturbed, in the absence of a showing that the land registration court had not acquired jurisdiction over the case and that there was actual fraud in securing the title.[12]

On May 27, 2004, the trial court rendered a Decision[13] in favor of respondent corporation and dismissed the complaint for cancellation of title for lack of merit, thus:

> WHEREFORE, in light of the foregoing considerations, judgment is hereby rendered in favor of the defendant and against the plaintiff. Consequently, the above-entitled case is hereby dismissed for lack of merit.
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> SO ORDERED.[14]

The lower court found that although expropriation proceedings were initiated by the government to acquire the subject property, the process did come into fruition and the property was never used for the intended purpose. The RTC likewise reasoned that MCIAA's action was already barred by prescription and laches.

Aggrieved by the trial court's decision, the Republic of the Philippines, represented by the MCIAA, sought recourse before the Court of Appeals. On April 10, 2014,[15] the appellate court denied MCIAA's appeal and affirmed the trial court's decision.[16]

The CA opined that indeed, laches has already set in as correctly appreciated by the lower court. Twenty-eight (28) years is a long time for the government to remain silent despite the fact that respondent already fenced the entire property with

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[12] *Rollo,* pp. 60-64.

[13] Records, pp. 156-161.

[14] *Id.* at 161.

[15] *Supra* note 1.

[16] *Rollo,* pp. 31-42.

hollow blocks. When the government built the Matumbo Road which traversed the property, the area was already fenced. This should have alerted the petitioner that some other entity is laying claim and possession over the subject property. Moreover, even assuming that there was a valid expropriation, the record is bereft of any evidence that the government had fully paid the just compensation for the properties it expropriated.

MCIAA filed a motion for reconsideration, but it was denied in the Resolution[17] dated March 19, 2015.

Hence, this petition for review on *certiorari* raising following issues:

I.

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT LACHES HAS SET IN THIS CASE AGAINST THE REPUBLIC.

II.

WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FINDING THAT RESPONDENT HAS A VALID TITLE OVER LOT NO. 2498.[18]

MCIAA argues that laches does not apply when the government sues as a sovereign or asserts governmental rights. MCIAA asserts that by the clear and unequivocal disposition of the CFI judgment that title to Lot No. 2498 is granted to the Republic of the Philippines, the reconstituted OCT No. RO-0608 issued to the predecessor-in-interest of respondent conferred no enforceable rights upon the latter as the same lot has already been expropriated by the government as early as January 1967.

MCIAA insists that it should be adjudged the real and lawful owner of Lot No. 2498, having validly acquired it through expropriation. MCIAA submits that although it was not able

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

[18] *Id.* at 16.

to prove full payment of the just compensation considering the lapse of time since 1967, such inability does not detract from the fact that the expropriation case was concluded and had gained finality by virtue of the Order issued on January 7, 1967. Assuming *arguendo* that the original owner of the expropriated land has not been paid for his land, MCIAA insists that such fact does not affect the propriety of the decision made in the expropriation proceedings awarding the land to the expropriator.

On the other hand, respondent corporation points out that MCIAA failed to present any credible evidence that there was a valid judgment of expropriation or payment of just compensation. It reiterates that MCIAA failed to adduce evidence that its predecessor-in-interest did not comply with the law on reconstitution of title. Finally, it claims that the petition has failed to show any reversible error in the assailed judgment to warrant the exercise of the court's appellate jurisdiction.

We find the petition to be unmeritorious.

At the outset, the Court has consistently held that the lower court's findings of fact, particularly when affirmed by the CA, are final and conclusive upon the Court. In this, as well as in other appeals, the Court, not being a trier of facts, does not review their findings, especially when they are supported by the records or based on substantial evidence.[19] It is not the function of the Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower courts are absolutely devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[20] However, We have carefully perused the records yet We found no ground to apply the exception in the instant case because the findings and conclusions of the appellate court are in full accord with those of the trial court.

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[19] *FGU Insurance Corporation v. Court of Appeals,* 494 Phil. 342, 355 (2005).

[20] *Id.* at 356.

Whether just compensation over the property was paid.

The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. The nature and scope of such power has been comprehensively described as follows:[21]

> x x x It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare. Thus, the right of eminent domain appertains to every independent government without the necessity for constitutional recognition. The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit the power which would, otherwise, be without limit. ***Thus, our own Constitution provides that "[p]rivate property shall not be taken for public use without just compensation***." Furthermore, the due process and equal protection clauses act as additional safeguards against the arbitrary exercise of this governmental power.[22]

The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. It is one of the harshest proceedings known to the law. Consequently, when the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power. The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.[23]

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[21] *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila,* 503 Phil. 845 (2005).

[22] *Id.* at 862, quoting *Heirs of Alberto Suguitan v. City of Mandaluyong,* 384 Phil. 676, 687-688 (2000). (Emphasis ours)

[23] *Id.*

Corollarily, the Government, which is the condemnor, has the burden of proving all the essentials necessary to show the right of condemnation. It has the burden of proof to establish that it has complied with all the requirements provided by law for the valid exercise of the power of eminent domain such as the payment of just compensation.[24]

However, in the instant case, MCIAA is silent as to proving the payment of just compensation. During trial, MCIAA failed to present any evidence of full payment of the just compensation for the property. The only evidence on record consists of the Order of the Court, dated July 8, 1964 (Exhibit "B"), placing the government in possession of Lot No. 2498, among others, after depositing ₱32,869.17, and the Order dated January 7, 1967 (Exhibit "A") declaring the reasonable value of the lots at ₱1.50 per square meter.[25] Other than these two Orders, MCIAA failed to produce any proof of payment of just compensation. Even MCIAA's own witness, Michael Bacarias, admitted during cross-examination, that he has no personal knowledge on whether or not just compensation was fully paid by MCIAA in favor of Godinez, and whether Lot No. 2498 was actually devoted for public use.[26]

Even assuming *arguendo* that the government deposited the amount of ₱32,869.17 as partial payment for the 27 lots subject of the expropriation case, no evidence were presented to prove that subsequent payment for the lots was made based on the adjusted rate of ₱1.50 per square meter. Thus, considering MCIAA's failure to prove payment either by documentary of testimonial evidence, it can be logically surmised that there was indeed no actual payment of just compensation.

The pertinent portion of the court *a quo's* decision is noteworthy, to wit:

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[24] *Id.* at 862-863.

[25] Records, p. 158.

[26] *Id.* at 80-82.

There is no question of the existence of the expropriation case of which Lot No. 2498 was among the 27 lots involved. ***Plaintiff has however shown no evidence that compensation has at all been paid for Lot No. 2498, nor has evidence been shown that plaintiff and its predecessors-in-interest ever used the property for any purpose.***

It is clear that, ***though the expropriation of Lot No. 2498 was initiated, the government did not follow through with the expropriation of this particular lot, probably because there was no more need for it, considering that the property is located about five (5) kilometers from the airport. This explains why Lot No. 2498 has been continuously possessed by defendant and it predecessors-in-interest.***

x x x x x x x x x[27]

Needless to say that in an expropriation case, an essential element of due process is that there must be just compensation whenever private property is to be taken for public use. Accordingly, Section 9, Article III, of our Constitution mandates: "*Private property shall not be taken for public use without just compensation.*" Clearly, without full payment of just compensation, there can be no transfer of title from the landowner to the expropriator.[28]

Whether laches has set in against the government.

Laches is the failure or neglect, for an unreasonable length of time to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it has either abandoned it or has declined to assert it. It has also been defined as such neglect or omission to assert a right taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity.[29]

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[27] Emphasis ours.

[28] *Republic v. Lim,* 500 Phil. 652, 665 (2005).

[29] *Salandanan v. Court of Appeals,* 353 Phil. 115, 120 (1998).

We have ruled in *Catholic Bishop of Balanga v. Court of Appeals*,[30] that:

> That principle of laches is a creation of equity which, as such, is applied not really to penalize neglect or sleeping upon one's right, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation. ***As an equitable defense, laches does not concern itself with the character of the defendant's title, but only with whether or not by reason of the plaintiff's long inaction or inexcusable neglect, he should be barred from asserting this claim at all, because to allow him to do so would be inequitable and unjust to the defendant.***
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> The doctrine of laches or stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and . . . is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.
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> ***The time-honored rule anchored on public policy is that relief will be denied to a litigant whose claim or demand has become "stale" or who has acquiesced for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention.*** In other words, public policy requires, for the peace of society, the discouragement of claims grown stale for non-assertion; thus laches is an impediment to the assertion or enforcement of a right which has become, under the circumstances, inequitable or unfair to permit.[31]

Corollarily, based on the foregoing, the government's inaction in paying the just compensation for the property for more than 30 years is fatal to their cause of action as laches has indeed already set in.

In the case of *APO Fruits Corporation, et al. v. Land Bank of the Philippines*,[32] just compensation has been defined as "the full and fair equivalent of the property taken from its owner by

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[30] 332 Phil. 206 (1996).

[31] *Catholic Bishop of Balanga v. CA, supra,* at 219-220. (Emphasis ours; citations omitted)

[32] 647 Phil. 251, 271 (2010), citing *Land Bank of the Philippines v. Orilla*, 578 Phil. 663, 676 (2008).

the expropriator." **However, in order for the payment to be "just," it must be real, substantial, full, and ample**.[33] The Court, in *Estate of Salud Jimenez v. Philippine Export Processing Zone*,[34] stressed that **not only must the payment be fair and correctly determined, but also, the payment should be made within a "reasonable time" from the taking of the property**. It succinctly explained that without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of the land while being made to wait for a decade or more before actually receiving the amount necessary to cope with the loss.[35] Thus, once just compensation is finally determined, the expropriator must immediately pay the amount to the lot owner. Clearly, in this case, the government's delay in the payment of the just compensation for over 30 years is no longer reasonable as contemplated by the law.

Thus, MCIAA's neglect or omission to assert a supposed right for more than thirty (30) years is too long a time as to warrant the presumption that it had abandoned such right to expropriate the subject property. No evidence was presented to show that MCIAA ever took any action, administrative or judicial, nor did it question or protest the corporation's occupation of the subject lot until its filing of the complaint in 1996, or more than 30 years. There was no evidence to show that MCIAA had even apprised defendant of its right and of its intention to assert it.

The application of laches is addressed to the sound discretion of the court as its application is controlled by equitable considerations.[36] In the instant case, with the foregoing

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[33] *Apo Fruits Corporation, et al. v. Land Bank of the Philippines, supra.*

[34] 402 Phil. 271, 295 (2001); *Land Bank of the Philippines v. Court of Appeals*, 327 Phil. 1047, 1054 (1996), quoting *Municipality of Makati v. Court of Appeals*, 268 Phil. 215 (1990).

[35] *Id.* at 222.

[36] *Insurance of the Philippine Islands Corporation v. Spouses Gregorio*, 658 Phil. 36, 42 (2011).

considerations, it is but just for MCIAA to face the consequence of its negligence or passivity after it had slept on its rights for more than 30 years. Clearly, the inaction of MCIAA for over 30 years has reduced its right to regain possession of the subject property to a stale demand. Indeed, the law helps the vigilant but not those who sleep on their rights.[37] For time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights.[38]

Whether respondent has a valid title over Lot No. 2498

The issue of whether or not the corporation acted in bad faith in the acquisition of the title of the subject Lot No. 2498 is immaterial considering that the government did not complete the expropriation process by its failure to pay just compensation. It failed to perfect its title over the subject lot. Even assuming that the corporation was in bad faith, MCIAA will not have a better title over the subject property because in the first place, MCIAA has no title to speak of. It would have been a different story if MCIAA actually acquired title over the subject property. In such a case, even if the corporation's title was registered first, it would be the Republic's title or right of ownership that shall be upheld.

In *Cabuhat v. Court of Appeals*,[39] We have said that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value. Thus, where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with

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[37] *Salandanan v. Court of Appeals, supra* note 29, at 121.

[38] *Id.*

[39] 418 Phil. 451, 456 (2001).

property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the law as every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. They are only charged with notice of the liens and encumbrances on the property that are noted on the certificate.

During cross-examination, Tirso S. Limbonhai, recalled that while he can rely solely upon the face of a Torrens Certificate of the Title and to dispense with the need of inquiring further, he nonetheless diligently sought to inquire, investigate and verify the status of the subject property, and conducted an ocular inspection of the subject property. He, however, found the title and the subject property to be clean.[40] Thus, considering that he purchased said subject lot on the assurance that Godinez' title thereto is clean and valid, he should not run the risk of being told later that his acquisition was invalid.

In *Peralta v. Heirs of Bernardina Abalon,*[41] citing *Tenio-Obsequio v. Court of Appeals*,[42] We explained the purpose of the Torrens system and its legal implications to third persons dealing with registered land, as follows:

> The main purpose of the Torrens system is to avoid possible conflicts of title to real estate and to facilitate transactions relative thereto by giving the public the right to rely upon the face of a Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright

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[40] *Rollo,* pp. 105-109.

[41] G.R. No. 183448, June 30, 2014, 727 SCRA 477, 490.

[42] 300 Phil. 588, 597-598 (1994).

cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance as to whether the title has been regularly or irregularly issued by the court. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.

The Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of being told later that his acquisition was ineffectual after all. This would not only be unfair to him. What is worse is that if this were permitted, public confidence in the system would be eroded and land transactions would have to be attended by complicated and not necessarily conclusive investigations and proof of ownership. The further consequence would be that land conflicts could be even more numerous and complex than they are now and possibly also more abrasive, if not even violent. The Government, recognizing the worthy purposes of the Torrens system, should be the first to accept the validity of titles issued thereunder once the conditions laid down by the law are satisfied.

Moreover, MCIAA never presented proof that the corporation or its predecessors-in-interest who had bought the subject lot from Godinez were buyers in bad faith. Nowhere in the records does it show that the respondent was in bad faith. We have held that the determination of bad faith is evidentiary in nature. Thus, an allegation of bad faith must be substantiated by clear and convincing evidence as jurisprudence dictates that bad faith cannot be presumed.[43] Consequently, since MCIAA failed to present any iota of evidence that the corporation or its predecessors-in-interest were in bad faith in the acquisition of the subject property, their claim of good faith, thus, prevails.

Verily, in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.

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[43] See *Arenas v. Court of Appeals*, 399 Phil. 372 (2000).

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. Preponderance of evidence is a phrase that means, in the last analysis, probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[44] In the case at bar, MCIAA failed to dispense its burden of proving by clear and convincing evidence that it has a right to have the TCT issued in the name of respondent corporation cancelled.

WHEREFORE, the petition is hereby **DENIED.** The Court **AFFIRMS** the Decision promulgated on April 10, 2014 by the Court of Appeals.

SO ORDERED.

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

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

THIRD DIVISION

[G.R. No. 221465. November 16, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODELIO LOPEZ *y* CAPULI,** *accused-appellant.*

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[44] *Oño v. Lim,* 628 Phil. 418, 430 (2010).

[**] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated November 16, 2016.

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** The essential elements in the successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs under Section 5, Article II of R.A. No. 9165 are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor. Material in the successful prosecution is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

2. **ID.; ID.; ILLEGAL POSSESSION OF A DANGEROUS DRUG; ELEMENTS.—** In the charge of illegal possession of a dangerous drug, the prosecution must prove the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. x x x Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE NOT FATAL WHEN THERE IS A SHOWING OF AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ITEM.—** In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. It is precisely in this regard that R.A. No. 9165, particularly its Section 21, prescribes the procedure to ensure the existence and identity of the drug seized from the accused and submitted to the court. The Implementing Rules of R.A. No. 9165 offer some flexibility when a proviso added 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." x x x The failure of the prosecution to show that the police officers conducted the required physical inventory and

photographed the objects confiscated does not *ipso facto* result in the unlawful arrest of the accused or render inadmissible in evidence the items seized. What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused. Despite non-compliance with the requirements of Section 21 of R.A. No. 9165, when there is a showing of an unbroken chain of custody of the seized item from the moment of its seizure by the buy-bust team, to the investigating officer, to the time it was brought to the crime laboratory for examination, the non-compliance is not fatal.

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.*:

This is an appeal filed by appellant Rodelio Lopez y Capuli from the 17 November 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 05574 affirming the judgment[2] of conviction rendered by the Regional Trial Court (RTC) of Manila, Branch 13 for the crimes of illegal sale and illegal possession of *shabu*.

Appellant was charged in two separate Informations, which read:

Criminal Case No. 05238648

That on or about **August 4, 2005**, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and

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[1] *Rollo*, pp. 2-12; Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring.

[2] Records, pp. 160-168; Presided by Judge Emilio Rodolfo Y. Legaspi III.

there, willfully, unlawfully and knowingly sell or offer for sale one (1) heat sealed transparent plastic sachet, containing ZERO POINT ZERO TWO (0.02) GRAM of white crystalline substance commonly known as "SHABU" containing methylamphetamine hydrochloride, which is a dangerous drug.[3]

Criminal Case No. 05238649

That on or about **August 4, 2005**, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control two (2) heat sealed transparent plastic sachets with marking "SAID 2" and "SAID 3" containing, to wit:

zero point zero six (0.06) gram
zero point zero five (0.05) gram

of white crystalline substance known as "shabu" containing methylamphetamine hydrochloride, a dangerous drug.[4]

The facts are as follow:

Acting on a tip from an informant that a certain Totoy was selling *shabu* on Tambunting Street in Manila, Police Senior Inspector Jay Baybayan (P/S Insp. Baybayan) of the Central Market Sta. Cruz Police Station formed a buy-bust team composed of Police Officer (PO) 2 Gerard Garcia (PO2 Garcia) as the poseur-buyer and PO2 Leonardo Cipriano (PO2 Cipriano) and PO1 Napoleon Osias (PO1 Osias) as back-ups. PO2 Garcia produced two (2) ₱100.00 bills and put markings on the bill. At around 9:30 p.m., on 4 August 2005, the group, together with the informant, proceeded to the target area. The informant spotted Totoy and approached him. He introduced PO2 Garcia to Totoy as the buyer of ₱200.00 worth of *shabu*. PO2 Garcia handed the marked money to Totoy. In turn, Totoy took out one plastic sachet of *shabu* from his pocket and handed it over to PO2 Garcia. Thereafter, the latter introduced himself as a police officer and shouted the pre-arranged signal to his police

[3] *Id*. at 2.

[4] *Id*. at 3.

back-ups. Totoy was arrested. PO2 Garcia frisked him and two more plastic sachets of *shabu* were seized from his right pocket. Totoy was then brought to the police station. Thereat, PO2 Garcia turned over the three (3) plastic sachets recovered from Totoy to P/S Insp. Baybayan, the investigator-in-charge. P/S Insp. Baybayan then marked the sachets in the police station. He later brought the sachets to the crime laboratory for examination. When asked to identify Totoy during trial, PO2 Garcia pointed to appellant.[5] The examination yielded a positive test result for methylamphetamine hydrochloride or *shabu*.[6]

For his defense, appellant testified that he was on Tambunting Street on 4 August 2005 to place a bet on horse racing when he noticed a group of armed men chasing a certain Roger Tisoy. When the group failed to apprehend Roger Tisoy, they arrested appellant instead and brought him to the police station. He first learned that he was being charged with illegal sale and possession of *shabu* during his arraignment. Appellant denied the charges against him.[7]

On 9 March 2012, the RTC found the appellant guilty of illegal sale and illegal possession of *shabu* penalized under Sections 5 and 11(3) respectively, of Republic Act (R.A.) No. 9165. The dispositive portion of the Decision reads:

In Criminal Case No. 05238648

WHEREFORE, in view of the foregoing, this Court finds the accused RODELIO LOPEZ y CAPULI @ TOTOY GUILTY beyond reasonable doubt as principal for violation of Section 5 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing shabu) as charged and he is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount of ₱500,000.00.

In Criminal Case No. 05238649

WHEREFORE, in view of the foregoing, this Court finds the accused RODELIO LOPEZ y CAPULI @ TOTOY GUILTY beyond

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[5] TSN, 11 August 2011, pp. 4-19.

[6] Records, pp. 9-10.

[7] TSN, 8 March 2012, pp. 5-7.

reasonable doubt as principal for violation of Section 11 (3) of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for possession of shabu) as charged and he is sentenced to suffer imprisonment in an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a Fine in the amount of ₱350,000.00.

The shabu in this case are ordered transmitted to the PDEA thru DDB for disposal as per RA 9165.[8]

The trial court held that the prosecution had established all the required elements for illegal sale and possession of dangerous drugs through a legitimate buy-bust operation. The trial court noted that the police failed to comply with the directive of Section 21, Article 11 of R.A. No. 9165 but nonetheless convicted appellant because the defense did not raise said issue during trial.

On appeal, the Court of Appeals affirmed the RTC's findings that all elements of the crimes of illegal sale and illegal possession of dangerous drugs were proven by the prosecution. The Court of Appeals considered appellant's defense of denial as weak and which cannot prevail over the positive declaration of PO2 Garcia. Moreover, the Court of Appeals ruled that appellant failed to impute any ill-motive on the part of PO2 Garcia to falsely testify against him.

Unfazed, appellant filed a Notice of Appeal.[9]

In a Resolution[10] dated 20 April 2016, the Court required the parties to submit supplemental briefs if they so desired. Both parties manifested that they are no longer filing their Supplemental Briefs.[11]

In his Brief,[12] appellant alleges that the prosecution failed to account for the chain of custody of the evidence. Appellant

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[8] Records, p. 168.

[9] *Rollo*, p. 13.

[10] *Id.* at 19.

[11] *Id.* at 23-24 and 29-31.

[12] CA *rollo*, pp. 31-44.

points out that PO2 Garcia did not immediately put markings on the confiscated plastic sachets after his apprehension and the latter did not even know who made the markings at the police station. Appellant also zeroes in on the police officers' non-compliance with Section 21 of R.A. No. 9165, such as the absence of an inventory and photograph of the specimens.

We dismiss the appeal and affirm the appellant's conviction.

The essential elements in the successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs under Section 5, Article II of R.A. No. 9165 are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor. Material in the successful prosecution is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[13]

In the instant case, appellant was caught *in flagrante delicto* of selling *shabu*, a dangerous drug, to PO2 Garcia, the poseur-buyer. PO2 Garcia's testimony has established that a sale transaction took place between him and appellant. PO2 Garcia narrated that he and the informant approached appellant to buy ₱200.00 worth of *shabu* at Tambunting Street in Manila. PO2 Garcia first handed the marked ₱200.00 bill to appellant. Appellant, in turn, took out one plastic sachet of white crystalline substance from his right pocket and gave it to PO2 Garcia.

In the charge of illegal possession of a dangerous drug, the prosecution must prove the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[14]

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[13] *People v. Blanco*, 716 Phil. 408, 414 (2013).

[14] *People v. Dela Cruz*, G.R. No. 205821, 1 October 2014, 737 SCRA 486, 494 citing *People v. Morales*, G.R. No. 172873, 19 March 2010, 616 SCRA 223, 235 further citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) and *People v. Partoza*, 605 Phil. 883, 890 (2009).

The presence of all the elements for violation of Section 11 of R.A. No. 9165 was likewise proven when upon appellant's arrest, PO2 Garcia frisked him and recovered two (2) plastic sachets of white crystalline substance from his right pocket. Appellant was clearly not authorized to possess the same. Moreover, possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.[15] Appellant did not present any explanation that he did not freely or conscious by possess the seized plastic sachets containing *shabu*.

In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. It is precisely in this regard that R.A. No. 9165, particularly its Section 21,[16] prescribes the procedure to ensure the existence and identity of the drug seized from the accused and submitted to the court. The Implementing Rules of R.A. No. 9165 offer some flexibility when a proviso added 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."[17]

We note the observation of the lower court that the police did not comply with Section II of R.A. No. 9165 but that such

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[15] *People v. Bio*, G.R. No. 195850, 16 February 2015, 750 SCRA 572, 578.

[16] Section 21. x x x

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

x x x x x x x x x

[17] *People v. Almodiel*, 694 Phil. 449, 467 (2012).

non-compliance was not raised as issue during the trial. The implication of such statement, which was seized by the accused and made the hinge on which his appeal, spun, is that the non-compliance, if it was made an issue below, would have been fatal for the prosecution. The accused is mistaken.

The failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not *ipso facto* result in the unlawful arrest of the accused or render inadmissible in evidence the items seized. What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.[18]

Despite non-compliance with the requirements of Section 21 of R.A. No. 9165, when there is a showing of an unbroken chain of custody of the seized item from the moment of its seizure by the buy-bust team, to the investigating officer, to the time it was brought to the crime laboratory for examination, the non-compliance is not fatal.[19]

In this case, the prosecution has established the integrity and evidentiary value of the confiscated *shabu*. PO2 Garcia recovered three (3) sachets of *shabu* from appellant. He held on to the plastic sachets until he arrived at the police station where he turned them over to P/S Insp. Baybayan, the investigator assigned to the case, which placed the markings. It was also P/S Insp. Baybayan who brought the specimen to the crime laboratory for examination.

Appellant contends that the marking of the seized sachets of *shabu* should have been made immediately after his apprehension. We do not agree. PO2 Garcia was able to explain his fear of being trapped in the alley where the buy-bust operation was conducted if he were to proceed with the marking of the evidence at the site.[20]

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[18] *People v. Salvador*, 726 Phil. 389, 404-405 (2014).

[19] *People v. Bansulat*, G.R. No. 211678, 8 June 2016.

[20] TSN, 11 August 2011, p. 18.

Finally, we sustain the penalties imposed by the RTC and affirmed by the Court of Appeals, as they are within the range provided by the law.

WHEREFORE, we hereby **AFFIRM** the Decision dated 17 November 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05574.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 221770. November 16, 2016]

NANITO Z. EVANGELISTA[*] (substituted by his heirs, represented by the surviving spouse, LEOVIGILDA C. EVANGELISTA), *petitioners, vs.* **SPOUSES NEREO V. ANDOLONG III AND ERLINDA T. ANDOLONG[**] and RINO AMUSEMENT INNOVATORS, INC.,** *respondents.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE REQUIRED IN CIVIL

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

[**] Additional Member per Raffle dated 16 March 2016.

[*] Deceased.

[**] "Spouses Nereo Andolong and Erlina Andolong" in the petition (see *rollo*, pp. 3 and 4).

CASES; DISCUSSED.— In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. Also, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant was not given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1, Rule 133 of the Rules of Court. "Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto."

APPEARANCES OF COUNSEL

Leynes Lozada-Marquez for petitioner.
Stephen L. Monsanto for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 22, 2015 and the Resolution[3] dated December 14, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 101120, which affirmed the Decision[4] dated October

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[1] *Id*. at 3-55.

[2] *Id*. at 59-68. Penned by Associate Justice Danton Q. Bueser with Associate Justices Florito S. Macalino and Nina G. Antonio-Valenzuela concurring.

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

[4] CA *rollo*, pp. 83-100. Penned by Acting Presiding Judge Maria Amifaith S. Fider-Reyes.

25, 2012 and the Resolution[5] dated January 10, 2013 of the Regional Trial Court of Quezon City, Branch 99 (RTC) in Civil Case No. Q-95-25680, dismissing the complaint of Nanito Z. Evangelista (Nanito) for failure to establish his money claims against respondents Spouses Nereo V. Andolong III and Erlinda T. Andolong (Spouses Andolong) and Rino Amusement Innovators, Inc. (RAII; collectively, respondents).

The Facts

The instant petition stemmed from a complaint for sum of money, accounting and specific performance with prayer for issuance of writ of preliminary attachment and damages[6] filed on November 22, 1995 by Nanito against respondents before the RTC, docketed as Civil Case No. Q-95-25680. Nanito alleged that Spouses Andolong are the majority shareholders of RAII, a domestic corporation engaged in the business of operating amusement centers.[7] On various dates, Nanito and respondents entered into various memoranda of agreement (MOA),[8] as well as deeds of assignment/sale with right to repurchase over machines, equipment, and amenities, which were used in the operations of amusement centers in different malls, such as SM Centerpoint in Manila,[9] Sta. Lucia East Grand Mall in Cainta, Rizal,[10] and Gaisano Country Mall in Cebu[11] (subject contracts).[12]

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[5] *Id*. at 101-103.

[6] Dated November 16, 1995. Records, Vol. I, pp. 1-7. This was subsequently amended in a Second Amended Complaint dated April 22, 1996 (*id*. at 251-260).

[7] *Rollo*, p. 60.

[8] See MOA dated November 12, 1993 for SM Centerpoint (*id*. at 109-113) and MOA dated November 7, 1994 for Sta. Lucia East Grand Mall (*id*. at 114-119).

[9] See MOA; *id*. at 109-113 and Conditional Deed of Assignment dated November 8, 1994 (Conditional Deed); *id*. at 120-122.

[10] See MOA; *id*. at 114-119.

[11] See Deed of Sale with Right to Repurchase dated December 28, 1994 (Deed of Sale); *id*. at 123-125.

[12] See *id.* at 61.

In the subject MOA, the parties agreed, *inter alia*, that they would equally share, *i.e.*, 50%-50%, from the net profits of said amusement centers and that respondents would remit Nanito's share on the 15th and 30th of the month.[13] Claiming that respondents failed to comply with their obligation to remit his share of the net profits, Nanito filed the instant complaint.[14] In support thereof, Nanito presented various computations of the revenues earned by the amusement centers.[15] In an Order[16] dated June 27, 1996, the RTC limited Nanito's money claim to ₱2,241,632.00, according to the stipulation of the parties in open court.[17]

After the presentation of Nanito's evidence, respondents filed a Demurrer to the Evidence,[18] which was, however, denied by the RTC.[19] Eventually, respondents failed to present their evidence despite the opportunity to do so; thus, they were deemed to have waived their right thereto. Thereafter, the RTC directed the parties to file their respective memoranda[20] to which they complied.[21]

During the pendency of the case, Nanito died and, consequently, was substituted by his heirs, represented by his surviving spouse, Leovigilda C. Evangelista[22] (petitioners).

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[13] See *id*. at 110 (for SM Centerpoint) and 115 (for Sta. Lucia East Grand Mall).

[14] See *id*. at 60-62.

[15] See *id*. at 130, 137, 138, and 159.

[16] Records, Vol. I, p. 341. Issued by Judge Felix M. De Guzman.

[17] See also CA *rollo*, pp. 87 and 97.

[18] Dated May 22, 2007. Records, Vol. I, pp. 599-607.

[19] See Order dated June 27, 2008 issued by Presiding Judge Ma. Victoria Alba-Estoesta; *id*. at 641, including dorsal portion.

[20] See Order dated May 5, 2011; records, Vol. II, p. 812.

[21] See Memorandum of Nanito dated June 7, 2011 (records, Vol. II, pp. 821-864) and Memorandum for Defendants (herein respondents) dated June 13, 2011 (*id*. at 866-880). See also *rollo*, p. 62.

[22] See Manifestation and *Ex-Parte* Motion dated December 12, 2005 (records, Vol. I, pp. 569-572); and Manifestation with Urgent Motion dated October 19, 2006 (*id*. at 586-587).

The RTC Ruling

In a Decision[23] dated October 25, 2012, the RTC dismissed petitioners' complaint for insufficiency of evidence. Essentially, the RTC found that Nanito failed to establish his claim against respondents in the stipulated amount of ₱2,241,632.00, as all the evidence he presented did not prove his entitlement thereto. Similarly, the RTC dismissed respondents' counterclaims[24] for lack of proof.[25]

Petitioners filed a motion for reconsideration,[26] but the same was denied in a Resolution[27] dated January 10, 2013. Aggrieved, petitioners appealed to the CA.[28]

The CA Ruling

In a Decision[29] dated May 22, 2015, the CA affirmed the RTC Ruling *in toto*. It held that while Nanito's documentary exhibits were admissible in evidence as they were presumed to have been made in the ordinary course of business, such documents only disclosed the gross monthly revenue earned by the amusement centers in their operation and did not show the actual profit earned by said centers.[30] In this regard, the CA pointed out that the respective amounts of gross revenue were still subject to expenses incurred in relation to the centers' daily operations, as well as the re-infusion of any possible earnings as capital in order to sustain the maintenance of the machines and equipment therein.[31] Thus, in view of the inconclusiveness of the evidence presented in proving the

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[23] CA *rollo*, pp. 83-100.

[24] See Amended Answer of respondents dated August 12, 1996; records, Vol. I, pp. 349-350.

[25] See CA *rollo*, pp. 98-99.

[26] See motion for reconsideration dated December 4, 2012; records, Vol. II, pp. 903-953.

[27] CA *rollo*, pp. 101-103.

[28] See [Appellants'] Brief dated September 8, 2014; *id*. at 28-82.

[29] *Rollo*, pp. 59-68.

[30] See *id*. at 65-66.

[31] See *id*.

existence of the net profits, the CA concluded that petitioners failed to prove their cause of action by a preponderance of evidence, warranting the dismissal of the complaint.[32]

Petitioners moved for reconsideration,[33] which was, however, denied in a Resolution[34] dated December 14, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly held that petitioners failed to prove their cause of action by a preponderance of evidence.

The Court's Ruling

The petition is partly meritorious.

In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. Also, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant was not given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1, Rule 133[35] of the Rules of Court.[36]

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[32] See *id*. at 66-67.

[33] See motion for reconsideration dated June 17, 2015; *id*. at 69-103.

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

[35] Section 1, Rule 133 of the Rules of Court reads:

Section 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[36] *Spouses Ramos v. Obispo*, 705 Phil. 221, 229-230 (2013), citing Heirs of *De Guzman v. Perona*, 636 Phil. 663, 672 (2010).

"Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto."[37]

In the instant case, it is undisputed that under the subject contracts, Nanito had invested a grand total of ₱5,728,800.00.[38] Under the subject MOA, he is entitled to receive 50% of the **net profits** of the amusement centers and that such profits must be remitted to him on the 15th and the 30th of each month.[39] However and as correctly pointed out by the CA, the documents presented by Nanito only showed the gross monthly revenue of the amusement centers without taking into consideration their daily operational expenses, as well as there-infusion of any possible earnings as capital in order to sustain the maintenance of the machines and equipment. As such, these documents are inconclusive in proving the existence of any net profits that respondents failed to remit to Nanito.

Be that as it may, the Court recognizes the fact that under the terms of the subject contracts, respondents have exclusive control over the operations of the amusement centers, with Nanito acting as a mere investor in the said ventures. Naturally, Nanito had no access to documents that would show the existence of net profits, considering that all documents pertaining to the

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[37] *Spouses Ramos v. Obispo*, *id.* at 230, citing *Chua v. Westmont Bank*, 683 Phil. 56, 68 (2012).

[38] ₱2,656,000.00 (See MOA and the Conditional Deed of SM Centerpoint) + ₱1,972,800.00 (See MOA of Sta. Lucia East Grand Mall)+ ₱1,100,000.00 (See Deed of Sale of Gaisano Mall) = ₱5,728,800.00 (See *rollo*, pp. 61, 109, 115, and 124).

[39] See *id*. at 110 and 115.

operations of the covered amusement centers, including financial statements, are all in the possession of respondents. Given this circumstance, Nanito was constrained to rely on the various computations of the revenues earned by the amusement centers as certified by the mall-owners where they were situated.[40] Such computations are enough to establish the existence of gross revenue from which the net profits may be derived at by simply subtracting all the operational expenses, as well any other possible deductions thereto such as any re-infusion of possible earnings as capital.

For respondents' part, they could have easily rebutted petitioners' claim for Nanito's share of net profits by producing pertinent documents which would show that the aforesaid gross profits were just enough, or even inadequate, to cover the operational expenses and capital re-infusions to sustain the amusement centers. Unfortunately, respondents opted not to shed light on the issues at hand as they, unwittingly or otherwise, waived their right to present evidence in this case. In this light, the Court is thus left with no option but to rule that the respondents' failure to present the documents in their possession — whether such failure was intentional or not — raises the presumption that evidence willfully suppressed would be adverse if produced.[41]

Under the foregoing circumstances, the Court is convinced that Nanito should have received remittances representing net profits from respondents, albeit he failed to prove the exact amount he should receive from the latter. In *Seven Brothers Shipping Corporation v. DMC-Construction Resources Inc.*,[42] the Court allowed the recovery of temperate damages in instances where it has been established that some pecuniary loss has been suffered, but its amount cannot be proven with certainty, *viz.*:

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[40] See *id*. at 130, 137, 138, and 159.

[41] See *Loon v. Power Master, Inc.*, 723 Phil. 515, 530 (2013), citing Section 3 (e), Rule 131 of the Rules of Court.

[42] G.R. No. 193914, November 26, 2014, 743 SCRA 33.

In contrast, **under Article 2224 [of the Civil Code], temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty**. This principle was thoroughly explained in *Araneta v. Bank of America* [148-B Phil. 124 (1971)], which cited the Code Commission, to wit:

> The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:
>
> > In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.

Thus, in *Tan v. OMC Carriers, Inc.* [654 Phil. 443 (2011)], temperate damages were rightly awarded because plaintiff suffered a loss, although definitive proof of its amount cannot be presented as the photographs produced as evidence were deemed insufficient. Established in that case, however, was the fact that respondent's truck was responsible for the damage to petitioner's property and that petitioner suffered some form of pecuniary loss. In *Canada v. All Commodities Marketing Corporation* [590 Phil. 342 (2008)], temperate damages were also awarded wherein respondent's goods did not reach the Pepsi Cola Plant at Muntinlupa City as a result of the negligence of petitioner in conducting its trucking and hauling services, even if the amount of the pecuniary loss had not been proven. In *Philtranco Service Enterprises, Inc. v. Paras* [686 Phil. 736 (2012)], the respondent was likewise awarded temperate damages in an action for breach of contract of carriage, even if his medical expenses had not been established with certainty. In *People v. Briones* [398 Phil. 31 (2000)], in which the accused was found guilty of murder, temperate damages were given even if the funeral expenses for the victim had not been sufficiently proven.

Given these findings, we are of the belief that temperate and not nominal damages should have been awarded, considering that

it has been established that respondent herein suffered a loss, even if the amount thereof cannot be proven with certainty.

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Consequently, in computing the amount of temperate or moderate damages, it is usually left to the discretion of the courts, but the amount must be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.

Here, we are convinced that respondent sustained damages to its conveyor facility due to petitioner's negligence. Nonetheless, for failure of respondent to establish by competent evidence the exact amount of damages it suffered, we are constrained to award temperate damages. Considering that the lower courts have factually established that the conveyor facility had a remaining life of only five of its estimated total life of ten years during the time of the collision, then the replacement cost of ₱7,046,351.84 should rightly be reduced to 50% or ₱3,523,175.92. This is a fair and reasonable valuation, having taking into account the remaining useful life of the facility.[43] (Emphases and underscoring supplied)

As already adverted to, respondents' failure to remit the net profits to Nanito pursuant to the subject MOA caused some pecuniary loss on the part of the latter, albeit he failed to prove the exact amount of such loss. In view of such circumstance, the Court deems it reasonable to award temperate damages to petitioners in the amount of ₱1,100,000.00, which is roughly half[44] of ₱2,241,632.00, or the amount of gross revenue claimed to have been earned by the amusement centers. Notably, the award of ₱1,100,000.00 shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

Finally, anent petitioners' other claims, *i.e.*, regarding the monetary value of the arcade machines that respondents allegedly pulled-out, suffice it to say that petitioners failed to prove their

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[43] *Id*. at 44-46, citations omitted.

[44] In the absence of contrary evidence, expenses shall be pegged at fifty percent (50%) of the gross revenue. (See *People v. Tambis*, 582 Phil. 339, 345 [2008] citing *People v. Catbagan*, 467 Phil. 1044, 1087 [2004].)

entitlement thereto since — as correctly pointed out by the CA — the identity of the machines they claim to have been pulled-out were not established by any competent proof.[45]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated May 22, 2015 and the Resolution dated December 14, 2015 of the Court of Appeals in CA-G.R. CV No. 101120 are hereby **AFFIRMED** with **MODIFICATION**, ordering respondents Spouses Nereo V. Andolong III and Erlinda T. Andolong and Rino Amusement Innovators, Inc. to jointly and solidarily pay petitioners heirs of Nanito Z. Evangelista, represented by his surviving spouse, Leovigilda C. Evangelista, temperate damages in the amount of ₱1,100,000.00 with legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

SO ORDERED.

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

Caguioa, J., on leave.

THIRD DIVISION

[G.R. No. 181007. November 21, 2016]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **WILLIAM SINGSON AND TRITON SHIPPING CORPORATION,** *respondents.*

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[45] See *rollo*, pp. 66-67.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, RESPECTED.—** It is settled that the factual findings of the CTA, as affirmed by the CA, are entitled to the highest respect and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts.

2. **TAXATION; TARIFF AND CUSTOMS CODE (TCC); PRESENCE OF PROBABLE CAUSE REQUIRED BEFORE ANY PROCEEDING FOR SEIZURE AND/OR FORFEITURE IS INSTITUTED.—** The Court has constantly pronounced that the policy is to place no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State to enable the government to carry out the functions it has been instituted to perform. Nonetheless, the TCC requires the presence of probable cause before any proceeding for seizure and/or forfeiture is instituted. The relevant provision governing the present case is Section 2535 which provides as follows: Sec. 2535. *Burden of Proof in Seizure and/or Forfeiture.* — In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code. Based on the afore-quoted provision, before forfeiture proceedings are instituted, the law requires the presence of probable cause which rests on the petitioner who ordered the forfeiture of the shipment of rice and its carrying vessel. Once established, the burden of proof is shifted to the claimant.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Valdez Anigan & Associates for respondents.

D E C I S I O N

REYES, *J.:*

This appeal by Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated November 16, 2006 and the Resolution[3] dated November 29, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 83282 affirming the Decision[4] dated November 18, 2003 and the Resolution[5] dated March 22, 2004 of the Court of Tax Appeals (CTA) in CTA Case No. 6406, which recalled and set aside the Warrant of Seizure and Detention (WSD) issued against the vessel M/V Gypsy Queen and its cargo of 15,000 bags of rice.

The Facts

Triton Shipping Corporation (TSC) is the owner of M/V Gypsy Queen. The vessel was loaded with 15,000 bags of rice shipped by Metro Star Rice Mill (Metro, Star) of Bocaue, Bulacan and consigned to William Singson (Singson). On September 5, 2001, the elements of the Philippine Navy (PN) apprehended and seized the vessel and its entire rice cargo somewhere in Caubayan Island, Cebu, for allegedly carrying suspected smuggled rice.[6]

During the inspection, the master of M/V Gypsy Queen presented the following documents: (1) Master's Oath of Safe Departure dated August 14, 2001; (2) Coasting Manifest

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[1] *Rollo*, pp. 19-34.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla concurring; *id*. at 36-43.

[3] *Id*. at 44.

[4] Penned by Associate Judge Lovell R. Bautista, with Presiding Judge Ernesto D. Acosta and Associate Judge Juanito C. Castañeda, Jr. concurring; *id*. at 97-106.

[5] *Id*. at 115.

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

indicating that the vessel was loaded with 15,000 bags of rice with Metro Star of Bocaue, Bulacan as the shipper and Raybrig Marketing of Cebu City/Singson as consignee; and (3) Roll Book showing that the vessel was cleared by the Philippine Ports Authority (PPA), North Harbor Office, Manila on August 14, 2001 and received by a certain PO3 Fernandez of the Philippine Coast Guard (PCG) in Manila.[7]

However, the PCG Station Commander in Manila, Jose G. Cabilo issued a Certification stating that: (1) there was no vessel named M/V Gypsy Queen that logged in or submitted any Master's Oath of Safe Departure on August 15, 2001; and (2) no personnel by the name of PO3 Fernandez of the PCG was detailed at Pier 18, Mobile Team, on August 15, 2001.[8] These matters were then conveyed to the District Collector of Customs (DCC) by Captain Alvin G. Urbi (Capt. Urbi), Commander, Naval Forces Central, PN in his letter dated September 12, 2001. Thereafter, Special Investigator Alejandro M. Bondoc of the Bureau of Customs (BOC) in Cebu, issued a memorandum dated September 17, 2001 recommending the issuance of a WSD against the vessel and the 15,000 bags of rice loaded therein.[9]

Accordingly, on September 18, 2001, the DCC of Port of Cebu, issued a WSD against M/V Gypsy Queen and the 15,000 bags of rice for violating the Tariff and Customs Code (TCC). Afterwards, forfeiture proceedings were conducted where both parties submitted their respective evidence.[10]

On December 18, 2001, the DCC rendered a Decision[11] in favor of TSC and Singson (respondents) and ordered the release of M/V Gypsy Queen and the said cargo on the ground that there was no evidence to establish a cause of action, thus:

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[7] *Id*. at 37.

[8] *Id*.

[9] *Id*.

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

[11] *Id*. at 45-60.

WHEREFORE, premises considered, and by virtue of the powers vested in me by law, the [WSD] in the above[-]captioned case is hereby ordered RECALLED and SET ASIDE. Accordingly, the subject 15,000 bags of rice and the vessel "M/V GYPSY QUEEN" are ordered RELEASES [sic] to their respective claimants or their duly authorized representative upon proper identification and compliance with applicable laws, rules and regulations.[12]

On December 19, 2001, the DCC issued a 1st Indorsement of the said decision and forwarded the entire records of the case to the Commissioner of Customs (petitioner), through its Legal Service, BOC, Manila. On January 29, 2002, the BOC, Legal Service referred the decision of the DCC for approval to the petitioner.[13]

On March 11, 2002, the petitioner issued the 2nd Indorsement[14] reversing and setting aside the decision of the DCC and ordered the forfeiture of M/V Gypsy Queen and its cargo.

The respondents filed a motion for reconsideration of the said indorsement but the same was denied. On March 12, 2002, the respondents filed a petition for review[15] with the CTA, and the petitioner submitted its Comment[16]on April 16, 2002.[17]

On November 18, 2003, the CTA reversed and set aside[18] the 2nd Indorsement issued by the petitioner and adopted the findings of the DCC. In arriving at the said decision, the CTA found that the documents submitted by the respondents were sufficient to prove that the 15,000 bags of rice apprehended on board M/V Gypsy Queen were locally sourced and were the

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

[13] *Id*. at 38.

[14] *Id*. at 61.

[15] *Id*. at 62-85.

[16] *Id*. at 86-95.

[17] *Id.* at 39.

[18] *Id*. at 97-106.

same rice that were withdrawn from the National Food Authority (NFA) of Zambales.[19]

Undaunted, the petitioner moved for reconsideration[20] but it was denied;[21] hence, it filed a petition for review[22]under Rule 43 before the CA.

On November 16, 2006, the CA affirmed the CTA's decision on the ratiocination that the certification issued by PCG Station Commander in Manila cannot create a presumption that M/V Gypsy Queen was involved in an illegal activity in violation of the TCC. The said certification standing alone and by itself cannot prove the alleged violation of the TCC. The record clearly showed that the vessel originated and sailed from Manila to Cebu and that the 15,000 bags of rice on board the vessel were not imported but locally purchased or sourced from NFA Zambales.[23] More so, the CA expressly pointed out that:

> Furthermore, it is an undisputed fact that, on February 7, 2002, BOC Deputy Commissioner Gil A. Valera wrote a letter to the [NFA] Administrator, Atty. Anthony R. Abad, requesting confirmation of the genuineness and authenticity of the NFA documents issued by NFA Zambales which were submitted by the respondents in the forfeiture proceedings. On February 15, 2002, the NFA confirmed the authenticity and genuineness of the documents as certified to by Manager Absalum R. Circujales, NFA, Iba, Zambales. It is well to note that petitioner failed to assail and rebut these pieces of evidence presented by respondents during the forfeiture proceedings which were confirmed as genuine and authentic which showed that the rice withdrawn from NFA Zambales were the same rice apprehended on board the vessel M/V "Gypsy Queen."[24]

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[19] *Id*. at 104.

[20] *Id*. at 107-113.

[21] *Id*. at 115.

[22] *Id*. at 116-131.

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

[24] *Id*. at 42.

Disagreeing with the CA's decision, the petitioner filed a motion for reconsideration[25] which was also denied;[26] hence, the petitioner now seeks recourse to this Court *via* a petition for review on *certiorari*.

The Issue

The main issue in this case is whether or not the CA erred in affirming the CTA's decision ordering the release of the 15,000 bags of rice and its carrying vessel.[27]

Ruling of the Court

The petition is bereft of merit.

The Court adopts the above-mentioned findings of fact of both the CTA and the CA. It is settled that the factual findings of the CTA, as affirmed by the CA, are entitled to the highest respect and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts.[28]

In the main, the petitioner argues that the 15,000 bags of rice were unlawfully imported into the Philippines; hence, there was legal ground for the forfeiture of the rice and its carrying vessel. The petitioner solely rely its argument on the certification issued by the PCG Station Commander in Manila, which was included in the parties' Joint Stipulation filed with the CTA, to wit:

> 1.3 That [Capt. Urbi], Commander, Naval Forces Central, [PN], in his letter to the [DCC] of Cebu dated 12 September 2001, stated among others, that verification made by his office with the Office of the Station Commander, Coast Guard Station, Manila, show that there was no vessel named MV "Gypsy Queen" that logged-in or submitted any Master's Oath of Safe Departure on 15 August 2001. It also

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[25] *Id.* at 194-199.

[26] *Id.* at 44.

[27] *Id.* at 26.

[28] *Filinvest Development Corporation v. Commissioner of Internal Revenue*, 556 Phil. 439, 446 (2007).

found that no personnel by the name [of] PO3 Fernandez, PCG, was detailed at Pier 18, Mobile Team on said date.[29]

This judicial admission, according to the petitioner, is more than enough to establish that the rice shipment was illegally transported.[30]

Clearly, this evidence does not suffice. The said certification is not sufficient to prove that the respondents violated the TCC. A reading of the said certification plainly shows that if there is something which was admitted, it is nothing more than the fact that Capt. Urbi sent a communication to the DCC of Cebu stating the information that he gathered from the PCG Station Commander in Manila, and not the truthfulness or veracity of those information.

The certification presented by the petitioner does not reveal any kind of deception committed by the respondents. Such certification is not adequate to support the proposition sought to be established which is the commission of fraud. It is erroneous to conclude that the 15,000 bags of rice were smuggled simply because of the said certification which is not conclusive and cannot overcome the documentary evidence of the respondents showing that the subject rice was produced and acquired locally.

Moreso, at the time the vessel and its cargo were seized on September 25, 2001, the elements of the PN never had a probable cause that would warrant the filing of the seizure proceedings. In fact, the petitioner ordered the forfeiture of the rice cargo and its carrying vessel on the mere assumption of fraud. Notably, the 2nd Indorsement issued by the petitioner failed to clearly indicate any actual commission of fraud or any attempt or frustration thereof.

The Court has constantly pronounced that the policy is to place no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient' the collection

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[29] *Rollo*, p. 27.

[30] *Id*.

of import and export duties due the State to enable the government to carry out the functions it has been instituted to perform.[31]

Nonetheless, the TCC requires the presence of probable cause before any proceeding for seizure and/or forfeiture is instituted. The relevant provision governing the present case is Section 2535 which provides as follows:

> Sec. 2535. *Burden of Proof in Seizure and/or Forfeiture*. — In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code.

Based on the afore-quoted provision, before forfeiture proceedings are instituted, the law requires the presence of probable cause which rests on the petitioner who ordered the forfeiture of the shipment of rice and its carrying vessel. Once established, the burden of proof is shifted to the claimant.

Guided by the foregoing provision, to warrant the forfeiture of the 15,000 bags of rice and its carrying vessel, there must be a prior showing of probable cause that: (1) the importation or exportation of the 15,000 bags of rice was effected or attempted contrary to law, or that the shipment of the 15,000 bags of rice constituted prohibited importation or exportation; and (2) the vessel was used unlawfully in the importation or exportation of the rice, or in conveying or transporting the rice, if considered as contraband or smuggled articles in commercial quantities, into or from any Philippine port or place.[32]

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[31] *Agriex Co., Ltd. v. Villanueva*, G.R. No. 158150, September 10, 2014, 734 SCRA 533, 555-556, citing *Subic Bay Metropolitan Authority v. Rodriguez, et al.*, 633 Phil. 196, 211 (2010).

[32] See *M/V "Don Martin" Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, Palacio Shipping, Inc., and Leopolda "Junior" Pamulaklakin v. Hon. Secretary of Finance, BOC, and the District Collector of Cagayan De Oro City*, G.R. No. 160206, July 15, 2015.

Still, the petitioner contends that the probable cause was established by the said certification that no vessel by the name of M/V Gypsy Queen logged in or submitted a Master's Oath of Safe Departure on August 15, 2001.

This assertion is erroneous and irrational. It was heedless on the part of the petitioner to institute forfeiture proceeding on the basis of that certification alone. A review of the records of the case shows that there was no probable cause to justify the forfeiture of the rice cargo and its carrying vessel. To prove that the rice shipment was imported, the respondents submitted the following pieces of evidence supporting the validity and regularity of the shipment:

1. For the vessel:
    a) the Master's Oath of Safe Departure dated August 14, 2001 (Exhibits "G", "G-1", and "G-2");
    b) the Roll Book showing that M/V Gypsy Queen was cleared by the PPA, North Harbor Office Manila on August 14, 2001 (Exhibits "P");
    c) Official Receipt No. 44191451 issued by the PPA for payment of port and other charges upon the said vessel dated August 14, 2001 in the amount of ₱3,300.00 (Exhibit "5"); and
    d) the Bill of Lading showing that the vessel loaded with 15,000 bags of rice sailed from Manila to Cebu for the consignee, Ray Brig Marketing/Singson (Exhibit "4").
2. For the cargo:
    a) Official Receipt No. 0703 issued by the Harbour Centre Port Terminal, Inc. dated August 14, 2001 in the amount of ₱65,160.00, and another Official Receipt evenly dated August 14, 2001 in the amount of ₱3,030.26 showing that proper usage and other port charges upon the said cargo were duly paid (Exhibits "10" and "11").

Besides, the records showed that the 15,000 bags of rice were of local origin, having been purchased from NFA Zambales pursuant to the Open Sale Program of the NFA. The findings of fact of the CTA on this matter are informative:

> Pursuant to the Open Sale Program of the NFA wherein the NFA would openly sell its imported stocks to interested individual retailers and encourage these retailers to buy the stocks in order that the older stocks can be disposed of in the warehouses to accommodate the incoming imported rice, Memorandum No. R03-140 No. 01-06-010 dated June 4, 2001 was issued by the Regional Manager II of NFA endorsing to the NFA Manager of Zambales the accredited individual retailers of NFA Nueva Ecija. Among the accredited individual retailers were Jose Navarro and Emmanuel Jacinto. Emmanuel Jacinto was able to buy from the open sale 7,000 bags of NFA rice. He likewise purchased NFA rice from Jose Navarro and Manuel Sevilla, a retailer from Bulacan. Emmanuel Jacinto then sold 17,000 bags of NFA rice to [Metro Star]. The parties admit that all documents issued by the NFA Zambales, relative to the said Open Sale Program such as the Certifications issued by the NFA Zambales Senior Grains Operations Officer, the Official Receipts, the NFA Authority to Issue and the NFA Warehouse Stocks Issue were duly confirmed as genuine by then NFA Administrator R.A. Abad in his letter dated February 15, 2002 to Customs Deputy Commissioner Gil Valera.
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> Subsequently, Metro Star sold 15,000 bags of rice to Raybrig Marketing owned by [Singson] in the amount of ₱12,050,000.00. [Singson] is duly registered to engage in Wholesaling/Importing Rice under Grains Business License issued by the NFA. Emmanuel Jacinto testified that these 15,000 bags of rice were taken from the 17,000 bags of imported NFA rice sold by him to [Metro Star]. It was Metro Star that delivered the 15,000 bags of NFA rice sold from its warehouse in Bocaue, Bulacan to Manila for loading. It was the charterer who arranged. for the shipment of the 15,000 bags of rice on board MN "Gypsy Queen" from Manila to Cebu. The shipment of the said 15,000 bags of rice was covered by a Bill of lading with [Metro Star] of Bulacan as Shipper and [Singson] of Raybrig Marketing in Cebu City as Consignee. And M/V "Gypsy Queen" paid the proper charges and other fees to the [PPA] in the amount of ₱3,030.00 as shown by Official Receipt No. 44191451 relative to said shipment.[33] (Citations omitted)

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

From the foregoing, it is clear that the respondents had sufficiently established that the 15,000 bags of rice were of local origin and there were no other circumstances that would indicate that the same were fraudulently transported into the Philippines. As such, the release of the rice cargo and its carrying vessel is warranted.

WHEREFORE, the petition is **DENIED**. The Decision dated November 16, 2006 and the Resolution dated November 29, 2007 of the Court of Appeals in CA-G.R. SP No. 83282 are **AFFIRMED**.

SO ORDERED.

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

Peralta, J., on official leave.

FIRST DIVISION

[G.R. No. 184841. November 21, 2016]

GERINO YUKIT, DANILO REYES, RODRIGO S. SUMILANG, LEODEGARIO O. ROSALES, MARIO MELARPIS,[1] MARCELO R. OCAN, DENNIS V. BATHAN, BERNARDO S. MAGNAYE, LORENZO U. MARTINEZ, ANTONIO M. LADERES, SOFIO DE LOS REYES BAON, MARIO R. MIGUEL, RODOLFO S. LEOPANDO, EDGARDO N. MACALLA, JR., MARIANO REYES, ALEJANDRO CUETO, VIRGILIO RINGOR and JASON R. BARTE, *petitioners, vs.* **TRITRAN, INC., JOSE C. ALVAREZ, JEHU C. SEBASTIAN, and JAM TRANSIT INC.,** *respondents.*

[1] "Elarpis" in some parts of the record.

SYLLABUS

1. REMEDIAL LAW; DOCTRINE OF *"STARE DECISIS ET NON QUIETA MOVERE"*; ONLY FINAL DECISIONS OF THE COURT ARE DEEMED PRECEDENTS THAT FORM PART OF THE LEGAL SYSTEM.— The doctrine of *stare decisis et non quieta movere* requires courts "to adhere to precedents, and not unsettle things which are established." Following this directive, when a court has laid down a principle of law applicable to a certain state of facts, it must apply the same principle to all future cases in which the facts sued upon are substantially the same. x x x It must be emphasized that only final decisions of this Court are deemed precedents that form part of our legal system. Decisions of lower courts or other divisions of the same court are not binding on others. Consequently, it was incorrect for the NLRC to consider *De Chavez* – a ruling rendered by the same NLRC division – as a binding precedent applicable to the present case.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); RIGHT TO REVERSE ITSELF.— The NLRC set aside its own ruling after taking a second hard look at the record; in particular, at the documentary evidence submitted by respondents. x x x We agree with the CA's observation that the reversal was made pursuant to the inherent power of the NLRC to amend and control its processes and orders, so as to make them conformable to law and justice. Like any other tribunal, the NLRC has the right to reverse itself, "especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party litigant." In this case, we find that there was sufficient ground for the NLRC to reverse its original ruling.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT; DUE TO SERIOUS BUSINESS LOSSES; SUFFICIENTLY ESTABLISHED.— It is settled that employers can lawfully close their establishments at any time and for any reason. The law considers the decision to close and cease business operations as a management prerogative that courts cannot interfere with. Our review of this case is therefore limited to a determination of whether the closure was

made in good faith to advance the employer's interest, and not for the purpose of circumventing the rights of the employees. In this case, the Court agrees with the conclusion of the CA and the NLRC that the closure of Tritran was legitimate, having been brought about by serious business losses as shown in the company's Audited Financial Statements (AFS). We have consistently ruled that a company's economic status may be established through the submission of financial statements. If prepared by independent external auditors, these statements are particularly entitled to weight and credence. x x x Bare allegations of "suspicious figures" cannot destroy the credibility of the documents, especially considering the strict national and international standards governing the accounting and auditing profession.

4. ID.; ID.; ID.; ID.; EMPLOYEES NOT ENTITLED TO SEPARATION PAY UNLESS THE COMPANY VOLUNTARILY OBLIGATED ITSELF TO PAY THEM SEVERANCE BENEFITS DESPITE ITS FINANCIAL CONDITION.— Since the closure of Tritran was due to serious business losses, petitioners would ordinarily not be entitled to separation benefits under Article 283. However, the Court notes that the company voluntarily obligated itself to pay severance benefits to the employees, notwithstanding its financial condition. In its letter to the DOLE Regional Office and the written notices it sent to its workers, Tritran expressly promised to pay separation benefits to the employees, less their actual accountabilities with the company. In fact, it repeatedly alleged that it had paid its other employees these benefits and offered the same remuneration to petitioners, as shown by photocopies of the check vouchers prepared in the latter's name. We likewise note that the undertaking to pay severance benefits was made to all affected workers and relayed to the DOLE Regional Office even prior to the filing of this case. Consequently, this promise must be considered a binding commitment, and not a mere settlement offer.

APPEARANCES OF COUNSEL

Mendoza Law Office for petitioners.
CRC Law Firm for respondents.

D E C I S I O N

SERENO, *C.J.*:

This Petition for Review[2] involves a dispute as to the validity of the closure of respondent Tritran, Inc. (Tritran) and the legality of the ensuing dismissal of petitioners, who were its former employees. Petitioners seek the reversal of the Decision[3] and Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 97788. The CA affirmed the Resolution[5] of the National Labor Relations Commission (NLRC), which set aside the earlier Decision[6] of the labor arbiter (LA) in favor of petitioners. The LA had ruled that petitioners had been illegally dismissed by Tritran and were consequently entitled to separation benefits.

FACTUAL ANTECEDENTS

Petitioners Danilo Reyes, Rodrigo S. Sumilang, Leodegario O. Rosales, Mario R. Melarpis, Marcelo R. Ocon, Dennis V. Bathan, Bernardo S. Magnaye, Lorenzo U. Martinez, Antonio M. Laderes, Sofio de los Reyes Baon, Mario R. Miguel, Edgrado N. Macalla, Jr., Alejandro Cueto, Virgilio Ringor and Jason R. Barte were formerly employed as drivers and conductors of Tritran.[7]

Respondent Tritran was a corporation engaged in the business of transporting persons and property as a common carrier.[8] As

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[2] Petition for Review dated 27 October 2008, *rollo*, pp. 3-60.

[3] Decision dated 18 October 2007 penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr.; *rollo,* pp. 62-75.

[4] Resolution dated 6 October 2008, *rollo* pp. 353-354.

[5] Resolution dated 18 August 2006 penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan; *rollo,* pp. 128-142.

[6] Decision dated 15 August 2005, *rollo,* pp. 147-163.

[7] Decision dated 18 October 2007, *rollo,* p. 63.

[8] Articles of Incorporation of Tritran Incorporated, *rollo*, pp. 209-216.

such, it operated a fleet of buses in designated routes between Metro Manila and selected areas in Batangas and Laguna.[9]

On 26 May 2004, Tritran sent a Notice of Closure/Cessation of Business[10] to the Regional Director, Regional Office No. IV of the Department of Labor and Employment (DOLE Regional Office), citing irreversible business losses to justify the permanent closure of the establishment. Despite its financial condition, however, Tritran undertook to pay separation benefits to its employees.[11]

A few months earlier, Tritran had informed the DOLE Regional Office of its decision to temporarily close the establishment and cease operations effective 15 January 2004.[12] The decision was made after the company had laid off a total of 114 employees in 2003[13] pursuant to a retrenchment program implemented to cut down costs. [14] It cited financial reverses as the reason for both the temporary closure and the retrenchment.[15]

In March and April 2004, petitioners filed complaints[16] before the NLRC against Tritran; its president, Jose C. Alvarez, and its vice president for finance and administration, Jehu C. Sebastian.

In their Position Paper, [17] petitioners alleged that they were illegally terminated from employment as a result of the invalid

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[9] *Id.* at 485.

[10] Letter dated 26 May 2004, *rollo*, pp. 539-540.

[11] *Id*. at 540.

[12] Letter dated 12 December 2003, *rollo*, p. 514.

[13] Tritran carried out the retrenchment in three tranches – 21 employees were retrenched effective 3 October 2003 (see Establishment Termination Report filed on 7 October 2003, *rollo*, p. 516); 87 were terminated effective 18 October 2003 (see Establishment Termination Report filed on 18 September 2003, *rollo*, p. 510); and six more were retrenched effective 21 October 2003 (*see* Establishment Termination Report filed on 21 October 2003, *rollo*, p. 511).

[14] Comment dated 18 February 2009, *rollo*, p. 609.

[15] *Supra* notes 12 and 13.

[16] Complaints, *rollo*, pp. 450-465.

[17] Position Paper for the Complainants, *rollo*, pp. 466-482.

closure of the company and were thus entitled to reinstatement. They claimed that Tritran never ceased its business as shown by the continued operation of its buses on the same routes under the management of JAM Transit, Inc.,[18] a company also owned by Alvarez.[19] It was also alleged that the employees of the company were asked to sign voluntary resignation letters if they wanted to avail themselves of employment under the new management.[20] To petitioners, these circumstances proved that the closure was a mere ploy for the company to circumvent their security of tenure and avoid its obligation to pay them separation benefits.[21]

In their Position Paper,[22] respondents denied these allegations and asserted that the closure was justified under Article 283 of the Labor Code. They cited the serious and irreversible losses sustained by the company from 2000 to 2002.[23] In support of this allegation, they submitted the Audited Financial Statements (AFS) of Tritran for the years ending 31 December 2001[24] and 31 December 2002,[25] which were prepared by its external auditors, Sicangco Menor Villanueva & Co. These documents showed that the company had incurred the following losses: ₱30,023,774.45 in 2000,[26] ₱37,621,961.71 in 2001[27] and ₱34,620,587.61 in 2002.[28] Respondents also emphasized their

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[18] *Id*. at 472.

[19] *Id*. at 474.

[20] *Id*. at 468.

[21] *Id*. at 469-474.

[22] Position Paper for the Respondents, *rollo*, pp. 483-496.

[23] *Id*. at 486.

[24] Financial Statements, 31 December, 2001, *rollo*, pp. 497-502.

[25] *Id*. at 503-509.

[26] *Supra* note 24, at 501.

[27] *Id.*

[28] *Supra* note 25, at 507.

compliance with the requirements of the Labor Code. For their part, Alvarez and Sebastian insisted that they could not be held personally liable, since the closure of Tritran was based on the "collective business judgment" of the officers of the company.[29]

In their Reply-Position Paper,[30] petitioners emphasized that the figures contained in the AFS were ridiculous and illogical. In particular, they questioned the fact that Tritran, a bus company, spent around ₱10 million for security services, but paid only about ₱1.5 million for the salaries and wages of its drivers and conductors.[31] They also pointed out that there was no evidence of the alleged sale of assets to JAM Transit; hence, the continued operation of the buses of Tritran, even under this new management, contradicted the alleged reason for the closure of former's business.

Respondents refuted the foregoing allegations in their Reply to Complainants' Position Paper.[32] They maintained that (a) Tritran suffered serious business losses as shown by the AFS; and (b) JAM Transit purchased the vehicles and other assets of Tritran after the closure.

THE RULING OF THE LA

In a Decision dated 15 August 2005,[33] LA Numeriano D. Villena ruled in favor of petitioners and awarded them full back wages, separation pay, and attorney's fees. He observed that the AFS submitted by respondents to substantiate their supposed losses contained "highly suspicious" expenditures for security.[34] He thus gave little weight to these documents and concluded that the closure was meant to circumvent the law on termination of employment.[35]

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[29] *Supra* note 22, at 493.

[30] Complainants' Reply-Position Paper, *rollo*, pp. 542-553.

[31] *Id*. at 548.

[32] Reply to Complainants' Position Paper, *rollo*, pp. 554-564.

[33] Decision dated 15 August 2005, *rollo*, pp. 356-372.

[34] *Id*. at 365.

[35] *Id*. at 366.

THE RULING OF THE NLRC

On appeal,[36] the NLRC initially affirmed the foregoing ruling. In a Decision[37] dated 28 April 2006, it agreed with the observations of the LA with respect to the doubtful expenses included in Tritran's AFS.[38] On this basis, it concluded that serious business losses were not sufficiently proven; therefore, the closure was not undertaken in good faith.[39]

Respondents sought reconsideration of the NLRC Decision on 30 May 2006.[40] They insisted that the expenses incurred by Tritran, particularly for security services, were legitimate and justified by the need to maintain the safety of the terminals and premises of the bus company. They also argued that there was sufficient evidence of serious business losses, i.e., financial statements audited by independent external auditors,[41] loan agreements[42] and a schedule of rollables.[43]

In a Resolution[44] dated 18 August 2006, the NLRC granted the Motion for Reconsideration.[45] Reversing its earlier ruling, it declared that the closure of Tritran was justified, given the serious business losses suffered by the company.[46] This time, the NLRC gave weight to the AFS as well other supporting documents submitted by respondents.[47] It also referred to its

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[36] Memorandum on Appeal, *rollo*, pp. 164-195.

[37] Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan; *rollo*, pp. 288-299.

[38] *Id*. at 294-295.

[39] *Id.* at 295.

[40] Motion for Reconsideration, *rollo*, pp. 300-323.

[41] *Id*. at 307-308.

[42] Agreement, *rollo*, pp. 198-206

[43] Schedule of Rollables, *rollo*, pp. 217-220.

[44] Resolution dated 18 August 2006, *rollo*, pp. 127-142.

[45] *Supra* note 40.

[46] *Supra* note 44, at 130-132.

[47] *Id*. at 131.

Decision in *Antonio de Chavez, et al. v. Tritran, Inc., et al.*,[48] in which it upheld the validity of the dismissal of certain employees of Tritran on the basis of the closure of the company.[49] Citing the principle of *stare decisis,* the NLRC declared that *De Chavez* must be followed in this case. [50]

THE RULING OF THE CA

On 5 February 2007, petitioners elevated the case to the CA via a Petition for Certiorari.[51] Apart from reiterating their arguments on the incredulous figures contained in Tritran's AFS,[52] they challenged the application of *De Chavez* to this case. They pointed out that (a) because *De Chavez* was issued two months after the NLRC had promulgated the original Decision in this case, the ruling cannot be used as binding precedent;[53] and (b) *stare decisis* only applies to final decisions of the Supreme Court. [54] Petitioners also emphasized that there was no justification for the reversal of the earlier Decision, as no new evidence or argument had been submitted.[55] They particularly questioned the sudden turnaround of the NLRC on the issue of the credibility of the AFS.[56]

In a Decision[57] dated 18 October 2007, the CA dismissed the Petition for Certiorari. It declared that the NLRC did not commit grave abuse of discretion when the latter reversed its earlier Decision:

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[48] Docketed as NLRC RAB IV-2-18970-04-L.

[49] *Id*. at 132-139.

[50] *Id*. at 133-139.

[51] Petition for *Certiorari* dated 5 February 2007, *rollo*, pp. 77-126.

[52] *Id*. at 104-112.

[53] *Id*. at 93-95.

[54] *Id*. at 95-96.

[55] *Id*. at 100.

[56] *Id*. at 100-103.

[57] Decision dated 18 October 2007, *rollo*, pp. 62-75.

In rectifying its previous assessment of petitioners' termination of employment and Tritran's closure or cessation of business, respondent NLRC did not commit any abuse of discretion, much less grave. The reasons are as follows:

> Petitioners reiterate their argument that no evidentiary weight should be given to the Audited Financial Statements and supporting documents such as the Balance Sheet, Statement of Income and Expenses and Statements of Cash Flow presented by private respondents in substantiation of their contention of continuing irreversible financial losses necessitating the closure of the respondent company. However, petitioners' disagreement with respondent NLRC on the weight it gave to certain evidence is no basis to strike down the assailed decision as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. If respondent NLRC gave more weight to Tritran's evidence, it was simply because such evidence clearly demonstrated the facts it intended to establish.
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> The respondent NLRC's decision in the Antonio De Chavez case was based on the same facts and issues present in this case. It is thus logically expected that, after such error had been discovered and rectified, respondent NLRC would abandon its former stance and proceed to resolve the issues raised in the case below to the end that the latter may be finally disposed of its merits, and to avoid possible conflicting decisions. Such abandonment is demanded by public interest and the circumstances.[58]

With respect to the issues raised by petitioners concerning Tritran's supposed losses, the CA refused to interfere with the NLRC's assessment of the evidence presented by the parties. The appellate court noted, however, that the suspicions brought up by petitioners were "based on tenuous, if nonexistent evidentiary support."[59] In contrast, respondents were deemed to have proven the losses incurred by Tritran, as well as the validity of the dismissal of the company's employees.[60] Hence,

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[58] *Id*. at 69.

[59] *Id*. at 72.

[60] *Id*. at 72-73.

the appellate court found no reason to doubt the conclusions of the NLRC.

Petitioners sought reconsideration of the Decision. However, their motion[61] was denied by the CA in a Resolution[62] dated 6 October 2008.

PROCEEDINGS BEFORE THIS COURT

Petitioners again challenge the credibility of the evidence presented to prove Tritran's supposed losses[63] and the applicability of the doctrine of *stare decisis* to this case.[64] They insist that the "sudden reversal of the NLRC's previous Decision dated 28 April 2006 was done in such a capricious, whimsical, arbitrary and anomalous manner that it so brazenly misapplied and violated the basic principle of *stare decisis*"[65] and thereby warrants a review.

In their Comment,[66] respondents maintain the propriety of the CA's dismissal of the Petition for Certiorari. They assert that there was no grave abuse of discretion on the part of the NLRC, since the reversal of the latter's earlier ruling was supported by law and evidence.[67] They also reiterate their arguments on the company's serious business losses, which supposedly rendered the closure of Tritran legitimate.[68]

ISSUES

The following issues are presented for resolution:

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[61] Motion for Reconsideration dated 9 November 2007, *rollo*, pp. 570-589.

[62] Resolution dated 6 October 2008, *rollo*, pp. 353-354.

[63] Petition for *Certiorari* dated 27 October 2008, *rollo*, pp. 3-60.

[64] *Id*. at 27-34.

[65] *Id.* at 21.

[66] Comment dated 18 February 2009, *rollo*, pp. 606-639.

[67] *Id*. at 617-624.

[68] *Id*. at 625-637.

1. Whether the principle of *stare decisis* was correctly applied by the NLRC

2. Whether the closure of Tritran was justified

3. Whether petitioners were validly dismissed from employment

OUR RULING

The Petition is **DENIED**.

The Court believes that the doctrine of *stare decisis* was erroneously applied by the NLRC to this case, and that the CA should have rectified this error. However, we agree with the conclusion of the CA that the NLRC did not act with grave abuse of discretion when the latter reversed its earlier Decision. As will be further discussed, the closure of Tritran was justified considering the serious business losses sustained by the company from 2000 to 2002. Given its legitimate closure, petitioners were validly terminated from employment.

The Court, however, deems it proper to modify the CA Decision and Resolution to take into account Tritran's voluntary undertaking to pay separation benefits to its terminated employees.

The doctrine of* stare decisis *was erroneously applied by the NLRC to justify the reversal of its earlier Decision.

The doctrine of *stare decisis et non quieta movere* requires courts "to adhere to precedents, and not unsettle things which are established."[69] Following this directive, when a court has laid down a principle of law applicable to a certain state of facts, it must apply the same principle to all future cases in which the facts sued upon are substantially the same.[70]

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[69] *Ty v. Banco Filipino Savings and Mortgage Bank*, 689 Phil. 603, 613 (2012) citing *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR)*, 548 Phil. 498 (2007).

[70] *The Secretary of Education, Culture, and Sports v. Court of Appeals*, 396 Phil. 187 (2000) citing *De la Cruz v. Court of Appeals*, 364 Phil. 786 (1999).

In this case, the NLRC referred to the principle of *stare decisis* in its Resolution dated 18 August 2006 as one of the reasons for the reversal of its original Decision affirming the LA ruling. As earlier discussed, it cited the Decision in *De Chavez v. Tritran, Inc*,. in support of its finding that Tritran's closure was due to serious business losses.[71]

The Court rejects the foregoing reasoning. We find that the *stare decisis* principle was erroneously applied to this case.

It must be emphasized that only final decisions of this Court are deemed precedents[72] that form part of our legal system.[73] Decisions of lower courts or other divisions of the same court are not binding on others.[74] Consequently, it was incorrect for the NLRC to consider *De Chavez* – a ruling rendered by the same NLRC division – as a binding precedent applicable to the present case.

We stress, however, that the erroneous application of the *stare decisis* principle to this case does not automatically lead to the conclusion that the NLRC acted with grave abuse of discretion when it reversed its original Decision.

The Court notes that the NLRC set aside its own ruling only after taking a second hard look at the records; in particular, at the documentary evidence submitted by respondents.[75] Clearly, *De Chavez* was not the only basis of the NLRC for reversing its original ruling. Consequently, we agree with the CA's observation that the reversal was made pursuant to the inherent power of the NLRC to amend and control its processes and orders, so as to make them conformable to law and justice.[76]

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[71] NLRC Resolution dated 18 August 2006, *rollo*, pp. 427-428.

[72] *Virtucio v. Alegarbes*, 693 Phil. 567(2012).

[73] CIVIL CODE, Article 8. Also see *Quasha Ancheta Peña & Nolasco Law Office v. Court of Appeals*, 622 Phil. 738 (2009).

[74] *Agustin-Se v. Office of the President*, G.R. No. 207355, 3 February 2016.

[75] NLRC Resolution dated 18 August 2006, *rollo*, p. 421-423.

[76] *Tocao & Velo v. CA*, 417 Phil. 794 (2001) citing *Vitarich Corporation v. National Labor Relations Commission*, 367 Phil. 1 (1999), which in turn cited *Astraquillo v. Javier*, L-20034, 121 Phil. 138 (1965).

Like any other tribunal, the NLRC has the right to reverse itself, "especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party litigant."[77] In this case, we find that there was sufficient ground for the NLRC to reverse its original ruling.

The closure of Tritran was justified by the serious business losses it incurred.

It is settled that employers can lawfully close their establishments at any time and for any reason.[78] The law considers the decision to close and cease business operations as a management prerogative that courts cannot interfere with.[79] Our review of this case is therefore limited to a determination of whether the closure was made in good faith to advance the employer's interest, and not for the purpose of circumventing the rights of the employees.[80]

In this case, the Court agrees with the conclusion of the CA and the NLRC that the closure of Tritran was legitimate, having been brought about by serious business losses as shown in the company's AFS.

We have consistently ruled that a company's economic status may be established through the submission of financial statements.[81] If prepared by independent external auditors, these statements are particularly entitled to weight and credence. In *Manatad v. Philippine Telegraph and Telephone Corp.*,[82] this Court explained:

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[77] *Id.* at 795.

[78] *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering,* 460 Phil. 583 (2003).

[79] *G.J.T. Rebuilders Machine Shop v. Ambos*, G.R. No. 174184, 28 January 2015, 748 SCRA 358.

[80] *PNCC Skyway Corp. v. Secretary of Labor and Employment*, G.R. No. 213299, 19 April 2016.

[81] See *G.J.T. Rebuilders Machine Shop v. Ambos,* G.R. No. 174184, 28 January 2015, *supra* note 79, and the cases cited therein.

[82] 571 Phil. 494 (2008).

That the financial statements are audited by independent auditors safeguards the same from the manipulation of the figures therein to suit the company's needs. The auditing of financial reports by independent external auditors are strictly governed by national and international standards and regulations for the accounting profession. It bears to stress that the financial statements submitted by respondent were audited by reputable auditing firms. Hence, petitioner's assertion that respondent merely manipulated its financial statements to make it appear that it was suffering from business losses that would justify the retrenchment is incredible and baseless.

In addition, the fact that the financial statements were audited by independent auditors settles any doubt on the authenticity of these documents for lack of signature of the person who prepared it. As reported by SGV & Co., the financial statements presented fairly, in all material aspects, the financial position of the respondent as of 30 June 1998 and 1997, and the results of its operations and its cash flows for the years ended, in conformity with the generally accepted accounting principles.[83]

Here, the AFS submitted by respondents were sufficient proofs of the serious business losses incurred by Tritran. These financial statements were prepared by Sicangco Menor Villanueva & Co., an independent external auditor, in accordance with generally accepted auditing standards.[84] The AFS were also attested to as fair presentations of the financial position of the company for the specified periods.[85]

The Court is aware of the objections of petitioners to the AFS on the ground that irregular and suspiciously bloated expenses and cash advances were included therein.[86] We also note their argument that respondents failed to present receipts, vouchers, contracts, or other documents to substantiate the figures in the financial statements.[87]

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[83] *Id*. at 510.

[84] Audited Financial Statements for the years ending 31 December 2001 and 2002, *supra* notes 24 and 25, at pp. 499 and 505.

[85] *Id.*

[86] *Id.* at 37-42.

[87] *Id.* at 40.

After judicious consideration, the Court finds that petitioners' arguments cannot prevail over the AFS or the attestations of the independent external auditor as to the fairness and accuracy of the figures contained therein. Bare allegations of "suspicious figures" cannot destroy the credibility of the documents, especially considering the strict national and international standards governing the accounting and auditing profession.[88]

With respect to the alleged failure of respondents to submit other evidence to support their claimed expenses, the Court agrees with the CA that they do not have this burden. Since petitioners are the ones claiming that the expenditures are dubious and false, it is their duty to prove their assertion. Only after the amounts spent on security services are shown to be bloated would the burden of evidence shift to respondents. Absent any evidence that the expenses are actually irregular, there is no basis for questioning the amounts stated in the AFS.

In the same manner, the allegation of petitioners that Tritran's buses continued to ply the same routes remained unsubstantiated. We note that the LA,[89] the NLRC,[90] and the CA[91] all confirmed the fact of the closure and cessation of operations. None of them gave credence to petitioners' assertion that Tritran continued to operate its buses, albeit under the management of JAM Transit. The Court finds no reason to reverse these conclusions.

Based on the foregoing, we affirm the ruling of the CA on this point. We find no grave abuse of discretion on the part of the NLRC in according evidentiary weight to the AFS and concluding that Tritran suffered serious business losses that led to its closure.

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[88] *Manalad v. PTTC, supra* note 82; *Hotel Enterprises of the Philippines, Inc. v. Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN*, 606 Phil. 490 (2009).

[89] *Supra* note 33, at 366.

[90] *Supra* note 5, at 130-131.

[91] *Supra* note 3, at 73.

Petitioners were validly terminated from employment.

Proceeding from the conclusion that the closure of Tritran was carried out for legitimate reasons, this Court affirms the validity of the dismissal of petitioners from employment. Article 283[92] of the Labor Code expressly sanctions termination of employment due to closure of establishment, subject to certain notice requirements. If the closure is not due to serious business losses or financial reverses, the company is likewise required to grant separation benefits to dismissed employees.

Here, Tritran's compliance with the notice requirement under the Labor Code has been sufficiently proven. The company sent a written notice to its workers at least one month prior to the effective date of its closure. It also informed the DOLE Regional Office of the intended cessation of operations within the deadline.[93]

Since the closure of Tritran was due to serious business losses, petitioners would ordinarily not be entitled to separation benefits under Article 283. However, the Court notes that the company

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[92] Article 283 of the Labor Code provides:

Art. 283. Closure of establishment and reduction of personnel.— The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[93] *Supra* note 10.

voluntarily obligated itself to pay severance benefits to the employees, notwithstanding its financial condition. In its letter to the DOLE Regional Office and the written notices it sent to its workers, Tritran expressly promised to pay separation benefits to the employees, less their actual accountabilities with the company. In fact, it repeatedly alleged that it had paid its other employees these benefits[94] and offered the same remuneration to petitioners,[95] as shown by photocopies of the check vouchers[96] prepared in the latter's name.

We likewise note that the undertaking to pay severance benefits was made to all affected workers and relayed to the DOLE Regional Office even prior to the filing of this case. Consequently, this promise must be considered a binding commitment, and not a mere settlement offer.

Having voluntarily assumed the obligation to pay separation benefits to its terminated employees,[97] Tritran must now fulfill its obligation. The CA Decision must therefore be modified in this respect.

WHEREFORE, the Petition for Review is **DENIED**. The CA Decision dated 18 October 2007 and Resolution dated 6 October 2008 are **AFFIRMED** with **MODIFICATION**. Respondent Tritran, Inc. is hereby ordered to pay petitioners their corresponding separation benefits less their accountabilities to the company.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

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[94] Comment, *rollo,* p. 631.

[95] Reply to Complainants' Position Paper, *rollo,* pp. 555-556.

[96] *Rollo,* pp. 229-239.

[97] *Republic v. National Labor Relations Commission*, G.R. No. 174747, 9 March 2016.

FIRST DIVISION

[G.R. No. 193816. November 21, 2016]

ERSON ANG LEE DOING BUSINESS as "SUPER LAMINATION SERVICES," *petitioner, vs.* **SAMAHANG MANGGAGAWA NG SUPER LAMINATION (SMSLS-NAFLU-KMU),** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF PIERCING THE CORPORATE VEIL; APPLIED TO CASES IN WHICH THE LABORER HAS BEEN PUT IN A DISADVANTAGEOUS POSITION AS A RESULT OF THE SEPARATE JUDICIAL PERSONALITIES OF THE EMPLOYERS INVOLVED.— This Court has time and again disregarded separate juridical personalities under the doctrine of piercing the corporate veil. It has done so in cases where a separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, among other grounds. In any of these situations, the law will regard it as an association of persons or, in case of two corporations, merge them into one. A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. This formulation has been applied by this Court to cases in which the laborer has been put in a disadvantageous position as a result of the separate juridical personalities of the employers involved. Pursuant to veil-piercing, we have held two corporations jointly and severally liable for an employee's back wages. We also considered a corporation and its separately-incorporated branches as one and the same for purposes of finding the corporation guilty of illegal dismissal. These rulings were made pursuant to the fundamental doctrine that the corporate fiction should not be used as a subterfuge to commit injustice and circumvent labor laws.

2. ID.; ID.; ID.; ID.; DOLE'S APPLICATION BY ANALOGY OF THE CONCEPT OF MULTI-EMPLOYER BARGAINING TO JUSTIFY ITS DECISION TO TREAT THE THREE COMPANIES AS ONE, AFFIRMED.— Here, a certification election was ordered to be held for all the rank-and-file employees of Super Lamination, Express Lamination, and Express Coat. The three companies were supposedly distinct entities based on the fact that Super Lamination is a sole proprietorship while Express Lamination and Express Coat were separately registered with the SEC. x x x [However,] Super Lamination, Express Lamination, and Express Coat are under the control and management of the same party – petitioner Ang Lee. In effect, the employees of these three companies have petitioner as their common employer, x x x [W]e discern from the synchronized movements of petitioner and the two other companies an attempt to frustrate or defeat the workers' right to collectively bargain through the shield of the corporations' separate juridical personalities. x x x We take note that all three establishments were unorganized. That is, no union therein was ever duly recognized or certified as a bargaining representative. Therefore, it is only proper that, in order to safeguard the right of the workers and Unions A, B, and C to engage in collective bargaining, the corporate veil of Express Lamination and Express Coat must be pierced. x x x [Thus,] We affirm DOLE's application by analogy of the concept of multi-employer bargaining to justify its Decision to treat the three companies as one. While the multi-employer bargaining mechanism is relatively new and purely optional under Department Order No. 40-03, it illustrates the State's policy to promote the primacy of free and responsible exercise of the right to collective bargaining. The existence of this mechanism in our labor laws affirm DOLE's conclusion that its treatment of the employees of the three companies herein as a single bargaining unit is neither impossible nor prohibited. It is justified under the circumstances. Besides, it is an established rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded by the courts not only respect but even finality when supported by substantial evidence; *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

3. ID.; ID.; ID.; ID.; BARGAINING UNIT OF THE RANK-AND-FILE EMPLOYEES OF THE THREE COMPANIES, DESPITE GEOGRAPHICAL LOCATION, IS APPROPRIATE AS IT AFFECTS A GROUPING OF EMPLOYEES WHO HAVE COMMUNAL INTEREST IN THE DIFFERENT SUBJECTS OF COLLECTIVE BARGAINING.— Petitioner argues that there is no showing that the rank-and-file employees of the three companies would constitute an appropriate bargaining unit on account of the latter's different geographical locations. This contention lacks merit. The basic test for determining the appropriate bargaining unit is the application of a standard whereby a unit is deemed appropriate if it affects a grouping of employees who have substantial, mutual interests in wages, hours, working conditions, and other subjects of collective bargaining. We have ruled that geographical location can be completely disregarded if the communal or mutual interests of the employees are not sacrificed. In the present case, there was communal interest among the rank-and-file employees of the three companies based on the finding that they were constantly rotated to all three companies, and that they performed the same or similar duties whenever rotated. Therefore, aside from geographical location, their employment status and working conditions were so substantially similar as to justify a conclusion that they shared a community of interest. This finding is consistent with the policy in favor of a single-employer unit, unless the circumstances require otherwise. The more solid the employees are, the stronger is their bargaining capacity.

APPEARANCES OF COUNSEL

Cabio Law Office and Associates for petitioner.
Remigio Saladero, Jr. for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on the Decision[1] and Resolution[2] of the Court of Appeals (CA) affirming the assailed Decision[3] of the Department of Labor and Employment (DOLE). DOLE allowed the conduct of certification election among the rank-and-file employees of Super Lamination Services (Super Lamination), Express Lamination Services, Inc. (Express Lamination), and Express Coat Enterprises, Inc. (Express Coat).

THE ANTECEDENT FACTS

Petitioner Erson Ang Lee (petitioner), through Super Lamination, is a duly registered entity principally engaged in the business of providing lamination services to the general public. Respondent Samahan ng mga Manggagawa ng Super Lamination Services (Union A) is a legitimate labor organization, which is also a local chapter affiliate of the National Federation of Labor Unions – Kilusang Mayo Uno.[4] It appears that Super Lamination is a sole proprietorship under petitioner's name,[5] while Express Lamination and Express Coat are duly incorporated entities separately registered with the Securities and Exchange Commission (SEC).[6]

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[1] *Rollo*, pp. 28-38; dated 24 May 2010; penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Manuel M. Barrios concurring; docketed as CA-G.R. SP No. 109486.

[2] *Id.* at 39-41; dated 21 September 2010.

[3] *Id.* at 63-69; dated 8 May 2009; penned by DOLE Undersecretary Romeo C. Lagman by authority of the DOLE Secretary.

[4] *Id*. at 78.

[5] *Id*. at 129.

[6] *Id*. at 127-128.

On 7 March 2008, Union A filed a Petition for Certification Election[7] to represent all the rank-and-file employees of Super Lamination. [8]

Notably, on the same date, Express Lamination Workers' Union (Union B) also filed a Petition for Certification Election to represent all the rank-and-file employees of Express Lamination.[9]

Also on the same date, the Samahan ng mga Manggagawa ng Express Coat Enterprises, Inc. (Union C) filed a Petition for Certification Election to represent the rank-and-file employees of Express Coat. [10]

Super Lamination, Express Lamination, and Express Coat, all represented by one counsel, separately claimed in their Comments and Motions to Dismiss that the petitions must be dismissed on the same ground — lack of employer-employee relationship between these establishments and the bargaining units that Unions A, B, and C seek to represent as well as these unions' respective members.[11] Super Lamination, in its Motion, posited that a majority of the persons who were enumerated in the list of members and officers of Union A were not its employees, but were employed by either Express Lamination or Express Coat.[12] Interestingly, both Express Lamination and Express Coat, in turn, maintained the same argument – that a majority of those who had assented to the Petition for Certification Election were not employees of either company, but of one of the two other companies involved.[13]

All three Petitions for Certification Election of the Unions were denied. On 21 May 2008, an Order was issued by DOLE

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[7] *Id*. at 75-77.

[8] *Id*. at 64.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 65-66, 140.

[12] *Id*. at 32.

[13] *Id*. at 65.

National Capital Region (NCR) Med-Arbiter Michael Angelo Parado denying the respective petitions of Unions B and C on the ground that there was no existing employer-employee relationship between the members of the unions and the companies concerned. On 23 May 2008, DOLE NCR Med-Arbiter Alma Magdaraog-Alba also denied the petition of respondent Union A on the same ground.[14]

The three unions filed their respective appeals before the Office of the DOLE Secretary, which consolidated the appeal because the involved companies alternately referred to one another as the employer of the members of the bargaining units sought to be represented.[15] The unions argued that their petitions should have been allowed considering that the companies involved were unorganized, and that the employers had no concomitant right to oppose the petitions. They also claimed that while the questioned employees might have been assigned to perform work at the other companies, they were all under one management's direct control and supervision.[16]

DOLE, through Undersecretary Romeo C. Lagman, rendered the assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the appeals filed by Express Lamination Workers Union (ELWU-NAFLU-KMU), Samahang Manggagawa ng Express Coat Enterprises, Inc. (SMEC-NAFLU-KMU) and Samahang Manggagawa ng Super Lamination Services (SMSLS-NAFLU-KMU) are hereby **GRANTED** and the Orders dated 21 May 2008 of DOLE-NCR Mediator-Arbiter Michael Angelo T. Parado are hereby **REVERSED and SET ASIDE**. The Order dated 23 May 2008 of DOLE NCR Mediator-Arbiter Alma E. Magdaraog-Alba is likewise **REVERSED and SET ASIDE**.

Accordingly, let the entire records of this be remanded to the regional office of origin for the immediate conduct of certification election among the rank-and-file employees of Express Lamination Services,

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[14] *Id*. 32-33.

[15] *Id*. at 64.

[16] *Id*. at 66.

Inc., Super Lamination Services and Express Coat Enterprises Inc., after the conduct of pre-election conference/s, with the following as choices;

1. Express Lamination Workers Union-NAFLU-KMU;
2. Samahan ng mga Manggagawa ng Super Lamination Services-NAFLU-KMU;
3. Samahang ng mga Manggagawa ng Express Coat Enterprises, Inc.-NAFLU-KMU; and
4. "No Union."

The employer/s and/or contending union(s) are hereby directed to submit to the Regional Office of origin, within ten (10) days from receipt of this Decision, a certified list of employees in the bargaining unit or the payrolls covering the members of the bargaining unit for the last three (3) months prior to the issuance of the Decision.

SO DECIDED.[17] (Emphases in the original)

DOLE found that Super Lamination, Express Lamination, and Express Coat were sister companies that had a common human resource department responsible for hiring and disciplining the employees of the three companies. The same department was found to have also given them daily instructions on how to go about their work and where to report for work. It also found that the three companies involved constantly rotated their workers, and that the latter's identification cards had only one signatory.[18]

To DOLE, these circumstances showed that the companies were engaged in a work-pooling scheme, in light of which they might be considered as one and the same entity for the purpose of determining the appropriate bargaining unit in a certification election.[19] DOLE applied the concept of multi-employer bargaining under Sections 5 and 6 of DOLE Department Order

[17] *Id.* at 69.

[18] *Id*. at 67.

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

40-03, Series of 2003. Under that concept, the creation of a single bargaining unit for the rank-and-file employees of all three companies was not implausible and was justified under the given circumstances.[20] Thus, it considered these rank-and-file employees as one bargaining unit and ordered the conduct of a certification election as uniformly prayed for by the three unions.

Aggrieved, petitioner instituted an appeal before the CA, which denied his Petition and affirmed the Decision of DOLE. It sided with DOLE in finding that Super Lamination, Express Lamination, and Express Coat were sister companies that had adopted a work-pooling scheme. Therefore, it held that DOLE had correctly applied the concept of multi-employer bargaining in finding that the three companies could be considered as the same entity, and their rank-and-file employees as comprising one bargaining unit.[21]

Petitioner filed a Motion for Reconsideration of the CA Decision, but the motion was denied.[22] Therefore, he now comes to this Court through the present Petition.

ISSUES

From the established facts and arguments, we cull the issues as follows:

1. Whether the application of the doctrine of piercing the corporate veil is warranted
2. Whether the rank-and-file employees of Super Lamination, Express Lamination, and Express Coat constitute an appropriate bargaining unit

THE COURT'S RULING

We deny the petition.

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[20] *Id*. at 68.

[21] *Id.* at 36.

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

An application of the doctrine of piercing the corporate veil is warranted.

Petitioner argues that separate corporations cannot be treated as a single bargaining unit even if their businesses are related,[23] as these companies are indubitably distinct entities with separate juridical personalities.[24] Hence, the employees of one corporation cannot be allowed to vote in the certification election of another corporation, lest the above-mentioned rule be violated.[25]

Petitioner's argument, while correct, is a general rule. This Court has time and again disregarded separate juridical personalities under the doctrine of piercing the corporate veil. It has done so in cases where a separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, among other grounds.[26] In any of these situations, the

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[23] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople*, 189 Phil. 396 (1980).

[24] *Indophil Textile Mill Workers Union-PTGWO v. Calica*, G.R. No. 96490, 205 SCRA 697, 3 February 1992; *Umali, et al. v. CA*, 267 Phil. 553 (1990).

[25] A certification election, as defined in the Labor Code's Implementing Rules, is the process of determining, by secret ballot, the employees' sole and exclusive representative in an appropriate bargaining unit, for purposes of collective bargaining or negotiation (Book V, Rule I, Sec. 1[x]). A union's right to file a petition for certification election is founded on the existence of an employer-employee relationship. The workers whom the union intends to represent must therefore be employees of the enterprise in which an election is sought. (C.A. Azucena, Jr., THE LABOR CODE WITH COMMENTS AND CASES, 461 [Eighth Edition, 2013]). Otherwise, the petition must be dismissed.

[26] The veil of separate corporate personality may be lifted when such personality is used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues; or when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation; or when the corporation is used as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of the creditors. In such cases, the corporation will be considered as a mere association of persons. The liability will directly attach to the stockholders

law will regard it as an association of persons or, in case of two corporations, merge them into one.[27]

A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same.[28]

This formulation has been applied by this Court to cases in which the laborer has been put in a disadvantageous position as a result of the separate juridical personalities of the employers involved.[29] Pursuant to veil-piercing, we have held two corporations jointly and severally liable for an employee's back wages.[30] We also considered a corporation and its separately-incorporated branches as one and the same for purposes of finding the corporation guilty of illegal dismissal.[31] These rulings were made pursuant to the fundamental doctrine that the corporate fiction should not be used as a subterfuge to commit injustice and circumvent labor laws.[32]

Here, a certification election was ordered to be held for all the rank-and-file employees of Super Lamination, Express Lamination, and Express Coat. The three companies were

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or to the other corporation. *(China Banking Corp. v. Dyne-Sem Electronics Corp.,* 527 Phil. 74 [2006]).

[27] *Villanueva v. Lorezo,* G.R. No. 179640, 18 March 2015; *Times Transportation Co. Inc. v. Sotelo,* 491 Phil. 756 (2005).

[28] *Prince Transport, Inc. v. Garcia,* 654 Phil. 296 (2011).

[29] See *Vicmar Development Corp. v. Elarcosa (*G.R. No. 202215, 9 December 2015); *Azcor Manufacturing, Inc. v. National Labor Relations Commission (*362 Phil. 370 [1999]); *Tomas Lao Construction v. National Labor Relations Commission (*344 Phil. 268 [1997]).

[30] *Azcor Manufacturing, Inc. v. National Labor Relations Commission, id.; Tomas Lao Construction v. National Labor Relations Commission, id.*

[31] *Vicmar Development Corp. v. Elarcosa, supra* note 29.

[32] *Tomas Lao Construction v. National Labor Relations Commission, supra* note 29 at 287.

supposedly distinct entities based on the fact that Super Lamination is a sole proprietorship while Express Lamination and Express Coat were separately registered with the SEC.[33] The directive was therefore, in effect, a piercing of the separate juridical personalities of the corporations involved. We find the piercing to be proper and in accordance with the law as will be discussed below.

The following established facts show that Super Lamination, Express Lamination, and Express Coat are under the control and management of the same party – petitioner Ang Lee. In effect, the employees of these three companies have petitioner as their common employer, as shown by the following facts:

1. Super Lamination, Express Lamination, and Express Coat were engaged in the same business of providing lamination services to the public as admitted by petitioner in his petition.[34]

2. The three establishments operated and hired employees through a common human resource department as found by DOLE in a clarificatory hearing.[35] Though it was not clear which company the human resource department was officially attached to, petitioner admits in his petition that such department was *shared* by the three companies for purposes of convenience.[36]

3. The workers of all three companies were constantly rotated and periodically assigned to Super Lamination or Express Lamination or Express Coat to perform the same or similar tasks.[37] This finding was further affirmed when petitioner admitted in his petition before us that the Super Lamination had entered into a work-pooling

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[33] *Rollo*, pp. 127-129.

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

[35] *Id*. at 36, 67.

[36] *Id*. at 11.

[37] *Id*.

agreement with the two other companies and shared a number of their employees.[38]

4. DOLE found and the CA affirmed that the common human resource department imposed disciplinary sanctions and directed the daily performance of all the members of Unions A, B, and C.[39]

5. Super Lamination included in its payroll and SSS registration not just its own employees, but also the supposed employees of Express Lamination and Express Coat. This much was admitted by petitioner in his Motion to Dismiss[40] which was affirmed by the Med-Arbiter in the latter's Order.[41]

6. Petitioner admitted that Super Lamination had issued and signed the identification cards of employees who were actually working for Express Lamination and Express Coat.[42]

7. Super Lamination, Express Lamination, and Express Coat were represented by the same counsel who interposed the same arguments in their motions before the Med-Arbiters and DOLE.[43]

Further, we discern from the synchronized movements of petitioner and the two other companies an attempt to frustrate or defeat the workers' right to collectively bargain through the shield of the corporations' separate juridical personalities. We make this finding on the basis of the motions to dismiss filed by the three companies. While similarly alleging the absence of an employer-employee relationship, they alternately referred

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[38] *Id.*

[39] *Id*. at 36, 67.

[40] *Id*. at 131.

[41] *Id.* at 141.

[42] *Id.* at 131.

[43] *Id*. at 64-65.

to one another as the employer of the members of the bargaining units sought to be represented respectively by the unions. This fact was affirmed by the Med-Arbiters' Orders finding that indeed, the supposed employees of each establishment were found to be alternately the employees of either of the two other companies as well. This was precisely the reason why DOLE consolidated the appeals filed by Unions A, B, and C.[44]

Due to the finger-pointing by the three companies at one another, the petitions were dismissed. As a result, the three unions were not able to proceed with the conduct of the certification election. This also caused confusion among the employees as to who their real employer is, as Union A claims in its Comment.[45]

We hold that if we allow petitioner and the two other companies to continue obstructing the holding of the election in this manner, their employees and their respective unions will never have a chance to choose their bargaining representative. We take note that all three establishments were unorganized. That is, no union therein was ever duly recognized or certified as a bargaining representative.[46]

Therefore, it is only proper that, in order to safeguard the right of the workers and Unions A, B, and C to engage in collective bargaining, the corporate veil of Express Lamination and Express Coat must be pierced. The separate existence of Super Lamination, Express Lamination, and Express Coat must be disregarded. In effect, we affirm the lower tribunals in ruling that these companies must be treated as one and the same unit for purposes of holding a certification election.

Petitioner has cited *Diatagon Labor Federation Local v. Ople*[47] and *Indophil Textile Mill Worker Union v. Calica*[48]

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[44] *Id.* at 64.

[45] *Id.* at 147.

[46] Article 268, Labor Code; *Azucena*, *supra* note 25, p. 447.

[47] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople*, *supra* note 23.

[48] *Indophil Textile Mill Workers Union-PTGWO v. Calica*, *supra* note 24.

in which this Court refused to treat separate corporations as a single bargaining unit. Those cases, however, are not substantially identical with this case and would not warrant their application herein. Unlike in the instant case, the corporations involved were found to be completely independent or were not involved in any act that frustrated the laborers' rights.

In *Diatagon*,[49] we refused to include the 236 employees of Georgia Pacific International Corporation in the bargaining unit of the employees of Liangga Bay Logging Co., Inc. This Court's refusal was in light of the fact that the two corporations were indubitably distinct entities with separate corporate identities and origins. Moreover, there was no discernible attempt to frustrate any of their labor-related rights, as the only conflict was over which bargaining unit they belonged to.

In *Indophil*,[50] this Court refused to pierce the corporate veil of Indophil Textile Mill and Indophil Acrylic Manufacturing. We found that the creation of Indophil Acrylic was not a device to evade the application of the collective bargaining agreement (CBA) between petitioner union and Indophil Textile Mill. This Court further found that despite the similarity in their business operations, the separate personalities of the two corporations were maintained and were not used for any of the purposes specified under the law that would warrant piercing. It is also apparent in this case that the workers' rights were not being hampered by the employers concerned, as the only issue between them was the extent of the subject CBA's application.

In this case, not only were Super Lamination, Express Lamination, and Express Coat found to be under the control of petitioner, but there was also a discernible attempt to disregard the workers' and unions' right to collective bargaining.

The foregoing considered, we find no error in the CA's affirmance of the DOLE directive. We affirm DOLE's application

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[49] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople, supra* note 23.

[50] *Indophil Textile Mill Workers Union-PTGWO v. Calica, supra* note 24.

by analogy of the concept of multi-employer bargaining to justify its Decision to treat the three companies as one. While the multi-employer bargaining mechanism is relatively new and purely optional under Department Order No. 40-03, it illustrates the State's policy to promote the primacy of free and responsible exercise of the right to collective bargaining.[51] The existence of this mechanism in our labor laws affirm DOLE's conclusion that its treatment of the employees of the three companies herein as a single bargaining unit is neither impossible nor prohibited.[52] It is justified under the circumstances discussed above.

Besides, it is an established rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded by the courts not only respect but even finality when supported by substantial evidence; *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[53]

The bargaining unit of the rank-and-file employees of the three companies is appropriate.

Petitioner argues that there is no showing that the rank-and-file employees of the three companies would constitute an appropriate bargaining unit on account of the latter's different geographical locations.[54] This contention lacks merit. The basic test for determining the appropriate bargaining unit is the application of a standard whereby a unit is deemed appropriate if it affects a grouping of employees who have substantial, mutual

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[51] Book V, Rule XVI, Section 1. Policy. – It is the policy of the Sate to promote and emphasize the primacy of free and responsible exercise of the right to self-organization and collective bargaining, either through single enterprise level negotiations or through the creation of a mechanism by which different employers and recognized or certified labor union in their establishments bargain collectively.

[52] *Rollo*, p. 68.

[53] *Prince Transport, Inc. v. Garcia, supra* note 28.

[54] *Rollo*, p. 18

interests in wages, hours, working conditions, and other subjects of collective bargaining.[55] We have ruled that geographical location can be completely disregarded if the communal or mutual interests of the employees are not sacrificed.[56]

In the present case, there was communal interest among the rank-and-file employees of the three companies based on the finding that they were constantly rotated to all three companies, and that they performed the same or similar duties whenever rotated.[57] Therefore, aside from geographical location, their employment status and working conditions were so substantially similar as to justify a conclusion that they shared a community of interest. This finding is consistent with the policy in favor of a single-employer unit, unless the circumstances require otherwise.[58] The more solid the employees are, the stronger is their bargaining capacity.[59]

As correctly observed by the CA and DOLE, while there is no prohibition on the mere act of engaging in a work-pooling scheme as sister companies, that act will not be tolerated, and the sister companies' separate juridical personalities will be disregarded, if they use that scheme to defeat the workers' right to collective bargaining. The employees' right to collectively bargain with their employers is necessary to promote harmonious labor-management relations in the interest of sound and stable industrial peace.[60]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 is **DENIED** for lack of merit. The Court of Appeals

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[55] *University of the Phils. v. Ferrer-Calleja,* G.R. No. 96189, 14 July 1992, 211 SCRA 464.

[56] *San Miguel Corp. Supervisors and Exempt Union v. Laguesma,* 343 Phil. 143 (1997).

[57] *Rollo,* p. 36.

[58] *General Rubber and Footwear Corp. v. Bureau of Labor Relations,* 239 Phil. 276 (1987).

[59] *Azucena, supra* note 25, p. 440.

[60] *Government Service Insurance System v. GSIS Supervisor's Union,* 160-A Phil. 1066 (1975).

Decision[61] and Resolution[62] in CA-G.R. SP No. 109486 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

FIRST DIVISION

[G.R. No. 197191. November 21, 2016]

OASIS PARK HOTEL, *petitioner, vs.* **LESLEE G. NAVALUNA, AMIE M. TUBELLEJA, JOAN REODIQUE, JOCELYN ORENCIADA, ELLAINE B. VILLAGOMEZ, OLIVIA E. AMASOLA and JONA MAE COSTELO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS; PROPER MODE OF REVIEW OVER DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), WHICH IS LIMITED TO THE RESOLUTION OF JURISDICTIONAL ISSUES.— It is settled that the mode of judicial review over decisions of the NLRC is by a petition for *certiorari* under Rule 65 of the Revised Rules of Court filed before the Court of Appeals. This special original action is limited to the resolution of jurisdictional issues, that is, lack or excess of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction.

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[61] Dated 24 May 2010.

[62] Dated 21 September 2010.

2. ID.; ID.; PLEADINGS AND PRACTICE; VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING; LACK OF COMPETENT EVIDENCE ON THE AFFIANT'S IDENTITY ON THE ATTACHED VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING DOES NOT WARRANT THE DISMISSAL OF PETITION, AS ATTACHMENT OF A PHOTOCOPY OF THE AFFIANT'S IDENTIFICATION CARD IN THE DOCUMENT IS NOT REQUIRED.— The Verification and Certificate of Non-Forum Shopping and Affidavit of Service attached to the Petition were accompanied by a duly accomplished *jurat* indicating the respective affiants' competent evidence of identity, particularly, their Social Security System Card and Voter's ID, respectively. The Court already pointed out in *Heirs of Amada Zaulda v. Isaac Zaulda,* that dismissal by the Court of Appeals of the petition for lack of competent evidence on the affiant's identity on the attached verification and certification against forum shopping was without clear basis. The 2004 Rules on Notarial Practice does not require the attachment of a photocopy of the identification card in the document. Even A.M. No. 02-8-13-SC, amending Section 12 thereof, is silent on it.

3. ID.; ID.; ID.; IF A PARTY TO A CASE HAS APPEARED BY COUNSEL, SERVICE OF PLEADINGS AND JUDGMENTS SHALL BE MADE UPON SAID COUNSEL, UNLESS SERVICE UPON THE PARTY IS SPECIFICALLY ORDERED BY THE COURT.— When service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which are present in this case. The notarized Affidavit of Service attached to the Petition stated that a copy of said Petition was served by registered mail upon Atty. Nicolas B. Medenilla, respondents' counsel, and indicated as well the corresponding registry receipt number and date and place the mail was posted. The registry receipt was attached to the Affidavit of Service. Service upon Atty. Medenilla is sufficient as the Court had previously declared that if a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon said counsel, unless service upon the party is specifically ordered by the court.

4. ID.; ID.; ID.; THE FAILURE OF PETITIONER TO IMPLEAD THE COMPLETE NAMES OF ALL PRIVATE

RESPONDENTS IN THE CAPTION OF THE PETITION DOES NOT WARRANT THE DISMISSAL OF SAID PETITION, ESPECIALLY WHEN ALL THE NAMES AND CIRCUMSTANCES OF THE PARTIES WERE STATED IN THE BODY OF THE PETITION, UNDER "PARTIES."— The failure of petitioner to implead the complete names of all private respondents in the caption of the Petition did not warrant the dismissal of said Petition, especially when all the names and circumstances of the parties were stated in the body of the Petition, under "PARTIES." As the Court held in *Genato v. Viola:* "It is not the caption of the pleading but the allegations therein that are controlling. The inclusion of the names of all the parties in the title of a complaint is a formal requirement under Section [1], Rule 7 of the Rules of Court. However, the rules of pleadings require courts to pierce the form and go into the substance. The non-inclusion of one or some of the names of all the complainants in the title of a complaint, is not fatal to the case, provided there is a statement in the body of the complaint indicating that such complainant/s was/were made party to such action."

5. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; ONLY THOSE PLEADINGS, PARTS OF CASE RECORDS AND DOCUMENTS WHICH ARE MATERIAL AND PERTINENT, IN THAT THEY MAY PROVIDE THE BASIS FOR A DETERMINATION OF A *PRIMA FACIE* CASE FOR ABUSE OF DISCRETION, ARE REQUIRED TO BE ATTACHED TO A PETITION FOR *CERTIORARI*, AND OMISSION TO ATTACH SUCH DOCUMENTS MAY BE RECTIFIED BY THE SUBSEQUENT SUBMISSION THEREOF; NON-ATTACHMENT OF THE COMPLAINTS BEFORE THE NLRC AND THE AFFIDAVIT OF FACT DOES NOT JUSTIFY THE DISMISSAL OF THE PETITION FOR *CERTIORARI*.— The failure of petitioner to attach to the Petition respondents' complaints before the NLRC, as well as a clear and legible copy of the Affidavit of Fact dated September 8, 2008, likewise did not justify the dismissal of said Petition. In *Gutierrez v. Valiente*, the Court described what constitutes relevant or pertinent documents under Rule 65, Section 1 of the Revised Rules of Court: With regard to the failure to attach material portions of the record in support of the petition, Section

1 of Rule 65 of the Rules of Court requires that petition for *certiorari* shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the records as are referred to therein, and other documents relevant or pertinent thereto; and failure of compliance shall be sufficient ground for the dismissal of the petition. x x x. In *Air Philippines Corporation v. Zamora,* the Court clarified that not all pleadings and parts of case records are required to be attached to the petition; only those pleadings, parts of case records and documents which are material and pertinent, in that they may provide the basis for a determination of a *prima facie* case for abuse of discretion, are required to be attached to a petition for *certiorari*, and omission to attach such documents may be rectified by the subsequent submission of the documents required. Based on the foregoing, copies of the NLRC Decision dated August 31, 2010 and Resolution dated November 30, 2010 attached to the Petition would have sufficed. Even if respondents' complaints before the NLRC and the Affidavit of Fact dated September 8, 2008 were arguably "relevant and pertinent for proper appreciation of the antecedent facts and the complete disposition of the case x x x," then the Court of Appeals could have simply required their subsequent submission.

6. ID.; ID.; ID.; WHEN TO FILE; THE FAILURE OF PETITIONER TO STATE IN THE PETITION THE DATE WHEN NOTICE OF THE JUDGMENT OR FINAL ORDER OR RESOLUTION WAS RECEIVED, WHEN A MOTION FOR NEW TRIAL OR RECONSIDERATION WAS FILED, IF ANY, AND WHEN NOTICE OF THE DENIAL THEREOF WAS RECEIVED, SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION. SUBSTANTIAL COMPLIANCE THEREOF WILL NOT SUFFICE.— [T]he Petition for *Certiorari* in CA-G.R. SP No. 117663 did fail to comply with one requirement which cannot be excused, *i.e.*, the statement of material dates, specifically, the date petitioner received a copy of the NLRC Decision dated August 31, 2010. x x x. As the Court has emphasized in *Tambong v. R. Jorge Development Corporation:* There are three essential dates that must be stated in a petition for *certiorari* brought under Rule 65. *First*, the date when notice of the judgment or final order or resolution was received; *second*,

when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.** x x x.

7. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE *ONUS* OF PROVING THAT THE EMPLOYEE WAS NOT DISMISSED OR IF DISMISSED, THAT THE DISMISSAL WAS NOT ILLEGAL, RESTS ON THE EMPLOYER, AND FAILURE TO DISCHARGE THE SAME WOULD MEAN THAT THE DISMISSAL IS NOT JUSTIFIED AND, THEREFORE, ILLEGAL; DISMISSAL OF RESPONDENTS DECLARED ILLEGAL.— Article 277 of the Labor Code guarantees the right of an employee to security of tenure x x x. It is clear from the xxx provision that the dismissal of respondents may be sustained only if shown to have been made for a just and authorized cause and with due process; and that the burden of proving that the termination was for a valid or authorized cause rests upon the employer. Time and again, the Court has ruled that in illegal dismissal cases, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal. The petitioner must not only rely on the weakness of the respondents' evidence, but must stand on the merits of its own defense. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation and unreliable documentary evidence cannot stand, as it will offend due process. Petitioner was unable to submit substantial evidence that respondents actually committed serious misconduct and wilful breach of trust to justify the respondents' dismissal from employment.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioner.
Nicolas B. Medenilla II for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioner Oasis Park Hotel assails the Resolutions dated January 26, 2011[1] and June 6, 2011[2] of the Court of Appeals in CA-G.R. SP No. 117663 which, respectively, dismissed the Petition for *Certiorari* under Rule 65 of the Revised Rules of Court due to procedural infirmities and denied the Motion for Reconsideration of petitioner. The appellate court effectively affirmed the Decision[3] dated August 31, 2010 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-003089-09 which (a) reversed the Decision[4] of the Labor Arbiter (LA) in NLRC NCR Case Nos. 11-15936-08, 11-16353-08, and 01-01669-09, finding the dismissal of respondents Leslee G. Navaluna, Amie M. Tubelleja, Joan Reodique, Jocelyn Orenciada, Jona Mae Costelo, Olivia E. Amasola, and Ellaine B. Villagomez valid; (b) declared that respondents were illegally dismissed; and (c) ordered petitioner to immediately reinstate respondents to their former positions, pay respondents full backwages, wage differentials, and proportionate 13th month pay.

Respondents were variously employed by petitioner as food attendant, cashier, or front desk clerk since 2003 to 2004.

Respondents, believing that they were not being accorded the labor standard benefits for regular employees, filed on August 28, 2008 a complaint for violation of labor standard laws against petitioner and/or the spouses Jean and William Victor (also

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[1] *Rollo*, pp. 75-77; penned by Associate Justice Ramon R. Garcia with Associate Justices Rosmari D. Carandang and Manuel M. Barrios concurring.

[2] *Id*. at 79-83.

[3] *Id*. at 57-65; penned by Commissioner Perlita B. Velasco with Commissioner Romeo L. Go concurring, Presiding Commissioner Gerardo C. Nograles took no part.

[4] *Id*. at 49-54; penned by Labor Arbiter Arthur L. Amansec.

called Bill) Percy, President and Vice President, respectively, of petitioner, before the Department of Labor and Employment (DOLE), docketed as NCROO-MFO-0809-IS-004. Respondents, though, continued reporting for work, confident that they were merely exercising their constitutional rights.

On September 17, 2008, petitioner issued a similarly worded Notice to Explain and Preventive Suspension[5] to each respondent. The Notice required respondents to submit within five days from notice their written explanation on why they should not be subject to disciplinary action or their services terminated for the following alleged offenses:

> a. Serious Misconduct and Willful Breach of the trust reposed upon you by management, specifically when you, together with [names of the other co-respondents], conspired among yourselves to sabotage the operations of the hotel by committing the following acts:
>
> 1 By being moody and miserable in dealing with the hotel's customers;
>
> 2 By intentional "slowdown" in the performance of your duties;
>
> b. Serious Misconduct, specifically by breeding contempt and fostering discontent among your co-workers through rumor mongering, discourtesy and crude attitude towards management.

The Notice also summoned respondents, assisted by their counsel, if they so desired, to attend the investigation/conference as regards their administrative cases on September 24, 2008 at the office of petitioner's counsel. Respondents' failure to submit their written explanation within the prescribed period or to attend the scheduled hearing would be deemed as a waiver of the same. The Notice further placed respondents on preventive suspension effective immediately and during the course of the investigation as their continued presence at the hotel "will pose a meaningful disruption in the productive operations."

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[5] *Id*. at 114-120.

Respondents individually submitted their written explanations to refute the charges against them,[6] but did not attend the administrative hearing. On October 16, 2008, petitioner issued to each respondent a written Notice of Termination,[7] all identically stating that:

> Based on your written explanation and your refusal and failure to attend the administrative hearing, you failed to present reasonable justification and sufficient evidence to counter the charges against you.
>
> After a thorough and careful deliberation of the evidence presented and investigation, management hereby finds that there exists substantial evidence establishing that you had committed all the said offenses charged against you. The offenses that you had committed constitute serious misconduct, willful disobedience of lawful orders of management and willful breach of the trust reposed on you by management, which are just causes of termination of employment according to Article 282 of the Labor Code of the Philippines.
>
> Considering the gravity of the offenses that you had committed, your failure to dutifully perform your functions, and your previous offenses against the company, your employment is hereby terminated effective immediately from the date of this Notice.

Consequently, respondents filed before the NLRC three separate complaints for illegal dismissal, underpayment of wages and labor standard benefits, damages, and attorney's fees, against petitioner and the spouses Percy, docketed as NLRC NCR Case Nos. 11-15936-08, 11-16353-08, and 01-01669-09.

In their Position Papers, respondents averred that the acts imputed against them by petitioner were not substantiated and did not constitute serious misconduct. Hence, there was no valid ground for their termination. Respondents asserted that they were dismissed as retaliation for their prior complaint against petitioner and the spouses Percy filed before the DOLE, *i.e.*, NCROO-MFO-0809-IS-004. After receiving notice of NCROO-

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[6] *Id.* at 121-128.

[7] *Id.* at 129-142.

MFO-0809-IS-004, the spouses Percy verbally and emotionally maltreated respondents even more. Bill, in particular, became more vicious when he was drunk, throwing ice cubes and empty bottles, and uttering offensive remarks at respondents, such as "fuck you," "take off your pants," "do you want to have sex with a fat old guy," "you're fucking stupid," or "fucking idiot." During those moments, respondents would just reply to Bill "I love you, sir," to avoid further trouble. Subsequently, respondents were strictly prohibited from entering the main restaurant and transferred to the newly reopened sports bar, which was located at what used to be a stock area. Jean reportedly commented about respondents' transfer that, *"mabuti yan, para lamukin sila."*

Petitioner and the spouses Percy maintained that respondents were terminated for intentionally slowing down the performance of their duties; being rude, moody, and miserable towards the patrons of the hotel; and breeding contempt and fostering discontent among other employees, which amount to serious misconduct and wilful breach of trust punishable by termination. Petitioner and the spouses Percy also argued that they had fully complied with labor standard laws, and that respondents were dismissed only after compliance with the twin requirements of notice and hearing.

On September 10, 2009, the Labor Arbiter rendered a Decision favoring petitioner and the spouses Percy. According to the Labor Arbiter:

> [Respondents'] acts, established by substantial evidence, notably, by the verified Position Paper and its Annexes, coupled with Affidavits of witnesses (Annexes A, B, and C of [petitioner and the spouses Percy's] Sur-Rejoinder) submitted by the [petitioner and the spouses Percy], constitute serious misconduct that justified the [petitioner] hotel into validly dismissing them from employment under Article 282 of the Labor Code. Maintaining them in its employ would further ruin the reputation of the hotel and ultimately destroy its business altogether.
>
> As the [petitioner and the spouses Percy's] Position Paper validly argues: *It is respectfully submitted that the acts of [respondents]*

fall within the purview of what is serious misconduct which is a just cause for termination under the Labor Code. [Respondents] were food attendants for [petitioner] Oasis Park Hotel ("Hotel" for brevity). As food attendants, their primary responsibility is to attend to the customers of the [petitioner] Hotel. As food attendants, they were supposed to show the [petitioner] hotel's customers that they were very much happy and willing to accommodate them. They were supposed to answer the legitimate needs of the [petitioner] hotel's customers. When they have shown their lack of interests in serving the [petitioner] hotel's customers, when they were intentionally slow in answering the orders of the said customers, when they worked very sluggish in the performance of their primary duties, these acts constitute dereliction of duty and, thus, qualify as a misconduct. Such acts of misconduct are of grave and aggravated character considering that to serve with gusto and eagerness the [petitioner] hotel's customers are their primary duty and the fact that these acts were done intentionally completely make it serious misconduct.

Indeed, with a mental make-up and disposition that would drive away our country's tourists, the [respondents] do not deserve a place in the hotel industry.[8]

The Labor Arbiter, while denying respondents' claims for overtime pay, night shift differential pay, premium pay for holiday and rest day work, and damages, granted respondents' claims for proportionate 13th month pay for October 2008 and wage differentials due to underpayment of wages.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, judgment is hereby made dismissing as wanting in merit the charge of illegal dismissal but ordering the [petitioner] hotel to pay each [respondent] a proportionate 13th month pay for the year 2008.

The [petitioner] hotel is also ordered to pay each [respondent] wage differentials arising from underpayment of wages but subject to the usual three years prescriptive period on money claims.

Other claims are dismissed for lack of merit[9].

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

[9] *Id*. at 54.

Respondents filed an appeal before the NLRC, docketed as NLRC LAC No. 11-003089-09. In its Decision dated August 31, 2010, the NLRC found:

> At the outset, it bears stressing the well-entrenched rule in dismissal cases that the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. Thus, the employer must not only rely on the weakness of the employees' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process. *(Dina Abad et al., vs. Roselle Cinema Silverscreen Corp. and Vermy Trinidad,* G.R. No. 141371, March 24, 2006)
>
> In the case at bar, We find that [petitioner and the spouses Percy] failed to hurdle the aforesaid duties. By relying alone on the affidavits attached to Sur-Rejoinder, [petitioner and the spouses Percy], in effect, put the cart before the horse when they dismissed the [respondents] on account of the alleged offenses. In other words, [petitioner and the spouses Percy] failed to present substantial evidence to support their accusations against [respondents] at the time they were dismissed from employment. As correctly pointed out by the [respondents], the belated execution of the questioned affidavits a year after the alleged infractions only tend to show that their dismissals were not supported by any evidence, much less substantial evidence, since the likelihood being that they were non-existing evidence at the time of the alleged investigation conducted by [petitioner]. This likelihood was further bolstered by the fact that [petitioner and the spouses Percy] considered the belated submission of the said affidavits of witnesses in their Sur-Rejoinder as newly discovered evidence, an implied admission that they were non-existing evidence at the very time [petitioner and the spouses Percy] supposedly deliberated on the dismissal of the [respondents].
>
> The same is true anent the Position Paper filed by [petitioner and the spouses Percy]. Contrary to the Labor Arbiter's finding, such can never partake of an evidence nor carries evidentiary weight, unless substantiated with the quantum of evidence required in this proceedings. For it is an elementary rule that mere allegations are not evidence.

Moreover, We note the proximity of the complaint filed by [respondents] against the [petitioner] for violation of labor laws, in one hand, and the date [petitioner and the spouses Percy] subsequently effected their dismissals, on the other. The lapse of the short period of time between the two inextricably related incidents further lends strong credence upon the [respondents'] stance that their dismissal was in retaliation to their filing of said complaint.

The foregoing disquisitions are in accord with the settled rule in termination cases enunciated in *Acebedo Optical vs. NLRC*,G.R. No. 150171, July 17, 2007, thus:

> "*From the preceding discussion, the dearth of reliable evidence on record constitutes serious doubt as to the factual basis of the charge of violation of company policy filed against private respondent. This doubt shall be resolved in her favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor. The consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. Having failed to satisfy this burden of proof, we find that petitioners dismissed private respondent without just cause. Consequently, the termination of her employment was illegal.*" x x x.[10]

The NLRC decreed in the end:

WHEREFORE, the appeal is hereby GRANTED and the appealed decision of the Labor Arbiter is SET ASIDE in so far as it upheld as valid the termination of [respondents]. A new one is issued finding all [respondents] to have been illegally dismissed from employment. Accordingly, [petitioner] Oasis Park Hotel owned by Perth, Incorporated is hereby ordered to immediately reinstate [respondents] to their former positions without loss of seniority rights and pay them full backwages computed from date of their dismissal up to their actual reinstatement. The monetary award as of the date of this Decision is appended as Annex "A".

The grant of wage differentials and proportionate 13th month pay is AFFIRMED.[11]

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[10] *Id*. at 61-63.

[11] *Id.* at 63-64.

The NLRC, in a Resolution[12] dated November 30, 2010, denied the Motion for Reconsideration of petitioner and the spouses Percy.

Aggrieved, petitioner filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 117663.

The Court of Appeals issued a Resolution dated January 26, 2011 dismissing the Petition in CA-G.R. SP No. 117663 due to the following procedural infirmities:

1) Incomplete verified statement of material dates as to the date of receipt of the assailed Decision dated August 31, 2010 of public respondent NLRC and the date of filing of the motion for reconsideration thereof in violation of Section 3, Rule 46 of the Revised Rules of Court;

2) Defective Verification and Certificate of Non-Forum Shopping and Affidavit of Service dated January 17, 2011 in that the same were not accompanied by duly accomplished *jurat* indicating the respective affiants' competent evidence of identity pursuant to A.M. 02-8-13-SC dated February 19, 2008, which amended Section 12(a), Rule II of the 2004 Rules on Notarial Practice, for failure to attach photocopies of their valid identification cards showing their photographs thereon;

3) The petition was not accompanied by other material supporting documents which were filed before the Labor Arbiter such as certified true copies of the respective complaints for illegal dismissal filed by private respondents in violation of Section 3, Rule 46 of the Revised Rules of Court;

4) The Affidavit of Fact dated September 8, 2008, marked as Annex "2" of petitioners' Position Paper filed before the Labor Arbiter, which in turn is marked as Annex "F" of the instant petition, is not a clear and legible copy thereof;

5) There was no proof of service of the petition upon private respondents in violation of Section 3, Rule 46 of the Revised Rules of Court in relation to Section[s] 2 and 13, Rule 13 of the same Rules; and

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

6) The petition's caption is defective for failure to implead the complete names of all private respondents pursuant to Section 1, Rule 7 of the Revised Rules of Court.[13]

Consequently, the Court of Appeals resolved:

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED.** This case is considered **CLOSED** and **TERMINATED.**[14]

Petitioner filed a Motion for Reconsideration, to which respondents filed a Comment. In its Resolution dated June 6, 2011, the Court of Appeals denied the Motion for Reconsideration of petitioner. On procedural matters, the appellate court adjudged:

After going over the grounds raised in the said Motion for Reconsideration, *vis-a-vis* the Comment filed by private respondents, We find that petitioner still failed to substantially rectify all the infirmities cited in the Resolution dated January 26, 2011.

First, petitioner failed to sufficiently comply with the requirement of a *verified petition* which shall indicate the *material dates* to show the timeliness of its filing in accordance with Section 3, Rule 46, in relation to Section 1, Rule 65 of the Rules of Court. Contrary to petitioner's asseveration that its failure to state the date of receipt of the assailed NLRC Decision dated August 31, 2010 is not a fatal defect, it bears to stress the well-settled rule that there are three (3) material dates that must be stated in a petition for certiorari under Rule 65, *i.e.* (1) the date when notice of the judgment or final order or resolution was received; (2) the date when a motion for new trial or reconsideration was filed; and (3) the date when notice of the denial thereof was received.

Second, We find no sufficient justification for petitioner's failure to attach the other pertinent and relevant portions of the records of the case such as the respective complaints for illegal dismissal filed by private respondents before the Labor Arbiter. Also, the attached affidavit of fact which is a material part of the records of the case was not clear and legible. These documents are relevant and pertinent for proper appreciation of the antecedent facts and the complete

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[13] *Id.* at 76.

[14] *Id.* at 77.

disposition of the case pursuant to Section 3, Rule 46 of the Rules of Court.

Third, petitioner's reason of inadvertence does not constitute justifiable circumstance that could excuse non-compliance with the rule requiring that all the names of the parties be indicated in the petition pursuant to Section 1, Rule 7 of the Rules of Court.

Verily, Section 3, Rule 46 of the Rules of Court is explicit that the failure of petitioner to comply with any of the requirements set forth therein shall be a sufficient ground for the dismissal of the petition. The rules of procedure are tools designed to promote efficiency and orderliness, as well as, to facilitate attainment of justice, such that strict adherence thereto is required. Their application may be relaxed only when rigidity would result in a defeat of equity and substantial justice, which is not present in the case at bar.[15]

The Court of Appeals also did not find merit in the substantive grounds argued by petitioner:

After considering the records, We find that petitioner failed to adduce sufficient evidence to prove that private respondents committed serious misconduct and willful disobedience warranting their dismissal from employment.

To prove the charges of serious misconduct and willful disobedience, petitioner relied on the affidavits of its alleged witnesses executed a year after the alleged infractions were committed by private respondents. Petitioner also labeled these as newly-discovered evidence when the same were presented before the Labor Arbiter. However, a perusal of the aforesaid affidavits readily reveals that these are clearly self-serving and mere afterthought. They could not be given evidentiary weight considering that they were executed a year after the alleged infraction were committed by private respondents and sans any explanation as to their unavailability at the time of the supposed investigation conducted by petitioner prior to private respondents' termination. Hence, We agree with the NLRC in holding that the belated execution of the questioned affidavits which were considered by petitioner as newly-discovered evidence clearly shows that the dismissal of private respondents were not supported by substantial evidence.

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[15] *Id*. at 80-81.

Any allegation constituting serious misconduct or willful disobedience that warrants the dismissal of an employee must be proven by facts and substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Thus, when there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.

In fine, for a writ of certiorari to issue, it is a condition *sine qua non* that there be grave abuse of discretion or such capricious and whimsical exercise of judgment, or is equated to lack of jurisdiction. It must be shown that the discretion was exercised arbitrarily, or despotically, or whimsically. We find neither lack of jurisdiction nor grave abuse of discretion on the part of the NLRC in rendering the assailed Decision dated August 31, 2010.[16]

Hence, petitioner comes before the Court *via* the instant Petition which raises the following assignment of errors:

THE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW IN SUSTAINING THE NATIONAL LABOR RELATIONS COMMISSION'S FINDING THAT THE RESPONDENTS WERE ILLEGALLY DISMISSED, DEPARTING FROM APPLICABLE DECISIONS OF THIS HONORABLE TRIBUNAL.

THE COURT OF APPEALS OVERLOOKED MATERIAL CIRCUMSTANCES AND FACTS WHICH WERE NOT DISPUTED AND IF TAKEN INTO ACCOUNT WOULD SIGNIFICANTLY ALTER THE COURT'S RESOLUTION.

THE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW IN DISMISSING PETITIONER'S PETITION FOR CERTIORARI ON ALLEGED PROCEDURAL INFIRMITIES.[17]

The Court determines that the issues for its resolution are (1) substantive, whether or not respondents were illegally dismissed; and (2) procedural, whether or not the Petition for *Certiorari* of petitioner in CA-G.R. SP No. 117663 was dismissible for its procedural infirmities.

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[16] *Id*. at 82-83.

[17] *Id*. at 20.

The Court addresses the procedural issue first and rules that the Court of Appeals did not commit any reversible error for dismissing the Petition for *Certiorari* of petitioner in CA-G.R. SP No. 117663 for failing to state the material dates as required by Rule 46, Section 3 of the Revised Rules of Court.

It is settled that the mode of judicial review over decisions of the NLRC is by a petition for *certiorari* under Rule 65 of the Revised Rules of Court filed before the Court of Appeals. This special original action is limited to the resolution of jurisdictional issues, that is, lack or excess of jurisdiction and grave abuse of discretion amounting to lack of jurisdiction.[18]

To recall, the Court of Appeals identified in its Resolution dated January 26, 2011 six procedural infirmities as grounds for the dismissal of the Petition for *Certiorari* in CA-G.R. SP No. 117663. Out of the six procedural infirmities, though, five are without basis or are not fatal to the Petition, *viz.*:

(a) The Verification and Certificate of Non-Forum Shopping and Affidavit of Service attached to the Petition were accompanied by a duly accomplished *jurat* indicating the respective affiants' competent evidence of identity, particularly, their Social Security System Card and Voter's ID, respectively.[19]

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[18] *St. Martin Funeral Home v. National Labor Relations Commission*, 356 Phil. 811, 819 (1998).

[19] Rule II, Section 12 of the 2004 Rules on Notarial Practice, as amended, reads:

Sec. 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, **voter's ID,** Barangay certification, Government Service Insurance System (GSIS) e-card, **Social Security System (SSS) card**, PhilHealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certificate from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification[.] (Emphases supplied.)

The Court already pointed out in *Heirs of Amada Zaulda v. Isaac Zaulda*,[20] that dismissal by the Court of Appeals of the petition for lack of competent evidence on the affiant's identity on the attached verification and certification against forum shopping was without clear basis. The 2004 Rules on Notarial Practice does not require the attachment of a photocopy of the identification card in the document. Even A.M. No. 02-8-13-SC, amending Section 12 thereof, is silent on it.

(b) When service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt,[21] both of which are present in this case. The notarized Affidavit of Service attached to the Petition stated that a copy of said Petition was served by registered mail upon Atty. Nicolas B. Medenilla, respondents' counsel, and indicated as well the corresponding registry receipt number and date and place the mail was posted. The registry receipt was attached to the Affidavit of Service. Service upon Atty. Medenilla is sufficient as the Court had previously declared that if a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon said counsel, unless service upon the party is specifically ordered by the court.[22]

(c) The failure of petitioner to implead the complete names of all private respondents in the caption of the Petition did not warrant the dismissal of said Petition, especially when all the names and circumstances of the parties were stated in the body of the Petition, under "PARTIES." As the Court held in *Genato v. Viola:*[23] "It is not the caption of the pleading but the allegations therein that are controlling. The inclusion of the names of all the parties in the title of a complaint is a formal requirement under Section [1], Rule 7 of the Rules of Court. However, the

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[20] 729 Phil. 639, 649-650 (2014).

[21] *Lisondra v. Megacraft International Corp.*, G.R. No. 204275, December 9, 2015.

[22] *Mojar v. Agro Commercial Security Service Agency, Inc.*, 689 Phil. 589, 599 (2012).

[23] 625 Phil. 514, 525 (2010).

rules of pleadings require courts to pierce the form and go into the substance. The non-inclusion of one or some of the names of all the complainants in the title of a complaint, is not fatal to the case, provided there is a statement in the body of the complaint indicating that such complainant/s was/were made party to such action."

(d) The failure of petitioner to attach to the Petition respondents' complaints before the NLRC, as well as a clear and legible copy of the Affidavit of Fact dated September 8, 2008, likewise did not justify the dismissal of said Petition. In *Gutierrez v. Valiente,*[24] the Court described what constitutes relevant or pertinent documents under Rule 65, Section 1 of the Revised Rules of Court:

> With regard to the failure to attach material portions of the record in support of the petition, Section 1 of Rule 65 of the Rules of Court requires that petition for *certiorari* shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the records as are referred to therein, and other documents relevant or pertinent thereto; and failure of compliance shall be sufficient ground for the dismissal of the petition.
>
> x x x x x x x x x
>
> These documents, however, are not at all relevant to the petition for *certiorari.* Since the issue of whether the RTC committed grave abuse of discretion pertained only to the Orders dated May 15, 2000, June 23, 2003, June 9, 2004 and September 9, 2004, copies of said Orders would have sufficed as basis for the CA to resolve the issue. It was in these Orders that the RTC supposedly made questionable rulings. Thus, the attachment of these Orders to the petition was already sufficient even without the other pleadings and portions of the case record. Moreover, Spouses Gutierrez corrected the purported deficiency by submitting the required documents in their Motion for Reconsideration.

In *Air Philippines Corporation v. Zamora,* the Court clarified that not all pleadings and parts of case records are required to be attached

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[24] 579 Phil. 486, 496-497 (2008).

to the petition; only those pleadings, parts of case records and documents which are material and pertinent, in that they may provide the basis for a determination of a *prima facie* case for abuse of discretion, are required to be attached to a petition for *certiorari*, and omission to attach such documents may be rectified by the subsequent submission of the documents required. (Citations omitted.)

Based on the foregoing, copies of the NLRC Decision dated August 31, 2010 and Resolution dated November 30, 2010 attached to the Petition would have sufficed. Even if respondents' complaints before the NLRC and the Affidavit of Fact dated September 8, 2008 were arguably "relevant and pertinent for proper appreciation of the antecedent facts and the complete disposition of the case x x x," then the Court of Appeals could have simply required their subsequent submission.

Nonetheless, the Petition for *Certiorari* in CA-G.R. SP No. 117663 did fail to comply with one requirement which cannot be excused, *i.e.*,the statement of material dates, specifically, the date petitioner received a copy of the NLRC Decision dated August 31, 2010.

Petitioner insists that the date they received the NLRC Decision dated August 31, 2010 is immaterial, as the 60-day period for filing its Petition for *Certiorari* in CA-G.R. SP No. 117663 is reckoned from the date it received the NLRC Resolution dated November 30, 2010 denying its Motion for Reconsideration.

Petitioner's argument is without merit.

Apropos herein is the following disquisition of the Court on the matter in *Blue Eagle Management, Inc. v. Naval:*[25]

On the matter of procedure, the Court of Appeals should have, at the outset, dismissed respondent's Petition for *Certiorari* in CA-G.R. SP No. 106037 for failure to state material dates.

A petition for *certiorari* must be filed within the prescribed periods under Section 4, Rule 65 of the Rules of Court, as amended:

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[25] G.R. No. 192488, April 19, 2016.

> Section 4. *When and where to file the petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

For the purpose of determining whether or not a petition for *certiorari* was timely filed, Section 3, Rule 46 of the Rules of Court, as amended, requires the petition itself to state the material dates:

> SEC. 3. *Contents and filing of petition, effect of non-compliance with requirements.* – x x x
>
> In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
>
> x x x x x x x x x
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be **sufficient ground for the dismissal of the petition.** x x x.

The Court, in *Vinuya v. Romulo,* expounded on the importance of stating the material dates in a petition for *certiorari:*

> As the rule indicates, the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. To establish the timeliness of the petition for *certiorari*, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for *certiorari* must be dismissed. The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari.* As the Court has emphasized in *Tambong v. R. Jorge Development Corporation:*
>
> > There are three essential dates that must be stated in a petition for *certiorari* brought under Rule 65.*First,* the date when notice of the judgment or final order or resolution

> was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.** x x x.

The Court has further said in *Santos v. Court of Appeals:*

> The requirement of setting forth the three (3) dates in a petition for *certiorari* under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or *Resolution* sought to be assailed. Therefore, that the petition for *certiorari* was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. It should not be assumed that in no event would the motion be filed later than fifteen (15) days. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction. x x x.

x x x x x x x x x

Absent the date when respondent received the NLRC Decision dated May 31, 2007, there is no way to determine whether respondent's Motion for Partial Reconsideration of the same was timely filed. A late motion for reconsideration would render the decision or resolution subject thereof already final and executory. x x x

It is true that in a number of cases, the Court relaxed the application of procedural rules in the interest of substantial justice. Nevertheless, the Court is also guided accordingly in this case by its declarations in *Sebastian v. Morales:*

> Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.
>
> Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules. x x x. (Citations omitted.)

Based on the rules and jurisprudence, the Court of Appeals correctly dismissed the Petition for *Certiorari* in CA-G.R. SP No. 117663 for failure to state material dates.

The Court, furthermore, finds no persuasive reason to relax or liberally apply the rules of procedure in the instant Petition for the sake of substantive justice, as the finding of the NLRC, sustained by the Court of Appeals, that respondents were illegally dismissed by petitioner is supported by the evidence or record.

Article 277 of the Labor Code guarantees the right of an employee to security of tenure, thus –

> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement

of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x.

It is clear from the above provision that the dismissal of respondents may be sustained only if shown to have been made for a just and authorized cause and with due process; and that the burden of proving that the termination was for a valid or authorized cause rests upon the employer.

Time and again, the Court has ruled that in illegal dismissal cases, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal. The petitioner must not only rely on the weakness of the respondents' evidence, but must stand on the merits of its own defense. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation and unreliable documentary evidence cannot stand, as it will offend due process.[26]

Petitioner was unable to submit substantial evidence that respondents actually committed serious misconduct and wilful breach of trust to justify the respondents' dismissal from employment. Initially, there were only the self-serving and unsubstantiated allegations of petitioner and the spouses Percy. Subsequently, petitioner and the spouses Percy attached to the Sur-Rejoinder they submitted to the Labor Arbiter on August

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[26] *Carlos v. Court of Appeals,* 558 Phil. 209, 220-221 (2007).

18, 2009 "newly discovered evidence," *i.e.*, the affidavits of other hotel employees to establish respondents' guilt. The Court agrees with the observation of the NLRC that such affidavits, belatedly executed by the hotel employees almost a year after respondents' dismissal on October 16, 2008, deserve little weight and credence for these were non-existent at the time petitioner conducted its alleged investigation of the charges against respondents and could not have been the basis for respondents' dismissal. Moreover, the Court cannot turn a blind eye to the very short period between respondents' filing of their complaint before the DOLE on August 28, 2008 and the issuance by petitioner to respondents of the Notices to Explain and Preventive Suspension on September 17, 2008 and Notices of Termination on October 16, 2008, giving rise to the reasonable belief that petitioner administratively charged and dismissed respondents as retaliation for respondents' filing of their complaint before the DOLE.

WHEREFORE, finding no reversible error in the herein assailed Resolutions dated January 26, 2011 and June 6, 2011 of the Court of Appeals in CA-G.R. SP No. 117663, the instant Petition for Review is hereby **DENIED.**

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

SECOND DIVISION

[G.R. No. 204422. November 21, 2016]

JESUS B. VILLAMOR, *petitioner, vs.* **EMPLOYEES' COMPENSATION COMMISSION [ECC] and SOCIAL SECURITY SYSTEM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACTS NOT PROPER SUBJECT THEREOF; EXCEPTIONS; WHEN FACTUAL FINDINGS NOT SUPPORTED BY EVIDENCE ON RECORD.— As a rule, questions of facts may not be the subject of an appeal by certiorari under Rule 45 of the Rules of Court as the Supreme Court is not a trier of facts. However, there are exceptions to this rule such as when the factual findings of the CA are not supported by the evidence on record and/or are based on misapprehension of facts. Such is the situation in this case.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION (EC) TEMPORARY TOTAL DISABILITY (TTD) BENEFITS UNDER PD 626, AS AMENDED; COMPENSABILITY OF AN ILLNESS; STROKE AND HYPERTENSION ARE LISTED AS COMPENSABLE OCCUPATIONAL DISEASES.— The Amended Rules on Employees' Compensation provides that for an illness or disease to be compensable, "[it] must be a result of occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions." In the case of stroke and hypertension, both are compensable since they are listed as occupational diseases under Nos. 19 and 29, respectively, of Annex "A" of the said rules. x x x [Here], petitioner was diagnosed with hypertension and stroke, as evidenced by his medical reports: x x x He was also able to show that his work and position in the union caused him physical and mental strain as he had to deal with the demands of various types of people. Thus, there is a probability that his work and position in the union increased his risk of suffering a stroke,

which affected his brain, caused cerebral infarctions, paralysis of the left side of his body, difficulty in speaking, and loss of muscular coordination. Direct evidence showing that his work and position in the union caused his illness is not necessary. As we have consistently ruled, the test of proof in compensation proceedings is probability, and not the ultimate degree of certainty. In fact, in claims for compensation, the strict rules of evidence need not be observed as the primordial and paramount consideration should be the employee's welfare. As to the findings of respondents SSS and ECC that petitioner is a chronic smoker and drinker, the Court finds that it should not bar petitioner's claim for compensation, whether or not such findings are true.

APPEARANCES OF COUNSEL

Yambot Lopez Law Offices for petitioner.
Rachel B. Jaboli for respondent SSS.

D E C I S I O N

DEL CASTILLO, *J.*:

"Probability and not ultimate degree of certainty is the test of proof in compensation proceedings."[1]

Before this Court are: (1) the Petition for Review on *Certiorari*[2] and (2) the Supplemental Petition[3] filed under Rule 45 of the Rules of Court assailing the October 31, 2012 Decision[4] of the Court of Appeals (CA), Manila, in CA G.R. SP No. 124496, which affirmed the denial of petitioner Jesus B. Villamor's claim

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[1] *Government Service Insurance System v. Cuanang*, 474 Phil. 727, 736 (2004).

[2] *Rollo*, pp. 8-30.

[3] *Id*. at 136-154.

[4] *Id*. at 32-40; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles.

for Employees' Compensation (EC) Temporary Total Disability (TTD) benefits under Presidential Decree (PD) No. 626,[5] as amended.

Factual Antecedents

In 1978, petitioner, with Social Security System (SSS) No. 03-4047063-3, was employed by Valle Verde Country Club, Inc. (VVCCI).[6]

On November 3, 2006, he was brought to Our Lady of Lourdes Hospital, Manila, due to dizziness associated with numbness and weakness on his left arm and leg.[7] His Cranial Computed Tomography (CT) scan revealed that he had an "acute non-hemorrhage infarct on the right pons/basal ganglia."[8]

After more than a week of confinement,[9] petitioner was discharged from the said hospital with diagnoses of Hypertension Stage 1; Cerebro-Vascular Disease (CVD) Acute, Non-Hemorrhagic Infarct Right Pons and Right Basal Ganglia; Dyslipidemia[10] (abnormal levels of lipids [cholesterol triglycerides, or both] carried by lipoproteins in the blood).[11]

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[5] Employees' Compensation Act.

[6] *Rollo*, p. 33.

[7] *Id*.

[8] *Id*.

[9] The Certification issued by Our Lady of Lourdes Hospital states that petitioner was confined at the said hospital from November 3 to 11, 2006 (*Id*. at 74). Likewise, the SSS Employees' Notification Form B-300 states that petitioner was confined in the hospital on November 3 to 11, 2006 and at home on November 12, 2006 to February 23, 2007 (*Id*. at 72). However, in the statement of facts of the ECC Decision (*Id*. at 58), which was quoted by the CA in its Decision, the ECC erroneously stated that petitioner was discharged on November 3, 2006 or on the same day he was admitted (*Id*. at 33).

[10] This term includes hyperlipoproteinemia [hyperlipidemia], which refers to abnormally high levels of total cholesterol, low density lipoprotein [LDL] – the bad – cholesterol, or triglycerides, as well as an abnormally low level of high density lipoprotein [HDL] – the good – cholesterol (*Id*. at 33).

[11] *Id.*

Ruling of the Social Security System

On March 9, 2007, petitioner filed before respondent SSS, Pasig City Branch, claims for sickness benefits under the SSS law and the EC TTD benefits under the EC law for his CVD or stroke, Infarct Hypertension.[12] Respondent SSS Pasig Branch granted his claim for sickness benefits under the SSS law.[13] However, it denied his claim for EC TTD benefits on the ground that there is no causal relationship between his illness and his working conditions.[14]

On August 18, 2011, respondent SSS Pasig Branch endorsed petitioner's records for further evaluation to respondent SSS-Medical Operations Department (SSS-MOD) but the latter denied the claim in a letter[15] dated August 26, 2011 for lack of a causal relationship between petitioner's job as clerk and his illness.[16] Respondent SSS-MOD also noted that petitioner's smoking history, alcoholic beverage drinking habit, and poor compliance with anti-hypertensive medication increased his risk of developing his illness.[17]

Ruling of the Employees' Compensation Commission

Petitioner appealed the denial of his claim to respondent Employees' Compensation Commission (ECC).[18]

On November 28, 2011, respondent ECC rendered a Decision[19] affirming the denial of petitioner's claim due to his failure to adduce substantial evidence that his stroke was work-related.

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[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 66.

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

[17] *Id*. at 34.

[18] *Id*.

[19] *Id*. 58-62; penned by Hon. Lourdes M. Trasmonte, Chairman-Designate, Department of Labor and Employment; Hon. Judy Frances A. See, Member-Designate, SSS; Hon. Dionisio C. Ebdane, Jr., Member-

Respondent ECC ruled that petitioner's illness was a "result of complications expected from a progressive disease, atherosclerosis, enhanced by major risk factors such as history of cigarette smoking and findings of dyslipidemia."[20]

Petitioner moved for reconsideration but respondent ECC denied the same as the filing of a motion for reconsideration is not allowed under Rule 5,[21] Section 11 of the Rules of Procedure for Filing and Disposition of Employees' Compensation Claims.[22]

Ruling of the Court of Appeals

Unfazed, petitioner elevated the matter to the CA via a Petition for Review[23] under Rule 43 of the Rules of Court.

On October 31, 2012, the CA rendered a Decision[24] affirming the denial of petitioner's claim for EC TTD benefits under PD No. 626, as amended. The CA quoted the findings of respondent ECC and ruled that in view of its expertise, its findings are binding on the CA.[25] The CA also said that petitioner's arguments are mere rehashes of the arguments he raised before respondent

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Designate, Government Service Insurance System; Hon. Vladimir R. Tupaz, Member, Employees' Sector; Hon. Miguel B. Varela, Member, Employers' Sector; and Hon. Evelyn P. Florendo-Tablang, Member, ECC Secretariat. Hon. Alexander D. Padilla, Member-Designate, Philippine Health Insurance Corporation, Absent. Hon. Anicia Marasigan-De Lima, Member-Designate, Civil Service Commission, no signature.

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

[21] Section 11. Form and Notice of Decision.

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No motion for reconsideration of the decision, resolution or order of the Commission shall be allowed.

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[22] *Rollo*, p. 63.

[23] *Id.* at 41-56.

[24] *Id.* at 32-40.

[25] *Id.* at 39.

ECC and that he failed to show that respondents ECC and SSS overlooked factual matters that would warrant the reversal of their findings.[26]

Issue

Hence, petitioner filed the instant Petition and Supplemental Petition under Rule 45 of the Rules of Court contending that the CA erred in denying his claim for EC TTD.

Petitioner's Arguments

Petitioner avers that his illnesses, stroke and essential hypertension, are both compensable diseases under ECC Resolution No. 432.[27] He claims that his illness, essential hypertension, is compensable without need of any proof of a causal relationship between his work and his illness because it is an occupational disease listed in Annex "A" of ECC Resolution No. 432.[28] His stroke is likewise compensable since he was able to prove by substantial evidence that it is work-related.[29] He insists that contrary to the findings of respondents SSS and ECC, he is not a mere clerk assigned in the front desk.[30] The truth is that he is the Sports Area In-Charge tasked to deal with the needs and complaints of the club members and their guests who wish to use the club's facilities.[31] He asserts that his work involves mental pressure and physical activity since he has to cater to the needs and complaints of different personalities of club members and their guest.[32] In addition, he is the President of the VVCCI Employees Union and, on behalf of the union, has filed several cases against VVCCI.[33] Due to his position

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[27] *Id*. at 138-140. (Note: ECC Resolution No. 432 dated July 20, 1977 incorporated additional list of illnesses into the official list of work-related diseases under PD No. 626, as amended.)

[28] *Id*. at 140-143.

[29] *Id*. at 143-148.

[30] *Id*. at 17.

[31] *Id*. at 17-18.

[32] *Id*. at 18-19.

[33] *Id*. at 23-24.

in the union, he was subjected to all forms of harassment in the workplace, prompting him to file cases against VVCCI before the National Labor Relations Commission.[34] His work and his position in the labor union caused him to experience tremendous stress that affected his health, develop hypertension, and suffer a stroke.[35]

Petitioner also belies the findings of respondents SSS and ECC that he is a chronic smoker and drinker.[36] He admits that he was a smoker but insists that he stopped smoking in 1995.[37] He also admits drinking alcoholic beverages but only occasionally.[38] In any case, petitioner argues that the fact that he was a smoker and a drinker should not bar him from claiming compensation.[39]

Respondents' Arguments

Respondents SSS and ECC, in essence, contend that petitioner is not entitled to compensation as he failed to prove by substantial evidence that his illness is work-related.[40] They also contend that petitioner raised factual matters, which are not proper in a petition for review on certiorari,[41]and that petitioner's arguments are mere reiterations of his previous arguments.[42]

Our Ruling

The Petition has merit.

As a rule, questions of facts may not be the subject of an appeal by certiorari under Rule 45 of the Rules of Court as the

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[34] *Id.*

[35] *Id*.

[36] *Id*. at 21-22 and 148-149.

[37] *Id*. at 22 and 148.

[38] *Id*.

[39] *Id*. at 22 and 148-149.

[40] *Id*. at 182-185 and 219-226.

[41] *Id*. at 218-219.

[42] *Id*. at 219.

Supreme Court is not a trier of facts.[43] However, there are exceptions to this rule such as when the factual findings of the CA are not supported by the evidence on record and/or are based on misapprehension of facts.[44] Such is the situation in this case.

Petitioner was not a mere clerk at the time he suffered a stroke.

The denial of petitioner's claim is based on the factual finding of respondents SSS and ECC that he is a mere clerk of VVCCI, responsible for the issuance of vouchers and receipts to its member.[45] Based on this, respondents SSS and ECC ruled that in the absence of any substantial evidence showing the causal relationship between his stroke and the clerical nature of his work, petitioner is not entitled to his claim.[46] This factual finding, however, is not supported by the evidence on record.

In 1978, VVCCI employed petitioner as a waiter.[47] It then transferred him to the Sports Department as Sports Dispatcher, and later, promoted him as Sports Area In-Charge.[48] His Identification Card[49] and SSS Employees' Notification Form B-300[50] both prove his claim that his position at the club is not a mere clerk, but is a Sports Area-In-Charge. In fact, his Job Description[51] proves that his work is not limited to issuing vouchers and receipts to club members, but includes the following duties and responsibilities:

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[43] *Medina v. Commission on Audit,* 567 Phil. 649, 664 (2008).

[44] *Swagman Hotels and Travel, Inc. v. Court of Appeals,* 495 Phil. 161, 174 (2005).

[45] *Rollo,* p. 58.

[46] *Id.* at 61.

[47] *Id.* at 12.

[48] *Id.*

[49] *Id.* at 86.

[50] *Id.* at 72.

[51] *Id.* at 85.

Basic Function:

Follow all house rules regarding order, use of sports facilities and strictly enforce proper sports attire. Monitor area assigned (i.e. cleanliness, availability of courts for member use, equipment, events). Coordinates with Shift Leader.

Specific duties and responsibilities:

1. Recognizes and implements all house rules regarding order and use of sports facilities. Sees to it that proper attire is strictly followed.

2. Takes note of any changes in the status of accounts of the Club members, which are circulated by the Administration and Accounting Offices and makes the necessary adjustments as the situation dictates.

3. Keeps record of court playing time by members, dependents, and sponsored guests. Makes sure that all charges are properly receipted and signed by the member concerned.

4. Sees to it that non-members are properly sponsored and charged.

5. Ensures that proper guest rate is applied, charged, paid for, and turned-over to the Cashier at the end of the shift.

6. Refers any complaint received from members concerning the facilities/staff to the Sports Supervisor.

7. Makes the necessary arrangements during tournaments.

8. Coordinates with F&B captain waiter concerning any F&B services as arranged by the client.

9. Cleans and maintains all facilities/equipment in the assigned area.

10. Reports any repair needed in the sports facilities.

11. Turns on lights when members/sponsored guests are in the court area and switches off lights after use.

12. Ensures that clean drinking water and glasses are available at all times for use of members/guests.

13. Perform other works as assigned by the Sports Supervisor.

Based on the foregoing, it is clear that contrary to the findings of the respondents SSS and ECC, petitioner's job is not a mere clerk issuing vouchers or receipts. His duties and responsibilities as Sports Area In-Charge are obviously laborious and stressful since he is tasked to cater to the needs of all club members and their guests, and to coordinate with the other departments of the club regarding their needs. He also receives the complaints and requests of club members and their guests, and ensures that these complaints and requests are properly addressed. To do all these, he has to move around the club and deal with the club members and their guests. Obviously, he has to endure both physical and mental stress in order to perform his duties.

Aside from his position as Sports Area In-Charge, petitioner is also the President of the VVCCI Employees Union since 1984, except for the period 2000-2004.[52] As the president of the union, he was subjected to harassment and unfair labor tactics of the management of the club. In fact, when petitioner suffered a stroke, there were four pending cases filed by him, on behalf of the union and in his own personal capacity, to wit:

a. Jesus B. Villamor v. Valle Verde Country Club, Inc. – NLRC-NCR Case No. 00-0504064-05;

b. Jesus B. Villamor v. Valle Verde Country Club, Inc. – NLRC-NCR Case No. 00-05-04402-06;

c. VVCCIEU and Jesus Villamor v. Valle Verde Country Club, Inc. – NLRC-NCR Case No. 10-05594-2001; and

d. VVCCIEU v. Valle Verde Country Club, Inc. – CA-G.R. SP No. 53189.[53]

Taking into account the foregoing facts, the Court finds that the CA seriously erred in affirming the factual findings of the respondents SSS and ECC that petitioner is a mere clerk and that the nature of his work did not affect his health; these factual findings are not supported by the evidence on record and are based on misapprehension of facts.

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[52] *Id.* at 12.

[53] *Id.* at 23-24.

Having discussed the true nature of petitioner's work, the Court shall now proceed to determine whether petitioner is entitled to his claim for EC TTD benefits under PD No. 626, as amended.

Petitioner is entitled to his claim for EC TTD benefits under PD No. 626, as amended.

The Amended Rules on Employees' Compensation provides that for an illness or disease to be compensable, "[it] must be a result of occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions."[54] In the case of stroke and hypertension, both are compensable since they are listed as occupational diseases under Nos. 19[55]and 29,[56] respectively, of Annex "A" of the said rules.

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[54] Section 1 (b), Rule III, Amended Rules on Employees' Compensation.

[55] 19. CEREBRO-VASCULAR ACCIDENTS. Any of the following conditions:

a. There must be proof that the acute stroke must have developed as a result of the stressful nature of work and pressures inherent in an occupation.

b. The strain of work that brings about an acute stroke must be of sufficient severity and must be followed within 24 hours by the clinical signs of an acute onset of neurological deficit to constitute causal relationship.

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of an acute onset of neurologic deficit during the performance of his work, and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

d. There was a history, which should be proven, of unusual and extraordinary mental strain or event, or trauma to or hyperextension of the neck. There must be a direct connection between the insult in the course of the employment and the worker's collapse.

e. If the neck trauma or exertion then and there caused either a brain infarction or brain hemorrhage as documented by neuro-imaging studies, the injury may be considered as arising from work.

f. If a person is a known hypertensive, it must be proven that his hypertension is controlled and that he was compliant with treatment.

g. A history of substance abuse must be totally ruled out.

[56] 29. ESSENTIAL HYPERTENSION

In fact, in *Government Service Insurance System v. Baul*[57] where the claimant who was diagnosed with essential hypertension later suffered a stroke, the Court affirmed the claimant's entitlement to compensation as both essential hypertension and stroke are considered occupational diseases. The Court ruled that:

Cerebro-vascular accident and essential hypertension are considered as occupational diseases under Nos. 19 and 29, respectively, of Annex 'A' of the Implementing Rules of P.D. No. 626, as amended. Thus, **it is not necessary that there be proof of causal relation between the work and the illness which resulted in the respondent's disability.** The open-ended Table of Occupational Diseases requires no proof of causation. In general, a covered claimant suffering from an occupational disease is automatically paid benefits.

However, although cerebro-vascular accident and essential hypertension are listed occupational diseases, their compensability requires compliance with all the conditions set forth in the Rules. In short, both are qualified occupational diseases. For cerebro-vascular accident, the claimant must prove the following: (1) there must be a history, which should be proved, of trauma at work (to the head

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Hypertension classified as primary or essential is considered compensable if it causes impairment of the function of body organs like the kidneys, eyes and brain, resulting in any kind of disability, subject to the submission of any of the following:

a. Chest X-ray report
b. Electrocardiograph (ECG) report
c. Blood chemistry report
d. Fundoscopy report,
e. Ophthalmologic evaluation
f. Computed tomography scan (C-T scan)
g. Magnetic resonance imaging (MRI)
h. Magnetic resonance angiography (MRA)
i. Two dimensional echocardiography (2-D Echo)
j. Kidney ultrasound
k. BP monitoring report

[57] 529 Phil. 390 (2006).

specifically) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry; (2) there must be a direct connection between the trauma or exertion in the course of the employment and the cerebro-vascular attack; and (3) the trauma or exertion then and there caused a brain hemorrhage. On the other hand, essential hypertension is compensable only if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability, provided that, the following documents substantiate it: (a) chest X-ray report; (b) ECG report; (c) blood chemistry report; (d) funduscopy report; and (e) C-T scan.

The degree of proof required to validate the concurrence of the above-mentioned conditions under P.D. No. 626 is merely substantial evidence, that is, such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. **What the law requires is a reasonable work-connection and not direct causal relation**. It is enough that the hypothesis on which the workmen's claim is based is probable. As correctly pointed out by the CA, **probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings**. For, in interpreting and carrying out the provisions of the Labor Code and its Implementing Rules and Regulations, the primordial and paramount consideration is the employee's welfare. To safeguard the worker's rights, any doubt as to the proper interpretation and application must be resolved in [his] favor. (Emphasis supplied)[58]

Taking the cue from the *Baul* case, the Court finds that petitioner is entitled to compensation for his illness. Just like in *Baul*, petitioner was diagnosed with hypertension and stroke, as evidenced by his medical reports: Cranial CT Scan,[59] Chest X-Ray Result,[60] Laboratory or Blood Chemistry Result,[61] and Electrocardiogram Result.[62] He was also able to show that his work and position in the union caused him physical and mental

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[58] *Id*. at 395-396.

[59] *Rollo*, p. 75

[60] *Id*. at 79.

[61] *Id*. at 76.

[62] *Id*. at 77-78

strain as he had to deal with the demands of various types of people. Thus, there is a probability that his work and position in the union increased his risk of suffering a stroke, which affected his brain, caused cerebral infarctions, paralysis of the left side of his body, difficulty in speaking, and loss of muscular coordination.

Direct evidence showing that his work and position in the union caused his illness is not necessary. As we have consistently ruled, the test of proof in compensation proceedings is probability, and not the ultimate degree of certainty.[63] In fact, in claims for compensation, the strict rules of evidence need not be observed as the primordial and paramount consideration should be the employee's welfare.[64]

As to the findings of respondents SSS and ECC that petitioner is a chronic smoker and drinker, the Court finds that it should not bar petitioner's claim for compensation, whether or not such findings are true. In *Government Service Insurance System v. De Castro*,[65] the Court said that:

> We find it strange that both the ECC and the GSIS singled out the presence of smoking and drinking as the factors that rendered De Castro's ailments, otherwise listed as occupational, to be non-compensable. To be sure, the causes of CAD and hypertension that the ECC listed and explained in its decision cannot be denied; smoking and drinking are undeniably among these causes. However, they are ***not the sole causes*** of CAD and hypertension and, at least, not under the circumstances of the present case. For this reason, we fear for the implication of the ECC ruling if it will prevail and be read as definitive on the effects of smoking and drinking on compensability issues, even on diseases that are listed as occupational in character. The ruling raises the possible reading that smoking and drinking, by themselves, are factors that can bar compensability.

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[63] *Government Service Insurance System v. Cuanang*, *supra* note 1.

[64] *Government Service Insurance System v. Calumpiano*, G.R. No. 196102, November 26, 2014, 743 SCRA 92, 111.

[65] 610 Phil. 568 (2009).

We ask the question of whether these factors can be sole determinants of compensability as the ECC has apparently failed to consider other factors such as age and gender from among those that the ECC itself listed as major and minor causes of atherosclerosis and, ultimately, of CAD. While age and gender are characteristics inherent in the person (and thereby may be considered non-work related factors), they also do affect a worker's job performance and may in this sense, together with stresses of the job, significantly contribute to illnesses such as CAD and hypertension. To cite an example, some workplace activities are appropriate only for the young (such as the lifting of heavy objects although these may simply be office files), and when repeatedly undertaken by older workers, may lead to ailments and disability. Thus, age coupled with an age-affected work activity may lead to compensability. From this perspective, none of the ECC's listed factors should be disregarded to the exclusion of others in determining compensability.

In any determination of compensability, the nature and characteristics of the job are as important as raw medical findings and a claimant's personal and social history. This is a basic legal reality in workers' compensation law. We are therefore surprised that the ECC and the GSIS simply brushed aside the disability certification that the military issued with respect to De Castro's disability, based mainly on their primacy as the agencies with expertise on workers' compensation and disability issues.

While ECC and GSIS are admittedly the government entities with jurisdiction over the administration of workers' disability compensation and can thus claim primacy in these areas, they cannot however claim infallibility, particularly when they use wrong or limited considerations in determining compensability.[66] (Emphasis in the original)

All told, the Court finds that under prevailing jurisprudence, the nature of petitioner's work and his medical results are substantial evidence to support his claim for EC TTD benefits under PD No. 626, as amended.

WHEREFORE, the Petition is hereby **GRANTED**. The assailed October 31, 2012 Decision of the Court of Appeals in CA G.R. SP No. 124496 is **REVERSED AND SET ASIDE**.

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[66] *Id*. at 581-582.

The respondents Social Security System and Employees' Compensation Commission are hereby ordered to pay petitioner Jesus B. Villamor Employees' Compensation Temporary Total Disability benefits due him under Presidential Decree No. 626, as amended.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 214772. November 21, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELSON SANTUILLE @ "BORDADO" @ ELTON SANTUILLE @ "BORDADO,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.— Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination. Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

2. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE PERPRETRATOR OF THE CRIME.— The prosecution eyewitnesses positively identified appellant as the person responsible for killing the victim Rogelio Maco. The Court finds no reason to disbelieve the credible and straightforward testimonies. We are not persuaded by the appellant's defenses of denial and alibi as these cannot prevail over the eyewitnesses' positive identification of him as the perpetrator of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.

3. CRIMINAL LAW; MURDER; ELEMENTS.— In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.

4. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY.— The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victim was sudden and unexpected which effectively deprived him of the chance to defend himself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim**.**

5. ID.; ID.; PENALTY.— The Court affirms the penalty of *reclusion perpetua* imposed upon appellant. Under Article 248 of the Revised Penal Code, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime. The Court likewise affirms the award of actual damages and civil indemnity but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

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.*:

This is an appeal assailing the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 05823 dated 27 February 2014 which dismissed the appeal of appellant Elson Santuille and affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of the City of Manila, Branch 42, in Criminal Case No. 10-274400, which found appellant *Elson Santuille @ "Bordado" @ Elton Santuille @ Bordado* guilty beyond reasonable doubt of the crime of Murder.

Appellant was charged before the RTC of the City of Manila, Branch 42, with murder as follows:

CRIMINAL CASE No. 10-274400

That on or about June 4, 2009, in the City of Manila, Philippines, the said accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault, and use personal violence upon the person of one ROGELIO MACO Y ARNESTO, by then and there shooting him on the head with an unknown caliber firearm, thereby inflicting upon him gunshot wound which was the direct and immediate cause of his death thereafter.[3]

During arraignment, appellant pleaded not guilty of the crime charged. At the preliminary and pre-trial conference, the prosecution and the defense stipulated on the identity of appellant

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[1] *Rollo*, pp. 2-13; Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Samuel H. Gaerlan and Pedro B. Corales concurring.

[2] Records, pp. 320-329; Presided by Presiding Judge Dinnah C. Aguila-Topacio.

[3] *Id.* at 1.

and the jurisdiction of the trial court.[4] Trial on the merits thereafter ensued.

The prosecution presented as witnesses Elvira T. Maco (Elvira), the wife of the victim, Myrna Q. Maco (Myra), sister-in-law of the victim, Benny A. Maco (Benny), brother of the victim, Dr. Alvin A. David (Dr. David), the medico-legal officer, and SPO4 Virgilio Martinez, the investigating police officer. The defense presented appellant himself, the Bureau of Corrections administrative officer Jose Ma. D. Dela Paz, *barangay tanod* Christopher D. De Jesus, and *barangay* chairman Saturnino L. Grutas (Grutas).

The prosecution established that on 4 June 2009, the victim, his wife Elvira, his sister-in law Myrna and brother Benny were all together in a condominium unit in Tondo, Manila, at work on a project. Grutas arrived thereat with three (3) *tanods*, among whom is appellant, and two (2) soldiers. The victim went outside the unit despite the party's opposition and fears of the worst, owing to the former and Grutas's strained relations. Elvira followed. Elvira and the victim's two (2) other family members, from the open door, witnessed Grutas hand appellant a gun which the latter pointed to the victim who tried to run away. Appellant then shot the victim at the back of the head and fled from the scene. Grutas mercilessly spat on the victim's slumped body.[5]

Dr. David, the medico-legal officer, confirmed that the victim died from the lone gunshot wound at the back of the head.[6] His findings were embodied in the Certificate of Post-Mortem Examination,[7] Official Autopsy Report,[8] and Anatomical Diagram.[9]

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

[5] TSN, 18 January 2011, pp. 6-9; TSN, 17 February 2011, pp. 3-9; TSN, 31 May 2011, pp. 3-7.

[6] TSN, 18 August 2011, pp. 4-7.

[7] Records, p.19.

[8] *Id*. at 126.

[9] *Id*. at 125.

Appellant maintained that he is Lando Santuille and that it was not he but his older brother, Elson, who killed the victim. He asserted that he had been away in Navotas at the time of the incident. He also stated that he had been imprisoned for murder in 2001 and was released on 15 March 2008; thus he could not have secured any National Bureau of Investigation (NBI) clearance[10] of Elson Santuille on 1 August 2007.[11] He presented a Certificate of Discharge from Prison[12] dated 15 March 2008 of one Lando Santuille bearing the mark "RELIEVED" as proof.

Jose Ma. Del Callar testified that appellant had been discharged from prison on 06 January 2007; proof of which is a Certificate of Discharge from Prison[13] of one Lando Santuille recorded in their office dated 6 January 2007 bearing the mark "RELEASED." The purported certificate of discharge dated 15 March 2008 presented by appellant does not appear in their office records.[14]

Christopher de Jesus (De Jesus), a *barangay tanod* like appellant, and also appointed by Grutas, testified to support appellant's assertion that the latter is Lando and not Elson Santuille. Witness De Jesus, at the time of his testimony, was a prison inmate in the same jail as appellant.[15]

Grutas, the *barangay* chairman, who had appointed both De Jesus and appellant as *tanods*, also testified in the same wise. Grutas had been initially implicated as principal by inducement of the instant murder case. The case against him in the prosecutor's office was however dismissed.[16]

After trial, the RTC on 25 October 2012 rendered the assailed decision disposing as follows:

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[10] *Id*. at 188.

[11] TSN, 8 December 2011, pp. 3-6; TSN, 10 April 2012, pp. 3-7.

[12] Records, p. 172.

[13] *Id*. at 223.

[14] TSN, 21 June 2012, pp. 4-12.

[15] TSN, 2 August 2012.

[16] TSN, 4 September 2012.

WHEREFORE, accused Elson Saldana Santuille is hereby found GUILTY beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer the penalty of *reclusion perpetua.* He is likewise ordered to pay the heirs of the victim PhP 53,030.00 as civil indemnity, PhP 50,000.00 as moral damages, and PhP 30,000.00 as exemplary damages.[17]

The RTC gave credence to the eyewitness accounts of Elvira, Myrna and Benny, all surnamed Maco, of appellant's liability in the killing of the victim. The RTC discovered the lies perpetuated by appellant to escape punishment. The RTC likewise found de Jesus and Grutas as biased witnesses. Significantly, the RTC judge conducted a visual comparison of the NBI clearance photo of one Elson Santuille with the facial features of appellant who claimed he is Lando Santuille; and definitively ruled that Lando and Elson Santuille are one and the same person.

The Court of Appeals found no reason to disturb the findings of the RTC and upheld its ruling but with modification on the amount of damages awarded. The appellate court also found the eyewitness accounts credible, straightforward and reliable and upheld their positive identification of appellant as the perpetrator. The Court of Appeals thus disposed:

WHEREFORE, the appeal is **DENIED** and the Decision dated October 25, 2012 of the RTC, Branch 42, Manila in Criminal Case No. 10-274400 is **AFFIRMED with MODIFICATION** only insofar as the amount to be paid by accused-appellant Santuille to pay the heirs of Rogelio Maco is concerned, which are as follows: ₱53,030.00 as actual damages, ₱75,000 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.[18]

Now before the Court for final review, we affirm appellant's conviction.

Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility

[17] Records, p. 329.

[18] *Rollo*, p. 12.

of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination.[19] Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.[20]

Our review of the records convinces us that these elements were clearly met. We uphold appellant's conviction in Criminal Case No. 10-274400 for Murder. The prosecution eyewitnesses positively identified appellant as the person responsible for killing the victim Rogelio Maco. The Court finds no reason to disbelieve the credible and straightforward testimonies. We are not persuaded by the appellant's defenses of denial and alibi as these cannot prevail over the eyewitnesses' positive identification of him as the perpetrator of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.[21]

The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victim was sudden and unexpected which effectively deprived him of the chance to defend himself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.

In fine, the Court finds no error in the conviction of the appellant.

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[19] *People v. Rivera*, 458 Phil. 856, 873 (2003) cited in *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227.

[20] *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227 citing *People v. Sameniano*, 596 Phil. 916, 928 (2009).

[21] *Malana, et al. v. People*, 573 Phil. 39, 53 (2008).

The Court affirms the penalty of *reclusion perpetua* imposed upon appellant. Under Article 248 of the Revised Penal Code, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime. The Court likewise affirms the award of actual damages and civil indemnity but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.[22]

Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[23]

WHEREFORE, premises considered, the Decision dated 27 February 2014 of the Court of Appeals, Special Second Division, in CA-G.R. CR-H.C. No. 05823, finding Elson Santuille @ "Bordado" @ Elton Santuille @ "Bordado" guilty of murder in Criminal Case No. 10-274400 is **AFFIRMED** with **MODIFICATION**. Appellant is not eligible for parole, and in addition to the actual damages of ₱53,030.00, appellant is **ORDERED** to pay the heirs of Rogelio Maco as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] and *Reyes, JJ.*, concur.

Peralta, J., on wellness leave.

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

[23] *People v. Vitero*, 708 Phil. 49, 65 (2013).

* Additional Member per Raffle dated 13 June 2016.

SECOND DIVISION

[G.R. No. 216600. November 21, 2016]

FEDERAL EXPRESS CORPORATION and RHICKE S. JENNINGS, *petitioners, vs.* **AIRFREIGHT 2100, INC. and ALBERTO D. LINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ARBITRATION PROCEEDINGS; ALTERNATIVE DISPUTE RESOLUTION OF 2004 (ADR ACT UNDER RA 9285); SECTION 3(h) ON CONFIDENTIAL INFORMATION; MAY INCLUDE OTHER INFORMATION AS LONG AS THEY SATISFY THE REQUIREMENTS OF EXPRESS OR IMPLIED CONFIDENTIALITY.— Section 3(h) of Republic Act (*R.A.*) No. 9285 or the Alternative Dispute Resolution of 2004 (*ADR Act*) defines confidential information as follows: "Confidential information" means any information, **relative to the subject of mediation or arbitration**, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. **It shall include (1) communication, oral or written, made in a dispute resolution proceedings**, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing of reconvening mediation or retaining a mediator; and (3) pleadings, motions manifestations, **witness statements**, reports **filed or submitted in an arbitration** or for expert evaluation. The said list is not exclusive and may include other information as long as they satisfy the requirements of express confidentiality or implied confidentiality.

2. ID.; ID.; SPECIAL ADR RULES (AM NO. 07-11-08-SC); WHEN RULES ON CONFIDENTIALITY AND PROTECTIVE ORDERS APPLY.— Rule 10.1 of A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution (*Special ADR Rules*) allows "[a] party, counsel or witness who disclosed or who was compelled to disclose information relative

to the subject of ADR under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential x x x the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure." Thus, the rules on confidentiality and protective orders apply when: 1. An ADR proceeding is pending; 2. A party, counsel or witness disclosed information or was otherwise compelled to disclose information; 3. The disclosure was made under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential; 4. The source of the information or the party who made the disclosure has the right to prevent such information from being disclosed; 5. The source of the information or the party who made the disclosure has not given his express consent to any disclosure; and 6. The applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during the ADR proceeding.

3. ID.; ID.; ADR ACT AND ARBITRATION RULES; INFORMATION DISCLOSED BY A PARTY OR WITNESS IN AN ADR PROCEEDING IS CONSIDERED PRIVILEGED AND CONFIDENTIAL.— The provisions of the ADR Act and the Arbitration Rules repeatedly employ the word "shall" which, in statutory construction, is one of mandatory character in common parlance and in ordinary signification. Thus, the general rule is that information disclosed by a party or witness in an ADR proceeding is considered privileged and confidential. In evaluating the merits of the petition, Rule 10.8 of the Special ADR Rules mandates that courts should be guided by the principle that confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, x x x Article 5.42 of the Implementing Rules and Regulations (*IRR*) of the ADR Act likewise echoes that arbitration proceedings, records, evidence and the arbitral award and other confidential information are privileged and confidential and shall not be published except [i] with the consent of the parties; or [ii] for the limited purpose of disclosing to the court relevant documents where resort to the court is allowed.

4. ID.; ID.; ID.; CONFIDENTIAL INFORMATION; ANY INFORMATION "RELATIVE TO" THE SUBJECT OF MEDIATION OR ARBITRATION MEANS ANY

INFORMATION "CONNECTED TO."— [T]he phrase "relative to the subject of mediation or arbitration" need not be strictly confined to the discussion of the core issues in the arbitral dispute. By definition, "relative" simply means "connected to," which means that parties in arbitration proceedings are encouraged to discuss openly their grievances and explore the circumstances which might have any connection in identifying the source of the conflict in the hope of finding a better alternative to resolve the parties' dispute. Arbitration, as envisioned by the ADR Act, must be taken in this perspective. x x x Arbitration, being an ADR proceeding, was primarily designed to be a prompt, economical and amicable forum for the resolution of disputes. It guarantees confidentiality in its processes to encourage parties to ventilate their claims or disputes in a less formal, but spontaneous manner. It should be emphasized that the law favors settlement of controversies out of court. Thus, a person who participates in an arbitration proceeding is entitled to speak his or her piece without fear of being prejudiced should the process become unsuccessful. Hence, any communication made towards that end should be regarded as confidential and privileged.

APPEARANCES OF COUNSEL

Donemark Torres & Sy Law Offices Quisumbing Torres for petitioners.

Esguerra & Blanco for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Federal Express Corporation (*FedEx*) and Rhicke S. Jennings (*Jennings*), assailing the January 20, 2015 Decision[2] of the Court of Appeals (*CA*)

[1] *Rollo*, pp. 3-50.

[2] *Id.* at 51-57. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Franchito N. Diamante and Melchor Quirino C. Sadang, concurring.

in CA-G.R. SP No. 135835, which affirmed the May 7, 2014 Order[3] of the Regional Trial Court, Branch 70, Pasig City (*RTC*), dismissing its petition for the issuance of a confidentiality/ protective order.

FedEx is a foreign corporation doing business in the Philippines primarily engaged in international air carriage, logistics and freight forwarding, while Jennings serves as its Managing Director for the Philippines and Indonesia. Respondent Airfreight 2100 (*Air21*) is a domestic corporation likewise involved in the freight forwarding business, while Alberto Lina (*Lina*) is the Chairman of its Board of Directors.

The Antecedents

FedEx, having lost its International Freight Forwarder's (*IFF*) license to engage in international freight forwarding in the Philippines, executed various Global Service Program (*GSP*) contracts with Air21, an independent contractor, to primarily undertake its delivery and pick-up services within the country.[4]

Under the GSP arrangement, the packages sent by FedEx customers from abroad would be picked up at a Philippine airport and delivered by Air21 to its respective consignees. Conversely, packages from Philippine clients would be delivered by Air21 to the airport and turned over to FedEx for shipment to consignees abroad. As stipulated in the GSP contracts, Air21 guaranteed that all shipments would be cleared through customs in accordance with Philippine law. In the implementation of these contracts, however, several issues relating to money remittance, value-added taxes, dynamic fuel charge, trucking costs, interests, and penalties ensued between the parties.

On May 11, 2011, in an effort to settle their commercial dispute, FedEx and Air21 agreed to submit themselves to arbitration before the Philippine Dispute Resolution Center (*PDRC*). Thus, on June 24, 2011, FedEx filed its Notice of

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[3] *Id*. at 97-102. Penned by Presiding Judge Louis P. Acosta.

[4] *Id*. at 216.

Arbitration. On October 3, 2011, the Arbitral Tribunal was constituted.

As part of the arbitration proceedings, Jennings, John Lumley Holmes (*Holmes*), the Managing Director of SPAC Legal of FedEx; and David John Ross (*Ross*), Senior Vice President of Operations, Middle East, India and Africa, executed their respective statements[5] as witnesses for FedEx. Ross and Holmes deposed that Federal Express Pacific, Inc., a subsidiary of FedEx, used to have an IFF license to engage in the business of freight forwarding in the Philippines. This license, however, was suspended pending a case in court filed by Merit International, Inc. (*Merit*) and Ace Logistics, Inc. (*Ace*), both freight forwarding companies, which questioned the issuance of the IFF to FedEx. Absent the said license, FedEx executed the GSP contracts with Air21 to be able to conduct its business in the Philippines. Ross and Holmes, in their individual statements, averred that Merit and Ace were either owned or controlled by Air21 employees or persons connected with the Lina Group of Companies, which included Air21.

Jennings, in his cross-examination, was identified as the source of the information that Merit and Ace were Air21's proxies and was asked if he had any written proof of such proxy relationship.[6] He answered in the negative. In his re-direct examination, he was made to expound on the supposed proxy relationship between Merit, Ace and Air21.[7] He responded that Merit and Ace were just very small companies with meager resources, yet they were able to finance and file a case to oppose the grant of IFF license to FedEx. Jennings also disclosed that one of the directors of Ace was a friend of Lina and that Lorna Orbe, the President of Merit, was the former "boss" of Lito Alvarez, who was also associated with Air21.

Feeling aggrieved by those statements, Lina for himself and on behalf of Air21, filed a complaint for grave slander against

[5] *Id*. at 188-228.

[6] *Rollo*, Arbitration TSN dated April 25, 2013, p. 241.

[7] *Id*. at 244.

Jennings before the Office of the City Prosecutor in Taguig City.[8] Lina claimed that the defamatory imputation of Jennings that Merit and Ace were Air21's proxies brought dishonor, discredit and contempt to his name and that of Air21. Lina quoted certain portions of the written statements of Holmes and Ross and the Transcript of Stenographic Notes (*TSN*) of the April 25, 2013 arbitration hearing reflecting Jennings' testimony to support his complaint.

Consequently, FedEx and Jennings (*petitioners*) filed their Petition for Issuance of a Confidentiality/Protective Order with Application for Temporary Order of Protection and/or Preliminary Injunction before the RTC alleging that all information and documents obtained in, or related to, the arbitration proceedings were confidential.[9] FedEx asserted that the testimony of Jennings, a witness in the arbitration proceedings, should not be divulged and used to bolster the complaint-affidavit for grave slander as this was inadmissible in evidence.

On January 16, 2014, the RTC granted petitioners' application for the Temporary Order of Protection.

Meanwhile, on February 3, 2014, the arbitral tribunal rendered an award in favor of FedEx.

Subsequently, in the assailed Order, dated May 7, 2014, the RTC denied FedEx's petition for lack of merit, stating that the statements and arbitration documents were not confidential information. It went on to state that "[t]he statement and 'Arbitration Documents' which purportedly consists the crime of Grave Slander under Articles 353 and 358 of the Revised Penal Code are not in any way related to the subject under Arbitration." The RTC further wrote that "a crime cannot be protected by the confidentiality rules under ADR. The said rules should not be used as a shield in the commission of any crime." Thus, it disposed:

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[8] *Id*. at 139-152.

[9] *Id*. at 103-126.

WHEREFORE, in view of the foregoing, the Petition for Issuance of a Confidentiality/Protective Order is hereby DENIED for lack of merit.

The case is hereby **DISMISSED**.

SO ORDERED.[10]

Dissatisfied, petitioners challenged the RTC order before the CA *via* a petition for review.

On January 20, 2015, the CA denied the petition. In its assailed decision, the CA explained that the declarations by Jennings were not confidential as they were not at all related to the subject of mediation as the arbitration proceedings revolved around the parties' claims for sum of money.[11] Thus, the CA ruled that "statements made without any bearing on the subject proceedings are not confidential in nature." It must be emphasized that other declarations given therein, if relative to the subject of mediation or arbitration, are certainly confidential.[12]

Hence, this present petition before the Court.

GROUNDS IN SUPPORT OF THE PETITION

A.

THE COURT OF APPEALS FAILED TO APPLY, OR OTHERWISE MISAPPLIED, SECTIONS 3(H) AND 23 OF THE ADR ACT.

B.

THE COURT OF APPEALS FAILED TO APPLY RULE 10.5 OF THE SPECIAL ADR RULES.

C.

THE TEST APPLIED BY THE COURT OF APPEALS FOR DETERMINING CONFIDENTIALITY OF INFORMATION IS NOT SANCTIONED BY AND IS INCONSISTENT WITH THE ADR ACT AND THE SPECIAL ADR RULES.

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[10] *Id*. at 102.

[11] *Id*. at 55-56.

[12] *Id*. at 57.

D.

THE ASSAILED DECISION RESULTS TO SUBSTANTIAL PREJUDICE TO PETITIONERS.

E.

THE ASSAILED DECISION DEFEATS PUBLIC POLICY ON CONFIDENTIALITY OF THE RECORDS OF AND COMMUNICATIONS MADE IN THE COURSE OF ARBITRATION.[13]

FedEx argues that the Jennings' statements were part of the (a) records and evidence of Arbitration (Section 23); (b) witness statements made therein (Section 3[h][3]); and (c) communication made in a dispute resolution proceedings (Section 3 [h][1]).[14] They, thus, averred that Jennings' oral statements made during the April 25, 2013 arbitration hearing and the TSN of the hearings, conducted on April 22 and 25, 2013, form part of the records of arbitration and must, therefore, be considered confidential information.

For said reason, petitioners assert that Rule 10.5 of the Special Alternative Dispute Resolution (*ADR*) Rules, allowing for the issuance of a confidentiality/protective order, was completely disregarded by the CA when it denied the petition filed by FedEx as a result of Lina divulging what were supposed to be confidential information from ADR proceedings.

Petitioners also claim that in ruling that Jennings' statements were not confidential information, by applying the test of relevance that "statements made without any bearing on the subject proceedings are not confidential in nature," the CA used a "test" that had no basis in law and whose application in its petition amounted to judicial legislation.[15]

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[13] *Id.* at 14.

[14] *Id.* at 16.

[15] *Id.* at 19.

Respondent Air21 and Lina (*respondents*), in their Comment,[16] essentially countered that:

> While the Alternative Dispute Resolution Act of 2004 (the "ADR Law") confers communications made during arbitration the privilege against disclosure, otherwise known as the confidentiality principle, to assist the parties in having a speedy, efficient and impartial resolution of their disputes, said privilege cannot be invoked to shield any party from criminal responsibility. The privilege is not absolute. The ADR Law does not exist in a vacuum without regard to other existing jurisprudence and laws, particularly the Revised Penal Code. Otherwise, we will permit a dangerous situation where arbitration proceedings will be used by an unscrupulous disputant as a venue for the commission of crime, which cannot be punished by the simple invocation of the privilege. Such an absurd interpretation of our laws cannot be deemed to be the underlying will of our Congress in framing and enacting our law on arbitration. To be sure, a crime cannot be protected or extinguished through a bare invocation of the confidentiality rule.[17]

The Court's Ruling

The crucial issue in this case is whether the testimony of Jennings given during the arbitration proceedings falls within the ambit of confidential information and, therefore, covered by the mantle of a confidentiality/protection order.

The Court finds the petition meritorious.

Section 3(h) of Republic Act (*R.A.*) No. 9285 or the Alternative Dispute Resolution of 2004 (*ADR Act*) defines confidential information as follows:

> "Confidential information" means any information, **relative to the subject of mediation or arbitration**, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. **It shall include (1) communication, oral or written, made in a dispute resolution proceedings**, including any memoranda, notes or work product of the neutral party or non-party

[16] *Id*. at 617-645.

[17] *Id*. at 617-618.

participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing of reconvening mediation or retaining a mediator; and (3) pleadings, motions manifestations, **witness statements**, reports **filed or submitted in an arbitration** or for expert evaluation. [Emphases Supplied]

The said list is not exclusive and may include other information as long as they satisfy the requirements of express confidentiality or implied confidentiality.[18]

Plainly, Rule 10.1 of A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution (*Special ADR Rules*) allows "[a] party, counsel or witness who disclosed or who was compelled to disclose information relative to the subject of ADR under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential x x x the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure." Thus, the rules on confidentiality and protective orders apply when:

1. An ADR proceeding is pending;
2. A party, counsel or witness disclosed information or was otherwise compelled to disclose information;
3. The disclosure was made under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential;
4. The source of the information or the party who made the disclosure has the right to prevent such information from being disclosed;
5. The source of the information or the party who made the disclosure has not given his express consent to any disclosure; and
6. The applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during the ADR proceeding.

[18] Atty. Gabriel T. Robeniol (now Associate Justice of the Court of Appeals), *Alternative Dispute Resolution* , 2012 edition, p. 31.

Gauged by the said parameters, the written statements of witnesses Ross, Holmes and Jennings, as well as the latter's oral testimony in the April 25, 2013 arbitration hearing, both fall under Section 3 (h) [1] and [3] of the ADR Act which states that "*communication, oral or written, made in a dispute resolution proceedings*, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; and (3) pleadings, motions, manifestations, *witness statements*, reports filed or submitted in an arbitration or for expert valuation," constitutes confidential information.

Notably, both the parties and the Arbitral Tribunal had agreed to the Terms of Reference (*TOR*) that "the arbitration proceedings should be kept strictly confidential as provided in Section 23 of the ADR Act and Article 25-A[19] of the PDRCI Arbitration Rules (*Arbitration Rules*) and that they should all be bound by such confidentiality requirements."

The provisions of the ADR Act and the Arbitration Rules repeatedly employ the word "shall" which, in statutory construction, is one of mandatory character in common parlance and in ordinary signification.[20] Thus, the general rule is that information disclosed by a party or witness in an ADR proceeding is considered privileged and confidential.

In evaluating the merits of the petition, Rule 10.8 of the Special ADR Rules mandates that courts should be guided by the principle that confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, to wit:

Rule 10.8. *Court action*. — If the court finds the petition or motion meritorious, it shall issue an order enjoining a person or persons from divulging confidential information.

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[19] Article 25-A of The New Arbitration Rules provides: Any information, relative to the subject of arbitration, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. It shall include pleadings, motions, manifestations, witness statements, reports filed or submitted in an arbitration or for expert evaluation.

[20] Agpalo, *Statutory Construction*, 1990 Edition, at 238.

In resolving the petition or motion, the courts shall be guided by the following principles applicable to all ADR proceedings: Confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use therein.

Article 5.42 of the Implementing Rules and Regulations (*IRR*)[21] of the ADR Act likewise echoes that arbitration proceedings, records, evidence and the arbitral award and other confidential information are privileged and confidential and shall not be published except [i] with the consent of the parties; or [ii] for the limited purpose of disclosing to the court relevant documents where resort to the court is allowed. Given that the witness statements of Ross, Holmes and Jennings, and the latter's arbitration testimony, fall within the ambit of confidential information, they must, as a general rule, remain confidential. Although there is no unbridled shroud of confidentiality on information obtained or disclosed in an arbitration proceeding, the presence of the above criteria must be apparent; otherwise, the general rule should be applied. Here in this case, only a perceived imputation of a wrongdoing was alleged by the respondents.

In denying the said application for confidentiality/protection order, the RTC and the CA did not consider the declarations contained in the said witness statements and arbitration testimony to be related to the subject of arbitration and, accordingly, ruled that they could not be covered by a confidentiality order.

The Court does not agree. Suffice it to say that the phrase "relative to the subject of mediation or arbitration" need not be strictly confined to the discussion of the core issues in the arbitral dispute. By definition, "relative" simply means "connected to," which means that parties in arbitration proceedings are encouraged to discuss openly their grievances and explore the circumstances which might have any connection in identifying the source of the conflict in the hope of finding

[21] Department Circular No. 98 (series of 2009).

a better alternative to resolve the parties' dispute. An ADR proceeding is aimed at resolving the parties' conflict without court intervention. It was not designed to be strictly technical or legally confined at all times. By mutual agreement or consent of the parties to a controversy or dispute, they acquiesce to submit their differences to arbitrators for an informal hearing and extra-judicial determination and resolution. Usually, an ADR hearing is held in private and the decision of the persons selected to comprise the tribunal will take the place of a court judgment. This avoids the formalities, delays and expenses of an ordinary litigation. Arbitration, as envisioned by the ADR Act, must be taken in this perspective.

Verily, it is imperative that legislative intent or spirit be the controlling factor, the leading star and guiding light in the application and interpretation of a statute.[22] If a statute needs construction, the influence most dominant in that process is the intent or spirit of the act.[23] A thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.[24] In other words, a statute must be read according to its spirit or intent and legislative intent is part and parcel of the statute. It is the controlling factor in interpreting a statute. Any interpretation that contradicts the legislative intent is unacceptable.

In the case at bench, the supposed questionable statements surfaced when FedEx's suspended IFF license was discussed during the arbitration hearing. In fact, when Jennings was asked by Arbitrator Panga to expound on how the opposition of Ace

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[22] *Yellow Taxi & Pasay Transp. Workers Union v. Manila Yellow Taxi Cab Co.*, 80 Phil. 833 (1948); *Ledesma v. Pictain*, 79 Phil. 95 (1947); *McMicking v. Lichauco*, 27 Phil. 386 (1914); *Garcia v. Ambler*, 4 Phil. 81 (1904).

[23] *De Jesus v. City of Manila*, 29 Phil. 73 (1914).

[24] *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 273 (1987); *Roa v. Collector of Customs*, 23 Phil. 315 (1912); *U.S. v. Co Chico*, 14 Phil. 128 (1909).

and Merit could be related to the ongoing arbitration, Jennings replied that, to his mind, it was indicative of the leverage that Air21 had over FedEx as it was able to withhold large sums of money and siphon their joint plans from being properly established. Whether the information disclosed in the arbitration proceeding would be given weight by the tribunal in the resolution of their dispute is a separate matter. Likewise, the relevance or materiality of the said statements should be best left to the arbitrators' sound appreciation and judgment. Even granting that the weight of the said statements was not fundamental to the issues in the arbitration process, nevertheless, they were still connected to, and propounded by, a witness who relied upon the confidentiality of the proceedings and expect that his responses be reflected.

Arbitration, being an ADR proceeding, was primarily designed to be a prompt, economical and amicable forum for the resolution of disputes. It guarantees confidentiality in its processes to encourage parties to ventilate their claims or disputes in a less formal, but spontaneous manner. It should be emphasized that the law favors settlement of controversies out of court. Thus, a person who participates in an arbitration proceeding is entitled to speak his or her piece without fear of being prejudiced should the process become unsuccessful. Hence, any communication made towards that end should be regarded as confidential and privileged.

To restate, the confidential nature of the arbitration proceeding is well-entrenched in Section 23 of the ADR Act:

SEC. 23. Confidentiality of Arbitration Proceedings. — The arbitration proceedings, including the records, evidence and the arbitral award, shall be considered confidential and shall not be published except (1) with the consent of the parties, or (2) for the limited purpose of disclosing to the court of relevant documents in cases where resort to the court is allowed herein. Provided, however, that the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.

If Lina had legal grounds to suspect that Jennings committed slanderous remarks even before the arbitration proceeding commenced, then he must present evidence independent and apart from some quoted portions of the arbitration documents.

It must be stressed that the very soul of an arbitration proceeding would be rendered useless if it would be simply used as an avenue for evidence gathering or an entrapment mechanism to lure the other unsuspecting party into conveying information that could be potentially used against him in another forum or in court.

Ultimately, the RTC and the CA failed to consider the fact that an arbitration proceeding is essentially a unique proceeding that is non-litigious in character where the parties are bound by a different set of rules as clearly encapsulated under the Special ADR Rules. Inevitably, when Lina cited portions of the said arbitration documents, he violated their covenant in the TOR to resolve their dispute through the arbitration process and to honor the confidentiality of the said proceeding. To disregard this commitment would impair the very essence of the ADR proceeding. By itself, this would have served as a valid justification for the grant of the confidentiality/protection order in favor of FedEx and Jennings.

Thus, the claimed slanderous statements by Jennings during the arbitration hearing are deemed confidential information and the veil of confidentiality over them must remain.

WHEREFORE, the petition is **GRANTED**. The January 20, 2015 Decision of the Court of Appeals (*CA*), in CA-G.R. SP No. 135835, is **REVERSED and SET ASIDE**.

The Petition for the Issuance of a Confidentiality/Protective Order filed by Federal Express Corporation and Rhicke S. Jennings is hereby **GRANTED**.

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-12-1813. November 22, 2016]
(Formerly A.M. No. 12-5-42-METC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE ELIZA B. YU, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[A.M. No. 12-1-09-MeTC. November, 22, 2016]

RE: LETTER DATED 21 JULY 2011 OF EXECUTIVE JUDGE BIBIANO G. COLASITO AND THREE (3) OTHER JUDGES OF THE METROPOLITAN TRIAL COURT, PASAY CITY, FOR THE SUSPENSION OR DETAIL TO ANOTHER STATION OF JUDGE ELIZA B. YU, BRANCH 47, SAME COURT.

[A.M. No. MTJ-13-1836. November, 22, 2016]
(Formerly A.M. No. 11-11-115-METC)

RE: LETTER DATED MAY 2, 2011 OF HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY.

[A.M. No. MTJ-12-1815. November 22, 2016]
(Formerly OCA IPI No. 11-2401-MTJ)

LEILANI A. TEJERO-LOPEZ, *complainant, vs.* **JUDGE ELIZA B. YU, BRANCH 47, METROPOLITAN TRIAL COURT, PASAY CITY,** *respondent.*

[OCA IPI No. 11-2398-MTJ. November 22, 2016]

JOSEFINA G. LABID, *complainant, vs.* **JUDGE ELIZA B. YU, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[OCA IPI No. 11-2399-MTJ. November 22, 2016]

AMOR V. ABAD, FROILAN ROBERT L. TOMAS, ROMER H. AVILES, EMELINA J. SAN MIGUEL, NORMAN D.S. GARCIA, MAXIMA SAYO and DENNIS ECHEGOYEN, *complainants, vs.* **HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[OCA IPI No. 11-2378-MTJ. November 22, 2016]

EXECUTIVE JUDGE BIBIANO G. COLASITO, VICE EXECUTIVE JUDGE BONIFACIO S. PASCUA, JUDGE RESTITUTO V. MANGALINDAN, JR. JUDGE CATHERINE P. MANODON, MIGUEL C. INFANTE (CLERK OF COURT IV, OCC-METC), RACQUEL C. DIANO (CLERK OF COURT III, METC, BRANCH 45), EMMA ANNIE D. ARAFILES (ASSISTANT CLERK OF COURT, OCC-METC), PEDRO C. DOCTOLERO, JR. (CLERK OF COURT III, METC, BRANCH 44), LYDIA T. CASAS (CLERK OF COURT III, METC, BRANCH 46), ELEANOR N. BAYOG (LEGAL RESEARCHER, METC, BRANCH 45), LEILANIE A. TEJERO (LEGAL RESEARCHER, METC, BRANCH 46), ANA MARIA V. FRANCISCO (CASHIER I, OCC-METC), SOLEDAD J. BASSIG (CLERK III, OCC-METC), MARISSA MASHHOOR RASTGOOY (RECORDS OFFICER, OCC-METC), MARIE LUZ M. OBIDA (ADMINISTRATIVE OFFICER, OCC-METC), VIRGINIA D. GALANG (RECORDS OFFICER I, OCC-METC), AUXENCIO JOSEPH CLEMENTE (CLERK OF COURT III, METC, BRANCH 48), EVELYN P. DEPALOBOS (LEGAL RESEARCHER, METC, BRANCH 44), MA. CECILIA GERTRUDES R. SALVADOR (LEGAL RESEARCHER, METC, BRANCH 48), JOSEPH B. PAMATMAT (CLERK III, OCC-METC), ZENAIDA N. GERONIMO (COURT STENOGRAPHER, OCC-

METC), BENJIE V. ORE (PROCESS SERVER, OCC-METC), FORTUNATO E. DIEZMO (PROCESS SERVER, OCC-METC), NOMER B. VILLANUEVA (UTILITY WORKER, OCC-METC), ELSA D. GARNET (CLERK III, OCC-METC), FATIMA V. ROJAS (CLERK III, OCC-METC), EDUARDO E. EBREO (SHERIFF III, METC, BRANCH 45), RONALYN T. ALMARVEZ (COURT STENOGRAPHER II, ME-TC, BRANCH 45), MA. VICTORIA C. OCAMPO (COURT STENOGRAPHER II, METC, BRANCH 45), ELIZABETH LIPURA (CLERK III METC, BRANCH 45), MARY ANN J. CAYANAN (CLERK III, METC, BRANCH 45), MANOLO MANUEL E. GARCIA (PROCESS SERVER, METC, BRANCH 45), EDWINA A. JUROK (UTILITY WORKER, OCC-METC), ARMINA B. ALMONTE (CLERK III, OCC-METC), ELIZABETH G. VILLANUEVA (RECORDS OFFICER, METC, BRANCH 44), ERWIN RUSS B. RAGASA (SHERIFF III, METC, BRANCH 44), BIEN T. CAMBA (COURT STENOGRAPHER II, METC, BRANCH 44), MARLON M. SULIGAN (COURT STENOGRAPHER II, METC, BRANCH 44), CHANDA B. TOLENTINO (COURT STENOGRAPHER II, METC, BRANCH 44), FERDINAND R. MOLINA (COURT INTERPRETER, METC, BRANCH 44), PETRONILO C. PRIMACIO, JR. (PROCESS SERVER, METC, BRANCH 45), EDWARD ERIC SANTOS (UTILITY WORKER, METC, BRANCH 45), EMILIO P. DOMINE (UTILITY WORKER, METC, BRANCH 45), ARNOLD P. OBIAL (UTILITY WORKER, METC, BRANCH 44), RICARDO E. LAMPITOC (SHERIFF III, METC, BRANCH 46), JEROME H. AVILES (COURT STENOGRAPHER II, METC, BRANCH 46), ANA LEA M. ESTACIO (COURT STENOGRAPHER II, METC, BRANCH 46), LANIE F. AGUINALDO (CLERK III, METC, BRANCH 44), JASMINE L. LINDAIN (CLERK III, METC, BRANCH 44), RONALDO S. QUIJANO

(PROCESS SERVER, METC, BRANCH 44), DOMINGO H. HOCOSOL (UTILITY WORKER, METC, BRANCH 48), EDWIN P. UBANA (SHERIFF III, METC, BRANCH 48), MARVIN O. BALICUATRO (COURT STENOGRAPHER II, METC, BRANCH 48), MA. LUZ D. DIONISIO (COURT STENOGRAPHER II, METC, BRANCH 48), MARIBEL A. MOLINA (COURT STENOGRAPHER II, METC, BRANCH 48), CRISTINA E. LAMPITOC (COURT STENOGRAPHER II, METC, BRANCH 46), MELANIE DC BEGASA (CLERK III, METC, BRANCH 46), EVANGELINE M. CHING (CLERK III, METC, BRANCH 46), LAWRENCE D. PEREZ (PROCESS SERVER, METC, BRANCH 46), EDMUNDO VERGARA (UTILITY WORKER, METC, BRANCH 46), AMOR V. ABAD (COURT INTERPRETER, METC, BRANCH 47), ROMER H. AVILES (COURT STENOGRAPHER II, METC, BRANCH 47), FROILAN ROBERT L. TOMAS (COURT STENOGRAPHER II, METC, BRANCH 47), MAXIMA C. SAYO (PROCESS SERVER, BRANCH 47), SEVILLA B. DEL CASTILLO (COURT INTERPRETER, METC, BRANCH 48), AIDA JOSEFINA IGNACIO (CLERK III, METC, BRANCH 48), BENIGNO A. MARZAN (CLERK III, METC, BRANCH 48), KARLA MAE R. PACUNAYEN (CLERK III, METC, BRANCH 48), IGNACIO M. GONZALES (PROCESS SERVER, METC, BRANCH 48), EMELINA J. SAN MIGUEL (RECORDS OFFICER, OCC, DETAILED AT BRANCH 47), DENNIS M. ECHEGOYEN (SHERIFF III, OCC-METC), NORMAN GARCIA (SHERIFF III, METC, BRANCH 47), NOEL G. LABID (UTILITY WORKER I, BRANCH 47), *complainants, vs.* **HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[OCA IPI No. 12-2456-MTJ. November 22, 2016]

JUDGE BIBIANO G. COLASITO, JUDGE BONIFACIO S. PASCUA, JUDGE RESTITUTO V. MANGALINDAN, JR. and CLERK OF COURT MIGUEL C. INFANTE, *complainants, vs.* **HON. ELIZA B. YU, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

[A.M. No. MTJ-13-1821. November 22, 2016]

JUDGE EMILY L. SAN GASPAR-GITO, METROPOLITAN TRIAL COURT, BRANCH 20, MANILA, *complainant, vs.* **JUDGE ELIZA B. YU, METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; SHOULD PRESERVE THE DIGNITY OF THEIR JUDICIAL OFFICES AND THE IMPARTIALITY AND INDEPENDENCE OF THE JUDICIARY WHILE EXERCISING THE FREEDOMS OF SPEECH AND EXPRESSION.— There is no question that when a Judge becomes the transgressor of the law that she has sworn to uphold, she places her office in disrepute, encourages disrespect for the law, and impairs public confidence in the integrity of the Judiciary itself. It is timely for the Court to use this occasion to remind Judge Yu and other judicial officers of the land that although they may enjoy the freedoms of speech and expression as citizens of the Republic, they should always conduct themselves, while exercising such freedoms, in a manner that should preserve the dignity of their judicial offices and the impartiality and independence of the Judiciary. As to this duty to observe self-restraint, Section 6, Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary* is clear and forthright x x x. Judge Yu's expression of her dissent against A.O. No. 19-2011 was misplaced. We may as well declare that she did not enjoy the privilege to dissent. Regardless of her

reasons for dissenting, she was absolutely bound to follow A.O. No. 19-2011. Indeed, she did not have the unbridled freedom to publicly speak against A.O. No. 19-2011 and its implementation, for her being the Judge that she was differentiated her from the ordinary citizen exercising her freedom of speech and expression who did not swear obedience to the orders and processes of the Court without delay. Her resistance to the implementation of A.O. No. 19-2011 constituted gross insubordination and gross misconduct, and put in serious question her fitness and worthiness of the honor and integrity attached to her judicial office.

2. ID.; ID.; INSUBORDINATION AND GROSS MISCONDUCT; UNWILLINGNESS TO COMPLY WITH THE COURT'S ISSUANCE, A CASE OF.— Insubordination is the refusal to obey some order that a superior officer is entitled to give and to have obeyed. It imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. Judge Yu's obstinate resistance to A.O. No. 19-2011 displayed both her rebellious character and her disdain and disrespect for the Court and its directives. Judge Yu's unwillingness to comply with A.O. No. 19-2011 was also a betrayal of her sworn duty to maintain fealty to the law, and brought dishonor to the Judiciary. In that regard, her conduct amounted to gross misconduct x x x. Judge Yu exhibited an unbecoming arrogance in committing insubordination and gross misconduct. By her refusal to adhere to and abide by A.O. No. 19-2011, she deliberately disregarded her duty to serve as the embodiment of the law at all times. She thus held herself above the law by refusing to be bound by the issuance of the Court as the duly constituted authority on court procedures and the supervision of the lower courts. To tolerate her insubordination and gross misconduct is to abet lawlessness on her part. She deserved to be removed from the service because she thereby revealed her unworthiness of being part of the Judiciary.

3. ID.; ID.; GROSS INSUBORDINATION; THE JUDGE'S ACT OF REJECTING THE APPOINTMENT OF COURT PERSONNEL FOR LACK OF HER PERSONAL ENDORSEMENT CONSTITUTES GROSS INSUBORDINATION.— Ms. Tejero-Lopez and other applicants had undergone scrutiny and processing by the duly constituted committee, and the OCA

had then signed and executed the appointment. Nonetheless, the authority to appoint still emanated from the Court itself. Judge Yu's objection to Ms. Tejero-Lopez's appointment for lack of her personal endorsement was not enough to negate the appointment. Judge Yu had no right to reject the appointment, making her rejection another instance of gross insubordination by her. x x x Judge Yu could only recommend an applicant for a vacant position in her court for the consideration of the SPBLC, which then accorded priority to the recommendee if the latter possessed superior qualifications than or was at least of equal qualifications as the other applicants she did not recommend. The SPBLC explained to Judge Yu the selection process that had resulted in the appointment of Ms. Tejero-Lopez. She could not impose her recommendee on the SPBLC which was legally mandated to maintain fairness and impartiality in its assessment of the applicants based on performance, eligibility, education and training, experience and outstanding accomplishments, psycho-social attributes and personality traits, and potentials.

4. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; PENDENCY OF ADMINISTRATIVE CASE; SHALL NOT DISQUALIFY AN EMPLOYEE FROM PROMOTION.— Judge Yu's rejection of the appointment of Ms. Lagman was x x x unwarranted. Under Section 34, Rule II of the *Uniform Rules on Administrative Cases in the Civil Service* (URACCS), a pending administrative complaint shall not disqualify an employee from promotion x x x. The rule, which is reiterated in Section 42 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACCS) of 2011, cannot be interpreted otherwise. Accordingly, Judge Yu's administrative complaint had no bearing on Ms. Lagman's appointment, more so because Ms. Lagman was held liable only for simple misconduct, a less grave offense that did not merit termination from public service for the first offense. It is relevant to point out, too, that Judge Yu had no personality to object to or oppose Ms. Lagman's appointment, considering that only a qualified next-in-rank employee has been recognized as a party-in-interest to file the protest in accordance with paragraph 1.6.1, Article IX of the 2002 *Revised Manual of Clerks of Court*.

5. LEGAL ETHICS; JUDGES; SERIOUS MISCONDUCT; UTTERING DISRESPECTFUL LANGUAGE AGAINST

THE COURT, A CASE OF.— [W]e also take Judge Yu to task for disrespectful language uttered against the Court, no less. She characterized the appointment of Ms. Tejero-Lopez as "*void ab initio*" and "*a big joke*." The use of such language in assailing the Court's exercise of its absolute power of appointment was highly offensive and intemperate. She thereby disregarded her obligation to show respect and deference toward the Court and its officials. She was thereby guilty of another serious misconduct.

6. ID.; ID.; GRAVE ABUSE OF AUTHORITY; MAKING VERBAL THREATS TO COMPEL A SUBORDINATE TO WITHDRAW HER APPLICATION CONSTITUTES GRAVE ABUSE OF AUTHORITY.— Judge Yu issued verbal threats of filing administrative, civil and criminal charges against Ms. Tejero-Lopez unless she withdrew her application. Judge Yu reiterated the threats in her letter dated June 14, 2011 addressed to Atty. Pabello. Ms. Tejero-Lopez felt intimidated enough because she actually withdrew her application (although she later went on with it). The making of the verbal threats by Judge Yu to compel a subordinate to withdraw her application constituted grave abuse of authority on the part of Judge Yu. Grave abuse of authority is committed by a public officer, who, under color of his office, wrongfully inflicts upon a person any bodily harm, imprisonment, or other injury; it is an act characterized with cruelty, severity, or excessive use of authority. Also, the intimidation exerted upon Ms. Tejero-Lopez amounted to oppression, which refers to an act of cruelty, severity, unlawful exaction, domination or excessive use of authority.

7. ID.; ID.; GROSS MISCONDUCT; WHEN A JUDGE INSISTS ON HER INHERENT AUTHORITY TO PUNISH FELLOW JUDGES FOR CONTEMPT OF COURT, SHE WIELDS A POWER THAT SHE DOES NOT HOLD WHICH MAKES HER GUILTY OF GROSS MISCONDUCT.— The issuance of the show-cause order by Judge Yu represented clear abuse of court processes, and revealed her arrogance in the exercise of her authority as a judicial officer. She thereby knowingly assumed the role of a tyrant wielding power with unbridled breadth. Based on its supervisory authority over the courts and their personnel, the Court must chastise her as an abusive member of the Judiciary who tended to forget that the law and judicial

ethics circumscribed the powers and discretion vested in her judicial office. x x x Moreover, the Court notes that Judge Yu's issuance of the show-cause order emanated from her desire to retaliate against her fellow Judges and the concerned court employees considering that the allegedly contumacious conduct was the copying of court records to be used as evidence in the administrative complaint against her. She thereby breached her duty to disqualify herself from acting at all on the matter. Such self-disqualification was required under Section 5, Canon 3, and Section 8 of Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary* x x x. By insisting on her inherent authority to punish her fellow Judges for contempt of court, Judge Yu wielded a power that she did not hold. Hence, she was guilty of gross misconduct.

8. ID.; ID.; GRAVE ABUSE OF AUTHORITY; UNJUSTIFIED REFUSAL TO APPROVE LEAVE APPLICATIONS EXPOSES A JUDGE TO ADMINISTRATIVE SANCTION.— The 2002 Revised Manual for Clerks of Court governs the approval of an application for sick leave by court personnel. Paragraphs 2.2.1 and 2.2.2, Chapter X of the 2002 Revised Manual requires the submission of a medical certificate or proof of sickness prior to the approval of the application for sick leave x x x. Noel Labid complied with the 2002 Revised Manual by submitting the medical certificate and the clinical abstracts issued and certified by the Medical Records Division of the Philippine General Hospital (PGH). The medical certificate indicated that he had been suffering from "*Bleeding submandibular mass in hypovolemic shock Squamous cell Carcinoma Stage IV floor of mouth*," while the clinical abstracts dated June 14, 2011 and June 23, 2011 indicated the same reason for his hospital admission. x x x Under paragraph 2.1.2 of the 2002 Revised Manual, heads of offices like Judge Yu possessed the authority to confirm the employee's claim of ill health. Being aware of Noel's true medical condition after having met with Mrs. Labid who had seen her to plead for the approval of her son's leave application, Judge Yu was not justified in demanding a prior written notice about Noel's serious medical condition. Neither was she justified in still requiring Noel to submit the certificate of fitness to work considering that he had yet to report for work. Noel's medical certificate and clinical abstracts had sufficiently established the reason for his absence and his

hospital admission. Despite his obvious critical condition, Judge Yu chose to ignore the medical records certified by a government health institution, and unjustifiably demanded the submission of documents that the 2002 Revised Manual did not require. Judge Yu did not convincingly establish that her actions came within the limits of her authority as a court manager, or were sanctioned by existing court regulations and policies. Her unjustified refusal to approve Noel's leave application exposed her to administrative sanction under paragraph 2.2.2 of the 2002 Revised Manual. Accordingly, Judge Yu was again guilty of grave abuse of authority.

9. ID.; ID.; OPPRESSION; A JUDGE IS GUILTY OF OPPRESSION WHEN SHE EXHIBITS INDIFFERENCE TO THE PLIGHT OF A CRITICALLY ILL SUBORDINATE IN URGENT NEED OF ASSISTANCE.— It is not hard to believe that Judge Yu deliberately refused to sign Noel's leave application in order to cause additional hardship to him in retaliation for his joining the administrative complaint against her. We consider to be credible Mrs. Labid's narration that Judge Yu had expressed her resentment towards Noel for his signing the complaint against her. By acting so, therefore, Judge Yu was vindictive, and exhibited indifference to the plight of the critically ill subordinate in urgent need of assistance. She was guilty of oppression, which is any act of cruelty, severity, unlawful exaction, domination or excessive use of authority constituting oppression. Her oppression did not befit an administrator of justice.

10. ID.; ID.; GROSS IGNORANCE OF THE LAW; ALLOWING ON-THE-JOB TRAINEES TO HAVE ACCESS TO COURT RECORDS IN VIOLATION OF THE COURT'S CIRCULAR, A CASE OF.— In OCA IPI No. 11-2399-MTJ, the complainants charged that Judge Yu had allowed on-the-job trainees (OJTs) to have access to court records. x x x The memorandum dated November 2, 2010 issued by Judge Yu indicated her intention to delegate the duties of an encoder to a certain Ms. Angelica Rosali, one of the OJTs concerned x x x. That the memorandum was not disseminated to the person concerned, and that it was not implemented were immaterial to the charge. The fact that Judge Yu issued the memorandum naming Ms. Rosali, a student, as the encoder and assigning to

her court duties similar to those of a regular court employee signified Judge Yu's intention to treat Ms. Rosali as a trainee instead of as a mere observer. Ms. Rosali denied in her *sinumpaang salaysay* that she had received the memorandum and performed encoding tasks, but nonetheless confirmed that she was directed to docket the decisions and staple the returns. x x x Under the circumstances, Judge Yu could not feign ignorance of the tasks assigned to and performed by the OJTs. If she had been strict about accepting student trainees, then she should not have assigned court-related tasks. In this regard, Judge Yu deliberately ignored OCA Circular No. 111-2005 in prohibiting OJTs x x x.

11. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES; DESIGNATION IN THE CIVIL SERVICE; DESIGNATION OF FIRST LEVEL PERSONNEL TO A SECOND LEVEL POSITION IS PROHIBITED.— Judge Yu designated as OIC of Branch 47 of the MeTC Mr. Ferdinand Santos, who occupied the position of Clerk III. Under the 2002 Revised Manual, the position of Clerk III fell under the first level position with a minimum educational requirement of two years of college studies, and a career service sub-professional eligible. The position of Clerk of Court III was a second level position with a minimum educational requirement of a Bachelor of Laws degree, at least one year relevant experience, four hours of relevant training, and a professional career service eligible. x x x Designating a first-level personnel like Mr. Santos as OIC defied CSC Memorandum Circular No. 06-05 because the position of OIC was reserved for personnel belonging to the second level. It becomes immaterial whether nobody from Branch 47 opposed the designation because the memorandum circular expressly prohibits designation of first level personnel to a second level position. It is emphasized that the memorandum is crafted in the negative; hence, the memorandum is mandatory, and imports that the act required shall not be done otherwise than designated. Judge Yu's contention that the designation of the OIC was based on trust and confidence had no basis. x x x Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They perform delicate functions as designated custodians of the courts funds, revenues, records, properties

and premises. The functions of a clerk of court require a higher degree of education as well as understanding of the law and court processes, that they cannot be delegated to first level personnel such as Mr. Santos. The position requires not only trust and confidence, but most importantly, education and experience. Ineluctably, the respondent ignored the clear import of CSC Memorandum Circular No. 06-05 in designating Mr. Santos as OIC.

12. REMEDIAL LAW; CIVIL PROCEDURE; TRIAL; *EX PARTE* RECEPTION OF EVIDENCE; MAY BE DELEGATED ONLY TO CLERKS OF COURT WHO ARE MEMBERS OF THE BAR.— Section 9, Rule 30 of the *Revised Rules of Civil Procedure* expressly requires that only clerks of court who are members of the Bar can be delegated to receive evidence *ex parte* x x x. The word *may* used in the rule related only to the discretion by the trial court of delegating the reception of evidence to the Clerk of Court, not to the requirement that the Clerk of Court so delegated be a member of the Bar. The rule on *ex parte* reception of evidence was unequivocal on this point, and required no elaboration. Neither the agreement by the parties nor their acquiescence could justify its violation. It followed that Judge Yu could not validly allow the presentation of evidence *ex parte* before Mr. Santos who was a mere OIC because he was not a member of the Bar. Breach of the rule on reception of evidence represented her ignorance of the rule of procedure in question, and subjected her to administrative liability for misconduct.

13. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; ALLOWING THE DIRECT EXAMINATION OF THE DEFENSE WITNESSES WITHOUT THE PUBLIC PROSECUTOR AND ALLOWING THE CHANGE OF PLEA BY THE ACCUSED WITHOUT THE ASSISTANCE OF COUNSEL CONSTITUTE GROSS IGNORANCE OF THE LAW.— [A]ll criminal actions shall be prosecuted under the control and direction of the public prosecutor. The true reason is that the prosecution of criminal offenses is always a public function. In *People v. Ramos*, we cautioned that the exception stated in Section 5, x x x [Rule 110 of the Rules of Court] should be strictly construed x x x. Judge Yu committed a flagrant error by allowing the direct examination of the defense witness

without the public prosecutor, or without the private counsel duly authorized by the public prosecutor in Criminal Case No. M-PSY-09-08592-CR. In addition, Judge Yu disregarded Section 6, Rule 116 of the *Rules of Court* when she allowed the change of plea by the accused in *People v. Manduriao* without the assistance of counsel. x x x The justification that the accused had waived his right to counsel, and had changed his plea after the respondent Judge had explained to him the imposable penalty for the offense did not stand considering that in order that the waiver by the accused of his right to counsel would be valid, the trial court must ensure that the accused did so voluntarily, knowingly and intelligently, taking into account the capacity of the accused to give such consent. We have nothing to show that Judge Yu took the pains to enforce the safeguards. Every judge was expected to know the fundamental substantive and procedural requirements on arraignment and right to counsel. We have always been clear about the right of the accused to counsel under the Constitution, and about the requirements for the arraignment of an accused under the *Rules of Court*. As such, Judge Yu was guilty of gross ignorance of the law, which is ignorance of the law when the law is so elementary, and when one professes not to know it, or when one acts as if she does not know it. Canon 6 of the *New Code of Judicial Conduct* prescribes that competence is a prerequisite to the due performance of the judicial office. In Judge Yu's case, her competence was indispensable to her fair and proper administration of justice in her office. By failing to adhere to and implement existing laws, policies, and the basic rules of procedure, she seriously compromised her ability to be an effective magistrate.

14. ID.; ID.; CONDUCT UNBECOMING A MEMBER OF THE JUDICIARY; SENDING MESSAGES CONTAINING SEXUAL INSINUATIONS, A CASE OF.— Judge Yu denied sending the messages to Judge San Gaspar-Gito, and countered that it was the latter who first sent the "meal stub" message. x x x The denial lacked persuasion. In her October 3, 2009 message to Judge San Gaspar-Gito's Yahoo account, Judge Yu apologized to Judge San Gaspar-Gito, and expressly clarified that Judge San Gaspar-Gito had not sent the "meal stub." Judge Yu even requested Judge San Gaspar-Gito to "*forget all [her] emails ... since June ...*" This apologetic tone from Judge Yu rendered

her denial of responsibility devoid of substance. Moreover, the barrage of messages, most of which were sent within the same day, makes us believe that they had all come from Judge Yu. Although she insisted that Judge San Gaspar-Gito had sent the "meal stub," Judge Yu did not offer any plausible explanation on the other messages containing sexual innuendos. It is notable that the Facebook and Yahoo messages started in August 2009 when Judge Yu was still a public prosecutor. Nonetheless, she could still be disciplined for such acts committed prior to her appointment to the Judiciary because her internet stalking of Judge San Gaspar-Gito continued after she had herself become a MeTC Judge in Pasay City on January 12, 2010 and lasted until July 2010. Our reading of the messages supports the studied conclusions by CA Justice Abdulwahid that they did contain sexual insinuations that were ostensibly improper for a Judge to write and send to another. The messages, however they may be read and understood, were at least vexatious and annoying. In any case, the sender showed her deep-seated proclivities reflective of conduct unbecoming of a member of the Judiciary.

15. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; EXCLUSIONARY RULE; INAPPLICABLE WHEN THERE IS NO VIOLATION OF THE RIGHT TO PRIVACY.— The exclusionary rule, or the fruit of the poisonous tree doctrine, presupposes a violation of law on the part of the agents of the Government, and bars the admission of evidence obtained in violation of the right against unreasonable searches and seizures expressly defined under Section 2, Article III of the Constitution. The exclusionary rule under Section 3(2), Article III of the Constitution refers to the prohibition against the issuance of general warrants that encourage law enforcers to go on fishing expeditions. Judge Yu did not specify that the State had unlawfully intruded into her privacy. The subjects of the present inquiry were the messages sent by her to Judge San Gaspar-Gito. Regardless of the mode of their transmission, the ownership of the messages pertained to the latter as the recipient. Considering that it was the latter who granted access to such messages, there was no violation of Judge Yu's right to privacy. As such, the grant of access by Judge San Gaspar-Gito did not require the consent of Judge Yu as the writer. x x x [T]he Court directed the MISO to retrieve the messages for

purposes of these cases. Based on the certification issued by the authorized MISO personnel, the messages were extracted from the Yahoo and Facebook accounts of Judge San Gaspar-Gito with the use of her official workstation. Hence, the exclusionary rule did not apply.

16. LEGAL ETHICS; JUDGES; ABUSE OF POWER; THE JUDGE'S ACT OF USING THE LETTERHEAD OF THE COURT IN SUMMONING ANOTHER TO A CONFERENCE WITH THE INTENTION OF USING HER AUTHORITY AS AN INCUMBENT JUDGE TO ADVANCE HER PERSONAL INTEREST CONSTITUTES ABUSE OF POWER.— [T]he OCA submits that Judge Yu's use of the letterhead of her office or court in summoning to a conference Atty. Reynaldo San Gaspar, the brother of Judge San Gaspar-Gito, constituted abuse of power, and violated Section 8, Canon 4 of the *New Code of Judicial Conduct* x x x. In the letter in question, Judge Yu used the phrase "our court" in issuing the invitation to Atty. San Gaspar. She was obviously intending to use her authority as an incumbent Judge to advance her personal interest. Such conduct was reprehensible because she thereby breached Section 4 of Canon 1 and Section 1 of Canon 4 of the *New Code of Judicial Conduct* x x x.

17. ID.; ID.; DISBARMENT; PURPOSE; THE RULE OF FUSING THE DISMISSAL OF A JUDGE WITH DISBARMENT DOES NOT IN ANY WAY DISPENSE WITH THE RIGHT TO DUE PROCESS.— Under Section 27, Rule 138 of the *Rules of Court*, an attorney may be disbarred on the ground of **gross misconduct** and **willful disobedience of any lawful order of a superior court**. Given her wanton defiance of the Court's own directives, her open disrespect towards her fellow judges, her blatant abuse of the powers appurtenant to her judicial office, and her penchant for threatening the defenseless with legal actions to make them submit to her will, we should also be imposing the penalty of **disbarment**. The object of **disbarment** is not so much to punish the attorney herself as it is to safeguard the administration of justice, the courts and the public from the misconduct of officers of the court. Also, **disbarment** seeks to remove from the Law Profession attorneys who have disregarded their Lawyer's Oath and thereby proved themselves unfit to continue

discharging the trust and respect given to them as members of the Bar. The administrative charges against respondent Judge Yu based on grounds that were also grounds for disciplinary actions against members of the Bar could easily be treated as justifiable disciplinary initiatives against her as a member of the Bar. This treatment is explained by the fact that her membership in the Bar was an integral aspect of her qualification for judgeship. Also, her moral and actual unfitness to remain as a Judge, as found in these cases, reflected her indelible unfitness to remain as a member of the Bar. At the very least, a Judge like her who disobeyed the basic rules of judicial conduct should not remain as a member of the Bar because she had thereby also violated her Lawyer's Oath. x x x The Court does not take lightly the ramifications of Judge Yu's misbehavior and misconduct as a judicial officer. By penalizing her with the supreme penalty of dismissal from the service, she should not anymore be allowed to remain a member of the Law Profession. However, this rule of fusing the dismissal of a Judge with disbarment does not in any way dispense with or set aside the respondent's right to due process. As such, her disbarment as an offshoot of A.M. No. 02-9-02-SC without requiring her to comment on the disbarment would be violative of her right to due process. To accord due process to her, therefore, she should first be afforded the opportunity to defend her professional standing as a lawyer before the Court would determine whether or not to disbar her.

BRION, *J.*, *concurring and dissenting opinion*:

1. LEGAL ETHICS; JUDGES; GROSS INSUBORDINATION AND GROSS MISCONDUCT; UNJUSTIFIED REFUSAL TO COMPLY WITH THE DIRECTIVES OF THE OFFICE OF THE COURT ADMINISTRATOR AND THE COURT, A CASE OF.— *In re Judge Yu's non-compliance with AO No. 19-2011*. The *ponencia* rules that the manner by which Judge Yu chose to express her dissent against AO No. 19-2011 has transgressed the bounds of judicial ethics. The *ponencia* reminds that Judge Yu has sworn to obey the orders and processes of the Court without delay. Her unjustified refusal to comply with the directives/orders of the OCA and the Court made her liable for gross insubordination and gross misconduct. More

importantly, the *ponencia* emphasizes, Judge Yu's refusal to submit to night duty openly defied the Court's authority, to issue AO No. 19-2011, that the Constitution grants it under Article VIII, Section 5(5) of the Constitution.

2. ID.; ID.; ID.; PERSISTENT REFUSAL TO HONOR THE APPOINTMENTS OF COURT PERSONNEL MAKES A JUDGE LIABLE FOR GROSS INSUBORDINATION AND GROSS MISCONDUCT.— *In re Judge Yu's refusal to honor the appointments of court personnel.* The *ponencia* agrees that Judge Yu's persistent refusal to honor the appointments amounted to a brazen challenge against the Court's power and discretion to appoint court employees. It emphasizes that these appointments are in the form of an order or directive from the Court which Judge Yu had no right to reject. For these acts, Judge Yu is liable for gross insubordination and gross misconduct.

3. ID.; ID.; ABUSE OF AUTHORITY; THE JUDGE'S ACT OF ISSUING A SHOW CAUSE ORDER AGAINST FELLOW JUDGES AND COURT PERSONNEL DEMONSTRATED HER CLEAR ABUSE OF COURT PROCESSES AND FLAGRANT ABUSE OF AUTHORITY.— *In re Judge Yu's issuing of a show cause order against judges and court personnel.* The *ponencia* x x x agrees with the OCA that the show cause order Judge Yu issued in OCA IPI No. 11-2378-MTJ demonstrated her clear abuse of court processes and flagrant abuse of authority, as well as her motivation to retaliate against her accusers, thereby violating Section 8, Canon 4 of the New Code of Judicial Conduct.

4. ID.; ID.; GRAVE ABUSE OF AUTHORITY AND OPPRESSION; INORDINATE REFUSAL TO APPROVE LEAVE OF ABSENCE APPLICATION DESPITE COMPLIANCE WITH THE REQUIREMENTS, A CASE OF.— *In re Judge Yu's refusal to sign the application for leave of absence and other allegations of oppression.* Equally, the *ponencia* agrees that Judge Yu's inordinate refusal to approve Noel Labid's leave of absence application, notwithstanding the latter's compliance with the requirements for sick leave application per the 2002 Revised Manual for Clerks of Court, reveals a motive to retaliate against Noel Labid for his joining the administrative complaint against her; these acts amount to grave abuse of authority and oppression.

5. ID.; ID.; SHOULD KNOW THE FUNDAMENTAL SUBSTANTIVE AND PROCEDURAL REQUIREMENTS ON ARRAIGNMENT AND RIGHT TO COUNSEL FOUND IN THE CONSTITUTION AND THE RULES OF COURT.— *In re allowing criminal proceedings without the presence of the public prosecutor.* The *ponencia* rules that Judge Yu should not only be cited for her failure to abide by Section 5, Rule 110 of the Rules of Court when she allowed the proceedings in *People v. Manduriao* to proceed without the actual presence of the public prosecutor. The *ponencia* points out that she should likewise be cited for her failure to comply with Section 6, Rule 116 of the same Rules when she allowed the change of plea by the accused in the same case without the assistance of counsel. To the *ponencia*, as a judge, she should know the fundamental substantive and procedural requirements on arraignment and right to counsel found in the Constitution and the Rules of Court (Revised Rules on Criminal Procedure).

6. ID.; ID.; CONDUCT UNBECOMING OF A MEMBER OF THE JUDICIARY; SENDING MESSAGES CONTAINING SEXUAL INNUENDOS CONSTITUTES CONDUCT UNBECOMING OF A MEMBER OF THE JUDICIARY.— *In re her sending inappropriate messages.* x x x T]he *ponencia* agrees with Judge Abdulwahid's conclusions that Judge Yu's Facebook and Yahoo messages to Judge San Gaspar-Gito contained sexual innuendos that are improper for a magistrate to write and send to another who find them vexatious and annoying, conduct that is improper and unbecoming of a member of the judiciary.

7. ID.; ID.; ABUSE OF POWER; THE USE OF THE COURT'S OFFICIAL LETTERHEAD IN SUMMONING ANOTHER CONSTITUTES ABUSE OF POWER.— [T]he *ponencia* x x x agrees with the OCA's findings and rules that Judge Yu's use of the court's official letterhead in summoning Atty. Reynaldo San Gaspar, Judge San Gaspar-Gito's brother, constitutes abuse of power and violates Section 8, Canon 4, as well as Section 4 of Canon 1 and Section 1 of Canon 4, all of the New Code of Judicial Conduct.

8. ID.; ID.; DISBARMENT; PURPOSE; AN ADMINISTRATIVE CASE AGAINST A JUDGE OF A REGULAR COURT BASED ON GROUNDS WHICH ARE ALSO GROUNDS

FOR DISCIPLINARY ACTION AGAINST MEMBERS OF THE BAR SHALL ALSO BE CONSIDERED AS DISCIPLINARY PROCEEDINGS AGAINST SUCH JUDGE AS A MEMBER OF THE BAR.— Under A.M. No. 02-9-02-SC (which took effect on October 1, 2002), an administrative case against a judge of a regular court based on grounds which are also grounds for disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. Likewise, it provides that **judgment in both respects may be incorporated in one decision or resolution**. x x x The Rules of Court, on the other hand, provides, under Section 27 of Rule 138, that a lawyer may be removed or suspended from the practice of law, *among others*, for gross misconduct, for any violation of the Lawyer's Oath, and for willful disobedience to the Court's orders, circulars, and other issuances x x x. It should be pointed out that the Lawyer's Oath is a source of a lawyer's obligations and its violation is a ground for disbarment or other disciplinary action. In addition to this, the Code of Professional Responsibility forbids a lawyer to engage in unlawful, dishonest, immoral, or deceitful conduct as provided under its Rule 1.01. Thus, every lawyer must pursue only the highest standards in the practice of his calling. This is because the practice of law is a privilege, and only those adjudged qualified are permitted to do so. x x x [T]he purpose of disbarment is not meant as a punishment depriving a lawyer of a source of livelihood; rather, it is intended to protect the administration of justice that those who exercise this function should be competent, honorable, and reliable in order that the courts and clients may rightly repose confidence in them.

9. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS REQUIREMENTS; WHEN COMPLIED WITH.— [T]echnical rules of procedure and evidence are not strictly applied to administrative proceedings. In administrative proceedings, it is enough that the party is given the chance to be heard before the case against him is decided. In the application of the principle of due process in administrative proceedings, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard. x x x In the leading case of *Ang Tibay v. CIR*, the Court laid down the following due process requirements that

must be complied with in administrative proceedings: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.

10. ID.; ID.; ID.; ID.; SUFFICIENTLY COMPLIED WITH WHEN THE RESPONDENT HAD BEEN GIVEN AMPLE OPPORTUNITY TO REBUT THE CHARGES AGAINST HER AND PRESENT CONTROVERTING EVIDENCE.— I submit that the due process requirements in administrative proceedings had been sufficiently complied as the Court finds Judge Yu guilty of gross insubordination, gross ignorance of the law, gross misconduct, grave abuse of authority, oppression, and conduct unbecoming of a judicial official. x x x [T]he filings and submissions of Judge Yu and the Resolutions and other processes of the Court that were sent and re-sent to Judge Yu — confirm the conclusion that Judge Yu had been sufficiently apprised of the charges against her, some of which could likewise potentially cause her disbarment; that she had been given ample opportunity to rebut these charges and present controverting evidence; and that she had used the granted opportunities through the various pleadings and Letters she filed with and sent to the Court. In other words, Judge Yu had been accorded every opportunity to defend her professional standing as a lawyer sufficient to warrant the ultimate sanction of disbarment.

D E C I S I O N

***PER CURIAM*:**

A judge embodies the law; she cannot be above it. She should not use it to advance her personal convenience, or to oppress

others. She should be obedient to the rules and directives enunciated by the Supreme Court for the effective administration of justice; otherwise, she becomes an arrogant tyrant. Being a magistrate of the law, she must comport herself in a manner consistent with the dignity of her judicial office, and must not commit any act that erodes public confidence in the Judiciary.

In these consolidated administrative proceedings, we resolve the several charges of gross misconduct, gross ignorance of the law, gross insubordination, oppression, and conduct unbecoming of a judge leveled by various complainants, some of them her fellow Judges, against respondent Judge Eliza B. Yu, the Presiding Judge of Branch 47, Metropolitan Trial Court (MeTC) in Pasay City.

On June 4, 2013, A.M. No. MTJ-12-1813 was consolidated with A.M. No. MTJ-12-1-09-MeTC.[1] Other closely-related administrative complaints involving the respondent, specifically: A.M. No. MTJ-13-1863, A.M. No. MTJ-12-1815, OCA IPI No. 11-2398-MTJ, OCA IPI No. 11-2399-MTJ, OCA IPI No. 11-2378-MTJ, and OCA IPI No. 12-2456-MTJ, were similarly consolidated.[2]

Antecedents

A.M. No. MTJ-12-1813
(*Office of the Court Administrator v. Judge Eliza B. Yu*)

On January 27, 2011, the Court, through Chief Justice Renato C. Corona, issued Administrative Order No. 19-2011[3] in response to the specific request of Secretary Alberto A. Lim of the Department of Tourism (DOT) to establish night courts in Pasay City and Makati City. A.O. No. 19-2011 designated the branches of the MeTC in Pasay City and Makati City as night courts to expeditiously hear and try cases involving nighttime apprehensions, special cases under the *Rule on Summary Procedure*, and criminal cases involving tourists, *viz.*:

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[1] *Rollo* (A.M. No. MTJ-12-1813), p. 157.

[2] *Id.* at 183.

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

ADMINISTRATIVE ORDER NO. 19-2011

ESTABLISHING NIGHT COURTS IN THE METROPOLITAN TRIAL COURTS OF PASAY CITY AND MAKATI CITY

WHEREAS, the Constitution mandates the speedy disposition of cases of all persons before judicial bodies;

WHEREAS, "the Executive Judges of the Metropolitan Trial Courts and Municipal Trial Courts in Cities of the cities and municipalities comprising Metro Manila x x x may assign all judges to hold night court sessions daily from Monday to Friday and on official holidays and special days."

WHEREAS, in line with the constitutional mandate on the speedy disposition of cases and in the exercise of its power of administrative supervision over all courts, the Supreme Court has ordered (a) the establishment of night courts in the Metropolitan Trial Courts of Manila "to try and decide all special cases enumerated in the Rule on Summary Procedure," and (b) the opening of two branches in the Metropolitan Trial Courts of Quezon City as night courts to hear "cases involving nighttime apprehensions" and special cases enumerated in the Rule on Summary Procedure";

WHEREAS, the Court held that the operational guidelines for the assignment of judges and the holding of night court sessions in Manila shall also be applicable to the night courts established in Quezon City;

WHEREAS, the Court requires the expeditious disposition of criminal cases involving tourists;

WHEREAS, the Honorable Secretary Alberto A. Lim of the Department of Tourism has requested the designation of night courts also in Pasay City and Makati City, in addition to those already existing in Manila and Quezon City;

WHEREFORE, it is hereby directed that:

1. Night courts similar to those designated in the Metropolitan Trial Courts of Manila City and Quezon City be established in the Metropolitan Trial Courts of Pasay City and Makati City;

2. The operational guidelines for the assignment of judges and the holding of night court sessions in the Metropolitan Trial

Courts of Manila be applicable to the night courts in the Metropolitan Trial Courts of Pasay City and Makati City, respectively, except operating hours, which shall be from four-thirty in the afternoon (4:30 p.m.) until eleven o'clock in the evening (11:00 p.m.);

3. The night courts of Pasay City and Makati City be authorized to try and decide cases involving nighttime apprehensions and all special cases enumerated in the Rule on Summary Procedure;

4. The provisions of Administrative Circular No. 58-2002, dated 14 November 2002, requiring an expeditious disposition of criminal cases involving tourists be complied with; and

5. The Executive Judges of the Metropolitan Trial Courts of Pasay City and Makati City (a) to inform the Philippine National Police (PNP) and the Prosecutor's Office within their respective jurisdictions of the schedule of the branches of the metropolitan trial courts assigned to hold night sessions; and (b) make representations with the PNP and the local government units to ensure that appropriate security measures are adopted to protect the judges and their staff during night sessions.

Immediate compliance with this order is enjoined.

27 January 2011.

To comply with A.O. No. 19-2011, then Pasay City MeTC Executive Judge Bibiano G. Colasito issued a Memorandum dated February 9, 2011[4] prescribing the schedules for night court service of all Pasay City MeTC Judges and employees effective February 14, 2011. Under the Memorandum, MeTC Branch 47, presided by respondent Judge Yu, was assigned night court duties every Friday. But Judge Yu did not desire to comply, and so inscribed the following marginal note on the February 9, 2011 Memorandum of Judge Colasito, to wit:

February 11, 2011

Pls. I dissent with the night court assignment. I have pending legal question before the Office of Court Administrator.[5]

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[4] *Id.* at 38.

[5] *Rollo* (OCA IPI No. 11-2378-MTJ), p. 18.

The pending legal question Judge Yu adverted to had been posed in her letter dated February 2, 2011 to the Court Administrator Jose Midas P. Marquez,[6] as follows:

Sir:

Our Court is in receipt of Administrative Order No. 19-2011 (Establishing Night Courts in the Metropolitan Trial Courts of Pasay City and Makati City) today.

Among others, it is provided that: "3. The night Courts of Pasay City and Makati City be authorized to try and decide cases involving night time apprehensions and all special cases enumerated in the Rule on Summary Procedure."

With due respect, **the police officers cannot apprehend, detain and bring the arrested persons charged with cases covered by the Rule on Summary Procedure at night without being liable for Arbitrary Detention. The arrested persons need not post bail under the Rule on Summary Procedure. Thus, there is no legal basis for the police officers to detain them prior to the hearing of their cases at night by the court. Moreover, the public prosecutors cannot conduct inquest on the night arrests of the suspected criminals because the penalty involved in cases covered by the Rule on Summary Procedure is not more than six (6) months. Inquest can be conducted only where the penalty is four (4) years, two (2) months and one (1) day and above. The night inquest without the release of the arrested suspects is questionable. It can make the public prosecutors criminally and administratively liable.**

It is tedious for the public prosecutor and the public attorney to attend the night court from 4:30 p.m. to 11:00 p.m. after attending an exhaustive hearing in the morning then attend the hearing on the following day, without additional pay.

Unlike in Manila Metropolitan Trial Courts where the cases tried by night courts are mostly violation of ordinances, in Pasay Metropolitan Trial Courts, most of the cases filed are Theft, B.P. Blg. 6 and P.D. No. 1602 that entail full blown trial because the accused refuses to enter into a plea bargaining. In this sense, the establishment of night courts in Pasay City cannot unclog a court's criminal docket. (Bold emphases supplied)

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[6] *Rollo* (A.M. No. MTJ-12-1318), p. 12.

Please enlighten us on this concern.

Thank you.

It appears that the Station Investigation and Detective Management Section (SIDMS) of the Pasay City Police Station received a copy of Judge Yu's letter to Court Administrator Marquez. Wary of the potential criminal liability of apprehending officers adverted to in the letter, Police Chief Inspector Raymund A. Liguden of the SIDMS sought clarification from the Office of the Pasay City Prosecutor.[7] In response, the Office of the Pasay City Prosecutor explained through Prosecutor Dolores P. Rillera that the apprehending officers could become liable for arbitrary detention only when they failed to refer the arrested persons for inquest proceedings within the periods specified under Article 125 of the *Revised Penal Code*.[8]

Apprised of the explanation from the Office of the Pasay City Prosecutor, Judge Yu requested Prosecutor Rillera to refer the matter to the Department of Justice (DOJ) and request a legal opinion thereon,[9] even as she requested Court Administrator Marquez to have her letter to Prosecutor Rillera docketed as an administrative matter.[10]

Judge Yu communicated her reservations about the night court by letter directly to DOT Secretary Lim,[11] pointing out that the DOT's request for the establishment of the night courts was supported neither by statistical data nor by any study. After rendering a lengthy discourse on the flaws of establishing night courts, she ended her letter with a request for additional compensation and security in case she would undertake night court duties. The pertinent portions of her letter ran as follows:

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[7] *Id.* at 33.

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

[9] *Id.* at 20.

[10] *Id.* at 19.

[11] *Id.* at 13-17.

Dear Sir:

This Court learned that you requested for the designation of night courts in Pasay City that resulted to the issuance of Administrative Order No. 19-2011 (Establishing Night Courts in the Metropolitan Trial Courts of Pasay City and Makati City) dated January 27, 2011.

With due respect, there is insufficient basis for your request. There was no statistical data present or there was no study conducted by your department recommending the necessity of establishing night courts in Pasay City. For the record, this Court is yet to hear a case involving any tourist. **Moreover, the tourists should be advised not to roam around the city at night so as not to be victims of various crimes. Usually, the perception of the tourists who are going around the city at night is negative, for they are likely to be engaging in unlawful nocturnal activities. They are at their own risk at night.**

There was no prior consultation with the police officers, public attorneys, public prosecutors, judges and their staff before your department requested for the creation of night courts in Pasay City.

There are many concerns which your department did not consider.

First, some of the rights of the accused who were charged with cases covered by the Summary Procedure are impaired by the operation of night courts. x x x

x x x x x x x x x

Second, night courts in Manila City and Quezon City are criticized for being ineffective and non-functional. In Manila City, when I was a public prosecutor, I questioned as to the legality of the detention of the accused being arraigned at night for violation of ordinances. When I was not given any legal justification, I requested to be relieved from night court. My experience showed that night court is a waste of time for all. The cases tried at night court can be tried during day time without burdening the three (3) pillars of our criminal justice system. xxx. The cases tried are violation of city ordinances, mostly on illegal vending in the night courts. I heard that these cases were filed for money making scheme by the police officers. From the information gathered, only those accused who

did not give them money were arrested, detained and brought to the night courts.

Third, there is a grave violation of the right of government employees against long and extended period of work with no additional pay at night. This is a form of exploitation of workers whose rights are enshrined under the Constitution. It bears pointing out that additional compensation for night time work is founded on public policy.

x x x x x x x x x.

Fourth, it is very burdensome to attend the court at night.

x x x x x x x x x.

Fifth, it is risky to work at night because of lack of security.

x x x x x x x x x.

Lastly, the establishment of night courts in Pasay City will not unclog a court's criminal docket. The situation in Manila City and Quezon City are not similar with Pasay City. x x x. In Manila Metropolitan Trial Courts, majority of the accused pay the fine for the violation of ordinances not involving any tourist crime during the night court hearing. Also, a study must be conducted by your department, if necessary, about the effectiveness of night courts in Manila City and Quezon City, and if these night courts are attaining the purposes they were created. If not, there is no reason for the establishment of a night court or tourism court here in Pasay City. Another thing, there is uneven assignment of judges alone to the night court. x x x.

I hope you find merit with this letter. May your department reconsider your request for the establishment of night courts in Pasay City. With due respect, **it will be appreciated if your department will give additional compensation and provide police security to the judges, public prosecutors, public attorneys and the entire court staff, if it insist of** [sic] **establishing night courts here without conducting any study.**

x x x. (Bold emphases supplied)

On May 5, 2011, the Office of the Court Administrator (OCA), through Assistant Court Administrator (ACA) Thelma C. Bahia,

responded to the concerns raised by the Judge Yu in the following manner:[12]

This refers to your letter dated February 2, 2011 apprising us of certain concerns relative to the establishment of night courts in Pasay City.

x x x x x x x x x

The first concern has been ably explained in the attached letter dated February 25, 2011 of Prosecutor Dolores P. Rillera, Chief, Inquest Division, Office of the City Prosecutor, Pasay City, addressed to Police Chief Inspector Raymond A. Liguden, Chief SIDMS, Pasay City, who, having been furnished a copy of your letter dated February 2, 2011, subsequently sought the guidance of Prosecutor Rillera on the matter.

With respect to the second point you raised, prosecutors and public attorneys of Pasay City had long been assigned their respective schedules to handle inquest proceedings until 10 p.m. prior to the designation of night courts in Pasay City. Attending night courts would not be as tedious as you surmise. Besides, prosecutors and public attorneys already receive allowances for staying beyond office hours.

As to the third issue, the main consideration for the designation of night courts is to address the matter of nighttime apprehension which include offenses enumerated in the Rule of Summary Procedure. Priority is also given to those criminal cases where the offended party or the complainant is a tourist or transient in the country as already explained in Administrative Circular No. 58-2002 dated November 14, 2002.

Be reminded that judges, prosecutors and public attorneys are public officers who are duty bound to serve with the highest degree of responsibility, integrity, loyalty and efficiency and whose main concern in the performance of their duties is public welfare and interest.

Please be guided accordingly.[13]

Ostensibly not satisfied, Judge Yu replied,[14] pertinently stating:

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[12] *Id.* at 28.

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

[14] *Id.* at 18.

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With due respect, your letter did not address the issues raised in my letter dated February 11, 2011 to Hon. Alberto A. Lim, Secretary of Tourism who did not reply said letter to date [sic]. Attached is my letter dated March 22, 2011 address[ed] to Hon. Jose Midas P. Marquez together with the attachments.

As per information from this Courts' Officer-in-Charge Emelina J. San Miguel who heard from other staff of the Office of the Clerk of Court, there is (sic) no criminal case filed at night since the start of the night courts here in Pasay until now showing the need to review, if not abolish the administrative order creating it.

Back at the Pasay City MeTC, the continued refusal by Judge Yu to render night court service prompted Executive Judge Colasito to assign additional night court duties to the other MeTC Judges and their personnel.[15]

In view of Judge Yu's refusal to follow A.O. No. 19-2011, the OCA submitted a memorandum to the Court,[16] recommending that her insubordination, gross misconduct and violation of *The New Code of Judicial Conduct* be docketed as an administrative complaint against her. In due course, the Court required Judge Yu to comment.[17]

In her comment, Judge Yu denied the charges, and asserted that she did not commit insubordination;[18] that her protest against night courts was a mere expression of her opinion; that she would render night duty upon receiving a resolution on her protest from the Court; that the OCAD should have submitted a complete study and report about the effectiveness of night courts in the National Capital Judicial Region, particularly in Pasay City;[19] and that her protest was covered by her

[15] *Id*. at 35.

[16] *Id*. at 1-11.

[17] *Id.* at 41.

[18] *Id*. at 43.

[19] *Id*. at 43-44.

constitutional right to freedom of speech[20] and other legal principles.[21]

Judge Yu also asserted that based on her experience, holding night courts unduly burdened the Judges and their court personnel, as well as other court employees;[22] that A.O. No. 19-2011 merely reiterated Administrative Order No. 72 dated June 30, 1988 that had been based on the *1983 Rule on Summary Procedure in Special Cases* but the latter issuance had already been superseded by the *1991 Revised Rules on Summary Procedure*;[23] that A.O. No. 19-2011 did not make any reference to the *1991 Rules of Summary Procedure* which was a "*huge legal blunder*;"[24] that the drafters of A.O. No. 19-2011 merely reiterated Administrative Circular No. 58-2002 dated November 14, 2002, and overlooked R.A. No. 4908 (*An Act Requiring Judges Of Courts To Speedily Try Criminal Cases Wherein The Offended Party Is A Person About To Depart From The Philippines With No Definite Date Of Return*);[25] that night court duty violated the 8-hour work period;[26] that the Court should exercise judicial restraint;[27] the A.O. No. 19-2011 was invalid for non-compliance with the requirements of issuing a valid administrative order;[28] that A.O. No. 19-2011 did not provide

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[20] *Id*. at 45; 98-105.

[21] *Id*. at 98-110; among her submissions were contentions on the supremacy of the Constitution; marketplace of ideas; privileged communications; totality and spirit of the letter; and the weight of evidence and burden of proof.

[22] *Id*. at 44.

[23] *Id*. at 47-50; she argued that the drafters of A.O. No. 19-2011 should have considered the material change brought about by Section 12 of the *1991 Revised Rules on Summary Procedure*, and the reverse order of arraignment and submission of affidavits under the *1983 Rule on Summary Procedure in Special Cases*.(see Comment dated July 16, 2012).

[24] *Id*. at 110.

[25] *Id*. at 59-61.

[26] *Id*. at 108.

[27] *Id*. at 111-113.

[28] *Id*. at 153; 158.

any penalty in case of its non-compliance;[29] and that A.O. No. 19-2011 was an invalid order addressed solely to the Executive Judges of the MeTC of Makati City and Pasay City.[30]

A.M. No. MTJ-13-1836
***(Re: Letter dated May 2, 2011 of Hon. Eliza B. Yu, Branch 47, MeTC, Pasay City);* and**

A.M. No. MTJ-12-1815
(Leilani A. Tejero-Lopez v. Judge Eliza B. Yu)

These administrative matters refer to the appointments of Ms. Leilani A. Tejero-Lopez as the Branch Clerk of Court of MeTC Branch 47, and Ms. Mariejoy P. Lagman as Clerk III of the Regional Trial Court (RTC) Branch 108, in Pasay City.

Respondent Judge Yu challenged the appointments.

I. Appointment of Ms. Tejero-Lopez as Clerk of Court III, MeTC Branch 47, Pasay City

On July 9, 2010, Judge Yu requested to fill the position of Clerk of Court III in her sala.[31] Upon approval of her request[32] and consequent posting of the notice of vacancy,[33] three applicants vied for the position, namely: Ms. Ellen D.L.S. Serrano, Ms. Leilani A. Tejero-Lopez and Ms. Eloisa A. Bernardo.[34] From the outset, Judge Yu favored Ms. Bernardo for the vacancy.[35]

After evaluating the applicants' qualifications, the Selection and Promotion Board for the Lower Courts under the OCA

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[29] *Id*. at 154; 158.

[30] *Id.*

[31] *Id*. at 736.

[32] *Rollo* (A.M. No. MTJ-13-1836), p. 52.

[33] *Id*. at 54.

[34] *Id*. at 55-58.

[35] *Id*. at 53; 59.

(OCA-SPBLC) recommended the appointment of Ms. Tejero-Lopez, then a Legal Researcher assigned at MeTC Branch 46, in its Board Resolution No. 12B-2011(A) dated April 4, 2011.[36] The OCA-SPBLC had found Ms. Bernardo to have lacked the required training.[37]

On April 12, 2011, Chief Justice Corona, along with Associate Justice Antonio T. Carpio and Associate Justice Conchita Carpio-Morales, approved Ms. Tejero-Lopez's appointment.

In the meantime, by letter dated March 31, 2011, Judge Yu requested the temporary designation of Ms. Bernardo as the Clerk of Court,[38] and furnished a copy of the letter to Ms. Tejero-Lopez.[39] In the letter, Judge Yu expressed her protest against the appointment of "another applicant from Metropolitan Trial Court Branch 46, Pasay City, as well as other applicants who cannot be appointed because they lacked the requirement of the personal endorsement by the judge." She further declared that it would be best to either hire a new lawyer or to call for another batch of applicants in the event that Ms. Bernardo would not be appointed.

The OCA-SPBLC, through Deputy Court Administrator Nimfa C. Vilches, denied Judge Yu's request for Ms. Bernardo's temporary designation pursuant to Section 2(b), Rule III of the *Omnibus Rules on Appointments and Other Personnel Actions* in view of the availability of a qualified applicant.[40]

On April 14, 2011, Ms. Tejero-Lopez learned from Ms. Emmie San Miguel, the then OIC of Branch 47, that Judge Yu had wanted her to execute a waiver or withdrawal of her application.

Wishing to settle the issue of the appointment amicably, Ms. Tejero-Lopez paid Judge Yu a visit in her chambers. The meeting

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[36] *Id*. at 84-90.

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

[38] *Id*. at 69.

[39] *Rollo* (A.M. No. MTJ-12-1815), p. 4.

[40] *Rollo* (A.M. No. MTJ-13-1836), p. 70.

between them was hostile. In describing the meeting, Ms. Tejero-Lopez pointed out that Judge Yu had shouted and exclaimed at her: "*Nanggugulo ka[!] Ikaw ang nanggugulo[!] katatawag ko lang sa Supreme Court, Sabi ng Supreme Court, ikaw ang nanggugulo[!].*" Ms. Tejero-Lopez recalled that Judge Yu then demanded her withdrawal with a threat to revoke her appointment later on. Faced with the prospect of eventually losing her job, Ms. Tejero-Lopez decided to withdraw her application.[41]

On April 26, 2011, Judge Yu asked for the reconsideration with the OCA-SPBLC by submitting a copy of the withdrawal of the application signed by Ms. Tejero-Lopez.[42]

However, by her letter dated May 10, 2011, Ms. Tejero-Lopez retracted her withdrawal, and signified her intention to pursue her application.[43]

After an investigation that established that Ms. Tejero-Lopez did not voluntarily withdraw her application, the OCA-SPBLC continued processing her appointment,[44] and she was eventually appointed Clerk of Court III effective May 31, 2011.[45]

Upon receiving her appointment on June 7, 2011, Ms. Tejero-Lopez went to Judge Yu's chambers to take her oath, but the latter refused her request to administer her oath. According to Ms. Tejero-Lopez, Judge Yu questioned the integrity of the selection process, and told her directly that the Court had appointed her in retaliation to her refusal to render night court

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[41] *Rollo* (A.M. No. MTJ-12-1815), pp. 5-6.

[42] *Rollo* (A.M. No. MTJ-13-1836), pp. 71-72.

[43] *Id.* at 91.

[44] *Id.* at 95; on May 2, 2011, the OCA-SPBLC met and resolved to wait for the explanation of Ms. Tejero-Lopez regarding her withdrawal; ACA Bahia volunteered to talk to Ms. Tejero-Lopez; following their meeting on May 9, 2011, ACA Bahia reported that Ms. Tejero-Lopez had only been prevailed upon by Judge Yu to withdraw her application by threatening to file the necessary actions to revoke her appointment or to remove her from the service.

[45] *Rollo* (A.M. No. MTJ-12-1815), p. 3.

service. Judge Yu threatened Ms. Tejero-Lopez with criminal cases of grave coercion and trespassing, and contempt of court if she persisted on taking her oath of office. Judge Yu further vowed to assail the appointment before the Court and the Civil Service Commission (CSC).[46]

On the same day, Judge Yu wrote to Atty. Caridad A. Pabello, Chief of Office, OCA-Office of Administrative Services (OCA-OAS),[47] to protest the appointment, to wit:

Madam:

Thank you for your telegram today. Please be informed that Leilani Lopez has withdrawn her application as Clerk of Court III in this court [a] long time ago. **She failed to comply** (sic) **all the requirements for the consideration of her application for such position because, among others, she has no personal endorsement from this court despite her last ditch attempt to get it on March 7, 2011.** This court did not sign an important document for her relative to the position thus her application cannot be considered by the Selection and Promotion Board for the Lower Courts at all. Moreover, **this court has continuing protest against her appointment in this court to date. And this was reiterated to Leilani Lopez few moments ago.**

Please be guided accordingly.

x x x (Bold emphasis supplied)

A week later, Judge Yu sent another letter stating that she had apprised Ms. Tejero-Lopez of her possible indictment for unlawful appointment, grave coercion and unjust vexation, among others.[48] She thereby also expressed her refusal to honor the "*void ab initio*" appointment of Ms. Tejero-Lopez, which she characterized as "*a big joke*." For the fullest appreciation of the contents, the letter is quoted hereinbelow:

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

[47] *Rollo* (A.M. No. MTJ-13-1836), p. 103.

[48] *Rollo* (A.M. MTJ-12-1815), p. 8.

Madam:

Please be informed that today Leilani Lopez, the applicant for Clerk of Court III who has withdrawn her application long time ago, sought to see me because of her appointment, **a legally infirm one**. I accommodated her for a brief talk for the last time, hoping to not see her again and never to bother me anymore.

It was explained to her that she will face possible indictment of, among others, unlawful appointment, grave coercion and unjust vexation, all punishable under the Revised Penal Code, if she forcibly insist to take a seat in this court despite of numerous oral and written opposition by the court to her selection and appointment. Likewise, she can be thrown to jail for contempt of court, if such callousness and discourteousness continue to exist in this court. Moreover, she was told that if thievery extends to public office, the elements of Theft under our penal code were established *prima facie*, as the concept of apoderamiento or unlawful taking predominates in this situation, an affront of the Rule of Law, showing that the Rule of Jungle where might is right triumphs as can be gleaned in a paper, a null and void appointment paper held by her. **Her appointment is highly questionable. Leilani Lopez received the proverbial forbidden apple, obviously grown from a toxic tree. Our court advised her for the last time not to eat it, or she will suffer the grave consequences, without any taint of threats to her. The ways of a scholar seem not to have a place in this prestigious institution, for her appointment is an example of brute force, they say it is a rape of the honor of this bench, others say it is a spit of insult.** However, this court will not press formal charges against the poor Leilani Lopez, a sorry victim of a subtle power play. Article 24 of the New Civil Code says indirectly that the court must be vigilant for the protection of morally dependent, ignorant, indigent, mentally weak, tenderness of age or other handicap of a person. Your office must be reminded that I took my oath seriously before SC Justice Antonio B. Nachura, and I swore to him that I will uphold the Constitution, and I will remain faithful to my oath even after his retirement in the judiciary. Consequently, **this court will not honor the void ab initio appointment of Leilani Lopez, a big joke and so this court is laughing at her** and all others who are like her, not to put her and others down, only to treat this delicate matter lightly in jest, strange things, sometimes contrary to law or contrary to the spirit of the law, do happen in judiciary. **The Selection**

and Promotion Board for the Lower Court is funny, and it made me laugh. I rather laugh than be angry, than feel helpless, than look powerless in this awful and mean situation. Firmness of decision anchored on the principles of righteousness and justice is one of the characteristic of this unassuming court. I am happy to feel that God is with me, and He not Satan is cheering with me in this lonely fight as to what is right and just.

Thank you. (Bold emphasis supplied)

On June 17, 2011, Judge Yu submitted her formal protest[49] against Ms. Tejero-Lopez' appointment, as follows:

Chief Justice Renato C. Corona
Supreme Court
P. Faura St., Manila City

FORMAL PROTEST TO THE APPOINTMENT OF LEILANI LOPEZ AS BRANCH CLERK OF COURT OF METROPOLITAN TRIAL COURT BRANCH 47, PASAY CITY

Sir:

All the laws provide the inherent relief of protest by the incumbent judge to an appointment of any staff in his or her court. The appointed applicant Leilani Lopez is not qualified and not fit to work as the branch clerk of court in my sala.

Leilani Lopez lacked personal indorsement. The applicant knew this, and so she said to me on June 14, 2011 that she does not know why she was appointed. She attempted to get a personal indorsement from me on March 7, 2011 that I rejected. She must submit her neuro-psychiatric test results to me and to the Board because it is definitely abnormal, some kind of an obsession, to insist in clinging on to a position of a branch clerk of court after numerous oral and written opposition by a judge she will be working with. This alone is a sign that she is unfit for the job. Her obsession is dark, it is destructive because she places her own personal interest over public interest[.] [w]ith her presence in my court, the public will definitely suffer, and so the judiciary. I as a judge will suffer. **I am demoralized with this rotten system of appointing an unfit applicant. I am unhappy**

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[49] *Rollo* (A.M. No. MTJ-13-1836), pp. 115-116.

right now of her appointment, and it will affect my enthusiasm and productivity in court. I expressed my disgust unabashedly before the Chief of OAS and the lawyer from the Legal Department, and so I felt discourteous as I was a victim of discourtesy here. For showing lack of delicadeza, Leilani Lopez was rejected openly[,] verbally[,] and in writing, made to her by me and my court staff [sic] for numerous times, thus she is callous and discourteous.

Leilani Lopez deceived me by giving me a formal letter of her withdrawal of application, only to find out yesterday that she filed her waiver of withdrawal which disclosure should have been made to me by her in good faith. This qualifies her for the crime of Other Deceits under Article 318 of the Revised Penal Code. In doing this, she does not have my trust and confidence, a biting reality since the time she applied for the position until her numerous rejections. Dishonesty encompasses all that deviates sense of honesty. Our workplace provides that "Dishonesty is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary." If Leilani Lopez has a gull [sic] to deceive me at this point in time, giving me her formal withdrawal letter and filing her waiver of her withdrawal letter without my knowledge, and this was not disclosed to me by her despite her opportunities to do so, this meant that she has a dishonorable and vicious character, undeserving to be in my court. She did this deceitful conduct to me and she showed unpredictable actuations to me and to the Board while she is still an applicant, she will most likely do it as a branch clerk of court in my sala. And so I will always be wary with her presence in my court, and it is a tremendous mental stressor for me as a judge.

With due respect, **there was a misconstruction of the laws on selection and appointment of court personnel by the Board,** it presupposes that all the applicants submitted for consideration by the Board must have good and harmonious working relationship with a judge he or she will work with and so the judge must have assented or agreed to the proposed application of all applicants, expressly or impliedly. If an appointed applicant is not the liking of the judge, there will be disharmony in the court. The working relationship with [sic] be based on mistrust and distrust. It will not accomplish anything

good for the judiciary as a whole. Each other's working life as a judge and as a branch clerk of court will be miserable. This is not the spirit of the letter of all the laws pertaining to selection and appointment of Supreme Court employee aspiring for confidential position such as branch clerk of court. In fact, I believe that the branch clerk of court must be co-terminus with a judge's assignment in a particular court. **I do not engage in a power play, it happens that the personal indorsement of a branch clerk of court is my prerogative as a judge and I want to exercise that prerogative to accomplish excellently in my judicial and non-judicial tasks. There were substantive and procedural flaws with her selection and appointment as branch clerk of court. The laws surrounding the irregular appointment of Leilani Lopez, including the fact of not resolving my grievance prior to her appointment, were misapplied in her case. We do not uphold the laws that cause quarrel and dissension in court. Assuming Leilani Lopez took her oath of an irregular appointment which she is aware of, my recourse as a judge is to ask for her detail to another court, preferable to the Selection and Promotion Board.** This will not contribute for the success of my court in the interest of public service. Our workplace deprived me of a court staff who I can completely trust, and help me accomplish great things in the judiciary. The Board deprived me already of my prerogative to choose my branch clerk of court, and so I want this deprivation to be put on record. If I lose this legal battle in this workplace, I am a winner because I brought to your attention, and all Supreme Court justices, ultimately the public, such unrighteous and unjust manner of selecting and appointing a branch clerk of court. **You may have been misled by the Board in signing her appointment. You have many things to do as Chief Justice, sometimes, you may not have read the minutes of Board and merely followed its recommendation. As a judge, I have my rights and privileges, and far more considered than the rights and privileges of an applicant for a branch clerk of court, a virtual stranger to me at the time of her application, and now her character is dubious to me. Imagine, this kind of irregular appointment invites suits and casts disrepute amongst us, I doubt if this is what our Supreme Court envisions or our Constitution dreams for the Supreme Court.** I re-plead all my letters and the attachments dated June 15 and 16, 2011 pertaining to the appointment of Leilani Lopez that were furnished to the Office of the Court Administrator and to you to form part of this formal protest. Attached herewith is a formal complaint against Leilani Lopez. (Emphasis supplied)

I am requesting for a Solomonic resolution of this protest.

Thank you.

Judge Yu submitted a supplemental formal protest dated June 28, 2011 describing the appointment to be "*tainted with irregularity in gross violation of the substantive and procedural laws*" and "*void ab initio*" for failure to obtain the favorable recommendation from her as the presiding judge.[50] She argued that the OCA-SPBLC had failed to assess the competence and qualifications of Ms. Tejero-Lopez; that Ms. Tejero-Lopez did not meet the minimum requirements for the position; and that the position of Branch Clerk of Court was confidential.

In view of Judge Yu's refusal to honor her appointment, Ms. Tejero-Lopez requested Executive Judge Colasito through her letter of June 11, 2011 for her detail to another office.[51]

Ms. Tejero-Lopez ultimately executed a *sinumpaang salaysay* charging Judge Yu with refusal to obey court order.[52]

On September 12, 2011, the Court dismissed Judge Yu's protest against the appointment of Ms. Tejero-Lopez.[53]

Judge Yu was undaunted, however, and she filed a motion for reconsideration,[54] attaching the motion to her supplemental explanation.[55]

II. Appointment of Ms. Mariejoy P. Lagman, Clerk III, RTC Branch 108, Pasay City

In June 2010, Judge Yu initiated a complaint, docketed as A.M. No. P-12-3033 (formerly A.M. No. 10-8-97-MeTC),

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[50] *Rollo* (A.M. No. MTJ-13-1836), pp. 239-244.

[51] *Rollo* (A.M. No. 11-2378-MTJ), p. 159.

[52] *Rollo* (A.M. No. MTJ-12-1815), pp. 1-2.

[53] *Rollo* (A.M. No. MTJ-13-1836), pp. 414-415.

[54] *Id.* at 410-412.

[55] *Id.* at 408-409.

entitled *Memoranda of Judge Eliza B. Yu Issued to Legal Researcher Mariejoy P. Lagman and to Court Stenographer Soledad J. Bassig, All of Metropolitan Trial Court, Branch 47, Pasay City*, against Ms. Mariejoy P. Lagman, Legal Researcher II of Branch 47, for grave misconduct, falsification, usurpation of judicial functions and dishonesty.

Citing "pressure within the working environment" and in order to have "a self-assured and peaceful mind," Ms. Lagman requested her transfer to another branch of the MeTC pending the hearing of the complaint against her.[56] Eventually, the Court appointed her as Clerk III of Branch 108 of the RTC in Pasay City effective October 5, 2010, a demotion from her position as Legal Researcher in Branch 47.

Apparently, Ms. Lagman's appointment did not sit well with Judge Yu, who assailed it before the OCA-SPBLC as a "fast appointment" for being made despite her pending administrative complaint.[57]

On May 2, 2011, the OCA received a letter from Judge Yu requesting for updates on the alleged delay in the appointment of a clerk of court in her branch, and her protest against the appointment of Ms. Lagman, among others.[58] She thereby threatened to file formal charges against the members of the OCA-SPBLC, thus:

Sir:

I am requesting your office to furnish me the information on the following:

(1) x x x;

(2) x x x;

(3) x x x;

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[56] *Id.* at 25.

[57] *Id.* at 19-20.

[58] *Id.* at 18.

(4) The report of an investigation of the very delayed appointment of our Branch Clerk of Court, the position is vacant for over three (3) years now;

(5) x x x; and

(6) The report of an investigation on the appointment of Ms. Mariejoy P. Lagman in RTC Branch 108, Pasay City despite the pending administrative cases involving grave offenses against her.

I am requesting Atty. Wilma D. Geronga, Chief of Legal Department, Docket and Clearance Division of your office, to docket my letter dated April 28, 2011 together with the attachments addressed to the Selection and Promotion Board for the Lower Courts that said office received on the same day touching on the foregoing matters for the conduct of full investigation because I will take the appropriate action. **I will not hesitate to press formal charges against your office if there was a transgression of the laws and if still necessary.** (sic) **Stamping out corruption of any form is one of my advocacies in life.**(Emphasis supplied)

Thank you.

The OCA filed a memorandum denouncing the misconduct and insubordination of Judge Yu relative to the appointments of Ms. Tejero-Lopez and Ms. Lagman.[59]

On January 30, 2012, the Court required Judge Yu to show cause and explain why she should not be disciplined for her actions.[60]

In her explanation,[61] Judge Yu denied the allegations, and maintained that she had only exercised her freedom of speech; that it was her "statutory right as a judge" to question the "irregular appointment" of a branch clerk of court whom she believed to be lacking in the basic requirements for the position;[62] that it was "strange to have a jurisprudence on alleged misconduct

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[59] *Id*. at 1-17.

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

[61] *Id*. at 229-234.

[62] *Id*. at 229.

and insubordination of a judge" based on mere letters; that her letters were privileged communications and could not be used against her, pursuant to her constitutional right against self-incrimination;[63] that she had no evil intention in writing her letters because she was thereby only expressing her honest-to-goodness opinion without fear of censorship.[64]

A.M. No. 12-109-METC
(Re: Letter dated 21 July 2011 of Executive Judge Bibiano G. Colasito and Three (3) Other Judges of the Metropolitan Trial Court,Pasay City, For the Suspension or Detail ToAnother Station of Judge Eliza B. Yu, Branch 47, Same Court)

A.M. No. 11-2399-MTJ
(Amor V. Abad, et al., v. Hon. Eliza B. Yu); and

A.M. No. 11-2378-MTJ
(Executive Judge Bibiano G. Colasito, et al. v. Hon. Eliza B. Yu)

A.M. No. 11-2399-MTJ refers to the complaint[65] filed by the court staff of MeTC Branch 47 charging Judge Yu with grave misconduct, oppression, gross ignorance of the law and violation of the *Code of Judicial Conduct*.

In OCA IPI No. 11-2378-MTJ, four MeTC Judges and 70 MeTC court personnel assigned in Pasay City filed two affidavit-complaints dated May 12, 2011[66] and July 14, 2011,[67] accusing Judge Yu with: (1) gross insubordination; (2) refusal to perform official duty; (3) gross ignorance of the law or procedure; (4) serious and grave misconduct constituting violations of Canon

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[63] *Id*. at 231.

[64] *Id*. at 233-234.

[65] *Rollo* (OCA IPI No. 11-2399-MTJ), pp. 1-9.

[66] *Rollo* (OCA IPI No. 11-2378-MTJ), pp. 1-17.

[67] *Id*. at 127-151.

3, Rules 3.0 and 3.08 of the *Code of Judicial Conduct* in relation to Canon 6 of *The New Code of Judicial Conduct of the Philippine Judiciary*; Sections 1 and 2, Canon 2 of the *New Code of Judicial Conduct*; and Sections 1 and 2, Canon 4 of the *Code of Judicial Conduct*; (5) violation of Supreme Court rules, directives and circulars; (6) violation of Canon 1 of the *Code of Professional Responsibility*; (7) violation of the Lawyer's Oath and her oath of office as judge; (8) oppressive conduct; and (9) violation of Article 231[68] of the *Revised Penal Code*.

A.M. No. 12-109-METC relates to the Letter dated July 21, 2011[69] sent by her fellow Pasay City MeTC Judges, namely: Executive Judge Bibiano G. Colasito (Branch 45), Vice-Executive Judge Bonifacio S. Pascua (Branch 44), Judge Restituto V. Mangalindan (Branch 46), and Judge Catherine P. Manodon (Branch 48), requesting Judge Yu's immediate suspension or detail to another station pending investigation of all the administrative cases filed against her.

The common issue in the three complaints concerned the conduct of Judge Yu in relation to her staff, fellow Judges and other officers of the Supreme Court, her disobedience of the Court's issuances, and her manner of disposing cases.

I. Oppressive conduct towards her staff

The complaining staffmembers of MeTC Branch 47 claimed that Judge Yu had constantly threatened them with administrative complaints;[70] that she had readily attributed malice upon their actions, and had sown intrigue against their honor;[71] that she

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[68] Article 231. *Open disobedience*. — Any judicial or executive officer who shall openly refuse to execute the judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of *arresto mayor* in its medium period to *prision correccional* in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos.

[69] *Rollo* (A.M. No. 12-1-09-MeTC), pp. 48-49.

[70] *Rollo* (OCA IPI No. 11-2378-MTJ), p. 3.

[71] *Rollo* (OCA IPI No. 11-2399-MTJ), p. 4.

had impulsively declared in open court during the hearing of the case docketed as Civil Case No. M-PSY-10-12032-CV entitled *Fabra v. Global Classe* that they had engaged in irregular conduct;[72] that she had berated Mr. Ferdinand Santos even in front of all the other staff members;[73] and that she had harassed the personnel who had brought administrative complaints against her (*i.e.* by refusing to sign the applications for leave of Noel Labid and Robert Froilan Thomas, and by requiring them to submit unwarranted documents).[74]

The complaining staffmembers recalled that at one time they had overheard the respondent uttering:

> *Mananalo tayo sa kaso sila ang mali. Tayo ang matuwid hindi sila. x x x Ferdie, ready na nga pala yung permit to carry ko. Magdadala ako ng baril, Cal 45.*[75]

by which they had felt threatened; and that seeing the door to the respondent's chamber left wide open, they had sought refuge in the offices of her fellow Judges.[76]

Judge Yu also trained her sights on the Pasay City MeTC personnel when she requested ACA Bahia to audit the Office of the Clerk of Court for allegedly unremitted fees paid for the *ex parte* presentations of evidence in replevin cases.[77] This incident, according to the complaining staffmembers, caused demoralization among the Pasay City court personnel.

II. Disrespectful attitude towards co-judges, SC officers and offices

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[72] *Id.*

[73] *Rollo* (OCA IPI No. 11-2399-MTJ), p. 2.

[74] *Rollo* (OCA IPI No. 11-2378-MTJ), pp.135-136.

[75] *Rollo* (OCA IPI No. 11-2399-MTJ), pp. 7-8.

[76] *Rollo* (A.M. No. 12-109-MeTC), pp. 1-2.

[77] *Id.* at 128; see letter dated May 5, 2011 addressed to ACA Thelma C. Bahia.

The complainant Judges charged Judge Yu with being disrespectful towards other Judges when she wrote Vice Executive Judge Caridad G. Cuerdo of the RTC Branch 113, and accused Executive Judge Pedro B. Corrales of the RTC Branch 118, Judge Maria Rosario B. Ragasa of the RTC Branch 108, MeTC Executive Judge Colasito, and MeTC Vice-Executive Judge Pascua with violations of Canon 1, Section 3 and Canon 2, Section 3 of the *New Code of Judicial Conduct*, and violation of Section 1, paragraph (c) of Presidential Decree No. 1829 (*obstruction of justice*).[78]

Allegedly, Judge Yu used her OIC Ferdinand A. Santos in sending the letter to Clerk of Court IV Miguel C. Infante.[79] The letter insinuated that Judge Gina Bibat-Palamos and Judge Josephine Vito-Cruz had failed to act despite their knowledge on the purported selling of decisions by court employees, pertinently stating:[80]

> Lastly, this court experienced few attempts to withdraw cash bond without motions by including in the orders granting release of cash bonds, including those confiscated, and the public prosecutor did not object for failure to read previous order of confiscation, presumably such order is detached from the court records, as there are instances the pleadings, motions and oppositions are removed from the records, then attached again after investigation of the court as to where is the particular paper. This is something old because for example, Acting Judge Josephine Vito-Cruz was able to sign commitment orders when records show that the accused was arrested and detained already, and this fact was on paper immediately preceding the order that she can read it, if it was not detached and attached again after her order; she was able to sign orders on two arraignments of same accused in different dates in several occasions, and this court noted that in calendaring, there were attempts to mislead by writing it is for arraignment instead of pre-trial that to relay on it, the court will issue two arraignment orders; and lost or detached exhibits that she decided on such point only to know later on the receiving copy of

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[78] *Id*. at 126.

[79] *Rollo* (A.M. No. 11-2378-MTJ), pp. 183-184.

[80] *Id*.

the plaintiff that she decided adversely in the case of *Equitable vs. Chua Ty Kuen*, Civil Case No. 2-03 for Replevin, as it seems the modus operandi is to win or dismiss cases by argument that the evidence are photocopies, as also in this court's experience in case of *People vs. Basa*, CC-00-1988 for Reckless Imprudence decided on June 28, 1010, the material exhibits are photocopies, some are not attached in the court records despite existence in the minutes and transcript of records, all these examples are presumably, are warnings of existence of wicked harm in this court. Thus, your office should scrutinize release of cash bonds. Of course, there were complaints of alleged selling of decisions by court staff in cahoots with each other during Judge Gina Palamos and Judge Josephine Vito Cruz who were aware of this money-making devious scheme.

This court hopes that your office will take note of this letter which the contents here were supplied by our judge that deserves to be acted upon swiftly by the Office of the Court Administrator to eradicate, if not lessen corruption in the judiciary.

Moreover, Judge Yu issued a resolution in Civil Case No. B-03-08 entitled *Rodelio Hilario v. Shirley Pabilona*,[81] whereby she declared that she was not the co-equal of Judge Vito-Cruz of the Municipal Trial Court in Cardona, Rizal, as follows:

With due respect, the principle of "co-equality" between the two courts provided in paragraph 5 of the motion for reconsideration, to wit, "In essence, the incumbent Presiding Judge cannot over-rule the regular procedure adopted by her predecessor judge, because they are of the same level," finds no application in this case because a predecessor's judge orders can be interfered and encroached upon by the incumbent judge when they are contrary to the principle of equity, existing law and jurisprudence. **Moreover, the predecessor judge, Honorable Josephine A. Vito Cruz is a Municipal Trial Court Judge of Cardona, Rizal while undersigned is a Metropolitan Trial Court Judge of Pasay City, their salary grades are not at par with each other so it is quite incorrect with defendant's counsel declaration that the predecessor judge and the incumbent judge are of the same level.**[82] (Bold emphasis supplied)

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[81] *Id*. at 52-67.

[82] *Id*. at 60.

Aside from her failure to accord the respect due her fellow Judges, Judge Yu was overheard uttering disparaging remarks against Court officers. In one instance, after the OCA-SPBLC had recommended Ms. Tejero-Lopez to the position of Branch Clerk of Court, Judge Yu made the following statement against Court Administrator Marquez, to wit:

Yang si Midas Marquez na iyan napaka-highly incompetent, kung lalaki lang ako sinuntok ko na iyan, basta gwapo at maganda, mga walang utak. Oh, tandaan nyo yan ha! Iyang OCAD kalaban natin hindi kakampi.[83]

Judge Yu also said at another occasion:

Iyang auditor na Cielo na iyan, traidor, sana noong pinakain ko nilagyan ko na lang ng lason.

referring to SC Auditor Cielo Calonia who had earlier denied having informed her about court personnel profiting from the collection of *ex parte* fees.[84]

The complainants claimed that Judge Yu's disrespectful attitude towards her fellow Judges and the Court's officials constituted a violation of Section 3 of Canon 1, and Section 3 of Canon 2 of *The New Code of Judicial Conduct*.

III. Gross ignorance of laws, rules and regulations

The complaining staffmembers averred that Judge Yu: (*a*) had assigned the duty of correcting draft decisions, orders and resolutions to on-the-job trainees (OJTs) in violation of Memorandum Circular No. 5-2003 entitled *Re: Prohibiting the Accommodation of Students to Undergo On-The-Job Training/ Practicum in the Different Offices of the Court*; (*b*) had designated an Officer-in-Charge (OIC) for Branch 47, who did not possess the minimum qualifications for the position and without approval from the Court; and (*c*) had ordered her staff to advertise and

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[83] *Id*. at 9.

[84] *Id*. at 10; also *rollo* (OCA IPI No. 11-2399-MTJ), p. 7.

offer for sale the books she had authored in violation of SC Administrative Circular No. 09-99.[85]

The complainants in A.M. No. 11-2399-MTJ and OCA IPI No. 11-2378-MTJ alleged that Judge Yu: (*a*) had authorized the prosecution of Criminal Case No. M-PSY-09-08592-CR entitled *People v. Ramil Fuentes, et al.*[86] without the presence and prior endorsement of the public prosecutor; (*b*) had allowed the arraignment of the accused in Criminal Case No. M-PSY-11-13957-CR entitled *People v. Balwinder Singh*,[87] and the change of plea by the accused in Criminal Case No. M-PSY-11-13159-CR entitled *People v. Lito Manduriao*[88] in the absence of the public prosecutor;[89] (c) had ordered the presentation of *ex parte* evidence in Civil Case No. M-PSY-11-12626-CV before the OIC who was not a member of the Bar in violation of Section 9, Rule 30 of the *Rules of Court*;[90] and (d) had required the plaintiffs in replevin cases to submit receipts of payment of legal fees under Sections 8(e) and 21(e) of Administrative Circular No. 35-2004, as well as an explanation why they were

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[85] *Rollo* (A.M. No. 11-2399-MTJ), pp. 2-3.

[86] *Rollo* (A.M. No. 11-2378-MTJ), pp. 38-51.

[87] *Rollo* (A.M. No. 11-2399-MTJ), p. 15.

[88] *Id.* at 25.

[89] *Rollo* (OCA IPI No. 11-2399-MTJ), pp. 16-24; the complainants in A.M. No. MTJ-12-1815 alleged that Judge Yu also allowed the prosecution of the following cases without the presence of the public prosecutor, *viz.*: Criminal Case No. M-PSY-11-14002-CR (*People v. Chudee Morales Dulay*); Criminal Case No. M-PSY-11-13956 (*People v. Regielyn Hidalgo*); Criminal Case No. M-PSY-11-13986-CR (*People v. Jennifer Alcantara*); Criminal Case No. M-PSY-11-13991-CR (*People v. Cris Gonzaga*); Criminal Case No. M-PSY-11-13446-CR (*People v. Sps. Joselito Lacsamana, et al.*); Criminal Case No. M-PSY-11-13510-CR (*People v. Vicente Guillermo*); Criminal Case Nos. M-PSY-10-12631-CR and M-PSY-10-12632 (*People v. Lorna Boto*); Criminal Case Nos. M-PSY-10-12228-CR and M-PSY-10-12229-CR (*People v. Evangelina Arias*); Criminal Case No. M-PSY-10-11902-CR (*People v. Anecito Basada*).

[90] *Rollo* (A.M. No. MTJ-11-2378), pp. 6, 33.

making payments to the OIC and stenographers during the *ex parte* presentation of evidence.[91]

Judge Yu was being held to account also for her failure to protect and uphold the dignity of her court by not castigating the opposing counsels who had physically attacked each other during court proceedings. She was heard to have remarked: *Hindi ko sila kinontempt kasi wala naman akong mabibenefit.*[92]

In her comment,[93] Judge Yu denied the accusations, and attributed malice and fraud to all the complainants, branding their accusation as the manifestation of a "tyranny in numbers."[94] She dismissed the charges against her as false, frivolous, meritless, and intended to harass her[95] and destroy her reputation.[96] She declared that she did not know most of the court employees who had executed and signed the complaint; and warned that they had opened themselves to criminal, civil and administrative liabilities by signing the complaint.[97]

Anent the charges of gross ignorance of the law, Judge Yu contended that the students who were OJTs had sought permission to report to her court in compliance with their school requirements, but they were told not to carry on judicial tasks;[98]

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[91] *Id*. at 131-135.

[92] *Rollo* (OCA IPI No. 11-2399-MTJ), pp. 3-4.

[93] *Id*. at 42-56; (A.M. No. 11-2378-MTJ), pp. 73-89; (A.M. No. 12-1-09-MeTC), pp. 437-453.

[94] *Rollo* (A.M. No. 11-2378-MTJ), p. 74; (A.M. No. 12-1-09-MeTC), p. 438.

[95] *Rollo* (A.M. No. 11-2378-MTJ), p. 437.

[96] *Rollo,* (A.M. No. 11-2378-MTJ), p. 80.

[97] *Id*. at 73; (A.M. No. 12-1-09-MeTC), p. 437.

[98] Ms. Angelica Rosali, one of the OJTs, submitted an affidavit denying the charges against the respondent. (see *Sinumpaang Salaysay* [*Rollo*, OCA IPI No. 11-2399-MTJ, pp. 57-58]); the other OJTs, namely, Ms. Johaira O. Mababaya, Ms. Catherine L. Sarate and Mr. Eduardo M. Pangilinan III, executed a joint affidavit (*Id*. at p. 76) stating that they had only acted as assistant to court stenographer Mr. Froilan Robert L. Tomas during their court observation.

that the memorandum dated November 2, 2010 was not followed, and was not officially given because of the prohibition against OJTs in the courts;[99] that Ms. Angelica Rosali had acted only as an observer to comply with her school requirements, as an accommodation of the request of her (Judge Yu's) parents;[100] that her designation of Mr. Santos as an OIC did not violate CSC Memorandum No. 6-2005 because the position of OIC required trust and confidence;[101] that she did not order her staffmembers to sell and advertise her books;[102] that she had cited the counsels disrupting the court proceedings with contempt of court and had imposed the corresponding fines on them;[103] that there was recent jurisprudence allowing a trial to proceed even in the absence of the public prosecutor provided no prejudice was caused to the State;[104] that there was a need to verify the case records with respect to the allegations that she had allowed the prosecution of criminal cases in the absence of the public prosecutor because of the complainants' propensity to falsify documents; that the complainants were not the proper parties to raise any issues related to the criminal proceedings;[105] that there were provisions of the *Rules of Court* allowing the waiver of certain rights according to the agreement of the parties;[106]

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[99] *Rollo* (OCA IPI No. 11-2399-MTJ), p. 43; see also letter dated September 5, 2011 (*rollo* [OCA IPI No. 11-2399-MTJ], pp. 145-B-149).

[100] *Id*. at 44.

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

[102] *Id*. at 47-49.

[103] *Id*. at 49.

[104] *Rollo* (OCA IPI No. 11-2378-MTJ), p. 86; (A.M. No. 12-1-09-MeTC), p. 450. In her letter dated August 7, 2011 addressed to Court Administrator Marquez, ACA Bahia and Atty. Geronga, the respondent cited *People v. Malinao* (G.R. No. 63735, April 5, 1990, 184 SCRA 148) where the Court held that the absence of the public prosecutor at the trial was not prejudicial to the accused because the witness had only testified on the autopsy report without any objection being interposed by the appellant's counsel, and the Defense waived the public prosecutor's presence (*Rollo* [OCA IPI. No. 11-2378-MTJ], pp. 235-236).

[105] *Rollo* (OCA IPI No. 11-2399-MTJ), p. 50.

[106] *Id*.

and that the provision on reception of *ex parte* evidence is merely directory because of the word "may." [107]

As to the charge of oppression, Judge Yu countered that she had always been kind and generous towards her staffmembers;[108] that she did not humiliate Mr. Santos;[109] that she did not terrorize her staffmembers, although she had displayed her anger and displeasure whenever they committed irregularities;[110] that she had not sown intrigues against her staffmembers, but had constantly reminded them to refrain from committing any graft and corrupt practices;[111] that in the hearing of the case of *Fabra v. Global Classe*, she had only replied to the manifestation made by Atty. Agustin Javellana regarding the false and irresponsible acts of her court staffmembers;[112] that the alleged threat in relation to her licensed firearm was untrue; and that the entering of the incident in the police blotter was libelous.[113]

Judge Yu denied uttering statements against Court Administrator Marquez, and SC Auditor Calonia.[114] She said that as far as the resolution alluding to Judge Vito Cruz was concerned, the court minutes were falsified, as to which Ms. Soledad Bassig and the lawyers were co-conspirators; that she harbored no ill will towards Judge Vito-Cruz; that such statement was a rejoinder to the unfair comments of the defendants' lawyer;[115] that the statement "spoke of the truth" and was not,

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[107] *Rollo* (OCA IPI No. 11-2378-MTJ), p. 248.

[108] *Id*. at 80-81.

[109] *Rollo* (OCA IPI No. 11-2399-MTJ), p. 47; see Affidavit of Mr. Ferdinand Santos, at 74-75.

[110] *Rollo* (OCA IPI No. 11-2378-MTJ), p. 83; (A.M. No. 12-1-09-MeTC), p. 447.

[111] *Rollo* (OCA IPI No. 11-2399-MTJ), p. 49.

[112] *Id*. at 50.

[113] *Id*. at 54-56.

[114] *Rollo* (OCA IPI No. 11-2378-MTJ), pp. 85-86; (A.M. No. 12-1-09-MeTC), pp. 449-450; (OCA IPI No. 11-2399-MTJ), pp. 51-53.

[115] *Rollo* OCA IPI No. 11-2378-MTJ), pp. 86-87; (A.M. No. 12-1-09-MeTC), pp. 450-451.

therefore, defamatory;[116] that in not furnishing to her the memorandum regarding the resolution prior to filing the administrative complaint, Executive Judge Colasito had deprived her of the opportunity to amend the same "just to suit their whims, caprices and fancies;" and that the filing of the administrative complaint against her had been done treacherously.[117]

OCA IPI No. 12-2456-MTJ
(Judge Bibiano G. Colasito, et al., all of the Metropolitan Trial Court [MeTC] Pasay City v. Judge Eliza B. Yu, MeTC, Branch 47, Pasay City)

This administrative matter concerned the letter dated January 12, 2012[118] signed by MeTC Executive Judge Colasito, Vice-Executive Judge Bonifacio S. Pascua, Judge Restituto V. Mangalindan, Jr., and Clerk of Court Miguel C. Infante charging Judge Yu with oppression in issuing the order dated December 1, 2011[119] in Criminal Case No. M-PSY-09-08592-CR entitled *People v. Ramil Fuentes, et al., viz.*:

> The stenographer in this case Romer Aviles is directed to make and attach the transcript of stenographic notes (TSN) dated September 7, 2011 within ten (10) days from receipt of this order copy furnished to Court Administrator Jose Midas P. Marquez and Assistant Court Administrator Thelma C. Bahia by the process server Maxima Sayo with corresponding return and proof of service and to surrender the tape containing the recorded proceedings on said date to the Officer-in-Charge Ferdinand Santos. Failure to comply with this will compel this Court to issue show cause for contempt of court against the responsible stenographer. Moreover, **he and Executive Judge Bibiano Colasito, et al. who are signatories in the false and malicious complaint under OCA IPI No. 11-2378-MTJ alleging gross ignorance of the law of this Court by surreptitiously taking a TSN, minutes and order dated March 22, 2011 of this case on**

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[116] *Id.* at 251.

[117] *Id.* at 253.

[118] *Rollo* (OCA IPI No. 12-2456-MTJ), p. 1.

[119] *Rollo* (OCA IPI No. 12-2456-MTJ), p. 2.

the absence of public prosecutor, when a trial can proceed without public prosecutor is allowed under our existing jurisprudence is directed to explain within seventy-two (72) hours from the receipt of this order why they should not be cited in contempt of court under Rule 71, Section 3(a) and (d) of the Revised Rules of Court. Process server Maxima Sayo is directed to personally serve copies of this order to Executive Judge Bibiano Colasito et al., with corresponding return.

Tentatively set the contempt proceedings February 15, 2012 at 8:30 a.m.

SO ORDERED. (Bold emphasis supplied)

To avert a crisis and disharmony in the Pasay City MeTCs, the Court suspended Judge Yu from office effective February 1, 2012.[120]

In her comment, Judge Yu maintains that she validly issued the subject order by virtue of the inherent contempt powers of the court,[121] and in accordance with the rulings in *People v. Godoy* and *Salcedo v. Hernandez*;[122] that the complainants should have availed of the appropriate relief in questioning the order instead of filing the administrative complaint; and that the OCA could not rule on the propriety of issuing the subject order because doing so was beyond the OCA's power and prerogative.[123]

OCA IPI No. 11-2398-MTJ
(Josefina G. Labid v. Judge Eliza B. Yu)

This administrative matter stemmed from the complaint filed by Mrs. Josefina G. Labid charging Judge Yu with oppression, gross ignorance of the law, and conduct unbecoming of a judge in connection with the fate of her son, Noel, who had served as Utility Worker I at the MeTC Branch 47.[124]

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[120] *Rollo* (A.M. No. 12-1-09-MeTC), p. 410.

[121] *Rollo* (OCA IPI No. 12-2456-MTJ), p. 4.

[122] *Id*. at 14-16.

[123] *Id*.

[124] *Rollo* (OCA IPI No. 11-2398-MTJ), pp. 1-5.

Mrs. Labid narrated that in January 2011, Noel had been diagnosed with "Cancer of the floor of the mouth, Stage IV-A"; that Noel had then applied for leave of absence covering the period of his treatment from January 2011 until March 2011, which Judge Yu had approved without any incident;[125] that being the sole breadwinner of the family, Noel had reported to work on April 4, 2011 against his doctor's advice; that she (Mrs. Labid) had started noticing that Noel would appear exhausted and weak upon arriving home from work; that Noel had confided to her that Judge Yu had directed him to go to different offices in the Supreme Court to deliver copies of her orders and letters, as well as her books or manuals, despite his medical condition;[126] that shortly after arriving home from work on June 7, 2011, Noel had become delirious and weak due to profuse bleeding in the mouth; that on the following day, she had gone to Branch 47 to inform the staff that Noel would not be reporting to work; that she had then learned that Noel had moved a heavy table inside the office upon the instructions of Judge Yu;[127] that Noel had reported back to work on June 10, 2011, but his bleeding had recurred and he had been constantly brought to the hospital since then;[128] that on June 28, 2011, she had submitted Noel's applications for leave at Judge Yu's office covering the periods of June 8 and 9, 2011,[129] and of June 13-30, 2011;[130] that she had returned on July 5, 2011 to the sala of Judge Yu, and had then learned that the latter had not signed Noel's application; that she was then told by Court Stenographer Roman Aviles to see and talk with Judge Yu; that she had met with Judge Yu in her chambers, and during their conversation, Judge Yu had allegedly remarked:

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[125] *Id*. at 1.

[126] *Id*.

[127] *Id*. at 2.

[128] *Id*.

[129] *Id*. at 26.

[130] *Id*. at 25.

Mabait naman ako sa anak mo. Pag-inuutusan ko siya binibigyan ko pa siya ng pera, siguro aabot ng ₱15,000.00 sa isang taon ang maibibigay ko sa kanya. Pero bakit pumirma siya sa petition na nagsasabi na bobo ako at corrupt? x x x halata pa na dinagdag lang sila ni Emma Sayo kasi di nakatype ang pangalan nila. Kung ganoon ang tingin nila sa akin, bakit di na lang sila magresign?[131]

that Judge Yu had replied that Noel would be in a better position to address her (Mrs. Labid) concern; that she had begged Judge Yu to sign her son's application for leave, explaining that she had to submit the document before the deadline in order to claim monetary aid from the Supreme Court Health and Welfare Fund; that instead of signing, Judge Yu had left her inside the chambers, and had given instructions to Mr. Santos; that upon her return, Judge Yu had advised that Noel should first submit a medical clearance before she would sign the application for leave; and that she had then appealed to Judge Yu by leaving a handwritten letter requesting the approval on Noel's application.[132]

Mrs. Labid recalled that she had returned the following day to again plead with Judge Yu, but Mr. Santos had prevented her from seeing Judge Yu and had instead handed her a memorandum for her son that reads as follows:

Dear Mr. Labid,

You have been consistently absent in this court due to sickness. As per record, your absences with leave due to treatment of cancer in the court are as follows: for the whole months of February 2011 and March 2011, you also incur several days absences for April and May 2011 while for the months of June, 2011 you incur 15 days absent (June 8, 9, 13, 14, 15, 16, 17, 21, 22, 23, 24, 27, 28, 29, 30, 2011). Being a government (public servant) employee, you are not suppose to be always absent from your work and if the absences are due to sickness, you must submit original copy of medical certificate. Your continued absence in your work affects the performance of this Court that affects also the performance of your co-employees. As per Civil Service Commission ruling; as a general rule, an employee

[131] *Id.* at 2.

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

whose continued absence from his work due to his lingering illness, the Department Head, if he sees to it that the performance of his office is much affected because of the continued absence of such the employee, the Department Head in his own discretion, may ask his superior for a replacement of such employee – thus the affected employee may file for permanent disability or terminal leave.

In view of the above matters, you are required to submit the following documents: Certificate of Fitness to Work (if not contagious), Duration of Recovery (from illness) and Certificate of discharge from the hospital (June 17 and 24, 2011) prior to the approval of your leave of absences for the months of June, 2011.

(sgd)
Ferdinand A. Santos
Officer-in-charge[133]

Mrs. Labid believed that Judge Yu had dictated the contents of the memorandum to Mr. Santos after their previous conversation; and that Judge Yu's unjustified refusal to sign Noel's application for leave had been motivated by malice and ill-will, arising from the administrative complaint against her that Noel had signed and joined. She mentioned that her son had later on died on August 15, 2011.[134]

In her comment,[135] Judge Yu denied the imputations of Mrs. Labid. She justified her denial of Noel's application for leave by citing in her undated and unsigned Memorandum[136] the ruling in A.M. No. 2004-41-SC (January 13, 2005) entitled *Re: Memorandum Report of Atty. Thelma C. Bahia against Ms. Dorothy Salgado*. She maintained that Mrs. Labid had not submitted the documents she had required.[137] She denied having received any handwritten letter from Mrs. Labid; and having known of Noel's condition. She insisted that Noel had volunteered to lift the table as part of his job as a utility worker.[138]

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[133] *Id.* at 17.

[134] *Id.* at 28.

[135] *Id.* at 30.

[136] *Id*. at 43-47.

[137] *Id*. at 45.

[138] *Id*. at 46.

A.M. No. MTJ-13-1821
(Hon. Emily L. San Gaspar v. Hon. Eliza B. Yu)

This administrative matter emanated from the Letter-Complaint of Judge Emily L. San Gaspar-Gito of MeTC Branch 20,[139] whereby the latter imputed to Judge Yu conduct unbecoming of a judge for constantly sending alarming messages with sexual undertones via Facebook and electronic mail.

Judge San Gaspar-Gito and Judge Yu became acquainted in May 2009 when the latter was the public prosecutor pinch hitting at the MeTC Branch 20 in Manila where the former presided as Judge. They became Facebook friends upon Judge Yu's initiative, and Judge San Gaspar-Gito accepted her request as a matter of courtesy.[140] Judge San Gaspar-Gito claimed that Judge Yu normally sent long messages that she had ignored most of the time.[141] On August 30, 2009, Judge San Gaspar-Gito received in her Yahoo account a peculiar message from Judge Yu, as follows:

NATIONAL HEROES DAY'S THANK YOU Sunday, August 30, 2009 6:02 PM

From: "ELIZA YU" <astrobench@yahoo.com>
To: emily_san_gaspar@yahoo.com
1 File (82KB)

Hon, thank you for your MEAL STUB ... when and where can I claim it? take care & love you.[142]

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[139] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, pp. 4-6.

[140] *Rollo* (A.M. No. MTJ-13-1821), Vol. II, TSN dated August 29, 2013, pp. 663-666.

[141] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, p. 4.

[142] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, Annex "A" of Letter of Mr.

Judge Yu sent another message to Judge San Gaspar-Gito's Facebook account with the subject *Meal Stub*, to wit:

August 31, 2009

Eliza B. Yu 9:20am
MEAL STUB

dear ems, i sent your meal stub at your yahoo account to honor you this national heroes day. **it's good you gave me an idea of your preferred sexual position, there's no need to study that 69, you'll get it from me spontaneously** … that's easy, pulled down your underwear, and eat what's in between your thighs … but you have to pay me $10 first … He He He! take care and see you later…[143] (Bold emphasis supplied)

The message contained an attachment similar to the image of a man and a woman juxtaposed in a 69 position appearing in the previous Yahoo message.[144] Judge San Gaspar-Gito ignored both communications, but Judge Yu continued sending more puzzling messages to the complainant's Facebook account, *viz.*:

September 1, 2009

Eliza B. Yu 11:21pm
YOUR MEAL STUB …

giving me FEVER honey … YOU ARE KEEPING ME WIDE AWAKE. I need a bath no not a bath … I need a sex therapist He He He

BLOWN KISS?? I haven't claim yet my meal stub now you are sending me a blown kiss … why don't you send me your cell no. asap so we can practice your fave 69?

Alexander M. Arevalo, Acting Chief of the SC Management Information Systems Office (MISO) dated May 27, 2013, p. 367.

[143] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, Annex "D" of Letter of Mr. Arevalo dated May 27, 2013, p. 533.

[144] *Id*.

September 2, 2009

Eliza B. Yu
PRO LOVE (No Jokening Here) 7:43am

YES TO LOVE NO TO LUST!!
Why naman you are heating me up out of
your hundreds FB friends?
HHHmmm … don't fall in love online kasi you
are not supposed to kiss, kiss a pc monitor … He He He
No dialogues from you lately, are we in a silent "titillating" movie?
Wala ba tayong rehearsals dito? FAMAS award na rin ba tayo?
Buti na lang magaan loob ko sa iyo,
SOUL MATES tayo. Isasauli ko na ang meal stub mo…wala naman nakalagay when and
where to claim, wala ring cell phone no. mo (siguro trip mo lang mag send ng lewd pic kasi photographer ka in your past life, lewd photographer … He He He).
Dami kong tanong sa iyo, pero impersonal kasi ang
computer kaya wala na akong masyadong tanong online … maliban sa ano na ba civil status mo, MAINIT KA MASYADO?? Yung photo profile mo, di na "cute little devil" … ikaw ay "red hot and horny"[145] na … tandaan mo honey NO TO CYBERSEX! NO TO PHONE SEX! PAY ME $10 FIRST BEFORE 69 (prone to HIV AIDS na sexual position ang 69 kaya sa swimming pool yan ginagawa). Take care and see you later.

September 4, 2009

Eliza B. Yu 9:24pm
2 VISITS

hey ems, i really miss you, so i plan to visit you at your chamber this sept. 1 and 21. are you available at these dates?? pls. reply. take care and see you later.

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[145] Judge San Gaspar-Gito stated that the "cute little devil" being referred to was a photo of her son in a red devil suit, while she was the one alluded to as red, hot and horny as she was wearing a red blouse in a family photo (TSN dated August 29, 2013, *rollo* [A.M. No. MTJ-13-1821], Vol. II, pp. 690-691.

Eliza B. Yu 9:47pm

hey, wish me good luck for my report tom at justice rene corona's class, it's a "MIXED NUTS" feelings to have a future chief justice as an audience (he's a "terrorist" … he he he … but he did not give me a HIGH FEVER unlike you! ha ha ha!) pls. tell me what time you will be at your chamber this sept. 7 and 21 so i can visit you? PREPARE THE $10. x's and o's.[146]

Confounded, Judge San Gaspar-Gito finally confronted Judge Yu on the messages. Instead of giving a direct reply, Judge Yu continued sending puzzling messages. Their exchanges ran as follows:

_____September 6, 2009_____

Eliza B. Yu 10:41 a.m.
CLUELESS INQUIRER
hey what's that meal stub and 69, got no idea about it? Does my fb send something to everyone? Am i in a game? huh, m wondering!

Eliza B. Yu 10:44am
A TRIBUTE TO ELVIS PRESLEY
Wise Men say
only fools rush in
but I cant help
falling in love with you

Shall I stay
would it be a sin
if I can't help falling in love with you…

Like a river flows, surely to the sea
Darlin so it goes, somethings are meant to be..
Take my hand, take my whole life too
for I can't help fallin in love with you…

Like a river flows, surely to the sea
Darlin so it goes, somethings are meant to be..

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[146] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, Annex "D" of Letter of Mr. Arevalo dated May 27, 2013, p. 534.

Take my hand take my whole life too for I can't help falling in love with you

for I cant help falling in love with…. You.

x x x x x x x x x x x x

_____September 12, 2009_____

Eliza B. Yu 7:07am
MOVIES

hey since you are a movie buff, watch "BROKEBACK MOUNTAIN," you will enjoy the sex between 2 cowboys in a tent. The 1st sex was made out of lust while the 2nd sex was made out of love! In the movie, the "measure of love was not jealousy but sacrifice."

_____September 14, 2009_____

Eliza B. Yu 8:43am
l'Hymne A l'Amour

Hey, after watching "Brokeback Mountain," I recommend you to watch "When Night Is Falling," there was a sizzling (red hot) sex between a university literature professor at a religious college and a free-spirited circus performer inside a tent, too just like "Brokeback Mountain." Certainly, you will enjoy "When Night Is Falling" more than "Brokeback Mountain" because you liked Edith Piaf's "l'Hymne A l'Amour."

x x x x x x x x x x x x

_____September 17, 2009_____

Eliza B. Yu 7:23pm
MOVIE AGAIN

Star Cinema's "In My Life," the ABS-CBN Movie outfit's grandest film offering for 2009, earned a record ₱20 million in ticket sales on its first day of screening. I don't recommend you and Owen this move (but Gener, Tiya and Yaya would enjoy watching this together … He He He) TAKE CARE!

_____September 18, 2009_____

x x x x x x x x x x x x

Eliza B. Yu 7:00am
Some Kind

honey i'm some kind of sloth at home and enjoy much freedom, and i miss you, tsup! tsup! tsup! take care always. see you later!

_____September 18, 2009_____

Emily San Gaspar 11:18pm

I think i would be watching in my life, have you watched it? Is it nice?

_____September 19, 2009_____

x x x x x x x x x x x x

Eliza B. Yu 4:07pm
IN MY LIFE

hey fb sweetie, ems not that i don't want to accompany you in a movie house, it's just that you succeeded heating me up with that 69 meal stub, it will be dangerous … to watch this in my life movie together, i may go down on you in a movie house ~ that would be highly scandalous … I will give you a dvd /vcd of it, I will go to video shops for it tomorrow (whether you have watched it or not, even I did not recommend it to you) … i am trying to shrug off a fuzzy, groovy feeling with you, OH NO! anyways, take care, take care, take care, i knew you have convention next week. if you are interested to join with us at GUMBO resto next week, just say so (dean froilan is a great guy, and a genius, interesting to meet him, this i recommend to you). Oh, i still have to give you complimentary copies of my articles published in the lawyers review. you gotta wait, i keep my promises. see you later . x's and o's for you. p.s. movie watching is not my ideal activity with you (it's at the bottom of the list, i rather watch you than tagalog movies).[147]

Judge San Gaspar-Gito decided to deactivate her Facebook account. Yet, the deactivation did not deter Judge Yu from sending messages to Judge San Gaspar-Gito's Yahoo account to express her disagreement over the Facebook deactivation, thus:

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[147] *Id*. at 535-537.

[No Subject] Friday, September 25, 2009 6:14PM

From: "ELIZA YU" ,luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com

Dear Emily, what happened to your FB account?
I told you to rest, I understand that it's so tiring
after travelling, our bodies crave sleep!
If I have your mobile no., I could have flown there
and joined you. Still, I believe there is plenty of time
ahead of us. Anyway, I did not mean you stay away
from Facebook or me… COME ON, tell me, you are joking
giving up Facebook … you have over 190 friends, they will
MISS you. You have my no. still (09175217828), you can contact me,
you should contact me, I am not running away from you, rain or shine.
I will stay even I am a problem. Take care always.
Talk and see you later. Of course, God bless us.[148]

Facebook Monday, September 28, 2009 5:45PM

From: "ELIZA YU" <luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com

Dear Emily, I raised the issue
before, about 4 months ago, about your
membership in Facebook, your
answer was acceptable …

Your declaration about consensus
in the convention seems to be an
after-thought, logic rejects it
as plausible. But I BELIEVE you.
There is no reason not to TRUST you.
I also understand the consensus.

Because you seemed HAPPY connecting
to your friends particularly those very
far in FB, it's not a smart choice to sacrifice
your happiness at the expense of consensus.
Also, there are ways to circumvent
the consensus' prohibition. You can change your
name to your nickname, and remove traces that
will link it to your work. You blended your
work with your personal life in FB,

[148] *Rollo* (A.M. No. MTJ-13-1821), Vol. I , Annex "B" of Letter of Mr. Arevalo dated May 27, 2013, p. 443.

of course your work's nature extend to your
personal life, the price you pay, not because of
the demand of your work, it's the price for your
your idealism with your work. It's up to
you what perspective you take, you
are intelligent, you ought to choose the best
option. Your FB speaks a lot about you.
You may not talk much about yourself in mails
but by reading your posts and looking at
your photos, you give clues of yourself,
you leave lots of fingerprints online.
Deactivating it is not the best option,
For now…

By the way, our office told me, I cannot
troubleshoot in your court, because you
have two prosecutors already – NO ROOM FOR ME
THERE. I told the staff to call you up about this.
I promised to troubleshoot next month, which
is not possible to happen. I learned that your
court was flooded, I was at home when notified,
I failed to help you clean up the mess. That's why,
there is the importance of mobile connection.
Besides, I will only call you if I have your cell no.
not text you. Anyway, take care always.
God bless you.[149]

PS Monday, September 28, 2009 6:06PM

From: "ELIZA YU" <luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com

ems, don't be like
MeTC magistrate (one of
Your judges pals according to your FB posting) who
permanently dismissed a case on the ground of
speedy trial when accused
jumped bail.

When there was a MR by
the prosecutor, it was

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[149] *Id*. at 446-447.

granted on the basis of
substantive justice.

Of course, there was double jeopardy
already, the MR was granted
correctly. And the pemanent (sic)
dismissal was wrong.

You are intelligent, you
finished your law schooling at
24 years old ranked 5th in your
class … DO NOT DE-ACTIVATE
YOUR FACEBOOK FOR MORE THAN
3 MONTHS.
Talk and see you later.[150]

Oh God, I Forgot... Monday, September 28, 2009 8:47PM

From: "ELIZA YU" <luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com

Tsup! Honey, next time you re-activate your FB,
pls. change your…
PHOTO PROFILE
DELETE:
Your Status, Birthday,
School, Work,
and all your PHOTOS.
it's OK to be wild online …
Be cautious and prudent.
Take care always.

Couple of weeks, I will be very busy will [sic] school
papers due to ending sem and
my second wind, will re-lobby
for my promotion.
Sept 30, I have lunch with …
Oct 1, I have dinner with …
Oct 2, I have appointment with …

[150] *Id*. at 448.

Oct 3, I have my last report
I have dinner at Gumbo for Dean's birthday
Oct 5, I have lunch at Aristocrat
Oct 6, I have cocktail at Manila Hotel
Oct 7, I have appointment at Ajinomoto
Oct 8, I will meet …
Oct 9, I will meet another …

I am regular troubleshooter, too.
I will see you later. Of course, I miss you.
God bless. MWAH! tsup …[151]

A month after sending the *meal stub* message, Judge Yu apologized for said message, to wit:

I AM SO SORRY... Saturday, October 3, 2009 6:22AM

From: "ELIZA YU" <luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com

Hello there Emily, I found out that Facebook sent unauthorized gifts (lewd ones) to its account subscribers, I asked my classmates if they sent this and that gift applications and they said no.

I am so sorry for my nonsense replies to that 69 gift application I received from your Facebook account (which you wondered).
Now, I believe it was not you who sent it to me.
I could have been a Facebook computer system error or maybe a Facebook prank hacker.

I deleted all your emails. I hope you will delete my emails to you also including this email for peace of mind and as a safety measure.
OH FORGET ALL MY EMAILS TO YOU SINCE JUNE AFTER READING & RIDDING THIS APOLOGY EMAIL. Deal??
This is our MOA.

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[151] *Id.* at 449.

It's a good choice to deactivate your Facebook
account – it will bring you good harm.
Sometimes, you have to convince yourself
that your status has changed a lot, you change friends,
you change status, change lifestyle and
… leave Facebook.

I cannot deactivate my Facebook account,
it was Dean Froilan Bacungan who invited me to
join. I created my Facebook account for him.
Thank you. Take care always.
God bless you.

I'M SO SORRY AGAIN … I gave you lots
of trashes online. Anyway, emails are easy to delete.[152]

Judge Yu subsequently sent an e-mail with a subject that read: "CONGRATS 4 UR ELECTION AS P.R.O. CDO METC NATIONAL CONVENTION, W/ MORE REASON 2 DELETE MY EMAILS 2 U. TY. GOD BLESS," but without an accompanying message.[153]

A few weeks later, Judge Yu confronted Judge San Gaspar-Gito regarding the reactivation of her Facebook account in the following manner:

CHILL OUT friday, October 23, 2009 2:13AM

From: "ELIZA YU" <luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com
Hey Milay, I have a trouble shooting assignment
this coming Monday (October 26) in MeTc Branch 23,
I will pass by your court for sure,
I will drop by, unless I'm in a bad mood
like you today! Chill out … it's basic, when the answer
to the question is obvious – DO NOT ANSWER!
Why did you re-activate your Facebook account?
Oh No, you gave a wrong answer!

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[152] *Id*. at 450.

[153] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, Annex "A" of Letter of Mr. Arevalo dated May 27, 2013, p. 451.

As expected, you are an Oscar awardee, remember?
Hhhmmm… lots of Oscar trophies you quite
collected at Facebook (He He He).
Nobody can prohibit you in the
exercise of your POLICE POWER in the
Facebook – that's the force of lust (He He He).
Your little siesta wants your photos?

Of course not, you look prettier in person
than in photos. I don't think your
prettiest photo can substitute the real you,
you are so warm in person.
Take care always.[154]

Judge San Gaspar-Gito was prompted to explain that her sister had used her Facebook account,[155] but Judge Yu apparently disbelieved the explanation and retorted instead:

Be Right back Friday, October 23, 2009 10:42PM

From: "ELIZA YU" <luvs2smile2@msn.com>
To: emily_san_gaspar@yahoo.com

Hello there Ems, the sister act explanation was cool! I'm sure it will be accepted by your MeTCJAP in case it found out you still maintain a Facebook account notwithstanding its express prohibition. Congrats, you seemed to be a member of the "palusot."com! (He He He)

What is the name of your sister? You mean having same parents? Affinity? Sorority? Job-related? Religious Organization? I thought you were the youngest child. Did I hear it right, you said while I was looking at your gold medal on the wall, you have 5 siblings? Going back to your sister, why would she do that? First, isn't she confident enough to be herself online? Second, she is unaware that it will put you in harm by feigning to be you? Third, did you not warn her? Fourth, Why did you tolerate her? You could have changed your password anytime so she cannot have an access.

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[154] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, Annex "B" of Letter of Mr. Arevalo dated May 27, 2013, p. 461.

[155] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, Annex "A" of Letter of Mr. Arevalo dated May 27, 2013, p. 389.

I thought it was definitely a rude answer (@ yahoo) as to why you re-activated you Facebook account? Only, I cannot judge you or anyone online, it's not my task to do so. As I said before, it is OK to be wild, wild, wild online.

Actually, your FB account was checking my FB account at those times you de-activated it. I laughed at you… oh no, not you… now, your sister for it. Still, it was the reason for my writing of "daily activity" entries at FB – that I was doing OK – after you went "PUFF" at FB, without saying any goodbye. Of course, I may deserve it, you may expect something, I failed to write, like a visit perhaps. But you did not give me your mobile no. so no seeing, only reading mails. Hhhmmm… so your sister got my mobile no. also. It's so cool! There is a possibility, it was your sister, I talked to online or did those stuff which I believed it was you from June to October. Well, then, I should meet your sister! Is she living with your popsie? What is the name your father? Let us then visit them.

Anyway, I have to go, I will visit the Franciscan missionary after this. I will donate biscuits and fruit juices for the abandoned children. I have a favourite cousin, with an awesome academic credentials and very pretty, who is a miraculous real, real in flesh, real in her words and deed, a sister belonging to the Franciscan missionary. She was assigned in Italy for almost 10 years as a nun, and she can read, write, Italian. I have to buy her a cake, it's her birthday today. Doesn't Italy means an abbreviation of I Trust And Love You?

I will talk to you later. I will drop by at your court on October 26, for sure am to pass by in going or coming from MeTc Branch 23, my first time to go there. I'm so accessible, so simple. It was you, or it was your sister, should I say, that make things complicated. The article, "A Tribute to a Great Mentor," it was your sister who wrote it? Well, Justice Angelina Sandoval – Gutierrez is her ideal woman. A tall order. Oh no, no need to tell me the orientation or preference of the author of the article by mere reading of it. Take care always. God bless you always. Be right back.[156]

The following day, Judge Yu sent another lengthy message apologizing for her previous actions.[157] But to add more

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[156] *Rollo* (A.M. No. MTJ-13-1821) Vol. I, Annex "B" of Letter of Mr. Arevalo dated May 27, 2013, p. 463.

[157] *Rollo* (A.M. No. MTJ-13-1821) Vol. I , Annex "D" of Letter of Mr. Arevalo dated May 27, 2013, pp. 503-504.

confusion, Judge Yu sent a message on November 17, 2009 containing a La Paz Bachoy recipe, but with a notation at the end reading: *we shall claim the 69 meal stub in a dirty kitchen*.[158]

Aside from attributing to Judge Yu the sending of messages containing sexual innuendos, Judge San Gaspar-Gito accused her of creating a fake Facebook account under the name "Rudela San Gaspar." That account contained captured photographs, including that of the complainant's son allegedly taken from her deactivated account. Judge San Gaspar-Gito confronted Judge Yu and threatened to initiate an administrative complaint. This threat prompted the respondent to take down the fake account.[159]

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[158] *Id*. at 468-469.

[159] The March 19, 2010 email message of Judge San Gaspar-Gito reads:

> Re: hello there … Thursday, March 18, 2010 7:46 PM
> From: "emily san gaspar" <emily_san_gaspar@yahoo.com>
> To: "Bambi Yu" <astrobench@yahoo.com>
>
> Elisa, a cousin of mine informed me that someone has created an account in my name, changing the same to "Rudela San Gaspar." When he traced the link re: the captured photo of my son and the other photos, the same was traceable from you. I looked into it and I am sure you are indeed the culprit. The details you originally placed in the Profile were matters that have been the subject of our earlier discussions. Even the photos you attached were the ones you captured from my previous Account, as what you have e-mailed me once.
>
> I consider you as a friend but I cannot tolerate such childish act. We are both judges and, on many occasions you have shown your idiosyncratic tendencies. I tried to be civil with you but what you have done is really the height of indecency. Faking a profile or misrepresenting someone in the Internet to enter into somebody else's private domain is conduct unbecoming of a judge. I compiled all the e-mails you sent to me through my Facebook Account. Those reflect how disturbed and unstable you are. If you do not stop on pestering me and my family I will forward all those e-mails to the Supreme Court in the form of a complaint and, to your parents and siblings as well, so that you may be taught a lesson on decency, civility, morality and good conduct. (*Rollo*, [A.M. No. MTJ-13-1821] Annex "A", Letter of Mr. Alexander M. Arevalo, Acting Chief of the SC Management Information Systems Office (MISO) dated May 27, 2013, p. 415).

The complainant also received a message on April 2, 2010 with an attached image of a boy holding a pair of scissors,[160] and a sign reading *Full Brazillian 5¢*.[161]

The last straw came on July 4, 2010 when Judge San Gaspar-Gito received a message from her friend, Juliet Tabanao-Galicinao, informing her that a certain Bambi Yu had inquired about her sexual orientation, *viz*.:

Juliet Tabanao-Galicinao July 4 at 12:15am
(no subject)

Milay:

Some crazy woman e-mailed me. Her name is bambi yu. I accepted her on Facebook because she told me you were friends. Then last Friday, she sent me a weird message asking if you were bisexual. I promptly answered her and after that, I deleted her from my facebook list, as well as any common friends we might have. I am telling you this so you will be warned that there are envious people like this. I am copying here the contents of our exchange for your own records.

as follows:

bambi yu:

I read your post about judge of the year award to Milay today. I was about to comment but your post disappeared. She wrote me months ago that she closed her Facebook account because it became a Pandora's box. I'm curious, is she an AC DC?? (I am actually laughing) You are listed as among her best friends, you must be competent to answer this inquiry. Rest assured that this is highly confidential. Thanks. God bless. .

Juliet Tabanao-Galicinao July 2 at 8:19am what is an AC DC?

Bambie Yu July 2 at 3:48pm Report

AC DC is non-offensive slang for bisexual. Is she a bisexual? Thanks for replying. Judges have limited correspondence here at FB. .

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[160] *Rollo* (A.M. No. MTJ-13-1821), Vol. I , Annex "A" of Letter of Mr. Arevalo dated May 27, 2013, p. 430.

[161] *Id*. at 431.

Juliet Tabanao-Galicinao July 2 at 8:45pm

Hi! Emily is definitely not bisexual. We have been friends and roomates in school for ages and I can honestly say she is straight. She is also very happily married with one kid. I am not saying this because we are friends. I am just stating a fact. I am not offended though. Glad I was able to correct a mistake. What made you think so? (just wondering)

Bambie Yu July 3 at 5:48am Report

What made me think Milay is an AC DC? It does not matter. While I thank you for your honest to goodness answer, and I would like to return the favor by answering your question but judges have restrictions and limited correspondence online. Judges are expected to be courteous to fellow judges. I promised not to speak or write anything about Emily that would put her in bad light. I honor my promises. She has high aspirations in the judiciary which we should support. Besides, we are enemies for judicial excellence awards. You can ask her directly the question please. She is the only one who can answer it correctly. My lips are sealed this time. Have a nice day. Thank you. God bless!

Bambie Yu July 3 at 6:04am Report

PS: Just to take advantage of your generosity, because Emily broke her vow not to open her Facebook account which she claimed to be Pandora's box, can you do me a little favor, to ask her to delete all my emails? She told me she kept all my old emails despite my instruction to delete them after reading. Our emails contained gossips which will lead to our disbarment as honorable members of the bar. Thus, I was anxious to learn from your post that hinted she opened up her Facebook account again yesterday, this meant she broke a vow. My emails may still be there, and I have waited for her assurance that she have deleted all. I did not receive any such assurance from her that my emails are gone except that she closed her FB account. I was relieved with that closed FB account until yesterday. I kept writing her before to delete my emails. She does not reply. Anyway, I am not going to speak anything bad against her. I would be glad if I will get an assurance from you, as her bestfriend, that she already deleted the emails. We are not speaking to each other because we have a huge misunderstanding and, I said earlier, we are enemies,

mortal enemies for the judicial excellence award. Thank you again & good day.[162]

Judge San Gaspar-Gito formally filed the present administrative complaint on July 12, 2010.[163]

Judge Yu submitted her comment by way of a compliance dated October 12, 2010,[164] and attached her own complaint-affidavit charging Judge San Gaspar-Gito with conduct unbecoming of a judge, and requesting the OCA to conduct a discreet investigation on the complaint.[165] She manifested that she had come upon two versions of Judge San Gaspar-Gito's complaint.[166]

The following day, Judge Yu wrote to the OCA expressing her dissatisfaction over the investigation being conducted by the OCA.[167]

On October 22, 2010 Judge Yu submitted a supplemental manifestation arguing that Judge San Gaspar-Gito did not only violate the *Code of Judicial Ethics*, the *Civil Code* and the *Revised Penal Code*, but also Republic Act No. 8792, specifically Section 32[168] on confidentiality of electronic messages. She described the complaint letters as poison letters, and denied all the material averments stated therein.[169]

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[162] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, pp. 102-103; see also Affidavit of Juliet Tabanao-Galicnao, *Rollo* (A.M. No. MTJ-13-1821), Vol. I, pp. 99-101.

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

[164] *Id*. at 27.

[165] *Id*. at 28-32.

[166] *Id*.

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

[168] Section 32. Obligation of Confidentiality. — Except for the purposes authorized under this Act, any person who obtained access to any electronic key, electronic data message or electronic document, book, register, correspondence, information, or other material pursuant to any powers conferred under this Act, shall not convey to or share the same with any other person.

[169] *Rollo* (A.M. No. MTJ-13-1821), Vol. II, p. 242.

Judge San Gaspar-Gito submitted her reply.[170]

Judge Yu wrote the OCA on March 18, 2011 formally withdrawing her complaint against Judge San Gaspar-Gito.[171]

On July 22, 2011, Judge Yu sent a letter to Judge San Gaspar-Gito's brother, Atty. Reynaldo L. San Gaspar,[172] to wit:

REPUBLIC OF THE PHILIPPINES
National Capital Judicial Region
METROPOLITAN TRIAL COURT
Branch 47, Pasay City
Tel. No. 831-1109

July 22, 2011

Atty. Reynaldo L. San Gaspar
No. 154 P. Talavera St.,
Pakil, 4017, Laguna

Dear Atty. San Gaspar:

Our court is inviting you for a brief conference in our court on August 5, 2011 around 1:00 p.m. to 4:00 p.m. or any available and convenient time and place for you, to clarify matters pertaining to the two (2) letters both dated July 12, 2010 of your sister Judge Emily L. San Gaspar-Gito. She can come with you if she wants to.

Your cooperation is highly appreciated.

Thank you.

Very truly yours,

(sgd.)
Judge Eliza B. Yu

Copy furnished:
Judge Emily L. San Gaspar-Gito
Metropolitan Trial Court Branch 20, Manila

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[170] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, pp. 52-97.

[171] *Id.* at 256.

[172] *Id.* at 353.

In the meantime, the Court referred the matter to the Court of Appeals (CA),[173] and directed Judge San Gaspar-Gito to allow the Chief of the Management Information System Office (MISO) to gain access to her Facebook and Yahoo accounts.

Pursuant to the Court's directive, the MISO accessed the Yahoo and Facebook accounts of Judge San Gaspar-Gito. Later on, Mr. Alexander M. Arevalo, the Acting Chief of the MISO, submitted his report,[174] attaching and certifying to the messages/communications extracted from the Yahoo and Facebook accounts of Judge San Gaspar-Gito.[175]

In her memorandum,[176] Judge Yu accused Judge San Gaspar-Gito with dishonesty and violation of the right to privacy.[177] She insisted on her innocence, claiming that Judge San Gaspar-Gito had sent her the meal stub with the attached image; that based on her research, the image was a photo engraving by Felicien Rops for *Le Diable au Corps* in 1865,[178] which should be treated as an artwork rather than as pornography;[179] that she had treated the message as a joke, but Judge San Gaspar-Gito would continually send similar graphics through the Facebook gift section everytime she would ask her to troubleshoot in her sala;[180] that she did not send some of the messages to Judge San Gaspar-Gito whom she knew to be very much married;[181] that she had become alarmed upon learning that Judge San Gaspar-Gito had repeatedly read her messages, and had treated the same as "treasures" that she had refused to delete;[182] and

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[173] *Id.* at 272-274.

[174] *Id*. at 358-538.

[175] *Id*. at 362-538.

[176] *Rollo* (A.M. No. MTJ-13-1821), Vol. II, pp. 124-202.

[177] *Id*. at 127.

[178] *Id*. at 128.

[179] *Id*. at 138.

[180] *Id*. at 129.

[181] *Id*. at 129-130.

[182] *Id*. at 130.

that her messages were intended to be "double entendres" and should not be considered as having any sexual connotations but instead as having been innocently uttered.[183]

In her September 26, 2013 manifestation,[184] Judge Yu attached a copy of her credit card bill supposedly showing that she had been charged $10.00 when she opened the meal stub sent by Judge San Gaspar-Gito. She posited that the lewd graphics had originated from Judge San Gaspar-Gito who had tampered the electronic messages submitted as evidence herein.[185]

Regarding her exchanges with Ms. Galicinao, Judge Yu invoked the exclusionary rule because she did not give her consent to use the private messages as evidence.[186]

CA Associate Justice Hakim S. Abdulwahid conducted the investigation, and scheduled several hearings. It appears that despite notice, Judge Yu did not appear in the hearings, and instead manifested her willingness to submit the matter for decision based on the records. She also waived her attendance, including the right to cross examine the complainant,[187] in order to avoid generating "hostile feelings and antagonistic views" upon the entry of appearance as counsel of Atty. Gener Gito, Judge San Gaspar-Gito's husband.[188]

Justice Abdulwahid submitted his Report and Recommendation dated September 26, 2013,[189] wherein he recommended the suspension from office of Judge Yu for a period of three months due to simple misconduct and conduct unbecoming of a judge. He concluded that the barrage of

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[183] *Id*. at 197-198.

[184] *Id*. at 203-212.

[185] *Id*. at 490-491.

[186] *Id*. at 135.

[187] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, pp. 600-601.

[188] *Rollo* (A.M. No. MTJ-13-1821), Vol. II, p. 490.

[189] *Rollo* (A.M. No. MTJ-13-1821), Vol. I, pp. 600-611.

inappropriate messages sent by Judge Yu, as well as her stalking through the internet, constituted conduct unbecoming of a judge; and that her use of her court's letterhead to summon the complainant's brother fell under the category of simple misconduct.

Recommendation and Evaluation of the Office of the Court Administrator

On October 13, 2015, the Court directed the OCA to submit a comprehensive evaluation, report and recommendation on the consolidated cases.[190]

The OCA complied through Deputy Court Administrator (DCA) Jenny Lind R. Aldecoa-Delorino[191] by submitting a Memorandum[192] containing the following recommendation:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that respondent Judge Eliza B. Yu, Branch 47, Metropolitan Trial Court, Pasay City, be found **GUILTY** of **INSUBORDINATION, GROSS IGNORANCE OF THE LAW, REFUSAL TO PERFORM OFFICIAL FUNCTIONS, GROSS MISCONDUCT AMOUNTING TO VIOLATION OF THE CODE OF JUDICIAL CONDUCT, GRAVE ABUSE OF AUTHORITY, OPPRESSION**, and **CONDUCT UNBECOMING OF A JUDGE**, and be **DISMISSED FROM THE SERVICE** with forfeiture of all benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office including government-owned or controlled corporations.[193]

The OCA recommended that the charges of gross ignorance of the law in allowing OJTs to perform judicial work and directing the court staff to sell the books authored by Judge Yu, as well as the allegation of malicious utterances against Court

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[190] *Rollo* (A.M. No. MTJ-12-1813), pp. 695-696.

[191] Court Administrator Marquez did not take part in the evaluation, report and recommendation.

[192] *Rollo* (A.M. No. MTJ-12-1813), pp. 697-755.

[193] *Id*. at 754-755.

Administrator Marquez should be dismissed for being unsubstantiated;[194] and upheld Judge Yu's requiring the plaintiffs with pending replevin cases to pay legal fees for transcripts, pursuant to her judicial prerogative to ensure that court funds were properly accounted for.[195]

The OCA declared Judge Yu's refusal to comply with A.M. No. 19-2011 and to honor the appointments of Ms. Lagman and Ms. Tejero-Lopez as insubordination; Judge Yu's letter to DOT Secretary Lim as gross misconduct, and a violation of Section 6, Canon 4 of the *New Code of Judicial Conduct*; Judge Yu's conduct in relation to the request for sick leave by Noel Labid, and the appointment of Ms. Tejero-Lopez as oppression;[196] regarded as gross ignorance of the law Judge Yu's acts of allowing the criminal proceedings in her court to continue without the presence of the public prosecutor, and of ordering the reception of evidence by the OIC who was not a member of the Bar;[197] and considered Judge Yu's issuance of the show cause order against Executive Judge Colasito, *et al*. as grave abuse of her authority.[198]

The OCA agreed with the recommendation and findings of Justice Abdulwahid to consider Judge Yu's actuations towards Judge San Gaspar-Gito as conduct unbecoming of a judge, but clarified that Judge Yu's use of the official letterhead of her court in summoning the brother of Judge San Gaspar-Gito to a conference demonstrated her abuse of power, and constituted a violation of Section 8, Canon 4 of the *New Code of Judicial Conduct*.[199]

Ruling of the Court

We agree with the findings and recommendations of the OCA.

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[194] *Id*. at 729.

[195] *Id*. at 730.

[196] *Id*. at 730, 739-741, 752.

[197] *Id*. at 731-734.

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

[199] *Id*. at 749-751.

I
Noncompliance with A.O. No. 19-2011

Judge Yu forthwith resisted the implementation of A.O. No. 19-2011 because of her unresolved protest against the issuance. She explained that her compliance with A.O. No. 19-2011 would render her protest moot. But her unresolved protest was not a sufficient justification for her to resist the implementation of A.O. No. 19-2011. She was quite aware that A.O. No. 19-2011 was issued pursuant to Section 6, Article VIII of the Constitution, which confers to the Court the power of administrative supervision over all courts,[200] and was for that reason an issuance to be immediately implemented and unquestioningly obeyed by the affected Judges.

The resistance by Judge Yu to the the implementation of A.O. No. 19-2011 was unexpected. She was quite aware that A.O. No. 19-2011 was not a mere request for her to comply with only partially, inadequately or selectively,[201] or for her to altogether disregard. At the very least, her resistance to A.O. No. 19-2011 manifested an uncommon arrogance on the part of a Judge of a court of the first-level towards the Court itself. Such attitude smacked of her unbecoming condescension towards the Court and her judicial superiors. We cannot tolerate her attitude lest it needlessly sows the seeds of arrogance in others that can ultimately destroy the faith and trust in the hierarchy of courts so essential in the effective functioning of the administration of justice.

Moreover, Judge Yu's resistance to the implementation of A.O. No. 19-2011 disrupted the orderliness of the other Pasay City MeTCs to the prejudice of public interest. This effect became unavoidable, for Executive Judge Colasito necessarily required the other courts to render additional night court duties to cope with her refusal to render night court duties.

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[200] Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[201] *Fernandez v. Hamoy*, A.M. No. RTJ-04-1821, August 12, 2004, 436 SCRA 186, 193.

Judge Yu compounded her condescension towards the Court and her judicial superiors by her bypassing them to directly communicate her personal reservations about A.O. No. 19-2011 to Secretary Lim, the proponent of holding the night courts, and other quarters like the police authority in Pasay City. Her reservations extended to assailing the legal foundation and the practicality for holding the night courts. Her doing so broadcast to them the notion that obedience to A.O. No. 19-2011 and similar issuances of the Court could be deferred at the whim and caprice of a lowly-ranked judicial officer like her. Although she might have regarded her reservations as impressed with outstanding merit, that was no justification for her to defer or reject the implementation of A.O. No. 19-2011 in her court for any length of time, and to be public about it. A.O. No. 19-2011 dealt with an administrative matter on the administration of justice and procedure over which the Court was the supreme and sole authority. She should have the maturity to know so, and to bow her head before that authority. Her freedom to exercise her constitutional right to free speech and expression was not a consideration. She had no privilege to disobey; hers was but to follow.

Judge Yu's having directly communicated her misgivings about A.O. No. 19-2011 to Secretary Lim and to other quarters was beyond forgiving by the Court. She thereby strongly hinted that the Court was altogether wrong and impractical about holding night courts. What she accomplished from such exercise was to broadcast how little regard she had for the Court and its issuances. Her attitude constituted an open insubordination that extensively diminished the respect owed to the Court by the public, especially by the latter who were directly affected in the implementation of A.O. No. 19-2011. There is no question that when a Judge becomes the transgressor of the law that she has sworn to uphold, she places her office in disrepute, encourages disrespect for the law, and impairs public confidence in the integrity of the Judiciary itself.[202]

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[202] *Id.* at 213.

It is timely for the Court to use this occasion to remind Judge Yu and other judicial officers of the land that although they may enjoy the freedoms of speech and expression as citizens of the Republic, they should always conduct themselves, while exercising such freedoms, in a manner that should preserve the dignity of their judicial offices and the impartiality and independence of the Judiciary. As to this duty to observe self-restraint, Section 6, Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary* is clear and forthright, *viz.*:

> Sec. 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

For sure, Judge Yu's expression of her dissent against A.O. No. 19-2011 was misplaced. We may as well declare that she did not enjoy the privilege to dissent. Regardless of her reasons for dissenting, she was absolutely bound to follow A.O. No. 19-2011. Indeed, she did not have the unbridled freedom to publicly speak against A.O. No. 19-2011 and its implementation, for her being the Judge that she was differentiated her from the ordinary citizen exercising her freedom of speech and expression who did not swear obedience to the orders and processes of the Court without delay.[203] Her resistance to the implementation of A.O. No. 19-2011 constituted gross insubordination and gross misconduct,[204] and put in serious question her fitness and worthiness of the honor and integrity attached to her judicial office.[205]

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[203] See *Office of the Court Administrator v. Indar*, A.M. No. RTJ-11-2287, January 22, 2014, 714 SCRA 381, 391-393; *Falsification of Daily Time Records of Ma. Emcisa A. Benedictos, Administrative Officer I, Regional Trial Court, Malolos City, Bulacan*, A.M. No. P-10-2784, October 19, 2011, 659 SCRA 403, 409.

[204] *Id.*

[205] *Office of the Court Administrator v. Amor*, A.M. No. RTJ-08-2140, October 7, 2014, 737 SCRA 509, 518.

According to *Himalin v. Balderian*,[206] the refusal of a Judge to comply with any resolution or directive of the Court constituted insubordination and gross misconduct, *viz.*:

> [A] judge who deliberately and continuously failed and refused to comply with a resolution of this Court was held guilty of gross misconduct and insubordination, the Supreme Court being the agency exclusively vested by our Constitution with administrative supervision over all courts and court personnel from the Presiding Justice of the Court of Appeals to the lowest municipal trial court clerk. The Court can hardly discharge such constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.

Insubordination is the refusal to obey some order that a superior officer is entitled to give and to have obeyed. It imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[207] Judge Yu's obstinate resistance to A.O. No. 19-2011 displayed both her rebellious character and her disdain and disrespect for the Court and its directives.

Judge Yu's unwillingness to comply with A.O. No. 19-2011 was also a betrayal of her sworn duty to maintain fealty to the law,[208] and brought dishonor to the Judiciary. In that regard, her conduct amounted to gross misconduct, defined as follows:

> Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection with one's performance of official functions and duties. For grave or gross misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law, or a persistent disregard of well-known rules. The misconduct must imply wrongful intention and not a mere error of judgment.[209]

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[206] A.M. No. MTJ-03-1504, August 26, 2003, 409 SCRA 606, 612.

[207] *Marigomen v. Labar*, A.M. No. CA-15-33-P, August 24, 2015; *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-07-2321, April 24, 2009, 586 SCRA 344, 349.

[208] Rule 3.01, Canon 3 of the *Code of Judicial Conduct*.

[209] *Gacad v. Clapis, Jr.*, A.M. No. RTJ-10-2257, July 17, 2012, 676 SCRA 534, 544.

In all, Judge Yu exhibited an unbecoming arrogance in committing insubordination and gross misconduct. By her refusal to adhere to and abide by A.O. No. 19-2011, she deliberately disregarded her duty to serve as the embodiment of the law at all times. She thus held herself above the law by refusing to be bound by the issuance of the Court as the duly constituted authority on court procedures and the supervision of the lower courts. To tolerate her insubordination and gross misconduct is to abet lawlessness on her part. She deserved to be removed from the service because she thereby revealed her unworthiness of being part of the Judiciary.[210]

II
Refusal to honor the appointments of court personnel

Although Judge Yu insisted on the irregularity of the appointment of Ms. Tejero-Lopez for lack of personal endorsement from her as the Presiding Judge, and of the appointment of Ms. Lagman due to a pending administrative complaint, the appointments of Ms. Tejero-Lopez and Ms. Lagman were valid and regular. As such, Judge Yu had no good reason to reject the appointments.

To start with, Ms. Tejero-Lopez and other applicants had undergone scrutiny and processing by the duly constituted committee, and the OCA had then signed and executed the appointment. Nonetheless, the authority to appoint still emanated from the Court itself.[211] Judge Yu's objection to Ms. Tejero-Lopez's appointment for lack of her personal endorsement was not enough to negate the appointment. Judge Yu had no right to reject the appointment, making her rejection another instance of gross insubordination by her. This consequence has been elucidated in *Edaño v. Asdala*,[212] as follows:

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[210] *Zamudio v. Peñas, Jr.*, A.M. No. RTJ-95-1332, February 24, 1998, 286 SCRA 367, 377.

[211] See Circular No. 30-91, September 30, 1991.

[212] A.M. No. RTJ-06-1974, July 26, 2007, 528 SCRA 212.

[R]espondent Judge Asdala, in insisting on the designation of respondent Nicandro as OIC, blithely and willfully disregarded the Memorandum of this Court, through the OCA, which approved the designation of Amy Soneja alone – and not in conjunction with respondent Nicandro – as OIC. **While the presiding judge, such as respondent Judge Asdala, can recommend and endorse persons to a particular position, this recommendation has to be approved by this Court. Again, the respondent judge ought to know that the Constitution grants this Court administrative supervision over all the courts and personnel thereof.** In the case at bar, despite the Court's approval of Amy Soneja's designation, the respondent judge allowed, if not insisted on, the continued discharge of the duties of OIC by respondent Nicandro. Respondent Judge Asdala even had the gall to insist that as presiding judge she has the authority and discretion to designate "anyone who works under her, as long as that person enjoys her trust and confidence." Coming from a judge, such arrogance, if not ignorance, is inexcusable. The memorandum from the OCA regarding the designation of court personnel is no less an order from this Court. Court officials and personnel, particularly judges, are expected to comply with the same. Respondent judge's gross insubordination cannot be countenanced.[213]

Judge Yu could only recommend an applicant for a vacant position in her court for the consideration of the SPBLC, which then accorded priority to the recommendee if the latter possessed superior qualifications than or was at least of equal qualifications as the other applicants she did not recommend.[214] The SPBLC explained to Judge Yu the selection process that had resulted in the appointment of Ms. Tejero-Lopez. She could not impose her recommendee on the SPBLC which was legally mandated to maintain fairness and impartiality in its assessment of the applicants[215] based on performance, eligibility, education and training, experience and outstanding accomplishments, psycho-social attributes and personality traits, and potentials.[216]

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[213] *Id*. at 222-223.

[214] Paragraph 1.4.10, Chapter IX, The 2002 Revised Manual for Clerks of Court.

[215] Paragraph 1.4.9, Chapter IX, The 2002 Revised Manual for Clerks of Court.

[216] Paragraph 1.4.14, Chapter IX, The 2002 Revised Manual for Clerks of Court.

Secondly, Judge Yu's rejection of the appointment of Ms. Lagman was just as unwarranted.

Under Section 34, Rule II of the *Uniform Rules on Administrative Cases in the Civil Service* (URACCS),[217] a pending administrative complaint shall not disqualify an employee from promotion, thus:

> Section 34. *Effect of the Pendency of an Administrative Case.* — Pendency of an administrative case shall not disqualify respondent from promotion or from claiming maternity/paternity benefits.
>
> For this purpose, a pending administrative case shall be construed as follows:
>
> a. When the disciplining authority has issued a formal charge; or
>
> b. In case of a complaint filed by a private person, a *prima facie* case is found to exist by the disciplining authority.

The rule, which is reiterated in Section 42 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACCS) of 2011,[218] cannot be interpreted otherwise.

Accordingly, Judge Yu's administrative complaint had no bearing on Ms. Lagman's appointment, more so because Ms. Lagman was held liable only for simple misconduct, a less grave offense that did not merit termination from public service for the first offense.[219] It is relevant to point out, too, that Judge

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[217] CSC Memorandum Circular No. 19, series of 1999, was the applicable rule when Judge Yu filed the administrative complaint against Ms. Lagman.

[218] Section 42. *Effects of the Pendency of an Administrative Case.* — Pendency of an administrative case shall not disqualify respondent from promotion and other personnel actions or from claiming maternity/paternity benefits.

For this purpose, a pending administrative case shall be construed as such when the disciplining authority has issued a formal charge or a notice of charge/s to the respondent.

[219] *Memoranda of Judge Eliza B. Yu Issued to Legal Researcher Mariejoy P. Lagman and to Court Stenographer Soledad J. Bassig, All of Metropolitan Trial Court, Branch 47, Pasay City*, A.M. No. P-12-3033, August 15, 2012, 678 SCRA 386.

Yu had no personality to object to or oppose Ms. Lagman's appointment, considering that only a qualified next-in-rank employee has been recognized as a party-in-interest to file the protest in accordance with paragraph 1.6.1, Article IX of the 2002 *Revised Manual of Clerks of Court*.[220]

Thirdly, we also take Judge Yu to task for disrespectful language uttered against the Court, no less. She characterized the appointment of Ms. Tejero-Lopez as "*void ab initio*" and "*a big joke*." The use of such language in assailing the Court's exercise of its absolute power of appointment was highly offensive and intemperate. She thereby disregarded her obligation to show respect and deference toward the Court and its officials. She was thereby guilty of another serious misconduct.

And, fourthly, Judge Yu issued verbal threats of filing administrative, civil and criminal charges against Ms. Tejero-Lopez unless she withdrew her application. Judge Yu reiterated the threats in her letter dated June 14, 2011 addressed to Atty. Pabello.[221] Ms. Tejero-Lopez felt intimidated enough because she actually withdrew her application (although she later went on with it). The making of the verbal threats by Judge Yu to compel a subordinate to withdraw her application constituted grave abuse of authority on the part of Judge Yu. Grave abuse of authority is committed by a public officer, who, under color of his office, wrongfully inflicts upon a person any bodily harm, imprisonment, or other injury; it is an act characterized with cruelty, severity, or excessive use of authority. Also, the

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[220] Article 1.6.1 Grounds of Protest —

A qualified next-in-rank employee may file a protest against the appointment issued for the following reasons:

1.6.1.1 Non-compliance with the selection process;

1.6.1.2 Discrimination on account of gender, civil status, disability, pregnancy, religion, ethnicity or political affiliation;

1.6.1.3 Disqualification of the appointee to a career position for reason of lack of confidence of the recommending authority; and

1.6.1.4 Other violations of the provisions of the MSP-LC.

[221] *Rollo* (A.M. No. MTJ-12-1815), p. 8.

intimidation exerted upon Ms. Tejero-Lopez amounted to oppression, which refers to an act of cruelty, severity, unlawful exaction, domination or excessive use of authority.[222]

III
Issuing a show-cause order against fellow Judges and court personnel

According to the OCA, Judge Yu gravely abused her authority in issuing the show-cause order against his fellow Judges, the complainants against her in OCA IPI No. 11-2378-MTJ. The OCA rendered its finding thereon, as follows:

> **This Office finds it absolutely irregular for respondent Judge Yu to require the complainants in OCA IPI No. 11-2378-MTJ to explain within seventy-two (72) hours upon receipt of notice why they should not be cited in contempt for surreptitiously taking the TSNs, orders and minutes of the proceedings in Criminal Case No. M-PSY-09-08592-CR and using these as part of their attachments to their complaint. As the respondent in OCA IPI No. 11-2378-MTJ, respondent Judge Yu has no authority to summon the complainants (Executive Judge Colasito, et al.) because it is only the Supreme Court who has the power to issue directives requiring the parties in an administrative case to appear and to present their respective arguments in support of their position**.
>
> Not only is her directive misplaced, it also shows respondent Judge Yu's utter lack of respect and disdain for the Supreme Court. It must be noted that the parties in Criminal Case No. M-PSY-09-08592-CR (*the accused Ramil Fuentes et al. and the plaintiff Republic of the Philippines)* are outsiders to the administrative controversy between respondent Judge Yu and the complainants in OCA IPI No. 11-2378-MTJ. However, **respondent Judge Yu acted as if she was the investigating authority instead of being the respondent. She took undue advantage of her position as a judge and used the judicial process for her own benefit. Such action clearly depicts an abusive character which has no place in the judiciary**. (Bold emphasis supplied)[223]

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[222] *Dialo, Jr. v. Macias*, A.M. No. RTJ-04-1859, July 13, 2004, 434 SCRA 186, 194.

[223] *Rollo* (A.M. No. MTJ-12-1831), p. 736.

The issuance of the show-cause order by Judge Yu represented clear abuse of court processes, and revealed her arrogance in the exercise of her authority as a judicial officer. She thereby knowingly assumed the role of a tyrant wielding power with unbridled breadth. Based on its supervisory authority over the courts and their personnel, the Court must chastise her as an abusive member of the Judiciary who tended to forget that the law and judicial ethics circumscribed the powers and discretion vested in her judicial office.

Nothing extenuated Judge Yu's abuse of authority and arrogance. Instead of accepting the error of her ways, Judge Yu defended her conduct by insisting on having the authority to initiate contempt proceedings against her fellow Judges and court personnel. She supported her insistence by citing the rulings in *People v. Godoy*,[224] *Zaldivar v. Sandiganbayan*,[225] and *Salcedo v. Hernandez*.[226] But the cited rulings had no relevance at all. *People v. Godoy* related to the contemptuous newspaper article involving a case that the trial court had decided. *Zaldivar v. Sandiganbayan* required the Tanodbayan-Ombudsman, a party in the case, to explain his contumacious remarks about an ongoing case to the media. *Salcedo v. Hernandez* concerned the contemptuous remarks by counsel for the petitioner in a motion filed before the Court. In short, the factual settings for the cited rulings involved parties or counsel of the parties, while the factual setting in this administrative matter concerned the act of merely copying the records of Judge Yu's court for purposes of producing evidence against her in the administrative cases her fellow Judges and the concerned court employees would be initiating against her. The latter were not parties in any pending case in her court.

Moreover, the Court notes that Judge Yu's issuance of the show-cause order emanated from her desire to retaliate against her fellow Judges and the concerned court employees considering

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[224] G.R. Nos. 115908-09, March 29, 1995, 243 SCRA 64.

[225] G.R. Nos. 79690-79707, October 7, 1988, 166 SCRA 316.

[226] 61 Phil. 724 (1935).

that the allegedly contumacious conduct was the copying of court records to be used as evidence in the administrative complaint against her. She thereby breached her duty to disqualify herself from acting at all on the matter. Such self-disqualification was required under Section 5, Canon 3, and Section 8 of Canon 4 of the *New Code of Judicial Conduct for the Philippine Judiciary*, *viz.*:

> Section 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:
>
> (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
>
> x x x x x x x x x
>
> Section 8. Judges shall not use or lend the prestige of the judicial office to advance their private interest, x x x.

By insisting on her inherent authority to punish her fellow Judges for contempt of court, Judge Yu wielded a power that she did not hold. Hence, she was guilty of gross misconduct.

IV
Refusal to sign the application for leave of absence and other allegations of oppression

The 2002 Revised Manual for Clerks of Court governs the approval of an application for sick leave by court personnel. Paragraphs 2.2.1[227] and 2.2.2,[228] Chapter X of the 2002 Revised Manual requires the submission of a medical certificate or proof of sickness prior to the approval of the application for sick leave, thus:

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[227] Citing Section 53 of Civil Service Commission Memorandum Circular No. 41, series of 1998.

[228] Citing Civil Service Commission Memorandum Circular No. 14, series of 1999.

2.2.1 Application for sick leave

All applications for sick leave of absence for one (1) full day or more shall be made on the prescribed form and shall be filed immediately upon the employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor, and/or agency head. **Application for sick leave in excess of five (5) successive days shall be accompanied by a proper medical certificate.**

x x x x x x x x x

2.2.2. Approval of sick leave

Sick leave shall be granted only on account of sickness or disability on the part of the employee concerned or of any member of his immediate family.

Approval of sick leave, whether with pay or without pay, is mandatory provided proof of sickness or disability is attached to the application in accordance with the applicable requirements. **Unreasonable delay in the approval thereof or non-approval without justifiable reason shall be a ground for appropriate sanction against the official concerned**. (Emphasis supplied)

Noel Labid complied with the 2002 Revised Manual by submitting the medical certificate and the clinical abstracts issued and certified by the Medical Records Division of the Philippine General Hospital (PGH). The medical certificate indicated that he had been suffering from "*Bleeding submandibular mass in hypovolemic shock Squamous cell Carcinoma Stage IV floor of mouth*,"[229] while the clinical abstracts dated June 14, 2011[230] and June 23, 2011[231] indicated the same reason for his hospital admission. However, Judge Yu was unconvinced by such submissions, and adamantly refused to approve Noel's leave application supposedly based on the ruling in *Re: Memorandum Report of Atty. Thelma C. Bahia against Ms. Dorothy Salgado.*[232]

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[229] *Rollo* (A.M. No. 11-2398-MTJ), p. 21.

[230] *Id.* at 22.

[231] *Id.* at 23.

[232] A.M. No. 2004-41-SC, January 13, 2005, 448 SCRA 81.

Judge Yu apparently misapplied the cited ruling.

Re: Memorandum Report of Atty. Thelma C. Bahia against Ms. Dorothy Salgado concerned the habitual absenteeism of the respondent court personnel, and her belated submission of the medical certificates proving her illness. Crucial was the finding that despite several attempts by her office to contact the respondent and to inquire on her situation, she had deliberately failed to inform her superior of her absence and her condition. This is not the same in the case of Noel.

Under paragraph 2.1.2[233] of the 2002 Revised Manual, heads of offices like Judge Yu possessed the authority to confirm the employee's claim of ill health. Being aware of Noel's true medical condition after having met with Mrs. Labid who had seen her to plead for the approval of her son's leave application, Judge Yu was not justified in demanding a prior written notice about Noel's serious medical condition. Neither was she justified in still requiring Noel to submit the certificate of fitness to work considering that he had yet to report for work.

Noel's medical certificate and clinical abstracts had sufficiently established the reason for his absence and his hospital admission. Despite his obvious critical condition, Judge Yu chose to ignore the medical records certified by a government health institution, and unjustifiably demanded the submission of documents that the 2002 Revised Manual did not require. Judge Yu did not convincingly establish that her actions came within the limits of her authority as a court manager, or were sanctioned by existing court regulations and policies. Her unjustified refusal to approve Noel's leave application exposed her to administrative sanction under paragraph 2.2.2 of the 2002 Revised Manual. Accordingly, Judge Yu was again guilty of grave abuse of authority.

It is not hard to believe that Judge Yu deliberately refused to sign Noel's leave application in order to cause additional

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[233] 2.1.2, In case of claim of ill health, heads of department of agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. x x x.

hardship to him in retaliation for his joining the administrative complaint against her. We consider to be credible Mrs. Labid's narration that Judge Yu had expressed her resentment towards Noel for his signing the complaint against her. By acting so, therefore, Judge Yu was vindictive, and exhibited indifference to the plight of the critically ill subordinate in urgent need of assistance. She was guilty of oppression, which is any act of cruelty, severity, unlawful exaction, domination or excessive use of authority constituting oppression.[234] Her oppression did not befit an administrator of justice.

Nonetheless, we dismiss the other allegations of oppression towards the staffmembers of Branch 47 for failure of the complainants to substantiate the same. In administrative cases, the complainant bears the burden of proving by substantial evidence the allegations in his complaint.[235]

V
Charges of gross ignorance of the law

I. Allowing on-the-job-trainees

In OCA IPI No. 11-2399-MTJ, the complainants charged that Judge Yu had allowed on-the-job trainees (OJTs) to have access to court records. She denied this charge, however, and claimed that the students were merely "observers" because of the prohibition. The OCA found this charge unsubstantiated.

We do not agree with the OCA's finding.

The memorandum dated November 2, 2010[236] issued by Judge Yu indicated her intention to delegate the duties of an encoder to a certain Ms. Angelica Rosali, one of the OJTs concerned, thus:

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[234] *Dialo, Jr. v. Macias*, A.M. No. RTJ-04-1859, July 13, 2004, 434 SCRA 186, 194.

[235] *Josefina M. Ongcuangco Trading Corporation v. Pinlac*, A.M. No. RTJ-14-2402, April 15, 2015, 755 SCRA 478, 486-487; *Fernandez v. Verzola*, A.M. No. CA-04-40, August 13, 2004, 436 SCRA 369, 373.

[236] *Rollo*, (OCA IPI No. 11-2399-MTJ), p. 10.

MEMORANDUM

TO: Mrs. Amor Abad, Officer-in-Charge, Mr. Romer Aviles and Mr. Froilan Robert Tomas, Stenographers, Mrs. Emelina San Miguel, Records Officer, Mrs. Maxima Sayo, Process Server, and **Ms. Angelica Rosali, Encoder.**

RE: Preference of Typing Orders, Encoding of Monthly Report, Submission of Monthly Report, Typing of Pro-Forma Notices and Orders and Other Related Concerns

In the interest of service, the stenographers are ordered to type first the orders on sentence, dismissal and archival of cases within the day of issuing the same in open court. Said orders must be placed at the court's chambers before 2:00 p.m. for signature after checking of the case titles and dates by the office[r]-in-charge. Thereafter, after (sic) signing of these orders by the undersigned judge, these will be forwarded to the encoder of the monthly report. **The encoder shall encode immediately these orders upon receipt thereof. The encoder shall be responsible for the typing of newly filed criminal and civil cases, the cases submitted for decision, and the cases decided, dismissed and archived.** Upon receipt of the newly filed criminal or civil cases within a day, the officer-in-charge shall place them, at the court's chambers. After the evaluation of these cases, the undersigned judge shall instruct the officer-in-charge to turn over these cases to the encoder for typing. Thereafter, after (sic) these newly filed criminal and civil cases are typed and printed within the day, a copy shall be furnished to the undersigned judge. The said cases will be given by the officer-in-charge to the records officer and process server for safekeeping. The monthly report must be submitted within the 1st week up to the 2nd week of the following month.

All other orders must be typed within the week after their issuance in open court. Every Friday, the Officer-in-Charge must see to it that all orders issued within the week are typed within the same week.

After the receipt of the printed copy of the newly filed civil and criminal cases from the encoder, the undersigned judge shall instruct the officer-in-charge to calendar these cases and to delegate fairly the typing of the notices of these cases. The officer-in-charge is directed to mimeograph the forms of subpoenas, summons, other notices, order to file an answer or counter-affidavit in cases covered by the Rule on Summary Procedure, order for the issuance of warrant of arrest,

warrant of arrest, commitment order, minutes, pre-trial order and such other pro-forma orders as determined by this Court subject to delegation. With respect to an order on archiving of a case, there must be a corresponding warrant of arrest. **The Officer-in-Charge is responsible for the checking of the correct name of the case title, date, parties and addresses of these pro-forma orders subject to delegation. Erroneous typing of case title, date, parties and addresses, among others is considered gross inefficiency if committed ten (10) consecutive times, and it calls [f]or an explanation. If re-committed another ten (10) consecutive times, this merits disciplinary sanction.**(Emphasis supplied)

For strict compliance.

Thank you.

(Sgd.) Eliza B. Yu
Judge

That the memorandum was not disseminated to the person concerned, and that it was not implemented were immaterial to the charge. The fact that Judge Yu issued the memorandum naming Ms. Rosali, a student, as the encoder and assigning to her court duties similar to those of a regular court employee signified Judge Yu's intention to treat Ms. Rosali as a trainee instead of as a mere observer. Ms. Rosali denied in her *sinumpaang salaysay*[237] that she had received the memorandum and performed encoding tasks, but nonetheless confirmed that she was directed to docket the decisions and staple the returns. The other student "observers," namely: Ms. Johaira O. Mababaya, Ms. Catherine L. Sarate and Mr. Eduardo M. Pangilinan III, also attested that they had conducted their court observation as "assistant court stenographer."

Under the circumstances, Judge Yu could not feign ignorance of the tasks assigned to and performed by the OJTs. If she had been strict about accepting student trainees, then she should not have assigned court-related tasks. In this regard, Judge Yu deliberately ignored OCA Circular No. 111-2005 in prohibiting OJTs, thus:

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[237] *Rollo* (OCA IPI No. 11-2399-MTJ), pp. 57-58.

OCA CIRCULAR NO. 111-2005

TO : THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS

SUBJECT: MEMORANDUM CIRCULAR NO. 5-2003 Re: PROHIBITING THE ACCOMODATION OF STUDENTS TO UNDERGO ON-THE-JOB TRAINING/PRACTICUM IN THE DIFFERENT OFFICES OF THE COURT

The Supreme Court En Banc in its Resolution dated 6 September 2005, in A.M. No. 05-7-16-SC, Re: Analysis of the Current Judicial System Using Information Technology by Student of the De La Salle University, Resolved to direct the undersigned to CIRCULARIZE to all lower courts Memorandum Circular No. 05-2003 dated 25 June 2003, to wit:

"MEMORANDUM CIRCULAR NO. 5-2003

PROHIBITING THE ACCOMMODATION OF STUDENTS TO UNDERGO ON-THE-JOB TRAINING/PRACTICUM IN THE DIFFERENT OFFICES OF THE COURT

It is observed that some offices of the Court allow students of different colleges and universities to undergo on-the-job training/ practicum without authority or approval by the Chief Justice.

Due to security reasons which prompted the Court to deny previous requests of colleges and universities for on-the-job training/practicum, it is noted that the practice of some offices allowing students to undergo on-the-job training/practicum jeopardizes not only the functions of some offices but also their confidential records. Notably, the accommodation of these students pose as a security risk.

ACCORDINGLY, in order to ensure the security of officials and employees of the Court as well as its records, all Chiefs of Offices/ Services/Divisions of the Court, including those of the Presidential Electoral Tribunal, Judicial and Bar Council and the Philippine Judicial Academy, are hereby directed **to disallow on-the-job training/ practicum in their respective offices/services/divisions**.

x x x x x x x x x

The provision of the above memorandum shall likewise apply to all trial courts to serve as a guide for similar requests of students and as reflective of the policy of the Court on the matter.

For the information and guidance of all concerned.

x x x x x x (Emphasis supplied)

II. Designating an Officer-in-Charge

Judge Yu designated as OIC of Branch 47 of the MeTC Mr. Ferdinand Santos, who occupied the position of Clerk III. Under the 2002 Revised Manual, the position of Clerk III fell under the first level position with a minimum educational requirement of two years of college studies,[238] and a career service sub-professional eligible.[239] The position of Clerk of Court III was a second level position with a minimum educational requirement of a Bachelor of Laws degree, at least one year relevant experience, four hours of relevant training, and a professional career service eligible.[240]

On the other hand, the CSC Memorandum Circular No. 06-05 dated February 15, 2005 provides the following guidelines:

CSC MEMORANDUM CIRCULAR NO. 06-05

TO: All Heads of Constitutional Bodies; Departments, Bureaus and Agencies of the National Government; Local Government Units; Government-Owned or Controlled Corporations; and State Universities and Colleges

SUBJECT: Guidelines on Designation

In its Resolution No. 050157 dated February 7, 2005, the Commission has adopted the following guidelines on Designation in the civil service:

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[238] A first level position includes clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies. (Section 8, Chapter 2, Title I, Book V, Executive Order No. 292)

[239] The 2002 Revised Manual for Clerks of Court (Vol. I), p. 618.

[240] *Id.* at 615.

x x x x x x x x x

B. Designees can only be designated to positions within the level they are currently occupying. However, Division Chiefs may be designated to perform the duties of third level positions.

First level personnel cannot be designated to perform the duties of second level positions.

x x x x x x x x x (Emphasis supplied)

Designating a first-level personnel like Mr. Santos as OIC defied CSC Memorandum Circular No. 06-05 because the position of OIC was reserved for personnel belonging to the second level. It becomes immaterial whether nobody from Branch 47 opposed the designation because the memorandum circular expressly prohibits designation of first level personnel to a second level position. It is emphasized that the memorandum is crafted in the negative; hence, the memorandum is mandatory, and imports that the act required shall not be done otherwise than designated.[241]

Judge Yu's contention that the designation of the OIC was based on trust and confidence had no basis. We underscore that the OIC referred to here was the acting Branch Clerk of Court (Clerk of Court III). The 2002 Revised Manual enumerates the following duties and responsibilities of a branch clerk of court, *viz.*:

1.3.1 Adjudicative Support Functions

1.3.1.1 Attends all court sessions

1.3.1.2 Supervises the withdrawal of all records of cases to be heard and the preparation of the notices of hearings, court's calendar, reports, minutes, monthly reports, inventory of cases, index of exhibits, and paging of records of cases;

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[241] *Brehm v. Republic*, G.R. No. L-18566, September 30, 1963, 9 SCRA 172, 176.

1.3.1.3 Sees to it that all returns of notices are attached to the corresponding evidence properly marked during the hearing as collected in an exhibit folder; and

1.3.1.4 Signs notices of orders and decisions for service to the parties, release papers of detained prisoners who are acquitted and/or who filed their corresponding bail bonds duly approved by the presiding judge.

1.3.2 Non-Adjudicative Functions

1.3.2.1 Plans, directs, supervises and coordinates the activities of all personnel in a branch of a multiple sala for effectiveness and efficiency;

1.3.2.2 Keeps tab of the attendance and whereabouts of court personnel during office hours;

1.3.2.3 Controls and manages all court records, exhibits, documents, properties and supplies;

1.3.2.4 Administers oath;

1.3.2.5 Issues certificates of appearances and clearances;

1.3.2.6 Drafts/prepares correspondence and indorsements for signature of the Judge; and

1.3.2.7 Performs other duties that may be assigned to him.

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They perform delicate functions as designated custodians of the courts funds, revenues, records,

properties and premises.[242] The functions of a clerk of court require a higher degree of education as well as understanding of the law and court processes, that they cannot be delegated to first level personnel such as Mr. Santos. The position requires not only trust and confidence, but most importantly, education and experience. Ineluctably, the respondent ignored the clear import of CSC Memorandum Circular No. 06-05 in designating Mr. Santos as OIC.

III. Ordering presentation of *ex parte* evidence before the OIC who was not a member of the Bar

Judge Yu argued that she did not commit any irregularity in ordering the presentation of *ex parte* evidence before her OIC who was not a member of the Bar because the rule on the reception of evidence by a member of the Bar was only directory under Section 9, Rule 30 of the *Revised Rules of Civil Procedure*, which uses the word *may*.

Judge Yu's argument does not impress.

Section 9, Rule 30 of the *Revised Rules of Civil Procedure* expressly requires that only clerks of court who are members of the Bar can be delegated to receive evidence *ex parte*, thus:

> Section 9. *Judge to receive evidence; delegation to clerk of court.* — The **judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or *ex parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar.** The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing. (Emphasis supplied)

The word *may* used in the rule related only to the discretion by the trial court of delegating the reception of evidence to the

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[242] *Sy v. Esponilla*, A.M. No. P-06-2261, October 30, 2006, 506 SCRA 14, 20.

Clerk of Court, not to the requirement that the Clerk of Court so delegated be a member of the Bar. The rule on *ex parte* reception of evidence was unequivocal on this point, and required no elaboration. Neither the agreement by the parties nor their acquiescence could justify its violation.[243] It followed that Judge Yu could not validly allow the presentation of evidence *ex parte* before Mr. Santos who was a mere OIC because he was not a member of the Bar. Breach of the rule on reception of evidence represented her ignorance of the rule of procedure in question, and subjected her to administrative liability for misconduct.[244]

IV. Allowing criminal proceedings without the actual participation of the public prosecutor

Anent the charge that she allowed the prosecution of criminal actions without the presence of the public prosecutor, Judge Yu retorted that the complainants were not the proper parties to assail her orders; that the accused in *People v. Manduriao* had begged to be arraigned without counsel after being informed of the penalty for the offense charged; and that the trial of the case could proceed without the public prosecutor, but not in the absence of a judge.[245]

We are appalled that a Judge like the respondent would explain herself in such a fundamentally wrong manner.

Section 5, Rule 110 of the *Rules of Court* states:

Section 5. *Who must prosecute criminal actions*. — **All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor**. **In case of heavy work schedule or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State**

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[243] *Umali-Paco v. Quilala,* A.M. No. RTJ-02-1699, October 15, 2003, 413 SCRA 364, 372.

[244] *Concern[ed] Lawyers of Bulacan v. Villalon-Pornillos,* A.M. No. RTJ-09-2183, July 7, 2009, 592 SCRA 36, 58.

[245] *Rollo* (A.M. No. 11-2399-MTJ), p. 146.

Prosecution Office to prosecute the case subject to the approval of the Court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

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Accordingly all criminal actions shall be prosecuted under the control and direction of the public prosecutor.[246] The true reason is that the prosecution of criminal offenses is always a public function.[247] In *People v. Ramos*,[248] we cautioned that the exception stated in Section 5, supra, should be strictly construed, thus:

The exception provided in Section 5 must be strictly applied as the prosecution of crime is the responsibility of officers appointed and trained for that purpose. The violation of the criminal laws is an affront to the People of the Philippines as a whole and not merely the person directly prejudiced, who is merely the complaining witness. This being so, it is necessary that the prosecution be handled by persons skilled in this function instead of being entrusted to private persons or public officers with little or no preparation for this responsibility. The exception should be allowed only when the conditions therefor as set forth in Section 5, Rule 110 of the Rules on Criminal Procedure have been clearly established.

In *Pinote v. Ayco*,[249] the Court castigated the respondent judge for allowing the presentation of the defense witnesses in the absence of the public prosecutor or the private prosecutor specially designated for the purpose. A breach of the *Rules of Court* like that could not be rectified by subsequently giving

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[246] *Pinote v. Ayco*, A.M. No. RTJ-05-1944, December 13, 2005, 477 SCRA 409, 412.

[247] *Ricarze v. Court of Appeals*, G.R. No. 160451, February 9, 2007, 515 SCRA 302, 314.

[248] G.R. No. 95370, March 10, 2991, 207 SCRA 144, 152.

[249] A.M. No. RTJ-05-1944 December 13, 2005, 477 SCRA 409.

the Prosecution the chance to cross-examine the witnesses. Judge Yu committed a flagrant error by allowing the direct examination of the defense witness without the public prosecutor, or without the private counsel duly authorized by the public prosecutor in Criminal Case No. M-PSY-09-08592-CR.

In addition, Judge Yu disregarded Section 6, Rule 116 of the *Rules of Court* when she allowed the change of plea by the accused in *People v. Manduriao* without the assistance of counsel. Judge Yu justified herself by claiming that she had apprised the accused of the penalty for the offense charged, which had then convinced the accused to change his plea.

The Court cannot accept her justification. In *Gamas v. Oco*,[250] we took the respondent judge to task for conducting an arraignment without the presence of counsel, and observed:

> Section 6 of Rule 116 means that:
>
> > [W]hen a defendant appears [at the arraignment] without [an] attorney, the court has four important duties to comply with: 1-It must inform the defendant that it[,] is his right to have [an] attorney before being arraigned; 2-After giving him such information the court must ask him if he desires the aid of attorney; 3-If he desires and is unable to employ [an] attorney, the court must assign [an] attorney de oficio to defend him; and 4-If the accused desires to procure an attorney of his own the court must grant him a reasonable time therefor.
>
> Compliance with these four duties is mandatory. The only instance when the court can arraign an accused without the benefit of counsel is if the accused waives such right and the court, finding the accused capable, allows him to represent himself in person. However, to be a valid waiver, the accused must make the waiver voluntarily, knowingly, and intelligently. In determining whether the accused can make a valid waiver, the court must take into account all the relevant circumstances, including the educational attainment of the accused. In the present case, however, respondent judge contends that complainants waived their right to counsel and insisted on their immediate arraignment.[251]

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[250] A.M. No. MTJ-99-1231, March 17, 2004, 425 SCRA 588.

[251] *Id*. at 599-600.

The justification that the accused had waived his right to counsel, and had changed his plea after the respondent Judge had explained to him the imposable penalty for the offense did not stand considering that in order that the waiver by the accused of his right to counsel would be valid, the trial court must ensure that the accused did so voluntarily, knowingly and intelligently, taking into account the capacity of the accused to give such consent. We have nothing to show that Judge Yu took the pains to enforce the safeguards.

Every judge was expected to know the fundamental substantive and procedural requirements on arraignment and right to counsel.[252] We have always been clear about the right of the accused to counsel under the Constitution, and about the requirements for the arraignment of an accused under the *Rules of Court*. As such, Judge Yu was guilty of gross ignorance of the law, which is ignorance of the law when the law is so elementary, and when one professes not to know it, or when one acts as if she does not know it. Canon 6 of the *New Code of Judicial Conduct* prescribes that competence is a prerequisite to the due performance of the judicial office. In Judge Yu's case, her competence was indispensable to her fair and proper administration of justice in her office. By failing to adhere to and implement existing laws, policies, and the basic rules of procedure, she seriously compromised her ability to be an effective magistrate.

VI
Sending of inappropriate messages was conduct unbecoming of a judicial officer

Judge Yu denied sending the messages to Judge San Gaspar-Gito, and countered that it was the latter who first sent the "meal stub" message. She maintained that the messages were confidential and inadmissible as evidence under the exclusionary rule.

Judge Yu's reliance on the exclusionary rule fails.

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[252] *Id.*

The exclusionary rule, or the fruit of the poisonous tree doctrine, presupposes a violation of law on the part of the agents of the Government,[253] and bars the admission of evidence obtained in violation of the right against unreasonable searches and seizures expressly defined under Section 2, Article III of the Constitution.[254] The exclusionary rule under Section 3(2), Article III of the Constitution refers to the prohibition against the issuance of general warrants that encourage law enforcers to go on fishing expeditions.[255]

Judge Yu did not specify that the State had unlawfully intruded into her privacy. The subjects of the present inquiry were the messages sent by her to Judge San Gaspar-Gito. Regardless of the mode of their transmission, the ownership of the messages pertained to the latter as the recipient. Considering that it was the latter who granted access to such messages, there was no violation of Judge Yu's right to privacy. As such, the grant of access by Judge San Gaspar-Gito did not require the consent of Judge Yu as the writer.[256] To recall, the Court directed the MISO to retrieve the messages for purposes of these cases.[257] Based on the certification issued by the authorized MISO personnel,[258] the messages were extracted from the Yahoo and Facebook accounts of Judge San Gaspar-Gito with the use of her official workstation. Hence, the exclusionary rule did not apply.

Judge Yu denied the imputed significance of the messages.

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[253] *Ejercito v. Sandiganbayan (Special Division)*, G.R. Nos. 157294-95, November 30, 2006, 509 SCRA 190, 218.

[254] *Anonymous Letter-Complaint Against Atty. Miguel Morales, Clerk of Court, Metropolitan Trial Court of Manila,* A.M. No. P-08-2519, November 19, 2008, 571 SCRA 361.

[255] *People v. Cogaed,* G.R. No. 200334, July 30, 2014, 731 SCRA 427, 454.

[256] Article 723, *Civil Code*.

[257] *Rollo* (A.M. No. 13-1821), Vol. I, pp. 356-357.

[258] *Id*. at 360.

The denial lacked persuasion. In her October 3, 2009 message to Judge San Gaspar-Gito's Yahoo account, Judge Yu apologized to Judge San Gaspar-Gito, and expressly clarified that Judge San Gaspar-Gito had not sent the "meal stub." Judge Yu even requested Judge San Gaspar-Gito to "*forget all [her] emails … since June …*" [259] This apologetic tone from Judge Yu rendered her denial of responsibility devoid of substance.

Moreover, the barrage of messages, most of which were sent within the same day, makes us believe that they had all come from Judge Yu. Although she insisted that Judge San Gaspar-Gito had sent the "meal stub," Judge Yu did not offer any plausible explanation on the other messages containing sexual innuendos.

It is notable that the Facebook and Yahoo messages started in August 2009 when Judge Yu was still a public prosecutor. Nonetheless, she could still be disciplined for such acts committed prior to her appointment to the Judiciary because her internet stalking of Judge San Gaspar-Gito continued after she had herself become a MeTC Judge in Pasay City on January 12, 2010 and lasted until July 2010.

Our reading of the messages supports the studied conclusions by CA Justice Abdulwahid that they did contain sexual insinuations that were ostensibly improper for a Judge to write and send to another. The messages, however they may be read and understood, were at least vexatious and annoying. In any case, the sender showed her deep-seated proclivities reflective of conduct unbecoming of a member of the Judiciary.

Finally, the OCA submits that Judge Yu's use of the letterhead of her office or court in summoning to a conference Atty. Reynaldo San Gaspar, the brother of Judge San Gaspar-Gito, constituted abuse of power, and violated Section 8, Canon 4 of the *New Code of Judicial Conduct*, thus:

Respondent Judge Yu's use of the letterhead of Branch 47, MeTC, to invite Atty. Reynaldo San Gaspar, complainant Judge Gito's brother,

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[259] *Id*. at 450.

to her court is no different from the aforecited cases. Respondent Judge Yu's letter reads as follows:

Our court is inviting you for a brief conference in our court on August 5, 2011 around 1:00 p.m. to 4:00 p.m. or any available and convenient time and place for you, to clarify certain matters pertaining to the two (2) letters both dated July 12, 2010 of your sister Judge Emily L. San Gaspar-Gito. She can come with you if she wants to.

Your cooperation is highly appreciated.

Thank you.

It is worthy to note that aside from appropriating the court's letterhead, respondent [J]udge Yu used the words "our court" to invite Atty. San Gaspar for the purpose of clarifying matters relative to the ongoing controversy between her and complainant Judge Gito. Even for an ordinary layman, receiving a letter from the court would already create the impression that his presence in the said venue is compulsory. Indeed, the letter to Atty. San Gaspar is a clear illustration of how respondent Judge Yu abuses her power as a member of the bench so that others would give in to her wishes. She undoubtedly took advantage of her position and used the same as a leverage against complainant Judge Gito who filed a case against her. This is patently a violation of Section 8, Canon 4 of the New Code of Judicial Conduct which mandates that judges shall not use the prestige of such office to advance their personal interests.[260]

The submission is well-founded.

In *Ladignon v. Garong*,[261] we discoursed on the liability of Judges for using their official letterhead to advance their personal interests, thus:

x x x In *Rosauro v. Kallos*, we found the respondent Judge liable for violating Rule 2.03 of the Code of the Judicial Conduct when he used his stationery for his correspondence on a private transaction with the complainant and his counsel parties with a pending case in his court. The Court held:

> By using his sala's stationery other than for official purposes, respondent Judge evidently used the prestige of his office x x x in violation of Rule 2.03 of the Code.

[260] *Rollo* (A.M. No. MTJ-12-1813), pp. 750-751.

[261] A.M. No. MTJ-08-1712, August 20, 2008, 562 SCRA 365.

We do not depart from this rule on the use of official stationary. We clarify, however, that the use of a letterhead should not be considered independently of the surrounding circumstances of the use-the underlying reason that marks the use with the element of "impropriety" or "appearance of impropriety." In the present case, the respondent Judge crossed the line of propriety when he used his letterhead to report *a complaint involving an alleged violation of church rules and, possibly, of Philippine laws.* Coming from a judge with the letter addressed to a foreign reader, such report could indeed have conveyed the impression of official recognition or notice of the reported violation.

The same problem that the use of letterhead poses, occurs in the use of the title of Judge or Justice in the correspondence of a member of the Judiciary. While the use of the title is an official designation as well as an honor that an incumbent has earned, a line still has to be drawn based on the circumstances of the use of the appellation. While the title can be used for social and other identification purposes, it cannot be used with the intent to use the prestige of his judicial office to gainfully advance his personal, family or other pecuniary interests. Nor can the prestige of a judicial office be used or lent to advance the private interests of others, or to convey or permit others to convey the impression that they are in a special position to influence the judge. (Canon 2, Rule 2.03 of the Code of Judicial Conduct) To do any of these is to cross into the prohibited field of impropriety.[262]

In the letter in question, Judge Yu used the phrase "our court" in issuing the invitation to Atty. San Gaspar. She was obviously intending to use her authority as an incumbent Judge to advance her personal interest. Such conduct was reprehensible because she thereby breached Section 4 of Canon 1 and Section 1 of Canon 4 of the *New Code of Judicial Conduct, viz*.:

CANON 1

INDEPENDENCE

x x x x x x x x x

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[262] *Id*. at 370-371.

SECTION. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

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VII
The Penalties

In fine, the administrative offenses Judge Yu committed were the following, to wit:

1. In **A.M. No. MTJ-12-1823**, **insubordination** and **gross misconduct** for her non-compliance with A.O. No. 19-2011;

2. In **A.M. No. MTJ-13-1836** and **A.M. No. MTJ-12-1815**, **gross insubordination** for her unwarranted refusal to honor the appointments of court personnel and rejection of the appointment of Ms. Lagman; **disrespect toward the Court** for her intemperate and disrespectful language in characterizing Ms. Tejero-Lopez's valid appointment as *void ab initio* and a *big joke*; and **grave abuse of authority** and **oppression** for issuing verbal threats of filing administrative, civil and criminal charges against Ms. Tejero-Lopez unless the latter withdrew her application;

3. In **OCA IPI No. 11-2378-MTJ** and **OCA IPI No. 12-2456-MTJ**, **grave abuse of authority** and **abuse of court processes** for issuing the show-cause order against her fellow Judges and court personnel; and **gross**

misconduct amounting to violation of the *Code of Judicial Conduct* for not disqualifying herself in acting on the supposedly contumacious conduct of her fellow Judges and concerned court personnel in copying the records of her court;

4. In **OCA IPI No. 12-2398-MTJ**, **refusal to perform official functions** and **oppression** for refusing to sign the application for leave of absence despite the employee having complied with the requirements, and for doing so in retaliation for the employee's having joined as signatory of administrative complaint filed against her;

5. Gross ignorance of the law for: (a) allowing on-the-job trainees and designating an OIC who did not possess the minimum qualifications for the position and without approval from the Court (**OCA IPI No. 11-2399-MTJ**; (b) ordering the presentation of *ex parte* evidence before the OIC despite his not being a member of the Bar (**OCA IPI No. 11-2378-MTJ**); (c) allowing criminal proceedings to be conducted without the actual participation of the public prosecutor (**A.M. No. MTJ-12-1815**); and (d) authorizing the change of plea by the accused without the assistance of counsel; and

6. In **A.M. No. MTJ-13-1821**, **conduct unbecoming of a judicial officer** for sending inappropriate messages with sexual undertones to a fellow female Judge, and for using the official letterhead of her judicial office in summoning a lawyer to a conference.

In view of the totality of the serious infractions committed by Judge Yu, the OCA recommended her dismissal from the service with the following ratiocination, to wit:

In all the cases subject of this consolidated administrative matters, the totality of the infractions committed by Judge Yu, *i.e.*. Gross Ignorance of the Law, Insubordination and Refusal to Perform Official Functions, Gross Misconduct Amounting to Violation of the Code of Judicial Conduct, Grave Abuse of Authority, Oppression, and Conduct Unbecoming a Judge, underscores the fact that she is not

fit to occupy the position of a judge. She has done more than enough harm to the reputation of the judiciary and the administration of justice, exacerbated by the oppression she has inflicted on her subordinates and her utter disrespect for her superiors.

In similar instances, the Supreme Court did not hesitate to impose upon erring judges the ultimate penalty of dismissal from service as they have indeed fallen short of the standards required of them as dispensers of justice. These same standards must be required of respondent Judge Yu, failing which she must be meted the penalty of dismissal from the service.[263]

The recommendation of the OCA is well-taken.

Judge Yu unquestionably committed several gross and serious administrative offenses ranging from gross misconduct and gross ignorance[264] to the lesser offense of conduct unbecoming of a judicial officer.[265] Under Section 8, Rule 140 of the *Rules of Court*, either **gross misconduct** or **gross ignorance of the law** is punished by either: (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; or (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[266] Under Section 46B, Rule 10 of the *Revised Rules on Administrative Cases in the Civil Service*, either **oppression** or **gross insubordination** – also considered grave offenses – is punishable with suspension from office for a period ranging from six months and one day to one year for the first offense, and dismissal from the service for the second offense. Under Section 11, Rule 140 of the *Rules of Court*, **conduct unbecoming of a judicial officer** merits either: (1) fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; or (2) censure; or (3) reprimand; or (4) admonition with warning.

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[263] *Rollo* (A.M. No. MTJ-12-1813), p. 754.

[264] Section 8, Rule 140, *Rules of Court*.

[265] Section 10, Rule 140, *Rules of Court*.

[266] Section 11, Rule 140, *Rules of Court*.

The grossness and severity of her offenses taken together demonstrated Judge Yu's unfitness and incompetence to further discharge the office and duties of a Judge. Her arrogance and insubordination in challenging A.O. No. 19-2011, and her unyielding rejection of the appointments of court personnel constituted gross insubordination and gross misconduct, and warranted her immediate dismissal from the Judiciary. Her requiring her fellow Judges to submit to her authority by virtue of her show-cause order, whereby she revealed her utter disrespect towards and disdain for them, as well as her conduct unbecoming of a judicial officer aggravated her liability. The administration of justice cannot be entrusted to one like her who would readily ignore and disregard the laws and policies enacted by the Court to guarantee justice and fairness for all.

VIII
Disbarment Cannot Be Meted Without Due Process

The foregoing findings may already warrant Judge Yu's disbarment.

A.M. No. 02-9-02-SC, dated September 17, 2002 and entitled *Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar*,[267] relevantly states:

> Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> **In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent**

[267] Effective October 1, 2002.

Justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

Under Section 27, Rule 138 of the *Rules of Court*, an attorney may be disbarred on the ground of **gross misconduct** and **willful disobedience of any lawful order of a superior court**. Given her wanton defiance of the Court's own directives, her open disrespect towards her fellow judges, her blatant abuse of the powers appurtenant to her judicial office, and her penchant for threatening the defenseless with legal actions to make them submit to her will, we should also be imposing the penalty of **disbarment**. The object of **disbarment** is not so much to punish the attorney herself as it is to safeguard the administration of justice, the courts and the public from the misconduct of officers of the court. Also, **disbarment** seeks to remove from the Law Profession attorneys who have disregarded their Lawyer's Oath and thereby proved themselves unfit to continue discharging the trust and respect given to them as members of the Bar.[268]

The administrative charges against respondent Judge Yu based on grounds that were also grounds for disciplinary actions against members of the Bar could easily be treated as justifiable disciplinary initiatives against her as a member of the Bar. This treatment is explained by the fact that her membership in the Bar was an integral aspect of her qualification for judgeship. Also, her moral and actual unfitness to remain as a Judge, as found in these cases, reflected her indelible unfitness to remain as a member of the Bar. At the very least, a Judge like her who disobeyed the basic rules of judicial conduct should not remain as a member of the Bar because she had thereby also violated her Lawyer's Oath.[269]

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[268] *Anacta v. Resurreccion*, A.C. No. 9074, August 14, 2012, 678 SCRA 352, citing *Berbano v. Barcelona*, A.C. No. 6084, September 3, 2003, 410 SCRA 258, 264.

[269] *Samson v. Caballero*, A.M. No. RTJ-08-2138, August 5, 2009, 595 SCRA 423, 432-433.

Indeed, respondent Judge Yu's violation of the fundamental tenets of judicial conduct embodied in the *New Code of Judicial Conduct for the Philippine Judiciary* would constitute a breach of the following canons of the *Code of Professional Responsibility*, to wit:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

> Rule 1.02 — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 6 — THESE CANONS SHALL APPLY TO LAWYERS IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR OFFICIAL TASKS.

> Rule 6.02 — A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

> Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

The Court does not take lightly the ramifications of Judge Yu's misbehavior and misconduct as a judicial officer. By penalizing her with the supreme penalty of dismissal from the service, she should not anymore be allowed to remain a member of the Law Profession.

However, this rule of fusing the dismissal of a Judge with disbarment does not in any way dispense with or set aside the respondent's right to due process. As such, her disbarment as an offshoot of A.M. No. 02-9-02-SC without requiring her to comment on the disbarment would be violative of her right to due process. To accord due process to her, therefore, she should first be afforded the opportunity to defend her professional

standing as a lawyer before the Court would determine whether or not to disbar her.

IX
Final Word

The Court will not hesitate to impose the extreme penalty on any judicial officer who has fallen short of the responsibilities of her worthy office. Any conduct that violates the norms of public accountability and diminishes the faith of the people in the judicial system must be condemned.[270] No act or omission by a Judge or Justice that falls short of the exacting norms of holding the public office of dispensing justice can be condoned, for the most important thing for every Judge or Justice is to preserve the people's faith and confidence in the Judiciary as well as in the individuals who dispense justice. The image of the Judiciary must remain unsullied by the misconduct of its officials. The Court will not shirk from its duty of removing from the Bench any Judge or Justice who has stained the integrity and dignity of the Judiciary.[271] This is what must be done now in these consolidated cases.

WHEREFORE, the Court **FINDS** and **PRONOUNCES** respondent **JUDGE ELIZA B. YU GUILTY** of **GROSS INSUBORDINATION**; **GROSS IGNORANCE OF THE LAW**; **GROSS MISCONDUCT**; **GRAVE ABUSE OF AUTHORITY**; **OPPRESSION**; and **CONDUCT UNBECOMING OF A JUDICIAL OFFICIAL**; and, **ACCORDINGLY**, **DISMISSES** her from the service **EFFECTIVE IMMEDIATELY**, with **FORFEITURE OF ALL HER BENEFITS**, except accrued leave credits, and further **DISQUALIFIES** her from reinstatement or appointment to any public office or employment, including to one in any government-owned or government-controlled corporations.

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[270] *Dagudag v. Paderanga*, A.M. No. RTJ-06-2017, June 19, 2008, 555 SCRA 217, 237.

[271] *Edaño v. Asdala*, A.M. No. RTJ-06-1974, July 26, 2007, 528 SCRA 212, 226.

Respondent **JUDGE ELIZA B. YU** is directed to show cause in writing within ten (10) days from notice why she should not be disbarred for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics as outlined herein.

Let a copy of this decision be furnished to the Office of the Court Administrator for its information and guidance.

SO ORDERED.

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

Brion, J., see concurring and dissenting opinion.

Leonen, J., joins the opinion of *J. Brion.*

Peralta and *Perlas-Bernabe, JJ.,* on official leave.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I **CONCUR** with the *ponencia's* findings and conclusions. I find, as the *ponencia* finds, that Judge Eliza B. Yu *(Judge Yu)* is **guilty** of gross insubordination, gross ignorance of the law, gross misconduct, grave abuse of authority, oppression, and conduct unbecoming of a judicial official; and should therefore be **dismissed from the service** effective immediately, with forfeiture of all benefits and disqualification from reinstatement or appointment to any public office or employment, and **disqualified** from reinstatement or appointment to any public office or employment.

I **DISAGREE**, however, with the *ponencia's* conclusion that, notwithstanding the severity and grossness of the various administrative offenses committed by Judge Yu that warrants her disbarment, the Court cannot, in these proceedings, order her disbarment. It reasons that the Court must first

allow her to defend her professional standing as a lawyer before it proceeds to mete out the ultimate sanction of disbarment.

I submit that the Court can properly **disbar** Judge Yu in these same proceedings. The proceedings the OCA and the Court undertook in the various administrative cases filed against Judge Yu, as borne by the records, sufficiently supports the conclusion that Judge Yu had been accorded more than ample opportunity to defend her professional standing as a lawyer justifying her disbarment.

More than anything, her ignorance, arrogance, recalcitrant attitude, uncharacteristic insubordination, megalomania, and lack of humility demonstrate her incompetence and unfitness to discharge not only the office and duties of judge; more than anything, they reveal an utter incompetence and unfitness to continue discharging the trust and respect invested her as a member of the Bar.

SUPPORTING REASONS FOR MY DISSENT

I. The cases and proceedings against Judge Yu.

A. The administrative complaints.

Based on the records, the following are the administrative cases filed against Judge Yu:

Complainant	Docket Number and Date	Charges
Gito, Emily L. San Gaspar (MeTC, Br. 20 Judge)	AM No. MTJ-13-1821 (formerly OCA IPI No. 10-2308-MTJ) (September 2, 2010)	Conduct unbecoming of a Judge. ➢ Stemmed from the July 12, 2010 Letter-Complaint of Judge Emily San Gaspar-Gito, Branch 20, MeTC, Manila concerning the former's Facebook and Yahoo messages with sexual undertones.[1]

[1] *Rollo,* pp. 741-749.

Luchavez, Gabina Punzalan	OCA IPI No. 10-2335-MTJ(December 21, 2010)	Conduct unbecoming of a Judge, gross ignorance of the law, and violation of RA No. 3019.[2]
Colasito, Bibiano G. (MeTC Judge), et al.	OCA IPI No. 11-2378-MTJ(June 2, 2011)	Gross insubordination, refusal to perform official duty, gross ignorance of the law/ procedure, **grave misconduct, violation of SC circulars, violation of the Code of Professional Responsibility, violation of the Oath**, and oppressive conduct. ➢ In Re: Judge Yu's refusal to comply with AO No. 19-2011 (Night Courts); her request for an audit of the Clerk of Court of Pasay City concerning the remittance of the fees in *ex parte* presentation of evidence; her order for the *ex parte* presentation of evidence before the OIC who is not a lawyer; her act of authorizing the prosecution of a criminal case without the presence of the public prosecutor; and her offensive remarks against Court Administrator Midas Marquez and the judiciary. (The case stemmed from the Affidavit-Complaint signed by

[2] *Id*. at 144.

		four (4) Pasay City MeTC judges[3] and seventy (70) court personnel[4] of Pasay City Courts).
Labid, Josefina G.	OCA IPI No. 11-2398-MTJ[5] (August 8, 2011)	Oppression, gross ignorance of the law, and conduct unbecoming of a judge. ➢ In Re: Judge Yu's refusal to approve Noel Labid's application for sick leave. (Related with OCA IPI No. 11-2378-MTJ)
Abad, Amor V. (Court Interpreter), et. al.	OCA IPI No. 11-2399-MTJ[6] (August 8, 2011)	**Grave misconduct**, oppression, gross ignorance of the law, and violation of the Code of Judicial Conduct. ➢ Directing three (3) non-court employees (allegedly OJTs) to correct the draft decisions in *ex parte* cases

[3] These are: Judge Catherine P. Manodon (now Presiding Judge of Branch 104, RTC, Quezon City), Judge Bonifacio S. Pascua (now Presiding Judge of Branch 56, RTC, Makati City; Judge Bibiano G. Colastino (now Presiding Judge of Branch 50, RTC, Manila; and Judge Restituto V. Mangalindan, Branch 46, MeTC, Pasay City. *Id*. at 712.

[4] *Id*. at 712-715.

[5] Filed by Ms. Josefina G. Labid, mother of Noel Labid, Utility Worker 1, Branch 47, MeTC, Pasay City. *Id*. at 726-727.

[6] Filed by the staff of Branch 47, MeTC, Pasay City, who were also complainant in OCA IPI No. 11-2378, namely: Amor V. Abad (Court Interpreter), Froilan I. Tomas (Court Stenographer), Roman H. Aviles (Court Stenographer), Norman D.S. Garcia (Deputy Sheriff IV), Maximo Sayo (Process Server), Emelina J. San Miguel (Records Officer), and Dennis Echegoyen (Deputy Sheriff). *Id*. at 720.

		and other court orders and resolutions; ordering the complainant-court personnel of Branch 47, Pasay City, to advertise and offer for sale the books she wrote; humiliating her staff in open court; making unsavory remarks against CA Marquez; directing the *ex parte* presentation of evidence before the court's officer-in-charge who is not a member of the Bar; authorizing the arraignment of the accused without the presence of the public prosecutor; and in refusing to approve the sick leave application of Noel Labid, among others.[7] (Related with OCA IPI No. 11-2378-MTJ)
Lopez, Leilani A. Tejero (Court Personnel)	AM No. MTJ-12-1815 formerly OCA IPI No. 11-2401-MTJ) (August 8, 2011 andAugust 23, 2012 respectively)	**Refusal to obey court order**. ➢ Stemmed from the "Sworn Statement" dated June 16, 2011 of Leilani A. Tejero Lopez, Clerk III, Branch 47, Pasay City., claiming that Judge Yu questioned the selection process of the OCA-SPB concerning her appointment as Branch Clerk of Court.[8]

[7] *Id.* at 720-724.

[8] *Id.* at 738.

Chun Suy Tay c/o Charlie V. Tumaru	OCA IPI No. 11-2411-MTJ (September 8, 2011)	Knowingly rendering unjust resolution and conduct prejudicial to the best interest of the service.[9]
Colsaito, Bibiano, et. al. (MeTC Pasay)	OCA IPI No. 12-2456-MTJ (January 13, 2012)	Grave abuse of authority and oppression. ➢ Stemmed from the December 1, 2011 Order of Judge Yu in Criminal Case No. M. PSY-09-08592-CR, entitled *"People of the Philippines v. Ramil Fuentes, et al."* directing the complainants in OCA IPI No. 11-2378-MTJ to show cause why they should not be held liable for contempt for the alleged surreptitious taking of a copy of TSN dated March 22, 2011 in the said case.[10]
OCA	AM No. MTJ-12-1813 (formerly AM No. 12-5-42-MeTC) (June 26, 2012)	RE: Incidents related to AO No. 19-2011 (the establishment of Night Courts) and the adverse actuations of Judge Eliza B. Yu anent the said Court issuance. ➢ Stemmed from the July 21, 2011 Letter of the judges of MeTC, Pasay City, requesting for the immediate suspension or

[9] *Id*. at 144.

[10] *Id*. at 734.

		detail to another station of Judge Yu pending investigation of all the administrative cases filed against the latter, namely: OCA IPI Nos. 11-2378-MTJ, 12-2456-MTJ, 2398-MTJ, 11-2399-MTJ, 10-2308-MTJ, and 12-1815B.[11]
OCA	AM No. 12-1-09-MeTC	RE: Letter dated 7-21-11 of Exec. Judge Bibiano G. Colastino and 3 other judges of MeTC Pasay City, for the suspension or detail to another station of Judge Eliza B. Yu, Branch 47 of the same court.
OCA	AM No. MTJ-13-1836 (formerly AM No. 11-11-115-MeTC	**Misconduct and insubordination**. ➢ Stemmed from the May 2, 2011 Letter of Judge Yu to CA Marquez requesting for an investigation on the (1) alleged delayed appointment of the Branch Clerk of Court at MeTC, Branch 47, Pasay City, and (2) appointment of Ms. Mariejoy P. Lagman as Clerk III, RTC, Br. 108, Pasay City, despite the pending administrative case against the latter involving grave offenses.[12]

[11] *Id.* at 751.

[12] *Id*. at 736.

B. Judge Yu's pleadings, letters, etc. filed before or sent to the OCA and/or Court and the Court's resolutions, orders, etc. in relation with these cases.

On the other, the following are the Motions, Memoranda, Manifestations, Letters, and other papers filed before and/or sent to the Court by Judge Yu *vis-à-vis* the Resolutions, Orders, and other Notices issued by the Court in relation with these proceedings.

Date	**Court Issuances, etc.**	**Date**	**Judge Yu's Pleadings, etc.**
		June 29, 2011	**Comment in OCA IPI No. 11-2378-MTJ.**[13]
		September 1, 2011	**Comment to AM No. MTJ-12-1815.**[14]
		September 2, 2011	**Comment in OCA IPI No. 11-2399-MTJ.**[15]
		January 26, 2012	Comment to OCA IPI No. 11-2398-MTJ, and adopts her Comment in OCA IPI Nos. 11-2378-MTJ, 11-2399-MTJ, 11-2401-MTJ, and 11-3728.
February 1, 2012	Resolution (of the Court's First Division) in	February 1, 2012	Motion to Declare Null and Void the February 1, 2012 Resolution.

[13] *Id*. at 718-720.

[14] *Id*. at 738-739.

[15] *Id*. at 724-726.

	AM No. 12-1-09-MeTC placing Judge Yu under preventive suspension.		
February 6, 2012	Resolution[16] noting Judge Yu's February 2, 2012 MR.	February 2, 2012	MR to the Court's February 1, 2012 Resolution placing Judge Yu under preventive suspension.
		February 3, 2012	Comment to OCA IPI No. 12-2456-MTJ.[17]
		March 1, 2012	Omnibus Motion to Lift Preventive Suspension, Motion for Clarification of Resolution dated February 1, 2012, Motion to Obtain Copy of Memorandum dated January 25, 2012 of the OCA, and Motion for Early Resolution of the Administrative Cases to the SC First Division.
June 26, 2012	Resolution:[18](1) Treated the Memorandum dated April 25, 2012 of the OCA as an Administrative		

[16] *Id*.

[17] *Id*. at 734-735.

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

	Complaint against Judge Yu to be docketed as AM No. MTJ-12-1813; and(2) Required Judge Yu to Comment on the OCA's April 25, 2012 Memorandum.		
July 24, 2012	Resolution[19] noting Judge Yu's June 29, 2012 Comment.	July 16, 2012	Comment[20] to the Court's June 26, 2012 Resolution.
		AM No. 11-11-115-MTC and AM No. MTJ-12-1813 (formerly AM No. 12-5-42-MeTC)	
		February 28, 2012	**Omnibus Motion to Lift Preventive Suspension, Motion for Clarification of Resolution dated February 1, 2012, Motion to Obtain Copy of Memorandum dated January 25, 2012 of the OCA, and Motion for Early Resolution of the Administrative Cases**
		March 14, 2012	**Motion to Re-Raffle**

[19] *Id*. at 97.

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

		March 22, 2012	**Supplemental to Omnibus Motion**
		May 7, 2012	**Motion to Reinstate with Manifestations**
		May 28, 2012	**Supplemental to Motion to Reinstate with Manifestations**
		June 15, 2012	**Letter to the OCA "Re OCA IPI No. 10-2308-MTJ"**
		June 18, 2012	**Manifestation**
		June 25, 2012	**Second Manifestation**
		June 29, 2012	**Comment[21] in relation with the establishment of Night Courts in AM No. 12-1-09-MTC.**
July 31, 2012	Resolution:[22] noted Judge Yu's July 23, 2012 Manifestation.	**July 23, 2012**	**Manifestation[23] expounding certain legal concepts in her July 16, 2012 Comment to Support her dismissal plea – of the charges of Insubordination, Gross Misconduct, and Violation of the New Code of Judicial Conduct.**

[21] *Id*. at 41-50.

[22] *Id*. at 134.

[23] *Id*. at 98-113.

November 13, 2012	Resolution:[24] noted Judge Yu's October 29, 2012 Letter and granted her Request for change of mailing address.		
March 12, 2013	Resolution:[25] noted Judge Yu's March 6, 2013 Manifestation, stating that February 28, 2013 Certificate of Appreciation for her 2-day lecture on Barangay Justice in Catbalogan City will refute the false and malicious complaint dated May 12, 2011 filed against her by Executive Judge Bibiano Colastino, *et al.*		
March 19, 2013	Resolution[26] noted Judge Yu's March 7, 2013 Manifestation.	March 7, 2013	Manifestation[27] (that DCA Bahia should have inhibited herself from signing the April

[24] *Id.* at 147.

[25] *Id.* at 204.

[26] *Id.* at 152.

[27] *Id.* at 151.

			25, 2012 Memorandum in re AM No. MTJ-12-1813).
		March 31, 2013	Letter[28] to Court Administrator Marquez (Re: March 14, 2013 Letter on Compliance with the Directive to Submit Additional Copies of Complaint)
June 4, 2013	Resolution:[29] noted Judge Yu's May 2, 2013 Manifestation; and consolidated AM No. MTJ-12-1813 and AM No. 12-1-09-MeTC.	May 2, 2013	Manifestation[30] (in relation with her April 8, 2013 Letter to the OCA in re: AM No. MTJ-12-1813)
June 18, 2013	Resolution:[31] noted Judge Yu's April 8, 2013 Letter in AM No. 12-1813-MTJ.		
August 6, 2013 (In AM Nos. MTJ-12-	Resolution:[32] directed the resending to Judge Yu of the		

[28] *Id*. at 404.

[29] *Id*. at 157.

[30] *Id*. at 153-156.

[31] *Id*. at 214.

[32] *Id*. at 175.

1813 and 12-1-09-MeTC)	Court's March 12, 2013 Resolution, which was returned unserved, at her permanent address, per 201 File.		
August 27, 2013 (In AM No. MTJ-12-1813 and AM No. 12-1-09-MeTC)	Resolution:[33] noted Judge Yu's July 21, 2013 Letter and Motion, and the August 14, 2013 Letter of Atty. Oliveros referring Judge Yu's July 21, 2013 Letter requesting for the Constitution of a Fact-Finding Committee to determine the administrative liability of CA Marquez; and consolidated AM Nos. 11-11-115-MeTC, MTJ-12-1815; OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, and 12-2456-MTJ with AM Nos.	July 21, 2013	Letter[34] and Motion to Declare Null and Void[35] the February 21, 2012 Resolution of the Court's First Division

[33] *Id*. at 183-184.

[34] *Id*. at 177.

[35] *Id*. at 178-182.

	12-1813 and 12-1-09-MeTC.		
September 3, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	Resolution: noted the August 8, 2013 Memorandum of CA Marquez in compliance with the Court's February 3, 2013 Resolution in AM No. 12-1-09-MeTC.		
		September 7, 2013	**Manifestation[36] Re the Consolidation of Administrative Cases: AM Nos. MTJ-12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, and 12-2456-MTJ in the Court *En Banc's* August 27, 2013 Resolution.**

[36] *Id*. at 185-188.

		September 18, 2013	Letter[37] to CJ thru Atty. Oliveros (Re: Fact-Finding Committee on Administrative Liability of the OCA).
October 8, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	Resolution:[38] noted Judge Yu's September 27, 2013 Manifestation relative to the Court's August 27, 2013 Resolution.	**September 27, 2013**	**Manifestation[39] (Re: Consolidation of Administrative Cases).**
		October 8, 2013	Letter[40] to Atty. Geronga (Chief, SC Legal Office) Re: Motion to Strike Out dated October 7, 2013 – in relation with the

[37] *Id*. at 207-210.

[38] *Id*. at 189-190.

[39] *Id*. at 185-188.

[40] *Id*. at 193-195.

			testimonies of Amor Abad, *et al.*
October 22, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	Resolution:[41] noted Judge Yu's October 9, 2013 Manifestation.	**October 9, 2013**	**Manifestation[42] Re the Consolidation of Administrative Cases (Acknowledging receipt of the Court's August 6, 2013 Resolution).**
November 12, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-	Resolution:[43] directed the resending to Judge Yu at her permanent address per her 201 filed of the Court's June 4, 2013 and August 27, 2013 Resolutions which were returned unserved.		

[41] *Id.* at 196-197.

[42] *Id.* at 191-192.

[43] *Id.* at 201-202.

MTJ, 11-2378-MTJ, and 12-2456-MTJ)			
November 19, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	Resolution:[44] directing the resending to Judge Yu at her permanent address per her 201 File of the Court's August 6, 2013 Resolution which was returned unserved; and denied Judge Yu's November 7, 2013 Motion to Inhibit.	November 7, 2013	Motion to inhibit CA Marquez[45]
December 3, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and	Resolution:[46] ordered the resending to Judge Yu of the Court's June 18, 2013 Resolution, which was returned unserved, at her		

[44] *Id*. at 212-213.

[45] *Id*. at 205-206.

[46] *Id*. at 217-218.

MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)			
December 10, 2013 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	Resolution:[47] noted the December 9, 2013 Letter of Atty. Oliveros referring Judge Yu's September 18, 2013 Letter and her Letter regarding AM No. 11-11-115-MTJ.		
January 28, 2014 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-	Resolution:[48] ordered the resending to Judge Yu of the Court's September 3, 2013 and		

[47] *Id*. at 225-226.

[48] *Id*. at 229-230.

115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	October 8, 2013 Resolutions, which were returned unserved, including all court processes intended for her.		
		February 1, 2014	Letter[49] (in support of the Complaint of Clerk III Ferdinand A. Santos against Court Administrator Marquez).
March 18, 2014 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-	Resolution:[50] noted Judge Yu's February 7, 2014 Manifestation; denied her MR; noted and denied her March 7, 2014 Supplement to the MR.	February 7, 2014	Manifestation[51] (Confirmation of January 14, 2014 Manifestation).

[49] *Id*. at 449-454.

[50] *Id*. at 400-402.

[51] *Id*. at 383-391.

MTJ, and 12-2456-MTJ)			
		February 8, 2014	Letter[52] to CJ Sereno thru Atty. Oliveros (in support of the Complaint of Clerk III Ferdinand A. Santos against Court Administrator Marquez).
		February 24, 2014	MR[53] to the November 19, 2013 Resolution denying her Motion to Inhibit (against CA Marquez).
		March 28, 2014	Letter[54] to CJ Sereno thru Atty. Oliveros (Re: Supplemental Complaint Against the OCA).
		March 28, 2014	Letter[55] to Atty. Geronga (Re: Delayed Resolution of Administrative Case).
		March 31, 2014	Letter[56] to CJ Sereno thru Atty. Oliveros

[52] *Id*. at 437-444.

[53] *Id*. at 393-399.

[54] *Id*. at 513-528.

[55] *Id*. at 533-535.

[56] *Id*. at 361-376.

			(Re: Supplemental Administrative Complaint against the OCA in relation with her September 18, 2013 Letter on Re; fact-Finding Committee of Administrative Liability of OCA).
		April 2, 2014	Letter[57] to CJ Sereno thru Atty. Oliveros (Re: Substantiation of Supplemental Administrative Complaint against the OCA).
		July 9, 2014	Motion to Dismiss Administrative Complaints.[58]
		July 21, 2014	Letter[59] to Atty. Geronga (Re: Submitting Amended Joint Motion to Dismiss dated July 9, 2014).
August 12, 2014(In AM Nos.	Resolution:[60] noted Judge Yu's July 21, 2014 Letter		

[57] *Id.* at 277-278.

[58] *Id*. at 537-630.

[59] *Id.* at 536.

[60] *Id.* at 639-641.

12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	submitting her Amended Joint Motion to Dismiss in OCA IPI Nos. 11-2378-MTJ, 11-2398-MTJ, 11-2399-MTJ, and 12-2456-MTJ, and AM Nos. MTJ-12-1815 and 12-1-09-MeTC; and the March 31, 2014 Supplemental Administrative Complaints of CA Marquez in relation with Judge Yu's September 18, 2013 Letter concerning the alleged administrative liability of CA Marquez.		
August 21, 2014	Resolution:[61] noted Judge Yu's Letters.		
September 1, 2014	Resolution:[62] noted Judge Yu's July 9, 2014 Joint Motion to Dismiss and July 9, 2014 Motion to Dismiss; denied		

[61] *Id.* at 639-641.

[62] *Id.* at 681-684.

	her Partial MR and her June 18, 2014 Letter; and noted without action her July 17, 2014 Letter.		
		May 27, 2015	**Letter questioning her preventive suspension; and seeking the early resolution of the administrative cases against her.**[63]
September 1, 2015 (In AM Nos. 12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; and OCA IPI Nos. 1123-99-MTJ, 11-2378-MTJ, and 12-2456-MTJ)	Resolution:[64] noted without action Judge Yu's: (1) July 9, 2014 Joint Motion to Dismiss in AM Nos. 12-1-09-MeTC and MTJ-12-1815; and OCA IPI Nos. 11-2399-MTJ, 11-2378-MTJ, and 12-2456-MTJ); (2) July 9, 2014 Motion to Dismiss in AM No. MTJ-12-		

[63] *Id*. at 752.

[64] *Id*. at 681-684.

	1813; and (3) July 9, 2013 Motion to Dismiss in AM No. MTJ-18-1821; denied for lack of merit the Partial Motion for Reconsideration of the Denial of the Motion for Severance of Consolidated Administrative Cases by the Honorable Supreme Court *En Banc* dated July 14, 2014; denied for lack of basis Judge Yu's June 18, 2014 Letter praying that Atty. Gito be impleaded as co-respondent of Judge San Gaspar-Gito in AM No. 13-1821; and noted without action Judge Yu's July 17, 2014 Letter stating that she wants to correct an error on page 7 of her September 2,		

	2011 Comment in OCA IPI No. 11-2399-MTJ.		

II. The OCA's findings as affirmed by the Court.

A. The OCA's findings and recommendation.

Through a Memorandum[65] dated February 11, 2016, the Office of the Court Administrator *(OCA),* through Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, recommended the following:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that respondent Judge Eliza B. Yu, Branch 47, Metropolitan Trial Court, Pasay City be found **GUILTY** of INSUBORDINATION, GROSS IGNORANCE OF THE LAW, REFUSAL TO PERFORM OFFICIAL FUNCTIONS, GROSS MISCONDUCT AMOUNTING TO VIOLATION OF THE CODE OF JUDICIAL CONDUCT, GRAVE ABUSE OF AUTHORITY, OPPRESSION, and CONDUCT UNBECOMING OF A JUDGE, and be DISMISSED FROM THE SERVICE with forfeiture of all benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office including government-owned or controlled corporations.

The OCA found Judge Yu Guilty of: (1) insubordination for her refusal to comply with AO No. 19-2011 and to honor the appointments of Ms. Lagman and Ms. Tejero-Lopez; (2) gross misconduct and violation of Section 6, Canon 4 of the New Code of Judicial Conduct for her letter to the Department of Tourism Secretary Lim; (3) oppression for her conduct in relation with Noel Labid's request for sick leave; (4) gross ignorance of the law for her act of allowing the criminal proceedings in her court to continue without the presence of the public prosecutor and for ordering the reception of evidence by the OIC who was not a member of the Bar; and (5) grave abuse of authority for issuing a show cause order against Judge Colasito, *et al.*

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[65] *Id.* at 701-755.

The OCA likewise agreed with the findings and recommendation of Judge Abdulwahid but clarified that her use of the court's official letterhead in summoning the brother of Judge San Gaspar-Gito demonstrated abuse of power and a violation of Section 8, Canon 4 of the New Code of Judicial Conduct.

The OCA, however, recommended the dismissal of the charges of gross ignorance of the law for allowing OJTs and in directing the court staff to sell her books, including the alleged malicious utterances against Court Administrator Marquez; and upheld Judge Yu's requiring the plaintiffs with pending replevin cases to pay legal fees for transcripts pursuant to her prerogative to ensure that the court funds are properly accounted for.

B. The *ponencia's* ruling.

The *ponencia* agreed with the recommendations and findings of the OCA.

In re Judge Yu's non-compliance with AO No. 19-2011. The *ponencia* rules that the manner by which Judge Yu chose to express her dissent against AO No. 19-2011 has transgressed the bounds of judicial ethics. The *ponencia* reminds that Judge Yu has sworn to obey the orders and processes of the Court without delay. Her unjustified refusal to comply with the directives/orders of the OCA and the Court made her liable for gross insubordination and gross misconduct. More importantly, the *ponencia* emphasizes, Judge Yu's refusal to submit to night duty openly defied the Court's authority, to issue AO No. 19-2011, that the Constitution grants it under Article VIII, Section 5(5) of the Constitution.

In re Judge Yu's refusal to honor the appointments of court personnel. The *ponencia* agrees that Judge Yu's persistent refusal to honor the appointments amounted to a brazen challenge against the Court's power and discretion to appoint court employees. It emphasizes that these appointments are in the form of an order or directive from the Court which Judge Yu had no right to reject. For these acts, Judge Yu is liable for gross insubordination and gross misconduct.

In re Judge Yu's issuing of a show cause order against judges and court personnel. The *ponencia* likewise agrees with the OCA that the show cause order Judge Yu issued in OCA IPI No. 11-2378-MTJ demonstrated her clear abuse of court processes and flagrant abuse of authority, as well as her motivation to retaliate against her accusers, thereby violating Section 8, Canon 4 of the New Code of Judicial Conduct.

In re Judge Yu's refusal to sign the application for leave of absence and other allegations of oppression. Equally, the *ponencia* agrees that Judge Yu's inordinate refusal to approve Noel Labid's leave of absence application, notwithstanding the latter's compliance with the requirements for sick leave application per the 2002 Revised Manual for Clerks of Court, reveals a motive to retaliate against Noel Labid for his joining the administrative complaint against her; these acts amount to grave abuse of authority and oppression.

The *ponencia* also dismisses the other allegations of oppression for lack of substantiation.

In re the charges of gross ignorance of the law. The *ponencia* however disagrees with the OCA's findings and rules that Judge Yu: (1) deliberately ignored OCA Circular No. 111-2005 in prohibiting on-the-job trainees when she issued the November 10, 2010 Memorandum naming the student, Ms. Rosali, as encoder and assigning her to court duties similar to a court employee; (2) violated CSC Memorandum Circular No. 06-05 when she designated Mr. Santos, as first level personnel, as OIC which is reserved to personnel belonging to the second level.

In re allowing criminal proceedings without the presence of the public prosecutor. The *ponencia* rules that Judge Yu should not only be cited for her failure to abide by Section 5, Rule 110 of the Rules of Court when she allowed the proceedings in *People v. Manduriao* to proceed without the actual presence of the public prosecutor. The *ponencia* points out that she should likewise be cited for her failure to comply with Section 6, Rule 116 of the same Rules when she allowed the change of plea by

the accused in the same case without the assistance of counsel. To the *ponencia,* as a judge, she should know the fundamental substantive and procedural requirements on arraignment and right to counsel found in the Constitution and the Rules of Court (Revised Rules on Criminal Procedure).

In re her sending inappropriate messages. Finally, the *ponencia* agrees with Judge Abdulwahid's conclusions that Judge Yu's Facebook and Yahoo messages to Judge San Gaspar-Gito contained sexual innuendos that are improper for a magistrate to write and send to another who find them vexatious and annoying, conduct that is improper and unbecoming of a member of the judiciary.

In line with this conclusion, the *ponencia* likewise agrees with the OCA's findings and rules that Judge Yu's use of the court's official letterhead in summoning Atty. Reynaldo San Gaspar, Judge San Gaspar-Gito's brother, constitutes abuse of power and violates Section 8, Canon 4, as well as Section 4 of Canon 1 and Section 1 of Canon 4, all of the New Code of Judicial Conduct.

III. My reasons for the vote to disbar Judge Yu.

The *ponencia* refuses to disbar Judge Yu reasoning that "*this rule of fusing the dismissal of a judge with disbarment does not in any way dispense with or set aside [Judge Yu's] right to due process. As such, his [sic] disbarment as an offshoot of A.M. No. 02-9-02-SC without requiring him [sic] to comment on the disbarment is violative of her right to due process. Thus, she should first be afforded the opportunity of defending her professional standing as a lawyer before she would be disbarred.*"

Notably, the *ponencia* recognizes that the administrative charges against Judge Yu in fact likewise constitutes as grounds for disciplinary actions against members of the Bar which the Court can very well treat as justifiable disciplinary initiatives to remove her from the Roll. It points out that Judge Yu's membership in the Bar is an integral aspect of her qualification for judgeship. To the *ponencia*, "her moral and actual fitness

to remain as a judge reflected her indelible unfitness to remain as a member of the Bar" who therefore must no longer "remain as its member because she thereby also violated her Layer's Oath."

I respect my colleague's position that gives significance to Judge Yu's right to due process. To be sure, everyone charged before any court or tribunal is entitled to due process or at the very least an opportunity to relay one's side and defend himself or herself. No less than our Constitution guarantees this right as it provides that "no person shall be deprived of life, liberty, or property without due process of the law x x x." Judges charged with administrative complaints are no exceptions to this due process requirement.

I disagree, however, with the *ponencia's* refusal to disbar Judge Yu in these proceedings as I do not find that she had not been given ample opportunity to explain and defend her professional standing as a lawyer. Contrary to the *ponencia's* observation, the records fully support the conclusion that Judge Yu has had more than the requisite minimum opportunity to explain herself against the disbarment charges that justifies her removal from the Roll of Attorneys.

A. Nature of disbarment.

Under A.M. No. 02-9-02-SC (which took effect on October 1, 2002), an administrative case against a judge of a regular court based on grounds which are also grounds for disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. Likewise, it provides that **judgment in both respects may be incorporated in one decision or resolution**. A.M. No. 02-9-02-SC specifically states:

Some administrative cases against justices of the Court of Appeals and the Sandiganbayan; Judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility; and

the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.

In any of the foregoing instances, **the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar**. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as a member of the Bar. **Judgment in both respects may be incorporated in one decision or resolution.** [emphases and underscoring supplied]

The Rules of Court, on the other hand, provides, under Section 27 of Rule 138, that a lawyer may be removed or suspended from the practice of law, *among others*, for gross misconduct, for any violation of the Lawyer's Oath, and for willful disobedience to the Court's orders, circulars, and other issuances:

Sec. 27. Attorneys removed or suspended by Supreme Court on what grounds. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other **gross misconduct** in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, **or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court**, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. [emphases and underscoring supplied]

It should be pointed out that the Lawyer's Oath is a source of a lawyer's obligations and its violation is a ground for disbarment or other disciplinary action. In addition to this, the Code of Professional Responsibility forbids a lawyer to engage in unlawful, dishonest, immoral, or deceitful conduct as provided under its Rule 1.01. Thus, every lawyer must pursue only the highest standards in the practice of his calling. This is because

the practice of law is a privilege, and only those adjudged qualified are permitted to do so.[66]

It must be stressed, however, that the purpose of disbarment is not meant as a punishment depriving a lawyer of a source of livelihood; rather, it is intended to protect the administration of justice that those who exercise this function should be competent, honorable, and reliable in order that the courts and clients may rightly repose confidence in them.[67]

In *Office of the Court Administrator v. Judge Indar*,[68] the Court automatically disbarred the respondent judge pursuant to the provisions of A.M. No. 02-9-02-SC, adopting the reasoning held in *Samson v. Caballero* that:

> Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as member of the Bar." The rule does not make it mandatory, before respondent may be held liable as a member of the bar, that respondent be required to comment on and show cause why he should not be disciplinarily sanctioned as a lawyer separately from the order for him to comment on why he should not be held administratively liable as a member of the bench. In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of "automatic conversion" of administrative cases against justices and judges to disciplinary proceedings against them as lawyers. This will also serve the purpose of A.M. No. 02-9-02-SC to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench also

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[66] See *Cojuangco, Jr. v. Atty. Palma,* 481 Phil. 646 (2004), citing *In Re: Gutierrez,* Adm. Case No. L-363, July 31, 1962, 5 SCRA 661; *Pantanosas, Jr. v. Atty. Elly L. Pamatong,* AC No. 7330, June 14, 2016; and *Spouses Garcia v. Atty. Bala,* 512 Phil. 486 (2005).

[67] See *Rosa Yap-Paras v. Atty. Justo Paras,* AC No. 4947, 551 Phil. 338 (2007); and *Avancena v. Judge Ricardo P. Liwanag,* 454 Phil. 20 (2003).

[68] 685 Phil. 272, 292-293(2012), citing *Samson v. Caballero*, A.M. No. RTJ-08-2138, August 5, 2009, 595 SCRA 423, 435-436.

as a disciplinary proceeding against him as a lawyer by mere operation of the rule. Thus, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals or a judge of a first- or second-level court.

It cannot be denied that respondent's dishonesty did not only affect the image of the judiciary, it also put his moral character in serious doubt and rendered him unfit to continue in the practice of law. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law. If the practice of law is to remain an honorable profession and attain its basic ideals, those counted within its ranks should not only master its tenets and principles but should also accord continuing fidelity to them. **The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning**. [emphasis in the original]

The Court similarly ruled in the fairly recent case of *Office of the Court Administrator v. Presiding Judge Joseph Cedrick O. Ruiz*[69] where it dismissed from the service and at same time disbarred the erring respondent judge, Joseph Cedrick O. Ruiz.

B. Due process requirements in administrative proceedings for disbarment.

Jurisprudence settles that technical rules of procedure and evidence are not strictly applied to administrative proceedings. In administrative proceedings, it is enough that the party is given the chance to be heard before the case against him is decided. In the application of the principle of due process in administrative proceedings, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.[70]

In *Office of the Court Administrator v. Judge Indar*,[71] the Court explained the underlying principle for the relaxation of

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[69] A.M. No. RTJ-13-2361, February 2, 2016, sc.judiciary.gov.ph.

[70] See *Office of the Court Administrator v. Judge Indar,* 685 Phil. 272, 292-293(2012) [citations omitted].

[71] 685 Phil. 272 (2012).

the due process requirements in administrative proceedings. Citing *Cornejo,* the Court pointed out that *"a public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency."* Thus, the strict application of technical rules of procedure required in judicial proceedings are not required with equal force in administrative proceedings.[72]

In the leading case of *Ang Tibay v. CIR*,[73] the Court laid down the following due process requirements that must be complied with in administrative proceedings: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.

C. Judge Yu had been afforded more than sufficient opportunity to defend her side in the numerous administrative complaints against her that included a charge for disbarment, and violation of the Code of Professional Responsibility and of the Lawyer's Oath.

Based on the above considerations, I submit that the due process requirements in administrative proceedings had been sufficiently complied as the Court finds Judge Yu guilty of

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[72] See *Office of the Court Administrator v. Judge Indar,* 685 Phil. 272, 292-293(2012), citing *Cornejo,* 41 Phil. 188, 194 (1920).

[73] 69 Phil. 635, 644 (1940).

gross insubordination, gross ignorance of the law, gross misconduct, grave abuse of authority, oppression, and conduct unbecoming of a judicial official.

In the following cases, Judge Yu was charged with grounds that likewise constitute as grounds for disbarment: (1) OCA IPI No. 11-2378-MTJ[74] for gross insubordination, grave misconduct, violation of SC circulars, violation of the Code of Professional Responsibility, and violation of the Oath, among others; (2) OCA IPI No. 11-2399-MTJ[75] for grave misconduct, among others; (3) AM No. MTJ-12-1815 (formerly OCA IPI No. 11-2401-MTJ) for refusal to obey court order; (4) AM No. MTJ-12-1813 (formerly AM No. 12-5-42-MeTC) concerning her refusal to abide by AO No. 19-2011; and (5) AM No. MTJ-13-1836 for misconduct and insubordination.

In all of these cases, Judge Yu had been able to defend herself *via* Comment, Manifestations, Motions, Letters, and other papers she filed with or sent to the Court, namely:

- In OCA IPI No. 11-2378-MTJ:[76]
  - Comment dated June 29, 2011.
- In AM No. MTJ-12-1815:
  - Comment dated September 1, 2011.
- In OCA IPI No. 11-2399-MTJ:[77]
  - Comment dated September 2, 2011.

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[74] *Rollo,* pp. 712-715.

[75] Filed by the staff of Branch 47, MeTC, Pasay City, who were also complainant in OCA IPI No. 11-2378, namely: Amor V. Abad (Court Interpreter), Froilan I. Tomas (Court Stenographer), Roman H. Aviles (Court Stenographer), Norman D.S. Garcia (Deputy Sheriff IV), Maximo Sayo (Process Server), Emelina J. San Miguel (Records Officer), and Dennis Echegoyen (Deputy Sheriff). *Id*. at 720.

[76] *Id*. at 718-720.

[77] Filed by the staff of Branch 47, MeTC, Pasay City, who were also complainant in OCA IPI No. 11-2378, namely: Amor V. Abad (Court

- In AM No. MTJ-12-1813:
  - July 16, 2012 Comment to the Court's June 26, 2012 Resolution treating the April 25, 2012 OCA Memorandum as Administrative Complaint against her to be docketed as AM No. MTJ-12-1813;
  - February 28, 2012 Omnibus Motion to Lift Preventive Suspension, Motion for Clarification of Resolution dated February 1, 2012, Motion to Obtain Copy of Memorandum dated January 25, 2012 of the OCA, and Motion for Early Resolution of the Administrative Cases;
  - March 14, 2012 Motion to Re-Raffle;
  - March 22, 2012 Supplemental to Omnibus Motion;
  - May 7, 2012 Motion to Reinstate with Manifestations;
  - May 28, 2012 Supplemental to Motion to Reinstate with Manifestations;
  - June 15, 2012 Letter to the OCA "Re OCA IPI No. 10-2308-MTJ";
  - June 18, 2012 Manifestation;
  - June 25, 2012 Second Manifestation;
  - June 29, 2012 Comment[78] in relation with the establishment of Night Courts in AM No. 12-1-09-MTC;
  - July 23, 2012 Manifestation[79] expounding certain legal concepts in her July 16, 2012 Comment to Support her dismissal plea – of the charges of Insubordination, Gross Misconduct, and Violation of the New Code of Judicial Conduct;
  - March 7, 2013 Manifestation[80] (that DCA Bahia

Interpreter), Froilan I. Tomas (Court Stenographer), Roman H. Aviles (Court Stenographer), Norman D.S. Garcia (Deputy Sheriff IV), Maximo Sayo (Process Server), Emelina J. San Miguel (Records Officer), and Dennis Echegoyen (Deputy Sheriff). *Id*. at 720.

[78] *Id*. at 41-50.

[79] *Id*. at 98-113.

[80] *Id*. at 151.

should have inhibited herself from signing the April 25, 2012 Memorandum in re AM No. MTJ-12-1813);

- May 2, 2013 Manifestation[81] (in relation with her April 8, 2013 Letter to the OCA in re: AM No. MTJ-12-1813).

Judge Yu likewise filed the following: (1) September 7, 2013 Manifestation[82] Re the Consolidation of Administrative Cases: AM Nos. MTJ-12-1813, 12-1-09-MeTC, 11-11-115-MeTC, and MTJ-12-1815; OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, and 12-2456-MTJ in the Court *En Banc's* August 27, 2013 Resolution; (2) September 27, 2013 Manifestation[83] (Re: Consolidation of Administrative Cases); (3) October 9, 2013 Manifestation[84] Re the Consolidation of Administrative Cases (Acknowledging receipt of the Court's August 6, 2013 Resolution); (4) May 27, 2015 Letter questioning her preventive suspension; and seeking the early resolution of the administrative cases against her;[85] and the several pleadings she filed praying that CA Marquez inhibit in the administrative proceedings against her.

The Court duly noted these filings and submissions thru the Resolutions and notices that the Court sent and re-sent to her permanent address written on her 201 File, as well as to the address she stated in her October 29, 2012 Letter[86] request for change of her mailing address. (I enumerated these numerous Court Resolutions under Part I-B of this Opinion).

All of these – the filings and submissions of Judge Yu and the Resolutions and other processes of the Court that were sent and re-sent to Judge Yu – confirm the conclusion that Judge

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[81] *Id*. at 153-156.

[82] *Id*. at 185-188.

[83] *Id*. at 185-188.

[84] *Id*. at 191-192.

[85] *Id*. at 752.

[86] See the Court's November 13, 2012 Resolution.

Yu had been sufficiently apprised of the charges against her, some of which could likewise potentially cause her disbarment; that she had been given ample opportunity to rebut these charges and present controverting evidence; and that she had used the granted opportunities through the various pleadings and Letters she filed with and sent to the Court.

In other words, Judge Yu had been accorded every opportunity to defend her professional standing as a lawyer sufficient to warrant the ultimate sanction of disbarment.

A final word. Judge Yu is a disgrace to both the bench and the bar. As I pointed out above, her ignorance, arrogance, recalcitrant attitude, uncharacteristic insubordination, megalomania, and lack of humility demonstrate her incompetence and unfitness to discharge not only the office and duties of judge; more than anything, they reveal an utter incompetence and unfitness to continue discharging the trust and respect invested her as a member of the Bar. Thus, I submit that – aside from being **dismissed from the service** and as a consequence of the findings of this Court which no other tribunal in the land can reverse– she should likewise be **disbarred** and her name stricken out from the roll of attorneys.

In sum, I **CONCUR** with the *ponencia's* ruling finding Judge Eliza B. Yu guilty of the administrative charges hailed against her and dismissing her from the service, subject to the above reservations.

I **VOTE** that Judge Eliza B. Yu should likewise be disbarred and her name be stricken off from the roll of attorneys.

EN BANC

[G.R. No. 207246. November 22, 2016]

JOSE M. ROY III, *petitioner, vs.* **CHAIRPERSON TERESITA HERBOSA, THE SECURITIES and EXCHANGE COMMISSION, and PHILILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondents.*

WILSON C. GAMBOA, JR., DANIEL V. CARTAGENA, JOHN WARREN P. GABINETE, ANTONIO V. PESINA, JR., MODESTO MARTIN Y. MAMON III, and GERARDO C. EREBAREN, *petitioners-in-intervention,*

PHILIPPINE STOCK EXCHANGE, INC., *respondent-in-intervention,*

SHAREHOLDERS' ASSOCIATION OF THE PHILIPPINES, INC., *respondent-in-intervention.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; REQUISITES.— The Court may exercise its power of judicial review and take cognizance of a case when the following specific requisites are met: (1) there is an actual case or controversy calling for the exercise of judicial power; (2) the petitioner has standing to question the validity of the subject act or issuance, *i.e.*, he has a personal and substantial interest in the case that he has sustained, or will sustain, direct injury as a result of the enforcement of the act or issuance; (3) the question of constitutionality is raised at the earliest opportunity; and (4) the constitutional question is the very *lis mota* of the case.

2. ID.; ID.; ID.; ID.; ID.; ACTUAL CONTROVERSY; A QUESTION IS RIPE FOR ADJUDICATION WHEN THE ACT BEING CHALLENGED HAS A DIRECT ADVERSE EFFECT ON THE INDIVIDUAL CHALLENGING IT.— Regarding the first requisite, the Court in *Belgica v. Ochoa*

stressed anew that an actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions. Related to the requirement of an actual case or controversy is the requirement of "ripeness," and a question is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.

3. ID.; ID.; ID.; ID.; ID.; *LOCUS STANDI*; PERSONAL AND SUBSTANTIAL INTEREST MUST BE BOTH MATERIAL AND REAL; MERE INVOCATION OF CITIZENSHIP OR MEMBERSHIP IN THE BAR IS INSUFFICIENT; STATUS AS TAXPAYER IS OF NO MOMENT AS THE ISSUE OF SECURITIES AND EXCHANGE COMMISSION – MEMORANDUM CIRCULAR NO. 8 (SEC-MC NO. 8) DOES NOT INVOLVE EXPENDITURE OF PUBLIC FUNDS AND TAXING POWER.— The personal and substantial interest that enables a party to have legal standing is one that is both **material**, an interest in issue and to be affected by the government action, as distinguished from mere interest in the issue involved, or a mere incidental interest, and **real**, which means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest. As to injury, the party must show that (1) he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. x x x The Court has previously emphasized that the *locus standi* requisite is not met by the expedient invocation of one's citizenship or membership in the bar who has an interest in ensuring that laws and orders of the Philippine government are legally and validly issued as these supposed interests are too general, which are shared by other groups and by the whole citizenry. x x x Petitioners' status as taxpayers is also of no moment. As often reiterated by the Court, a taxpayer's suit is allowed only when the petitioner has demonstrated the direct correlation of the act complained of and the disbursement of public funds in contravention of law or the Constitution, or

has shown that the case involves the exercise of the spending or taxing power of Congress. SEC-MC No. 8 does not involve an additional expenditure of public funds and the taxing or spending power of Congress.

4. ID.; ID.; ID.; ID.; ID.; ID.; LIBERAL APPROACH TO THE RULE OF *LOCUS STANDI* ON THE ALLEGATION OF "TRANSCEDENTAL IMPORTANCE X X X" SHOULD NOT BE ABUSED.— Petitioners' cursory incantation of "transcendental importance x x x of the rules on foreign ownership of corporations or entities vested with public interest" does not automatically justify the brushing aside of the strict observance of the requisites for the Court's exercise of judicial review. An indiscriminate disregard of the requisites every time "transcendental or paramount importance or significance" is invoked would result in an unacceptable corruption of the settled doctrine of *locus standi*, as every worthy cause is an interest shared by the general public. In the present case, the general and equivocal allegations of petitioners on their legal standing do not justify the relaxation of the *locus standi* rule. While the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused.

5. REMEDIAL LAW; CIVIL PROCEDURE; INDISPENSABLE PARTIES; PARTY-IN-INTEREST WITHOUT WHOM THERE CAN BE NO FINAL DETERMINATION OF AN ACTION; DISCUSSED.— Under Section 3, Rule 7 of the Rules of Court, an indispensable party is a party-in-interest without whom there can be no final determination of an action. Indispensable parties are those with such a material and direct interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. The interests of such indispensable parties in the subject matter of the suit and the relief are so bound with those of the other parties that their legal presence as parties to the proceeding is an absolute necessity and a complete and efficient determination of the equities and rights of the parties is not possible if they are not joined.

6. POLITICAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY (ARTICLE XII); OPERATION OF

PUBLIC UTILITY 60% OF THE CAPITAL OWNED BY FIIPINOS; "CAPITAL" DEFINED IN THE CASE OF *GAMBOA VS. TEVES*.— [T]he sole issue in the *Gamboa* case was: "whether the term 'capital' in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility." x x x The decretal portion of the *Gamboa* Decision follows the definition of the term "capital" in the body of the decision, to wit: "x x x the term 'capital' in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares)." The Court adopted the foregoing definition of the term "capital" in Section 11, Article XII of the 1987 Constitution in furtherance of "the intent and letter of the Constitution that the 'State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos' [because a] broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility." The Court, recognizing that the provision is an express recognition of the sensitive and vital position of public utilities both in the national economy and for national security, also pronounced that the evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest. Further, the Court noted that the foregoing interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities; and, as revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation.

7. ID.; ID.; ID.; ID.; ID.; DEFINITION OF CAPITAL DECLARED IN THE GAMBOA DECISION WAS NOT MODIFIED IN THE GAMBOA RESOLUTION; CASE AT BAR.— Was the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution declared for the first time by the Court in the *Gamboa* Decision modified in the *Gamboa* Resolution? The Court is convinced that it was not. x x x For the most part of the *Gamboa* Resolution, the Court,

x x x reiterated that both the Voting Control Test and the Beneficial Ownership Test must be applied to determine whether a corporation is a "Philippine national" and that a "Philippine national," is "a Filipino citizen, or a **domestic corporation "at least sixty percent (60%) of the capital stock outstanding *and entitled to vote*,"** is owned by Filipino citizens. A domestic corporation is a "Philippine national" only if at least 60% of its ***voting stock*** is owned by Filipino citizens." The Court also reiterated that, from the deliberations of the Constitutional Commission, it is evident that the term "capital" refers to **controlling interest** of a corporation, and the framers of the Constitution intended public utilities to be ***majority*** Filipino-owned and controlled.

8. ID.; ID.; ID.; ID.; ID.; VOTING CONTROL TEST OR CONTROLLING INTEREST REQUIREMENT INCORPORATED IN SECTION 2 OF SEC-MC NO. 8; BENEFICIAL OWNERSHIP TEST OR FULL BENEFICIAL OWNERSHIP OF STOCKS REQUIREMENT IN THE FOREIGN INVESTMENTS ACT OF 1992 (FIA) NOT EXPRESSLY MENTIONED THEREIN WILL NOT RENDER IT INVALID.— The relevant provision in the assailed SEC-MC No. 8 is Section 2, which provides: Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors. Section 2 of SEC-MC No. 8 clearly incorporates the Voting Control Test or the controlling interest requirement. **In fact, Section 2 goes beyond requiring a 60-40 ratio in favor of Filipino nationals in the voting stocks; it moreover requires the 60-40 percentage ownership in the total number of outstanding shares of stock, whether voting or not.** The SEC formulated SEC-MC No. 8 to adhere to the Court's unambiguous pronouncement that "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights is required." x x x While SEC-MC No. 8 does not expressly mention the Beneficial Ownership Test or full beneficial ownership of stocks requirement in the FIA, this will

not, as it does not, render it invalid — meaning, it does not follow that the SEC will not apply this test in determining whether the shares claimed to be owned by Philippine nationals are Filipino, *i.e.*, are held by them by mere title or in full beneficial ownership. To be sure, the SEC takes its guiding lights also from the FIA and its implementing rules, the Securities Regulation Code (Republic Act No. 8799; "SRC") and its implementing rules.

9. ID.; ID.; ID.; ID.; ID.; BENEFICIAL OWNERSHIP DEFINED IN THE IMPLEMENTING RULES AND REGULATIONS OF THE SECURITIES REGULATION CODE (SRC-IRR) CONSISTENT IN FIA-IRR, NOT MERE LEGAL TITLE BUT FULL BENEFICIAL OWNERSHIP OF THE SHARE; DEFINITION UNDERSTOOD ONLY IN DETERMINING THE RESPECTIVE NATIONALITIES OF THE "OUTSTANDING CAPITAL STOCK OF A PUBLIC UTILITY CORPORATION."— The definition of "beneficial owner" or "beneficial ownership" in the Implementing Rules and Regulations of the Securities Regulation Code ("SRC-IRR") is consistent with the concept of "full beneficial ownership" in the FIA-IRR. As defined in the SRC-IRR, "**[b]eneficial owner** or **beneficial ownership** means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security) x x x." While it is correct to state that beneficial ownership is that which may exist either through voting power and/or investment returns, it does not follow, that the SRC-IRR, in effect, recognizes a possible situation where voting power is not commensurate to investment power. The term "full beneficial ownership" found in the FIA-IRR is to be understood in the context of the entire paragraph defining the term "Philippine national." Mere legal title is not enough to meet the required Filipino equity, which means that it is not sufficient that a share is registered in the name of a Filipino citizen or national, *i.e.*, he should also have full beneficial ownership of the share. If the voting right of a share held in the name of a Filipino citizen or national is assigned or transferred to an alien, that share is not to be counted in the determination of the required Filipino equity. In the same vein,

if the dividends and other fruits and accessions of the share do not accrue to a Filipino citizen or national, then that share is also to be excluded or not counted. x x x[T]he "beneficial owner or beneficial ownership" definition in the SRC-IRR is understood only in determining the respective nationalities **of the outstanding capital stock** of a public utility corporation in order to determine its compliance with the percentage of Filipino ownership required by the Constitution.

10. ID.; ID.; ID.; ID.; ID.; INTENTION TO APPLY VOTING CONTROL TEST AND BENEFICIAL OWNERSHIP TEST NOT MENTIONED IN REFERENCE TO "EACH CLASS OF SHARES"; GAMBOA DECISION HELD THAT PREFERRED SHARES ARE TO BE FACTORED IN ONLY IF THEY ARE ENTITLED TO VOTE IN THE ELECTION OF DIRECTORS.— As worded, ***effective control*** by Filipino citizens of a public utility is already assured in the provision. With respect to a stock corporation engaged in the business of a public utility, the constitutional provision mandates three safeguards: (1) 60% of its capital must be owned by Filipino citizens; (2) participation of foreign investors in its board of directors is limited to their proportionate share in its capital; and (3) all its executive and managing officers must be citizens of the Philippines. x x x [However], the intention to apply the voting control test and the beneficial ownership test was **not** mentioned in reference to "each class of shares." Even the *Gamboa* Decision was silent on this point. To be sure, the application of the 60-40 Filipino-foreign ownership requirement separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares fails to understand and appreciate the nature and features of stocks as financial instruments.

11. ID.; ID.; ID.; ID.; ID.; THE CLEAR AND UNEQUIVOCAL DEFINITION OF "CAPITAL" IN GAMBOA HAS ATTAINED FINALITY.— [T]he *fallo* or decretal/dispositive portions of both the *Gamboa* Decision and Resolution are definite, clear and unequivocaL While there is a passage in the body of the *Gamboa* Resolution that might have appeared contrary to the *fallo* of the*Gamboa* Decision - capitalized upon by petitioners to espouse a restrictive re-interpretation of "capital" - the definiteness and clarity of the *fallo* of the *Gamboa* Decision must control over the *obiter dictum* in the *Gamboa* Resolution

regarding the application of the 60-40 Filipino-foreign ownership requirement to "each class of shares, regardless of differences in voting rights, privileges and restrictions." The final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision because at the root of the doctrine that the premises must yield to the conclusion is, side by side with the need of writing *finis* to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give unimpeachable legal reasons." Petitioners cannot, after *Gamboa* has attained finality, seek a belated correction or reconsideration of the Court's unequivocal definition of the term "capital". x x x Indeed, the definition of the term "capital" in the *fallo* of the *Gamboa* Decision has acquired finality.

SERENO, *C.J., concurring opinion*:

POLITICAL LAW; STATUTORY CONSTRUCTION; VALIDITY OF SEC-MC NO. 8 PROVIDING FOR THE GUIDELINES ON COMPLIANCE WITH THE FILIPINO-FOREIGN OWNERSHIP REQUIREMENTS UNDER THE CONSTITUTION; DIRECTIVE IN *GAMBOA* CASE REITERATED FOR THE SEC TO COMPLY WITH ITS DUTY TO ASCERTAIN THE FACTUAL SURROUNDING THE OWNERSHIP OF THE PLDT SHARES.— The Petition for Certiorari before this Court assails the validity of Memorandum Circular No. 8, Series of 2013, issued by respondent Securities and Exchange Commission (SEC). The SEC circular provides for the guidelines on compliance with the Filipino-foreign ownership requirements prescribed in the Constitution and/or existing laws by corporations engaged in nationalized and partly nationalized activities. x x x [T]he circular limits the application of the ownership requirement only to the *number* of stocks in a corporation. It does not take into consideration the *par value*, which, in turn, affects the *dividends* or earnings of the shares. x x x The number **and** the par value of the permutation of shares definitely affect the issue of the stockholding of a corporation. As illustrated by Justice Antonio T. Carpio, preferred shares having higher par values and higher dividend declarations result in higher earnings than those of common shares. In his example, even if Filipinos own

120 shares (100 common, 20 preferred), which outnumber the 80 preferred shares of foreigners, it is possible that the latter would have higher earnings. This possibility would arise if preferred shares – although less in number – have greater par values and dividend earnings. Thus, compliance on the basis of the number of shares alone, does not necessarily result in keeping the required degree of beneficial ownership in favor of Filipinos. The different combinations of shares with respect to the number, par value, and dividend earnings must also be taken into account. For this reason, I reiterate our directive in *Gamboa* for the SEC to comply with its duty to ascertain the factual issues surrounding the ownership of the PLDT shares. x x x From that determination, the SEC may be able to gather the necessary information to correctly classify various kinds of shares in different combinations of numbers, par values, and dividends. However, with the SEC considering only the matter of the number of shares under the assailed circular, and absent any deeper analysis of PLDT equity, structure, any disposition in this case would be premature.

VELASCO, JR., *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; REQUISITES.— It is elementary that the power of judicial review is subject to certain limitations, which must be complied with by the petitioner before this Court may take cognizance of the case. The Court held, thus: When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the lis mota of the case.

2. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING; DIRECT AND PERSONAL INJURY MUST BE ESTABLISHED.— To satisfy legal standing in assailing the constitutionality of a governmental act, the petitioner must prove the **direct and personal injury** that he might suffer if the act is permitted to stand. x x x The *locus standi* requisite is likewise not satisfied by the mere fact that petitioner Roy is a "concerned citizen, an

officer of this Court and ... a taxpayer." We have previously emphasized that the *locus standi* requisite is not overcome by one's citizenship or membership in the bar. These supposed interests are too general, shared as they are by other groups and by the whole citizenry. x x x The casual invocation of the supposed "transcendental importance" [also] does not automatically justify the disregard of the stringent requirements for this Court's exercise of judicial power.

3. REMEDIAL LAW; RULE ON THE HIERARCHY OF COURTS.— In like manner, a hollow invocation of "transcendental importance" does not warrant the immediate relaxation of the rule on hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. Indeed, "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition." x x x Section 4, Rule 65 of the Rules of Court itself provides that the RTC and the CA have concurrent jurisdiction to issue the writ of *certiorari*. For certainly, the issue of abuse of discretion is not so complex as to disqualify every court, except this Court, from deciding it. Thus, due deference to the competence of these courts and a becoming regard of the time-honored principle of the hierarchy of courts bars the present direct recourse to this Court.

4. ID.; CIVIL PRPOCEDURE; INDISPENSABLE PARTIES; NOT PLEADED IN CASE AT BAR.— Under Rule 3, Section 7 of the Rules of Court, an indispensable party is a party-in-interest, without whom there can be no final determination of an action. The interests of such indispensable party in the subject matter of the suit and the relief are so bound with those of the other parties that his legal presence as a party to the proceeding is an absolute necessity. As a rule, an indispensable party's interest in the subject matter is such that a complete and efficient determination of the equities and rights of the parties is not possible if he is not joined. In the case at bar, it is alleged that the propriety of the SEC's enforcement of this Court's interpretation of "capital" is important as it affects corporations in nationalized and partly-nationalized industries. And yet, besides respondent PLDT, no other corporation subject to the

same restriction imposed by Section 11, Article XII of the Constitution has been joined or impleaded by the present recourse. x x x Worse, petitioner and petitioners-in-intervention failed to acknowledge that their restrictive interpretation of the Court's ruling in *Gamboa* affects not only the public utility corporations but, more so, the shareholders who will likely be divested of their stocks.

5. ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; GRAVE ABUSE OF DISCRETION; REQUIRES EXERCISE OF POWER IN AN ARBITRARY MANNER SO PATENT AND GROSS AMOUNTING TO AN EVASION OF POSITIVE DUTY OR VIRTUAL REFUSAL TO PERFORM A DUTY ENJOINED OR TO ACT AT ALL IN CONTEMPLATION OF LAW.— The petition is anchored on the contention that the SEC committed grave abuse of discretion in issuing MC No. 8. By grave abuse of discretion, the petitioners must prove that the Commission's act was tainted with the quality of whim and caprice. Abuse of discretion is not enough. It must be shown that the Commission exercised its power in an arbitrary or despotic manner because of passion or personal hostility that is so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.

6. POLITICAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY (ARTICLE XII); OPERATION OF PUBLIC UTILITY 60% OF THE CAPITAL OWNED BY THE FILIPINOS; DEFINITION OF CAPITAL IN THE *GAMBOA* DECISION NOT MODIFIED IN THE *GAMBOA* RESOLUTION.— The Court explained in the June 28, 2011 Decision in *Gamboa* that **the term "capital" in Section 11, Article XII refers "only to shares of stock entitled to vote in the election of directors."** The rationale provided by the majority was that this interpretation ensures that **control** of the Board of Directors stays in the hands of Filipinos, since foreigners can only own a maximum of 40% of said shares and, accordingly, can only elect the equivalent percentage of directors. As a necessary corollary, Filipino stockholders can always elect 60% of the Board of Directors which, to the majority of the Court, translates to control over the corporation. x x x The motions for reconsideration of the June 28, 2011 Decision

filed by the movants in *Gamboa* argued against the application of the term "capital" to the voting shares alone and in favor of applying the term to the total outstanding capital stock (combined total of voting and non-voting shares). Notably, none of them contended or moved for the application of the capital or the 60-40 requirement to "each and every class of shares" of a public utility, as it was **never an issue in the case**. In resolving the motions for reconsideration in *Gamboa*, it is relevant to stress that the majority **did not modify** the June 28, 2011 Decision.

7. ID.; ID.; ID.; ID.; REQUIRING THE SEC IN THE ISSUANCE OF SEC MC NO. 8 TO IMPOSE 60-40 REQUIREMENT TO "EACH AND EVERY CLASS OF SHARES" IN A PUBLIC UTILITY IS NOT FEASIBLE.— [R]equiring the SEC to impose the 60-40 requirement to "each and every class of shares" in a public utility is not only unsupported by Section 11, Article XXI, it is also administratively and technically infeasible to implement and enforce given the variety and number of classes that may be issued by public utility corporations. x x x [T]o require the SEC and other government agencies to keep track of the ever-changing capital classes of corporations would be impractical, if not downright impossible. Perhaps it is best to be reminded that the law does not require the impossible. (*Lex non cogit ad impossibilia*.)

8. ID.; ID.; ID.; ID.; BENEFICIAL OWNERSHIP; THE SEC IMPOSED THE 60-40 REQUIREMENT NOT ONLY ON THE VOTING SHARES BUT ALSO ON THE TOTALITY OF CORPORATION'S SHAREHOLDING.— Neither can the petitioners rely on the concept of "beneficial ownership" to sustain their position. The phrase, "beneficial ownership," is nowhere found in Section 11, Article XII of the Constitution. Rather "beneficial ownership" was introduced in the Implementing Rules and Regulations of the Foreign Investment Act of 1991 (FIA), not even in the law itself. x x x At most, as pointed out by the majority, "beneficial ownership" must be understood in the context in which it is used. Thusly, the phrase simply means that the **name and *full* rights of ownership** over the 60% of the voting shares in public utilities must belong to Filipinos. If either the voting rights or the right to dividends, among others, of voting shares registered in the name Filipino

citizens or nationals are assigned or transferred to an alien, these shares shall not be included in the computation of the 60% threshold. The Commission even went above and beyond the duty levied by the court and imposed the 60-40 requirement not only on the voting shares but also on the totality of the corporation's shareholding, thus ensuring that the public utilities are, in fact, "effectively controlled" by Filipinos given the added layers of protection given to ensure that Filipino stockholders have the full beneficial ownership and control of public utility corporations in accordance with the Constitution.

BERSAMIN, *J., concurring opinion*:

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI AND PROHIBITION; GRAVE ABUSE OF DISCRETION; NOT PRESENT IN THE ISSUANCE OF SEC-MC NO. 8.—** Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave. The SEC's strict compliance with the interpretation in *Gamboa v. Teves* of the term *capital* as used in Section 11, Article XII of the 1987 Constitution is an indication that it acted without arbitrariness, whimsicality or capriciousness.

2. **ID.; ID.; ID.; LIMITED TO THE EXERCISE OF JUDICIAL AND QUASI-JUDICIAL FUNCTIONS; NOT APPLICABLE TO SEC-MC NO. 8 ISSUED IN THE EXERCISE OF REGULATORY FUNCTIONS.—** The remedies of *certiorari* and prohibition respectively provided for in Section 1 and Section 2 of Rule 65 of the *Rules of Court* are limited to the exercise of *judicial* or *quasi-judicial* functions (except that prohibition also applies to ministerial functions) by the respondent tribunal, board or officer that acts without or in excess of jurisdiction,

or with grave abuse of discretion amounting to lack or excess of jurisdiction. It is hardly a matter to be disputed that the issuance by the SEC of MC No. 8 was in the exercise of its regulatory functions. In such exercise, the SEC's quasi-judicial functions were not involved. A *quasi-judicial function* relates to the action, discretion, *etc*. of public administrative officers or bodies required to investigate facts, or to ascertain the existence of facts, to hold hearings, and to draw conclusions from the facts as the basis for official actions and for the exercise of discretion of a judicial nature. Indeed, the quasi-judicial or adjudicatory functions of the SEC under its original and exclusive jurisdiction related only to the hearing and determination of controversies and cases involving [corporate matters].

3. POLITICAL LAW; CONSTITUTION; JUDICIARY; EXPANDED JURISDICTION OF THE COURT IS CONFINED TO REVIEWING WHETHER OR NOT ANOTHER BRANCH OF GOVERNMENT ACTED WITH GRAVE ABUSE OF DISCRETION; ISSUANCE OF MC NO. 8 BY SEC CANNOT BE CATEGORIZED AS AN ACT OF EITHER AN EXECUTIVE OR A LEGISLATIVE CHARACTER WITHIN THE CONTEXT OF THE PHRASE ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT.— The Court cannot take cognizance of Roy's petition for *certiorari* and prohibition under its expanded jurisdiction provided in Section 1, paragraph 2, of Article VIII of the Constitution. Such expanded jurisdiction of the Court is confined to reviewing whether or not another branch of the Government (that is, the Executive or the Legislature), including the responsible officials of such other branch, acted without or in excess of jurisdiction, or gravely abused its discretion amounting to lack or excess of jurisdiction. x x x The SEC, albeit under the administrative supervision of the Department of Finance, did not come under the terms *any branch or instrumentality of the Government* used in Section 1, Article VIII of the 1987 Constitution. Although it is an agency vested with adjudicatory as well as regulatory powers, its issuance of MC No. 8 cannot be categorized as an act of either an executive or a legislative character within the context of the phrase *any branch or instrumentality of the Government* used in Section 1, Article VIII of the 1987 Constitution.

4. ID.; ID.; NATIONAL ECONOMY AND PATRIMONY (ARTICLE XII); OPERATION OF PUBLIC UTILITY 60% OF THE CAPITAL OWNED BY FILIPINOS; CASE OF GAMBOA EXPLICITLY DEFINED THE TERM CAPITAL AS REFERRING ONLY TO SHARES OF STOCK ENTITLED TO VOTE IN THE ELECTION OF DIRECTORS; SEC-MC NO. 8 STRICTLY FOLLOWED THE SAID DEFINITION.— In focus is the term *capital* as used in Section 11, Article XII of the Constitution x x x In the decision promulgated on June 28, 2011 in *Gamboa v. Teves*, the Court explicitly defined the term *capital* as referring only to shares of stock entitled to vote in the election of directors. x x x The objective of the Court in defining the term *capital* as used in Section 11, Article XII of the Constitution was to ensure that both *controlling interest and beneficial ownership* were vested in Filipinos. The decision of June 28, 2011 pronounced that *capital* refers only to shares of stock that can vote in the election of directors (*controlling interest*) and owned by Filipinos (*beneficial ownership*). Put differently, 60 percent of the outstanding capital stock (whether or not entitled to vote in the election of directors), coupled with 60 percent of the voting rights, must rest in the hands of Filipinos. The language and tenor of the assailed Section 2 of MC No. 8 strictly follow the definition of the term *capital* in *Gamboa v. Teves*. Such definition already attained finality at the time Roy filed his petition. The resolution of October 9, 2012 did not *in the least* modify such definition. Hence, the SEC did not abuse its discretion in issuing MC No. 8.

5. REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF IMMUTABILITY OF JUDGMENT; SUPPOSED CONFLICT BETWEEN THE DISPOSITIVE PORTION AND THE BODY OF A RESOLUTION WAS NOT SUFFICIENT TO DISREGARD THE DOCTRINE.— Under the doctrine of finality and 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 even if the modification is made by the court that rendered it or by the Highest Court of the land. The supposed conflict between the dispositive portion or *fallo* of the resolution promulgated on October 9, 2012 and the body of the resolution

was not a sufficient cause to disregard the doctrine of immutability. To begin with, the dispositive portion or *fallo* prevails over body of the resolution. It is really fundamental that the dispositive part or *fallo* of a judgment that actually settles and declares the rights and obligations of the parties finally, definitively, and authoritatively controls, *regardless of the presence of inconsistent statements in the body that may tend to confuse*. Indeed, the dispositive part or *fallo* is the final order, while the opinion is but a mere statement, ordering nothing.

CARPIO, *J., separate dissenting opinion*:

1. POLITICAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY (ARTICLE XII); OPERATION OF PUBLIC UTILITY; BOTH THE *GAMBOA DECISION* AND *RESOLUTION* PROVIDES THAT THE 60 PERCENT MINIMUM FILIPINO OWNERSHIP REFERS NOT ONLY TO VOTING RIGHT BUT ALSO TO FULL BENEFICIAL OWNERSHIP OF THE STOCKS; SEC-MC NO. 8 CAN BE SUSTAINED AS VALID AND FULLY COMPLIANT WITH THE *GAMBOA DECISION* AND *RESOLUTION* ONLY IF THE STOCKS WITH VOTING RIGHTS AND THE STOCKS WITHOUT VOTING RIGHTS, WHICH COMPRISE THE CAPITAL OF A CORPORATION OPERATING A PUBLIC UTILITY, HAVE *EQUAL* PAR VALUES.— [I]n both *Gamboa Decision* and *Resolution*, the Court categorically declared that the 60 percent minimum Filipino ownership refers not only to voting rights but likewise to full beneficial ownership of the stocks. Likewise, the 60 percent Filipino ownership applies uniformly to each class of shares. Such interpretation ensures effective control by Filipinos of public utilities, as expressly mandated by the Constitution. x x x SEC Memorandum Circular No. 8 provides for two conditions in determining whether a corporation intending to operate or operating a public utility complies with the mandatory 60 percent Filipino ownership requirement. It expressly states that the 60 percent Filipino ownership requirement "shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors." x x x If the 60 percent Filipino ownership

requirement is not met **either** by the outstanding voting stock **or** by the total outstanding voting and non-voting stock, then the Constitutional requirement is violated. SEC Memorandum Circular No. 8 can be sustained as valid and fully compliant with the *Gamboa Decision* and *Resolution* only if (1) the stocks with voting rights and (2) the stocks without voting rights, which comprise the capital of a corporation operating a public utility, have **equal** par values. If the shares of stock have different par values, then applying SEC Memorandum Circular No. 8 would contravene the *Gamboa Decision* that the "**legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate**."

2. ID.; ID.; ID.; ID.; PROVISION THAT AT LEAST SIXTY PER CENTUM OF CAPITAL IN THE OPERATION OF PUBLIC UTILITY SHALL BE OWNED BY FILIPINO CITIZENS; THE TERM "CAPITAL," DISCUSSED.— Section 11, Article XII of the Constitution is clear: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least **sixty per centum of whose *capital* is owned by such citizens**, x x x." The term "capital" in this constitutional provision does not refer to a specific class of share, as the Constitution does not distinguish between voting or non-voting, common or preferred shares of stock. Thus, the term "capital" refers to all shares of stock that are subscribed, which constitute the "capital" of a corporation. Consequently, the 60 percent Filipino ownership requirement applies uniformly to all classes of shares that are subscribed.

MENDOZA, *J., dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; APPROPRIATE REMEDIES TO RAISE CONSTITUTIONAL ISSUES AND TO REVIEW AND/OR PROHIBIT OR NULLIFY THE ACTS OF LEGISLATIVE AND EXECUTIVE OFFICIALS.— The special civil actions for *certiorari* and prohibition under Rule 65 have been held by this Court as proper remedies through which the question of grave abuse of discretion can be heard

regardless of how the assailed act has been exercised. In *Araullo v. Aquino*, this Court stated that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, **even if the latter does not exercise judicial, quasi-judicial or ministerial functions."** It was further stated that in discharging the duty "to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties." Hence, petitions for *certiorari*, as in this case, and prohibition are undeniably appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

2. ID.; ID.; DECLARATORY RELIEF; WHEN PROPER.— An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. It gives a practical remedy to end controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs. The purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. In this case, declaratory relief can no longer be availed of because the mere issuance of MC No. 8 is being viewed by the petitioners as a violation by itself of the Constitution and this Court's final directive in *Gamboa*. As it appears, the purpose of this petition is to settle the very question on whether the issuance was made within the bounds of the Constitution which, if otherwise, would certainly amount to grave abuse of discretion.

3. ID.; PRINCIPLE OF HIERARCHY OF COURTS; PROSCRIPTION AGAINST DIRECT RECOURSE TO THE COURT; EXCEPTIONS.— Under that principle [of hierarchy of courts], direct recourse to this Court is improper because the Court must remain the court of last resort to satisfactorily perform its constitutional functions. x x x Be that as it may, the invocation of this Court's original jurisdiction or plea for the dispensation of recourse to inferior courts having concurrent jurisdiction to issue writs of *certiorari* has been allowed in certain instances for special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case. Exigent and compelling circumstances demand that this Court take cognizance of this case to put an end to the controversy and resolve the matter that could have pervasive effect on this nation's economy and security.

4. POLITICAL LAW; CONSTITUTION; JUDICIARY; JUDICIAL REVIEW; REQUISITES; BEFORE THE COURT ACCEPTS A CHALLENGE TO A GOVERNMENTAL ACT, THERE MUST BE FIRST AN ACTUAL CASE OR CONTROVERSY; EXPANDED TO DETERMINED GRAVE OF DISCRETION ON THE PART OF ANY INSTRUMENTALITY OF THE GOVERNMENT.— The Court's authority to take cognizance of the kind of questions presented in this case is not absolute. The Constitution prescribes that before the Court accepts a challenge to a governmental act, there must be first an actual case or controversy. x x x As ingrained in our jurisprudence, an actual case is one that is appropriate or ripe for determination, not conjectural or anticipatory. x x x Traditionally, a justiciable controversy must involve countervailing interests pertaining to enforceable and demandable rights of adverse parties. But with the constitutionally granted expansion of the power of judicial review brought about to reflect the people's desire to have a proactive Judiciary that is ever vigilant with its duty to maintain the supremacy of the Constitution, justiciable questions took an expanded form. As held in *Imbong v. Ochoa*, the Judiciary would now have the constitutional authority to determine whether

there had been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

5. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING; PETITIONER AS CITIZEN IS SUITED TO CHALLENGE WHETHER MC NO. 8 CONFORMS WITH THE FINAL RULING IN GAMBOA CASE ON CONSTITUTIONAL LIMITS ON FOREIGN PARTICIPATION IN PUBLIC UTILITIES.— As defined, *locus standi* or legal standing is the personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The party must also demonstrate that the injury is likely to be redressed by a favorable action of the courts. x x x I find petitioners as properly suited in their capacities as citizens. In many cases, the legal standing of a citizen in the context of issues concerning constitutional questions was permitted by the Court. In *Imbong v. Ochoa*, the Court stated that the citizen's standing to question the constitutionality of a law could be allowed even if they had only an indirect and general interest shared in common with the public, provided that it involved the assertion of a public right specifically in cases where the people themselves were regarded as the real parties-in-interest. x x x The collective interest of the Filipino in the compliance of the SEC, being the statutory regulator in charge of enforcing and monitoring observance with the Court's interpretation of the constitutional limits on foreign participation in public utilities, is a matter of public right. x x x This transcendentally important question requires the Court to determine whether MC No. 8 conforms to the final ruling in *Gamboa*.

6. ID.; ID.; NATIONAL ECONOMY AND PATRIMONY (ARTICLE XII); FILIPINO PARTICIPATION ON OPERATION OF PUBLIC UTILITY CORPORATION; THE 60-40 RULE MUST BE APPLIED SEPARATELY TO EACH AND EVERY CLASS OF SHARES.— The words "own and control," used to qualify the minimum Filipino participation in Section 11, Article XII of the Constitution, reflects the importance of Filipinos having both the ability to influence the corporation through voting rights and economic benefits. In other words, **full ownership up to 60% of a public utility**

encompasses **both control** *and* **economic rights**, both of which must stay in Filipino hands. Filipinos, who own 60% of the **controlling interest**, must also own 60% of the **economic interest** in a public utility.x x x [And] **the only way** to minimize, if not totally prevent disparity of control and economic rights given to Filipinos, and to obstruct consequences not envisioned by the Constitution, **is to apply the 60-40 rule separately to each class of shares of a public utility corporation**. It results in the equalization of Filipino interests, both in terms of control and economic rights, in each and every class of shares. By making the economic rights and controlling rights of Filipinos in a public utility paramount, directors and managers would be persuaded to act in the interest of the Filipino stockholders. In turn, the Filipino stockholders would exercise their corporate ownership rights in ways that would benefit the entire Filipino people cognizant of the trust and preference accorded to them by the Constitution.

7. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT MUST NOT BE READ SEPARATELY BUT IN CONNECTION WITH THE OTHER PORTIONS OF THE DECISION OF WHICH IT FORMS A PART.— The respondents claim that the statement that the 60-40 rule applies to each type of shares was a mere *obiter dictum*. x x x Jurisprudence is replete with the doctrine that a final and executory judgment may nonetheless be "clarified" by reference to other portions of the decision of which it forms a part; that a judgment must not be read separately but in connection with the other portions of the decision of which it forms a part. Otherwise stated, a decision should be taken as a whole and considered in its entirety to get the true meaning and intent of any particular portion thereof. It "must be construed as a whole so as to bring all of its parts into harmony as far as this can be done by fair and reasonable interpretation and so as to give effect to every word and part, if possible, and to effectuate the obvious intention and purpose of the Court, consistent with the provisions of the organic law." A final ruling in *Gamboa*, therefore, includes the clarification and elucidation in the subsequent *Gamboa Resolution*, which was unquestioned until it lapsed into finality.

LEONEN*, J., dissenting opinion*:

1. POLITICAL LAW; STATUTORY CONSTRUCTION; MEMORANDUM CIRCULAR NO. 8 ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION (MC NO. 8 OF THE SEC) VIOLATED THE CONSTITUTIONAL PROVISIONS LIMITING FOREIGN OWNERSHIP IN CERTAIN ECONOMIC ACTIVITIES AND IS IN PATENT DISREGARD OF THE COURT'S STATEMENTS IN THE *GAMBOA V. FINANCE SECRETARY TEVES* DECISION AND RESOLUTION.— Respondent Securities and Exchange Commission's Memorandum Circular No. 8, series of 2013 is inadequate as it fails to encompass each and every class of shares in a corporation engaged in nationalized economic activities. This is in violation of the constitutional provisions limiting foreign ownership in certain economic activities, and is in patent disregard of this Court's statements in its June 28, 2011 Decision as further illuminated in its October 9, 2012 Resolution in *Gamboa v. Finance Secretary Teves*. Thus, the Securities and Exchange Commission gravely abused its discretion. A better considered reading of *both* the 2011 Decision and 2012 Resolution in *Gamboa* demonstrates this Court's adherence to the rule on which the present Decision turns: that the 60 per centum (or higher, in the case of Article XII, Section 10) Filipino ownership requirement in corporations engaged in nationalized economic activities, as articulated in Article XII and Article XIV of the 1987 Constitution, must apply "to each class of shares, regardless of differences in voting rights, privileges and restrictions[.]"

2. ID.; CONSITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; MC NO. 8 OF THE SEC TRIGGERS A JUSTICIABLE CONTROVERSY AS IT SUPPOSEDLY RUNS A FOUL OF THE CONSTITUTIONAL EQUITY REQUIREMENT IN CERTAIN CORPORATIONS ENGAGED IN NATIONALIZED ECONOMIC ACTIVITIES.— Memorandum Circular No. 8, an official act of the Securities and Exchange Commission, suffices to trigger a justiciable controversy. x x x The Court, here, is called to examine an official enactment that supposedly runs afoul of the Constitution's

injunction to "conserve and develop our patrimony," and to "develop a self-reliant and independent national economy effectively controlled by Filipinos." This allegation of a serious infringement of the Constitution compels us to exercise our power of judicial review. A consideration of the constitutional equity requirement as applying to each and every single class of shares, not just to those entitled to vote for directors in a corporation, is more in keeping with the "philosophical underpinning" of the 1987 Constitution, i.e., "that capital must be construed in relation to the constitutional goal of securing the controlling interest in favor of Filipinos." No class of shares is ever truly bereft of a measure of control of a corporation. x x x In the most crucial corporate actions – those that go into the very constitution of the corporation – even so-called non-voting shares may vote. Not only can they vote; they can be pivotal in deciding the most basic issues confronting a corporation. Certainly, the ability to decide a corporation's framework of governance (i.e., its articles of incorporation and by-laws), viability (through the encumbrance or disposition of all or substantially all of its assets, engagement in another enterprise, or subjection to indebtedness), or even its very existence (through its merger or consolidation with another corporate entity, or even through its outright dissolution) demonstrates not only a measure of control, but even possibly *overruling* control. "Non-voting" preferred and redeemable shares are hardly irrelevant in controlling a corporation. It is in this light that I emphasize the necessity, not only of legal title, but more so of full beneficial ownership by Filipinos of the required percentage of capital in certain corporations engaged in nationalized economic activities. This has been underscored in *Gamboa*.

3. ID.; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; RESTRICTIONS ON FOREIGN EQUITY PARTICIPATION IN PUBLIC UTILITY ENTERPRISE; CONTROL TEST AS A PRIMARY METHOD OF DETERMINING COMPLIANCE THEREWITH, ALONG WITH THE GRANDFATHER RULE AS A "SUPPLEMENT" TO THE CONTROL TEST.— I likewise emphasize "the [C]ontrol [T]est as a primary method of determining compliance with the restrictions imposed by the Constitution on foreign equity participation," along with a recognition

of the Grandfather Rule as a "supplement" to the Control Test. My Dissent from the April 21, 2014 Decision in *Narra Nickel*, noted that "there are two (2) ways through which one may be a beneficial owner of securities, such as shares of stock: first, by having or sharing voting power; and second, by having or sharing investment returns or power." x x x Full beneficial ownership vis-a-vis capacity to control a corporation is self-evident in ownership of voting stocks: the investiture of the capacity to vote evinces involvement in the running of the corporation. x x x Appreciating full beneficial ownership and control in a corporation may require a more nuanced approach when the subject of inquiry is investment returns or power. Control through the capacity to vote can be countervailed, if not totally negated, by reducing voting shares to empty shells that represent nominal ownership even as the corporation's economic gains actually redound to the holders of other classes of shares. There exist practices such as corporate layering which, can be used to undermine the Constitution's equity requirements. It is in the spirit of ensuring that effective control is lodged in Filipinos that the dynamics of applying the Control Test and the Grandfather Rule must be considered. x x x The Control Test was established by legislative fiat. The Foreign Investments Act "is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment." Its Section 3(a) defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines[.]" x x x The Control Test serves the purposes of ensuring effective control and full beneficial ownership of corporations by Filipinos, even as several corporations may be involved in the equity structure of another. x x x Nevertheless, ostensible equity ownership does not preclude unscrupulous parties' resort to devices that undermine the constitutional objective of full beneficial ownership of and effective control by Filipinos. It is at this juncture that the Grandfather Rule finds application: Bare ownership of 60% of a corporation's shares would not suffice. What is necessary is such ownership as will ensure control of a corporation.

APPEARANCES OF COUNSEL

Cartagena & Associates for petitioners-in-intervention.

Angelo Patrick F. Advincula, et al., for Philippine Stock Exchange, Inc.

The Solicitor General for public respondent.

Angara Abello Concepcion Regala & Cruz for respondent PLDT.

D E C I S I O N

CAGUIOA, *J.*:

The petitions[1] before the Court are special civil actions for *certiorari* under Rule 65 of the Rules of Court seeking to annul Memorandum Circular No. 8, Series of 2013 ("SEC-MC No. 8") issued by the Securities and Exchange Commission ("SEC") for allegedly being in violation of the Court's Decision[2] ("*Gamboa* Decision") and Resolution[3] ("*Gamboa* Resolution") in *Gamboa v. Finance Secretary Teves*, G.R. No. 176579, respectively promulgated on June 28, 2011, and October 9, 2012, which jurisprudentially established the proper interpretation of Section 11, Article XII of the Constitution.

The Antecedents

On June 28, 2011, the Court issued the *Gamboa* Decision, the dispositive portion of which reads:

WHEREFORE, we *PARTLY GRANT* the petition and rule that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the

[1] These are the Petition for *Certiorari* filed on June 10, 2013 (the "Petition") and Petition-in-Intervention (for *Certiorari*) filed on July 30, 2013 (the "Petition-in-Intervention"). They will be referred to collectively as the "petitions."

[2] *Gamboa v. Finance Secretary Teves*, 668 Phil. 1 (2011).

[3] *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*, 696 Phil. 276 (2012).

total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is *DIRECTED* to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.[4]

Several motions for reconsideration were filed assailing the *Gamboa* Decision. They were denied in the *Gamboa* Resolution issued by the Court on October 9, 2012, *viz*:

WHEREFORE, we **DENY** the motions for reconsideration **WITH FINALITY**. No further pleadings shall be entertained.

SO ORDERED.[5]

The *Gamboa* Decision attained finality on October 18, 2012, and Entry of Judgment was thereafter issued on December 11, 2012.[6]

On November 6, 2012, the SEC posted a Notice in its website inviting the public to attend a public dialogue and to submit comments on the draft memorandum circular (attached thereto) on the guidelines to be followed in determining compliance with the Filipino ownership requirement in public utilities under Section 11, Article XII of the Constitution pursuant to the Court's directive in the *Gamboa* Decision.[7]

On November 9, 2012, the SEC held the scheduled dialogue and more than 100 representatives from various organizations, government agencies, the academe and the private sector attended.[8]

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[4] *Gamboa v. Finance Secretary Teves*, *supra* note 2, at 69-70.

[5] *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*, *supra* note 3, at 363.

[6] *Rollo* (Vol. II), pp. 605-609.

[7] *Id*. at 547.

[8] *Id*. at 548.

On January 8, 2013, the SEC received a copy of the Entry of Judgment[9] from the Court certifying that on **October 18, 2012**, the *Gamboa* Decision had become **final and executory**.[10]

On March 25, 2013, the SEC posted another Notice in its website soliciting from the public comments and suggestions on the draft guidelines.[11]

On April 22, 2013, petitioner Atty. Jose M. Roy III ("Roy") submitted his written comments on the draft guidelines.[12]

On May 20, 2013, the SEC, through respondent Chairperson Teresita J. Herbosa, issued SEC-MC No. 8 entitled "*Guidelines on Compliance with the Filipino-Foreign Ownership Requirements Prescribed in the Constitution and/or Existing Laws by Corporations Engaged in Nationalized and Partly Nationalized Activities*." It was published in the *Philippine Daily Inquirer* and the *Business Mirror* on May 22, 2013.[13] Section 2 of SEC-MC No. 8 provides:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.
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> Corporations covered by special laws which provide specific citizenship requirements shall comply with the provisions of said law.[14]

On June 10, 2013, petitioner Roy, as a lawyer and taxpayer, filed the Petition,[15] assailing the validity of SEC-MC No. 8 for

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[9] *Id*. at 605-609.

[10] *Id*. at 548.

[11] *Id*.

[12] *Rollo* (Vol. I), pp. 31-33.

[13] *Rollo* (Vol. II), pp. 549, 587-288.

[14] *Id*. at 588.

[15] *Rollo* (Vol. I), pp. 3-206 (with annexes).

not conforming to the letter and spirit of the *Gamboa* Decision and Resolution and for having been issued by the SEC with grave abuse of discretion. Petitioner Roy seeks to apply the 60-40 Filipino ownership requirement separately to each class of shares of a public utility corporation, whether common, preferred non-voting, preferred voting or any other class of shares. Petitioner Roy also questions the ruling of the SEC that respondent Philippine Long Distance Telephone Company ("PLDT") is compliant with the constitutional rule on foreign ownership. He prays that the Court declare SEC-MC No. 8 unconstitutional and direct the SEC to issue new guidelines regarding the determination of compliance with Section 11, Article XII of the Constitution in accordance with *Gamboa*.

Wilson C. Gamboa, Jr.,[16] Daniel V. Cartagena, John Warren P. Gabinete, Antonio V. Pesina, Jr., Modesto Martin Y. Mamon III, and Gerardo C. Erebaren ("intervenors Gamboa, *et al.*") filed a Motion for Leave to File Petition-in-Intervention[17] on July 30, 2013, which the Court granted. The Petition-in-Intervention[18] filed by intervenors Gamboa, *et al.* mirrored the issues, arguments and prayer of petitioner Roy.

On September 5, 2013, respondent PLDT filed its Comment (on the Petition dated 10 June 2013).[19] PLDT posited that the Petition should be dismissed because it violates the doctrine of hierarchy of courts as there are no compelling reasons to invoke the Court's original jurisdiction; it is prematurely filed because petitioner Roy failed to exhaust administrative remedies before the SEC; the principal actions/remedies of *mandamus* and declaratory relief are not within the exclusive and/or original jurisdiction of the Court; the petition for *certiorari* is an inappropriate remedy since the SEC issued SEC-MC No. 8 in the exercise of its *quasi*-legislative power; it deprives the necessary and indispensable parties of their constitutional right

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[16] Son of deceased petitioner Wilson P. Gamboa in *Gamboa*.

[17] *Rollo* (Vol. I), pp. 222-230 (with annex).

[18] *Id*. at 231-446 (with annexes).

[19] *Id*. at 466-530.

to due process; and the SEC merely implemented the dispositive portion of the *Gamboa* Decision.

On September 20, 2013, respondents Chairperson Teresita Herbosa and SEC filed their Consolidated Comment.[20] They sought the dismissal of the petitions on the following grounds: (1) the petitioners do not possess *locus standi* to assail the constitutionality of SEC-MC No. 8; (2) a petition for *certiorari* under Rule 65 is not the appropriate and proper remedy to assail the validity and constitutionality of the SEC-MC No. 8; (3) the direct resort to the Court violates the doctrine of hierarchy of courts; (4) the SEC did not abuse its discretion; (5) on PLDT's compliance with the capital requirement as stated in the *Gamboa* ruling, the petitioners' challenge is premature considering that the SEC has not yet issued a definitive ruling thereon.

On October 22, 2013, PLDT filed its Comment (on the Petition-in-Intervention dated 16 July 2013).[21] PLDT adopted the position that intervenors Gamboa, *et al.* have no standing and are not the proper party to question the constitutionality of SEC-MC No. 8; they are in no position to assail SEC-MC No. 8 considering that they did not participate in the public consultations or give comments thereon; and their Petition-in-Intervention is a disguised motion for reconsideration of the *Gamboa* Decision and Resolution.

On May 7, 2014, Petitioner Roy and intervenors Gamboa, *et al.*[22] filed their Joint Consolidated Reply with Motion for Issuance of Temporary Restraining Order.[23]

On May 22, 2014, PLDT filed its Rejoinder [To Petitioner and Petitioners-in-Intervention's Joint Consolidated Reply dated 7 May 2014] and Opposition [To Petitioner and Petitioners-in-

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[20] *Rollo* (Vol. II), pp. 544-615 (with annexes).

[21] *Id*. at 633-654.

[22] Petitioner Roy and intervenors Gamboa, *et al.* will be collectively referred to as the "petitioners".

[23] *Rollo* (Vol. II), pp. 723-762 (with annex).

Intervention's Motion for Issuance of a Temporary Restraining Order dated 7 May 2014].[24]

On June 18, 2014, the Philippine Stock Exchange, Inc. ("PSE") filed its Motion to Intervene with Leave of Court[25] and its Comment-in- Intervention.[26] The PSE alleged that it has standing to intervene as the primary regulator of the stock exchange and will sustain direct injury should the petitions be granted. The PSE argued that in the *Gamboa* ruling, "capital" refers only to shares entitled to vote in the election of directors, and excludes those not so entitled; and the dispositive portion of the decision is the controlling factor that determines and settles the questions presented in the case. The PSE further argued that adopting a new interpretation of Section 11, Article XII of the Constitution violates the policy of conclusiveness of judgment, *stare decisis*, and the State's obligation to maintain a stable and predictable legal framework for foreign investors under international treaties; and adopting a new definition of "capital" will prove disastrous for the Philippine stock market. The Court granted the Motion to Intervene filed by PSE.[27]

PLDT filed its Consolidated Memorandum[28] on February 10, 2015.

On June 1, 2016, Shareholders' Association of the Philippines, Inc.[29] ("SHAREPHIL") filed an Omnibus Motion [1] For Leave to Intervene; and [2] To Admit Attached Comment-in-

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[24] *Id*. at 765-828.

[25] *Id*. at 839-847.

[26] *Id*. at 848-879.

[27] *Id.* at 880.

[28] *Id*. at 964-1077.

[29] A non-stock and non-profit association composed of shareholders of Philippine companies, which aims to advocate changes in the legal and regulatory framework that will help improve the rights of minority shareholders and to promote and protect all types of shareholders' rights under existing laws, rules and regulations. *Id*. at 1081.

Intervention.[30] The Court granted the Omnibus Motion of SHAREPHIL.[31]

On June 30, 2016, petitioner Roy filed his Opposition and Reply to Interventions of Philippine Stock Exchange and Sharephil.[32] Intervenors Gamboa, *et al.* then filed on September 14, 2016, their Reply (to Interventions by Philippine Stock Exchange and Sharephil).[33]

The Issues

The twin issues of the Petition and the Petition-in-Intervention are: (1) whether the SEC gravely abused its discretion in issuing SEC-MC No. 8 in light of the *Gamboa* Decision and *Gamboa* Resolution, and (2) whether the SEC gravely abused its discretion in ruling that PLDT is compliant with the constitutional limitation on foreign ownership.

The Court's Ruling

At the outset, the Court disposes of the second issue for being without merit. In its Consolidated Comment dated September 13, 2013,[34] the SEC already clarified that it "has not yet issued a definitive ruling anent PLDT's compliance with the limitation on foreign ownership imposed under the Constitution and relevant laws [and i]n fact, a careful perusal of x x x SEC-MC No. 8 readily reveals that all existing covered corporations which are non-compliant with Section 2 thereof were given a period of one (1) year from the effectivity of the same within which to comply with said ownership requirement. x x x."[35] Thus, in the absence of a definitive ruling by the SEC on PLDT's compliance with the capital requirement pursuant to the *Gamboa* Decision

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[30] *Id.* at 1080-1114.

[31] Resolution dated June 14, 2016, *id*. at 1115-1116.

[32] *Id*. at 1117-1133.

[33] *Id*. at 1134-1138.

[34] *Id*. at 544-615 (with annex).

[35] *Id*. at 580.

and Resolution, any question relative to the inexistent ruling is premature.

Also, considering that the Court is not a trier of facts and is in no position to make a factual determination of PLDT's compliance with the constitutional provision under review, the Court can only resolve the first issue, which is a pure question of law. However, before the Court tackles the first issue, it has to rule on certain procedural challenges that have been raised.

The Procedural Issues

The Court may exercise its power of judicial review and take cognizance of a case when the following specific requisites are met: (1) there is an actual case or controversy calling for the exercise of judicial power; (2) the petitioner has standing to question the validity of the subject act or issuance, *i.e.*, he has a personal and substantial interest in the case that he has sustained, or will sustain, direct injury as a result of the enforcement of the act or issuance; (3) the question of constitutionality is raised at the earliest opportunity; and (4) the constitutional question is the very *lis mota* of the case.[36]

The first two requisites of judicial review are not met.

Petitioners' failure to sufficiently allege, much less establish, the existence of the first two requisites for the exercise of judicial review warrants the perfunctory dismissal of the petitions.

a. No actual controversy.

Regarding the first requisite, the Court in *Belgica v. Ochoa*[37] stressed anew that an actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal

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[36] *Belgica v. Ochoa*, 721 Phil. 416, 518-519 (2013), citing *Joya v. Presidential Commission on Good Government (PCGG)*, 296-A Phil. 595, 602 (1993) and *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 438 (2010); *Hon. General v. Hon. Urro*, 662 Phil. 132, 144 (2011), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632 (2000).

[37] *Id*. at 519-520. Citations omitted.

claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions. Related to the requirement of an actual case or controversy is the requirement of "ripeness," and a question is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.

Petitioners have failed to show that there is an actual case or controversy which is ripe for adjudication.

The Petition and the Petition-in-Intervention identically allege:

> 3. The standing interpretation of the SEC found in MC8 practically encourages circumvention of the 60-40 ownership rule by impliedly allowing the creation of several classes of voting shares with different degrees of beneficial ownership over the same, but at the same time, not imposing a 40% limit on foreign ownership of the higher yielding stocks.[38]
>
> 4. For instance, a situation may arise where a corporation may issue several classes of shares of stock, one of which are common shares with rights to elect directors, another are preferred shares with rights to elect directors but with much lesser entitlement to dividends, and still another class of preferred shares with no rights to elect the directors and even less dividends. In this situation, the corporation may issue common shares to foreigners amounting to forty percent (40%) of the outstanding capital stock and issue preferred shares entitled to vote the directors of the corporation to Filipinos consisting of 60%[39] percent (sic) of the outstanding capital stock entitled to vote. Although it may appear that the 60-40 rule has been complied with, the beneficial ownership of the corporation remains with the foreign stockholder since the Filipino owners of the preferred shares have only a miniscule share in the dividends and profit of the corporation. Plainly, this situation runs contrary to the Constitution and the ruling of this x x x Court.[40]

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[38] ";" instead of "." in the Petition-in-Intervention.

[39] "%" is omitted in the Petition-in-Intervention.

[40] ";" instead of "." in the Petition-in-Intervention. Petition for *Certiorari*, *rollo* (Vol. I), p. 12; Petition-in-intervention, *id*. at 243.

Petitioners' hypothetical illustration as to how SEC-MC No. 8 "practically encourages circumvention of the 60-40 ownership rule" is evidently speculative and fraught with conjectures and assumptions. There is clearly wanting specific facts against which the veracity of the conclusions purportedly following from the speculations and assumptions can be validated. The lack of a specific factual milieu from which the petitions originated renders any pronouncement from the Court as a purely advisory opinion and not a decision binding on identified and definite parties and on a known set of facts.

Firstly, unlike in *Gamboa*, the identity of the public utility corporation, the capital of which is at issue, is unknown. Its outstanding capital stock and the actual composition thereof in terms of numbers, classes, preferences and features are all theoretical. The description "preferred shares with rights to elect directors but with much lesser entitlement to dividends, and still another class of preferred shares with no rights to elect the directors and even less dividends" is ambiguous. What are the specific dividend policies or entitlements of the purported preferred shares? How are the preferred shares' dividend policies different from those of the common shares? Why and how did the fictional public utility corporation issue those preferred shares intended to be owned by Filipinos? What are the actual features of the foreign-owned common shares which make them superior over those owned by Filipinos? How did it come to be that Filipino holders of preferred shares ended up with "only a miniscule share in the dividends and profit of the [hypothetical] corporation"? Any answer to any of these questions will, at best, be contingent, conjectural, indefinite or anticipatory.

Secondly, preferred shares usually have preference over the common shares in the payment of dividends. If most of the "preferred shares with rights to elect directors but with much lesser entitlement to dividends" and the other "class of preferred shares with no rights to elect the directors and even less dividends" are owned by Filipinos, they stand to receive their dividend entitlement ahead of the foreigners, who are common shareholders. For the common shareholders to have "bigger

dividends" as compared to the dividends paid to the preferred shareholders, which are supposedly predominantly owned by Filipinos, there must still be unrestricted retained earnings of the fictional corporation left after payment of the dividends declared in favor of the preferred shareholders. The fictional illustration does not even intimate how this situation can be possible. No permutation of unrestricted retained earnings of the hypothetical corporation is shown that makes the present conclusion of the petitioners achievable. Also, no concrete meaning to the petitioners' claim of the Filipinos' "miniscule share in the dividends and profit of the [fictional] corporation" is demonstrated.

Thirdly, petitioners fail to allege or show how their hypothetical illustration will directly and adversely affect them. That is impossible since their relationship to the fictional corporation is a matter of guesswork.

From the foregoing, it is evident that the Court can only surmise or speculate on the situation or controversy that the petitioners contemplate to present for judicial determination. Petitioners are likewise conspicuously silent on the direct adverse impact to them of the implementation of SEC-MC No. 8. Thus, the petitions must fail because the Court is barred from rendering a decision based on assumptions, speculations, conjectures and hypothetical or fictional illustrations, more so in the present case which is not even ripe for decision.

b. No locus standi.

The personal and substantial interest that enables a party to have legal standing is one that is both **material**, an interest in issue and to be affected by the government action, as distinguished from mere interest in the issue involved, or a mere incidental interest, and **real**, which means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.[41]

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[41] *Galicto v. Aquino III*, 683 Phil. 141, 170-171 (2012), citing *Miñoza v. Lopez*, 664 Phil. 115, 123 (2011).

As to injury, the party must show that (1) he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[42] If the asserted injury is more imagined than real, or is merely superficial and insubstantial, an excursion into constitutional adjudication by the courts is not warranted.[43]

Petitioners have no legal standing to question the constitutionality of SEC-MC No. 8.

To establish his standing, petitioner Roy merely claimed that he has standing to question SEC-MC No. 8 "as a concerned citizen, an officer of the Court and as a taxpayer" as well as "the senior law partner of his own law firm[, which] x x x is a subscriber of PLDT."[44] On the other hand, intervenors Gamboa, *et al.* allege, as basis of their *locus standi*, their "[b]eing lawyers and officers of the Court" and "citizens x x x and taxpayers."[45]

The Court has previously emphasized that the *locus standi* requisite is not met by the expedient invocation of one's citizenship or membership in the bar who has an interest in ensuring that laws and orders of the Philippine government are legally and validly issued as these supposed interests are too general, which are shared by other groups and by the whole citizenry.[46] Per their allegations, the personal interest invoked by petitioners as citizens and members of the bar in the validity or invalidity of SEC-MC No. 8 is at best equivocal, and totally insufficient.

Petitioners' status as taxpayers is also of no moment. As often reiterated by the Court, a taxpayer's suit is allowed only

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[42] *Id.* at 170, citing *Tolentino v. Commission on Elections*, 465 Phil. 385, 402 (2004).

[43] *Id.* at 172. Citations omitted.

[44] *Rollo* (Vol. I), p. 7.

[45] Motion for Leave to file Petition-In-Intervention, *id.* at 224-225.

[46] *Galicto v. Aquino III, supra* note 41, at 172-173, citing *Integrated Bar of the Philippines v. Zamora, supra* note 36, at 633.

when the petitioner has demonstrated the direct correlation of the act complained of and the disbursement of public funds in contravention of law or the Constitution, or has shown that the case involves the exercise of the spending or taxing power of Congress.[47] SEC-MC No. 8 does not involve an additional expenditure of public funds and the taxing or spending power of Congress.

The allegation that petitioner Roy's law firm is a "subscriber of PLDT" is ambiguous. It is unclear whether his law firm is a "subscriber" of PLDT's shares of stock or of its various telecommunication services. Petitioner Roy has not identified the specific direct and substantial injury he or his law firm stands to suffer as "subscriber of PLDT" as a result of the issuance of SEC-MC No. 8 and its enforcement.

As correctly observed by respondent PLDT, "(w]hether or not the constitutionality of SEC-MC No. 8 is upheld, the rights and privileges of all PLDT subscribers, as with all the rest of subscribers of other corporations, are necessarily and equally preserved and protected. Nothing is added [to] or removed from a PLDT subscriber in terms of the extent of his or her participation, relative to what he or she had originally enjoyed from the beginning. In the most practical sense, a PLDT subscriber loses or gains nothing in the event that SEC-MC No. 8 is either sustained or struck down by [the Court]."[48]

More importantly, the issue regarding PLDT's compliance with Section 11, Article XII of the Constitution has been earlier ruled as premature and beyond the Court's jurisdiction. Thus, petitioner Roy's allegation that his law firm is a "subscriber of PLDT" is insufficient to clothe him with *locus standi*.

Petitioners' cursory incantation of "transcendental importance x x x of the rules on foreign ownership of corporations or entities

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[47] *Automotive Industry Workers Alliance v. Romulo*, 489 Phil. 710, 719 (2005). Citations omitted.

[48] PLDT's Consolidated Memorandum, *rollo* (Vol. II), p. 992.

vested with public interest"[49] does not automatically justify the brushing aside of the strict observance of the requisites for the Court's exercise of judicial review. An indiscriminate disregard of the requisites every time "transcendental or paramount importance or significance" is invoked would result in an unacceptable corruption of the settled doctrine of *locus standi*, as every worthy cause is an interest shared by the general public.[50]

In the present case, the general and equivocal allegations of petitioners on their legal standing do not justify the relaxation of the *locus standi* rule. While the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused.[51]

The Rule on the Hierarchy of Courts has been violated.

The Court in *Bañez, Jr. v. Concepcion*[52] stressed that:

> The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shied the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy. x x x

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[49] Petition for *Certiorari*, *rollo* (Vol. I), p.10, and Petition-in-intervention (For *Certiorari*), *rollo* (Vol. I), p. 240.

[50] *Republic v. Roque*, 718 Phil. 294, 307 (2013), citing *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 478 (2010).

[51] See *Galicto v. Aquino III*, *supra* note 41, at 170, citing *Lozano v. Nograles*, 607 Phil. 334, 344 (2009).

[52] 693 Phil. 399 (2012).

> x x x Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe. x x x[53]

Petitioners' invocation of "transcendental importance" is hollow and does not merit the relaxation of the rule on hierarchy of courts. There being no special, important or compelling reason that justified the direct filing of the petitions in the Court in violation of the policy on hierarchy of courts, their outright dismissal on this ground is further warranted.[54]

The petitioners failed to implead indispensable parties.

The cogent submissions of the PSE in its Comment-in-Intervention dated June 16, 2014[55] and SHAREPHIL in its Omnibus Motion [1] For Leave to Intervene; and [2] To Admit Attached Comment-in-Intervention dated May 30, 2016[56] demonstrate how petitioners should have impleaded not only PLDT but all other corporations in nationalized and partly-nationalized industries because the propriety of the SEC's enforcement of the Court's interpretation of "capital" through SEC-MC No. 8 affects them as well.

Under Section 3, Rule 7 of the Rules of Court, an indispensable party is a party-in-interest without whom there can be no final determination of an action. Indispensable parties are those with such a material and direct interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence.[57] The interests of

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[53] *Id.* at 412.

[54] *Id.* at 414.

[55] *Rollo* (Vol. II), pp. 848-879.

[56] *Id.* at 1080-1114.

[57] See *Cua, Jr. v. Tan*, 622 Phil. 661, 720 (2009).

such indispensable parties in the subject matter of the suit and the relief are so bound with those of the other parties that their legal presence as parties to the proceeding is an absolute necessity and a complete and efficient determination of the equities and rights of the parties is not possible if they are not joined.[58]

Other than PLDT, the petitions failed to join or implead other public utility corporations subject to the same restriction imposed by Section 11, Article XII of the Constitution. These corporations are in danger of losing their franchise and property if they are found not compliant with the restrictive interpretation of the constitutional provision under review which is being espoused by petitioners. They should be afforded due notice and opportunity to be heard, lest they be deprived of their property without due process.

Not only are public utility corporations other than PLDT directly and materially affected by the outcome of the petitions, their shareholders also stand to suffer in case they will be forced to divest their shareholdings to ensure compliance with the said restrictive interpretation of the term "capital." As explained by SHAREPHIL, in five corporations alone, more than Php158 Billion worth of shares must be divested by foreign shareholders and absorbed by Filipino investors if petitioners' position is upheld.[59]

Petitioners' disregard of the rights of these other corporations and numerous shareholders constitutes another fatal procedural flaw, justifying the dismissal of their petitions. **Without giving all of them their day in court, they will definitely be deprived of their property without due process of law.**

During the deliberations, Justice Velasco stressed on the foregoing procedural objections to the granting of the petitions; and Justice Bersamin added that the special civil action for *certiorari* and prohibition is not the proper remedy to assail SEC-MC No. 8 because it was not issued under the adjudicatory or *quasi*-judicial functions of the SEC.

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[58] *De Galicia v. Mercado*, 519 Phil. 122, 127 (2006).

[59] *Rollo* (Vol. II), p. 1107.

The Substantive Issue

The only substantive issue that the petitions assert is whether the SEC's issuance of SEC-MC No. 8 is tainted with grave abuse of discretion.

The Court holds that, even if the resolution of the procedural issues were conceded in favor of petitioners, the petitions, being anchored on Rule 65, must nonetheless fail because the SEC did **not** commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued SEC-MC No. 8. **To the contrary**, the Court finds SEC-MC No. 8 to have been issued in fealty to the *Gamboa* Decision and Resolution.

The ratio in the Gamboa Decision and Gamboa Resolution.

To determine what the Court directed the SEC to do — *and therefore resolve whether what the SEC did amounted to grave abuse of discretion* — the Court resorts to the decretal portion of the *Gamboa* Decision, as this is the portion of the decision that a party relies upon to determine his or her rights and duties,[60] *viz*:

WHEREFORE, we *PARTLY GRANT* the petition and rule that the term "capital" in Section II, Article XII of the I987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is *DIRECTED* to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section II, Article XII of the Constitution, to impose the appropriate sanctions under the law.[61]

In turn, the *Gamboa* Resolution stated:

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[60] See *Suntay v. Cojuangco-Suntay*, 360 Phil. 932 (1998).

[61] *Gamboa v. Finance Secretary Teves*, *supra* note 2.

In any event, the SEC has expressly manifested[62] that it will abide by the Court's decision and defer to the Court's definition of the term "capital" in Section II, Article XII of the Constitution. Further, the SEC entered its special appearance in this case and argued during the Oral Arguments, indicating its submission to the Court's jurisdiction. It is clear, therefore, that there exists no legal impediment against the proper and immediate implementation of the Court's directive to the SEC.

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x x x **The dispositive portion of the Court's ruling is addressed not to PLDT but solely to the SEC, which is the administrative agency tasked to enforce the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution.**[63]

To recall, the sole issue in the *Gamboa* case was: "whether the term 'capital' in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility."[64]

The Court directly answered the Issue and **consistently** defined the term "capital" as follows:

x x x The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

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[62] In its Manifestation and Omnibus Motion dated July 29, 2011, the SEC stated: "x x x The Commission, however, would submit to whatever would be the final decision of this Honorable Court on the meaning of the term "capital".

In its Memorandum, the SEC also stated: "In the event that this Honorable Court rules with finality on the meaning of "capital," the SEC will yield to the Court and follow its interpretation." (*Heirs of Wilson P. Gamboa v. Finance Sec. Teves*, *supra* note 3, at 356-357, footnote 54; emphasis omitted.)

[63] *Heirs of Wilson P. Gamboa v. Finance Sec. Teves*, *id.* at 356, 358.

[64] *Gamboa v. Finance Secretary Teves*, *supra* note 2, at 35.

x x x x x x x x x

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**[65]

The decretal portion of the *Gamboa* Decision follows the definition of the term "capital" in the body of the decision, to wit: "x x x we x x x rule that the term 'capital' in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares)."[66]

The Court adopted the foregoing definition of the term "capital" in Section 11, Article XII of the 1987 Constitution in furtherance of "the intent and letter of the Constitution that the 'State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos' [because a] broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility."[67] The Court, recognizing that the provision is an express recognition of the sensitive and vital position of public utilities both in the national economy and for national security, also pronounced that the evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.[68] Further,

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[65] *Id*. at 51-53.

[66] *Id*. at 69-70.

[67] *Id*. at 58.

[68] *Id*. at 44.

the Court noted that the foregoing interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities; and, as revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation.[69]

In this regard, it would be *apropos* to state that since Filipinos own at least 60% of the outstanding shares of stock entitled to vote directors, which is what the Constitution precisely requires, then the Filipino stockholders **control** the corporation, *i.e.*, they dictate corporate actions and decisions, and they have all the rights of ownership including, but not limited to, offering certain preferred shares that may have greater economic interest to foreign investors — as the need for capital for corporate pursuits (such as expansion), may be good for the corporation that they own. Surely, these "true owners" will not allow any dilution of their ownership and control if such move will not be beneficial to them.

As owners of the corporation, the economic benefits will necessarily accrue to them. There is thus no logical reason why Filipino shareholders will allow foreigners to have greater economic benefits than them. It is illogical to speculate that they will create shares which have features that will give greater economic interests or benefits than they are holding and not benefit from such offering, or that they will allow foreigners to profit more than them from their own corporation — unless they are dummies. But, Commonwealth Act No. 108, the Anti-Dummy Law, is NOT in issue in these petitions. Notably, even if the shares of a particular public utility were owned 100% Filipino, that does not discount the possibility of a dummy situation from arising. Hence, even if the 60-40 ownership in favor of Filipinos rule is applied separately to each class of shares of a public utility corporation, as the petitioners insist, the rule can easily be side-stepped by a dummy relationship. In other words, even applying the 60-40 Filipino-foreign

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[69] *Id*. at 53-54.

ownership rule to each class of shares will not assure the lofty purpose enunciated by petitioners.

The Court observed further in the *Gamboa* Decision that reinforcing this interpretation of the term "capital," as referring to interests or shares entitled to vote, is the definition of a Philippine national in the Foreign Investments Act of 1991 ("FIA"), which is explained in the Implementing Rules and Regulations of the FIA ("FIA-IRR"). The FIA-IRR provides:

> Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.
>
> For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.[70]

Echoing the FIA-IRR, the Court stated in the *Gamboa* Decision that:

> Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]."
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> x x x x x x x x x
>
> The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipinos in accordance with the constitutional mandate. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting

[70] *Id*. at 55-57.

rights, is constitutionally required for the State's grant of authority to operate a public utility. x x x[71]

Was the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution declared for the first time by the Court in the *Gamboa* Decision modified in the *Gamboa* Resolution?

The Court is convinced that it was not. The *Gamboa* Resolution consists of 51 pages (excluding the dissenting opinions of Associate Justices Velasco and Abad). For the most part of the *Gamboa* Resolution, the Court, after reviewing SEC and DOJ[72] Opinions as well as the provisions of the FIA and its predecessor statutes,[73] reiterated that both the Voting Control Test and the Beneficial Ownership Test must be applied to determine whether a corporation is a "Philippine national"[74] and that a "Philippine national," as defined in the FIA and all its predecessor statutes, is "a Filipino citizen, or a **domestic corporation "at least sixty percent (60%) of the capital stock outstanding *and entitled to vote*,"** is owned by Filipino citizens. A domestic corporation is a "Philippine national" only if at least 60% of its ***voting stock*** is owned by Filipino citizens."[75] The Court also reiterated that, from the deliberations of the Constitutional Commission, it is evident that the term "capital" refers to **controlling interest** of a corporation,[76] and the framers of the Constitution intended public utilities to be ***majority*** Filipino-owned and controlled.

The ***"Final Word"*** of the *Gamboa* Resolution put to rest the Court's interpretation of the term "capital," and this is quoted *verbatim*, to wit

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[71] *Id.* at 57, 63.

[72] Department of Justice.

[73] Executive Order No. 226 or the *Omnibus Investments Code of 1987*; Presidential Decree No. 1789 or the *Omnibus Investments Code of 1981*, and Republic Act No. 5186 or the *Investment Incentives Act of 1967*.

[74] *Heirs of Wilson P. Gamboa v. Finance Secretary Teves*, *supra* note 3, at 321.

[75] *Id.* at 331.

[76] *Id.* at 342.

XII.
Final Word

The Constitution expressly declares as State policy the development of an economy "***effectively controlled***" by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60 percent of whose capital ***with voting rights*** belongs to Filipinos. The FIA's implementing rules explain that "[f]or stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of stocks, coupled with appropriate voting rights is essential.**" In effect, the FIA clarifies, reiterates and confirms the interpretation that the term "capital" in Section 11, Article XII of the 1987 Constitution refers to ***shares with voting rights, as well as with full beneficial ownership***. This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation.[77]

Everything told, the Court, in both the *Gamboa* Decision and *Gamboa* Resolution, finally settled with the FIA's definition of "Philippine national" as expounded in the FIA-IRR in construing the term "capital" in Section 11, Article XII of the 1987 Constitution.

The assailed SEC-MC No. 8.

The relevant provision in the assailed SEC-MC No. 8 is Section 2, which provides:

Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.[78]

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[77] *Id*. at 361-362.

[78] *Rollo* (Vol. I), p. 35.

Section 2 of SEC-MC No. 8 clearly incorporates the Voting Control Test or the controlling interest requirement. **In fact, Section 2 goes beyond requiring a 60-40 ratio in favor of Filipino nationals in the voting stocks; it moreover requires the 60-40 percentage ownership in the total number of outstanding shares of stock, whether voting or not.** The SEC formulated SEC-MC No. 8 to adhere to the Court's unambiguous pronouncement that "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights is required."[79] Clearly, SEC-MC No. 8 cannot be said to have been issued with grave abuse of discretion.

A simple illustration involving Company X with three kinds of shares of stock, easily shows how compliance with the requirements of SEC-MC No. 8 will necessarily result to full and faithful compliance with the *Gamboa* Decision as well as the *Gamboa* Resolution.

The following is the composition of the outstanding capital stock of Company X:

100 common share
100 Class A preferred shares (with right to elect directors)
100 Class B preferred shares (without right to elect directors)

SEC-MC No. 8	***GAMBOA* DECISION**
(1) 60% (required percentage of Filipino) applied to the total number of outstanding shares of stock entitled to vote in the election of directors	"shares of stock entitled to vote in the election of directors"[80] (60% of the voting rights)

If at least a total of 120 of common shares and Class A preferred shares (in any combination) are owned and controlled by

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[79] *Gamboa v. Finance Secretary Teves*, *supra* note 2, at 57.

[80] *Id.* at 69-70.

Filipinos, Company X is compliant with the 60% of the voting rights in favor of Filipinos requirement of both SEC-MC No. 8 and the *Gamboa* Decision.

SEC-MC No. 8	***GAMBOA* DECISION/ RESOLUTION**
(2) 60% (required percentage of Filipino) applied to BOTH (a) the total number of outstanding shares of stock, entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.	"Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights"[81] or "Full beneficial ownership of the stocks, coupled with appropriate voting rights x x x shares with voting rights, as well as with full beneficial ownership"[82]

If at least a total of 180 shares of all the outstanding capital stock of Company X are owned and controlled by Filipinos, provided that among those 180 shares a total of 120 of the common shares and Class A preferred shares (in any combination) are owned and controlled by Filipinos, then Company X is compliant with both requirements of voting rights and beneficial ownership under SEC-MC No. 8 and the *Gamboa* Decision and Resolution.

From the foregoing illustration, SEC-MC No. 8 simply implemented, and is fully in accordance with, the *Gamboa* Decision and Resolution.

While SEC-MC No. 8 does not expressly mention the Beneficial Ownership Test or full beneficial ownership of stocks requirement in the FIA, this will not, as it does not, render it invalid meaning, it does not follow that the SEC will not apply

[81] *Id.* at 57.

[82] *Heirs of Gamboa v. Finance Secretary Teves*, *supra* note 3, at 361.

this test in determining whether the shares claimed to be owned by Philippine nationals are Filipino, *i.e.*, are held by them by mere title or in full beneficial ownership. To be sure, the SEC takes its guiding lights also from the FIA and its implementing rules, the Securities Regulation Code (Republic Act No. 8799; "SRC") and its implementing rules.[83]

The full beneficial ownership test.

The minority justifies the application of the 60-40 Filipino-foreign ownership rule separately to each class of shares of a public utility corporation in this fashion:

> x x x The words "own and control," used to qualify the minimum Filipino participation in Section 11, Article XII of the Constitution, reflects the importance of Filipinos having both the ability to influence the corporation through voting rights and economic benefits. In other words, **full ownership up to 60% of a public utility** encompasses **both control** *and* **economic rights**, both of which must stay in Filipino hands. Filipinos, who own 60% of the **controlling interest**, must also own 60% of the **economic interest** in a public utility.
>
> x x x In mixed class or dual structured corporations, however, there is variance in the proportion of stockholders' controlling interest vis-a-vis their economic ownership rights. This resulting variation is recognized by the Implementing Rules and Regulations (*IRR*) of the Securities Regulation Code, which defined beneficial ownership as that may exist either through voting power and/or through investment returns. By using **and/or** in defining beneficial ownership, the **IRR**, in effect, recognizes a possible situation where voting power is not commensurate to investment power.

The definition of "beneficial owner" or "beneficial ownership" in the Implementing Rules and Regulations of the Securities Regulation Code ("SRC-IRR") is consistent with the concept of"full beneficial ownership" in the FIA-IRR.

As defined in the SRC-IRR, "**[b]eneficial owner** or **beneficial ownership** means any person who, directly or indirectly, through

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[83] For definition of "Beneficial owner or beneficial ownership" and "Control," please refer to Sections 3.1.2 and 3.1.8, respectively of the 2015 Implementing Rules and Regulations of the Securities Regulation Code.

any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security) x x x."[84]

While it is correct to state that beneficial ownership is that which may exist either through voting power and/or investment returns, it does not follow, as espoused by the minority opinion, that the SRC-IRR, in effect, recognizes a possible situation where voting power is not commensurate to investment power. That is a wrong syllogism. The fallacy arises from a misunderstanding on what the definition is for. The "beneficial ownership" referred to in the definition, while it may ultimately and indirectly refer to the overall ownership of the corporation, more pertinently refers to the ownership of the share subject of the question: is it Filipino-owned or not?

As noted earlier, the FIA-IRR states:

> ***Compliance with the required Filipino ownership of a corporation shall*** be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.
>
> ***For stocks to be deemed owned and held by Philippine citizens or Philippine nationals***, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.[85]

The emphasized portions in the foregoing provision is the equivalent of the so-called "beneficial ownership test." That is all.

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[84] 2015 Implementing Rules and Regulations of the Securities Regulations Code, Sec. 3.1.2.

[85] Implementing Rules and Regulations of Republic Act No. 7042 (Foreign Investment Act of 1991) as Amended by Republic Act No. 8179, Sec. 1, b; underscoring and emphasis supplied.

The term "full beneficial ownership" found in the FIA-IRR is to be understood in the context of the entire paragraph defining the term "Philippine national." Mere legal title is not enough to meet the required Filipino equity, which means that it is not sufficient that a share is registered in the name of a Filipino citizen or national, *i.e.*, he should also have full beneficial ownership of the share. If the voting right of a share held in the name of a Filipino citizen or national is assigned or transferred to an alien, that share is not to be counted in the determination of the required Filipino equity. In the same vein, if the dividends and other fruits and accessions of the share do not accrue to a Filipino citizen or national, then that share is also to be excluded or not counted.

In this regard, it is worth reiterating the Court's pronouncement in the *Gamboa* Decision, which is consistent with the FIA-IRR, *viz*:

> Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. ***Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required.*** x x x
>
> x x x x x x x x x
>
> The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipinos in accordance with the constitutional mandate. ***Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is constitutionally required (or the State's grant of authority to operate a public utility.*** x x x.[86]

And the ***"Final Word"*** of the *Gamboa* Resolution is in full accord with the foregoing pronouncement of the Court, to wit:

> ***XII***
> ***Final Word***
>
> x x x The FIA's implementing rules explain that "[f]or stocks to be deemed owned and held by Philippine citizens or Philippine

[86] *Gamboa v. Finance Secretary Teves*, *supra* note 2, at 57, 63. Emphasis and underscoring supplied.

nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential.**"[87]

Given that beneficial ownership of the outstanding capital stock of the public utility corporation has to be determined for purposes of compliance with the 60% Filipino ownership requirement, the definition in the SRC-IRR can now be applied to resolve **only** the question of who is the beneficial owner or who has beneficial ownership of each "specific stock" of the said corporation. Thus, if a "specific stock" is owned by a Filipino in the books of the corporation, but the stock's voting power or disposing power belongs to a foreigner, then that "specific stock" will not be deemed as "beneficially owned" by a Filipino.

Stated inversely, if the Filipino has the "specific stock's" voting power (he can vote the stock or direct another to vote for him), or the Filipino has the investment power over the "specific stock" (he can dispose of the stock or direct another to dispose it for him), or he has both (he can vote and dispose of the "specific stock" — or direct another to vote or dispose it for him), then such Filipino is the "beneficial owner" of that "specific stock" and that "specific stock" is considered (or counted) as part of the 60% Filipino ownership of the corporation. In the end, all those "specific stocks" that are determined to be Filipino (per definition of "beneficial owner" or "beneficial ownership") will be added together and their sum must be equivalent to at least 60% of the total outstanding shares of stock entitled to vote in the election of directors and at least 60% of the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

To reiterate, the "beneficial owner or beneficial ownership" definition in the SRC-IRR is understood only in determining the respective nationalities ***of the outstanding capital stock*** of a public utility corporation in order to determine its compliance with the percentage of Filipino ownership required by the Constitution.

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[87] *Heirs of Gamboa v. Finance Secretary Teves, supra* note 3, at 361.

The restrictive re-interpretation of "capital" as insisted by the petitioners is unwarranted.

Petitioners' insistence that the 60% Filipino equity requirement must be applied to each class of shares is simply beyond the literal text and contemplation of Section 11, Article XII of the 1987 Constitution, *viz*:

> Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* or whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

As worded, ***effective control*** by Filipino citizens of a public utility is already assured in the provision. With respect to a stock corporation engaged in the business of a public utility, the constitutional provision mandates three safeguards: (1) 60% of its capital must be owned by Filipino citizens; (2) participation of foreign investors in its board of directors is limited to their proportionate share in its capital; and (3) all its executive and managing officers must be citizens of the Philippines.

In the exhaustive review made by the Court in the *Gamboa* Resolution of the deliberations of the Constitutional Commission, the opinions of the framers of the 1987 Constitution, the opinions of the SEC and the DOJ as well as the provisions of the FIA, its implementing rules and its predecessor statutes, the intention to apply the voting control test and the beneficial ownership test was **not** mentioned in reference to "each class of shares." Even the *Gamboa* Decision was silent on this point.

To be sure, the application of the 60-40 Filipino-foreign ownership requirement separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares fails to understand and appreciate the nature and features of stocks as financial instruments.[88]

There are basically only two types of shares or stocks, *i.e.*, common stock and preferred stock. However, the classes and variety of shares that a corporation may issue are dictated by the confluence of the corporation's financial position and needs, business opportunities, short-term and long- term targets, risks involved, to name a few; and they can be classified and re-classified from time to time. With respect to preferred shares, there are cumulative preferred shares, non-cumulative preferred shares, convertible preferred shares, participating preferred shares.

Because of the different features of preferred shares, it is required that the presentation and disclosure of these financial instruments in financial statements should be in accordance with the substance of the contractual arrangement and the definitions of a financial liability, a financial asset and an equity instrument.[89]

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[88] A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. [IAS 32 — Financial Instruments: Presentation, Key definitions [IAS 32.11, available at <http://www.iasplus.com/en/standards/ias/ias32>, last accessed on November 28, 2016]. The common examples of financial instruments within the scope of International Auditing Standards (IAS) 39 are as follows: cash; demand and time deposit; commercial paper; accounts, notes, and loans receivable and payable; debt and equity securities which includes investments in subsidiaries, associates, and joint ventures; asset backed securities such as collateralised mortgage obligations, repurchase agreements, and securitised packages of receivables; and derivatives, including options, rights, warrants, futures contracts, forward contracts, and swaps. [IAS 39 — *Financial Instruments: Recognition and Measurement*, available at <http://www.iasplus.com/en/standards/ias/ias39>, last accessed on November 28, 2016].

[89] IAS 32 *Financial Instruments: Presentation*, <http://www.ifrs.org/Documents/IAS32.pdf>, last accessed on November 28, 2016.

Under IAS[90] 32.16, a financial instrument is an equity instrument only if (a) the instrument includes no contractual obligation to deliver cash or another financial asset to another entity, and (b) if the instrument will or may be settled in the issuer's own equity instruments, it is either: (i) a non- derivative that includes no contractual obligation for the issuer to deliver a variable number of its own equity instruments; or (ii) a derivative that will be settled only by the issuer exchanging a fixed amount of cash or another financial asset for a fixed number of its own equity instruments.[91]

The following are illustrations of how preferred shares should be presented and disclosed:

Illustration — preference shares

If an entity issues preference (preferred) shares that pay a fixed rate of dividend and that have a mandatory redemption feature at a future date, the substance is that they are a contractual obligation to deliver cash and, therefore, should be recognized as a liability. [IAS 32.18(a)] In contrast, preference shares that do not have a fixed maturity, and where the issuer does not have a contractual obligation to make any payment are equity. In this example even though both instruments are legally termed preference shares they have different contractual terms and one is a financial liability while the other is equity.

Illustration — issuance of fixed monetary amount of equity instruments

A contractual right or obligation to receive or deliver a number of its own shares or other equity instruments that varies so that the fair value of the entity's own equity instruments to be received or delivered equals the fixed monetary amount of the contractual right or obligation is a financial liability. [IAS 32.20]

Illustration — one party bas a choice over bow an instrument is settled

When a derivative financial instrument gives one party a choice over how it is settled (for instance, the issuer or the holder can choose

[90] International Accounting Standards.

[91] <http://www.iasplus.com/en/standards/ias/ias32>, last accessed on November 28, 2016.

settlement net in cash or by exchanging shares for cash), it is a financial asset or a financial liability unless all of the settlement alternatives would result in it being an equity instrument. [IAS 32.26][92]

The fact that from an accounting standpoint, the substance or essence of the financial instrument is the key determinant whether it should be categorized as a financial liability or an equity instrument, there is no compelling reason why the same treatment may not be recognized from a legal perspective. Thus, to require Filipino shareholders to acquire preferred shares that are substantially debts, in order to meet the "restrictive" Filipino ownership requirement that petitioners espouse, may not bode well for the Philippine corporation and its Filipino shareholders.

Parenthetically, given the innumerable permutations that the types and classes of stocks may take, requiring the SEC and other government agencies to keep track of the ever-changing capital classes of corporations will be impracticable, if not downright impossible. And the law does not require the impossible. (*Lex non cogit ad impossibilia*.)[93]

That stock corporations are allowed to create shares of different classes with varying features is a flexibility that is granted, among others, for the corporation to attract and generate capital (funds) from both local and foreign capital markets. This access to capital — which a stock corporation may need for expansion, debt relief/repayment, working capital requirement and other corporate pursuits — will be greatly eroded with further unwarranted limitations that are not articulated in the Constitution. The intricacies and delicate balance between debt instruments (liabilities) and equity (capital) that stock corporations need to calibrate to fund their business requirements and achieve their financial targets are better left to the judgment of their boards and officers, whose bounden duty is to steer their companies to financial stability and profitability and who are ultimately answerable to their shareholders.

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[92] *Id*.

[93] *Biraogo v. The Philippine Truth Commission of 2010*, *supra* note 36, at 463.

Going back to the illustration above, the restrictive meaning of the term "capital" espoused by petitioners will definitely be complied with if 60% of each of the three classes of shares of Company X, consisting of 100 common shares, 100 Class A preferred shares (with right to elect directors) and 100 Class B preferred shares (without right to elect directors), is owned by Filipinos. **However**, what if the 60% Filipino ownership in each class of preferred shares, i.e., 60 Class A preferred shares and 60 Class B preferred shares, is not fully subscribed or achieved because there are not enough Filipino takers? Company X will be deprived of capital that would otherwise be accessible to it were it not for this unwarranted "restrictive" meaning of "capital."

The fact that all shares have the right to vote in 8 specific corporate actions as provided in Section 6 of the Corporation Code does not *per se* justify the favorable adoption of the restrictive re-interpretation of "capital" as the petitioners espouse. As observed in the *Gamboa* Decision, *viz*:

> The Corporation Code of the Philippines classifies shares as common or preferred, thus:
>
> > Sec. 6. *Classification of shares*. — The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, **That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code**: Provided, further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation: Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.
> >
> > Preferred shares of stock issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of

incorporation which are not violative of the provisions of this Code: Provided, That preferred shares of stock may be issued only with a stated par value. The Board of Directors, where authorized in the articles of incorporation, may fix the terms and conditions of preferred shares of stock or any series thereof: Provided, That such terms and conditions shall be effective upon the filing of a certificate thereof with the Securities and Exchange Commission.

x x x x x x x x x

A corporation may, furthermore, classify its shares for the purpose of insuring compliance with constitutional or legal requirements.

Except as otherwise provided in the articles of incorporation and stated in the certificate of stock, each share shall be equal in all respects to every other share.

Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;

2. Adoption and amendment of by-laws;

3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;

4. Incurring, creating or increasing bonded indebtedness;

5. Increase or decrease of capital stock;

6. Merger or consolidation of the corporation with another corporation or other corporations;

7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation x x x.[94]

The *Gamboa* Decision held that preferred shares are to be factored in only if they are entitled to vote in the election of directors. If preferred shares have no voting rights, then they cannot elect members of the board of directors, which wields control of the corporation. As to the right of non- voting preferred

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[94] *Gamboa v. Finance Secretary Teves, supra* note 2, at 51-54. Underscoring supplied.

shares to vote in the 8 instances enumerated in Section 6 of the Corporation Code, the *Gamboa* Decision considered them but, in the end, did not find them significant in resolving the issue of the proper interpretation of the word "capital" in Section 11, Article XII of the Constitution.

Therefore, to now insist in the present case that preferred shares be regarded differently from their unambiguous treatment in the *Gamboa* Decision is enough proof that the *Gamboa* Decision, which had attained finality more than 4 years ago, is being drastically changed or expanded.

In this regard, it should be noted that the 8 corporate matters enumerated in Section 6 of the Corporation Code require, at the outset, a favorable recommendation by the management to the board. As mandated by Section 11, Article XII of the Constitution, all the executive and managing officers of a public utility company must be Filipinos. Thus, the all-Filipino management team must first be convinced that any of the 8 corporate actions in Section 6 will be to the best interest of the company. Then, when the all-Filipino management team recommends this to the board, a majority of the board has to approve the recommendation – and, as required by the Constitution, foreign participation in the board cannot exceed 40% of the total number of board seats. Since the Filipino directors comprise the majority, they, if united, do not even need the vote of the foreign directors to approve the intended corporate act. After approval by the board, all the shareholders (with and without voting rights) will vote on the corporate action. The required vote in the shareholders' meeting is 2/3 of the outstanding capital stock.[95] Given the super majority vote requirement, foreign

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[95] Sec. 16 (Amendment of Articles of Incorporation); Sec. 37 (Power to extend or shorten corporate term); Sec. 38 (Power to increase or decrease capital stock; create or increase bonded indebtedness); Sec. 40 (Sale or other dispositions of [all or substantially all] assets); Sec. 42 (Power to invest corporate funds in another corporation or business or for any other purpose); Sec. 48 (Amendments to by-laws); Sec. 77 (Stockholder's or member's approval [of plan of merger or consolidation]); Sec. 118 (Voluntary dissolution where no creditors are affected); and Sec. 119 (Voluntary dissolution where creditors are affected).

shareholders cannot dictate upon their Filipino counterpart. However, foreigners (if owning at least a third of the outstanding capital stock) must agree with Filipino shareholders for the corporate action to be approved. The 2/3 voting requirement applies to all corporations, given the significance of the 8 corporate actions contemplated in Section 6 of the Corporation Code.

In short, if the Filipino officers, directors and shareholders will not approve of the corporate act, the foreigners are helpless.

Allowing stockholders holding preferred shares without voting rights to vote in the 8 corporate matters enumerated in Section 6 is an acknowledgment of their right of ownership. If the owners of preferred shares without right to vote/elect directors are not allowed to vote in any of those 8 corporate actions, then they will not be entitled to the appraisal right provided under Section 81[96] of the Corporation Code in the event that they dissent in the corporate act. As required in Section 82, the appraisal right can only be exercised by any stockholder who voted against the proposed action. Thus, without recognizing the right of every stockholder to vote in the 8 instances enumerated in Section 6, the stockholder cannot exercise his appraisal right in case he votes against the corporate action. In simple terms, the right to vote in the 8 instances enumerated in Section 6 is more in furtherance of the stockholder's right of ownership rather than as a mode of control.

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[96] Sec. 81. ***Instances of appraisal right.*** — Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;

2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the Code; and

3. In case of merger or consolidation.

As to financial interest, giving short-lived preferred or superior terms to certain classes or series of shares may be a welcome option to expand capital, without the Filipino shareholders putting up additional substantial capital and/or losing ownership and control of the company. For shareholders who are not keen on the creation of those shares, they may opt to avail themselves of their appraisal right. As acknowledged in the *Gamboa* Decision, preferred shareholders are merely investors in the company for income in the same manner as bondholders. Without a lucrative package, including an attractive return of investment, preferred shares will not be subscribed and the much-needed additional capital will be elusive. A too restrictive definition of "capital," one which was never contemplated in the *Gamboa* Decision, will surely have a dampening effect on the business milieu by eroding the flexibility inherent in the issuance of preferred shares with varying terms and conditions. Consequently, the rights and prerogatives of the owners of the corporation will be unwarrantedly stymied.

Moreover, the restrictive interpretation of the term "capital" would have a tremendous impact on the country as a whole — and to all Filipinos.

The PSE's Comment-in-Intervention dated June 16, 2014[97] warns that:

> 80. [R]edefining "capital" as used in Section 11, Article XII of the 1987 Constitution and adopting the supposed "Effective Control Test" will lead to disastrous consequences to the Philippine stock market.
>
> 81. Current data of the PSE show that, if the "Effective Control Test" were applied, the total value of shares that would be deemed in excess of the foreign-ownership limits based on stock prices as of 30 April 2014 is **One Hundred Fifty Nine Billion Six Hundred Thirty Eight Million Eight Hundred Forty Five Thousand Two Hundred Six Pesos and Eighty Nine Cents (Php159,638,845,206.89)**.

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[97] *Rollo* (Vol. II), pp. 848-879.

82. The aforementioned value of investments would have to be discharged by foreign holders, and consequently must be absorbed by Filipino investors. Needless to state, the lack of investments may lead to shutdown of the affected enterprises and to immeasurable consequences to the Philippine economy.[98]

In its Omnibus Motion [1] For Leave to Intervene; and [2] To Admit Attached Comment-in-Intervention dated May 30, 2016,[99] SHAREPHIL further warns that "[t]he restrictive re-interpretation of the term "capital" will result in massive forced divestment of foreign stockholdings in Philippine corporations."[100] SHAREPHIL explains:

4.51. On 16 October 2012, Deutsche Bank released a Market Research Study, which analyzed the implications of the ruling in *Gamboa*. The Market Research Study stated that:

> "If this thinking is applied and becomes established precedent, it would significantly expand on the rules for determining nationality in partially nationalized industries. If that were to happen, not only will PLDT's move to issue the 150m voting prefs be inadequate to address the issue, a large number of listed companies with similar capital structures could also be affected."

4.52. In five (5) companies alone, One Hundred Fifty Eight Billion Pesos (PhP158,000,000,000.00) worth of shares will have to be sold by foreign shareholders in a forced divestment, if the *obiter* in *Gamboa* were to be implemented. Foreign shareholders of PLDT will have to divest One Hundred Three Billion Eight Hundred Sixty Million Pesos (PhP103,860,000,000.00) worth of shares.

a. Foreign shareholders of Globe Telecom will *have* to divest Thirty Eight Billion Two Hundred Fifty Million Pesos (PhP38,250,000,000.00) worth of shares.

b. Foreign shareholders of Ayala Land will have to divest Seventeen Billion Five Hundred Fifty Million Pesos (PhP17,550,000,000.00) worth of shares.

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[98] *Id*. at 870. Emphasis supplied.

[99] *Id*. at 1080-1114.

[100] *Id*. 1105.

c. Foreign shareholders of ICTSI will have to divest Six Billion Four Hundred Ninety Million Pesos (PhP6,490,000,000.00) worth of shares.

d. Foreign shareholders of MWC will have to divest Seven Billion Seven Hundred Fourteen Million Pesos (PhP7,714,000,000.00) worth of shares.

4.53. Clearly, the local stock market which has an average value turn-over of Seven Billion Pesos cannot adequately absorb the influx of shares caused by the forced divestment. As a result, foreign stockholders will have to sell these shares at bargain prices just to comply with the *Obiter*.

4.54. These shares being part of the Philippine index, their forced divestment *vis-a-vis* the inability of the local stock market to absorb these shares will necessarily bring immense downward pressure on the index. A domino-effect implosion of the Philippine stock market and the Philippine economy, in general is not remote. x x x.[101]

Petitioners have failed to counter or refute these submissions of the PSE and SHAREPHIL. These unrefuted observations indicate to the Court that a restrictive interpretation — or rather, re-interpretation, of "capital", as already defined with finality in the *Gamboa* Decision and Resolution — directly affects the well-being of the country and cannot be labelled as "irrelevant and impertinent concerns x x x add[ing] burden [to] the Court."[102] These observations by the PSE[103] and SHAREPHIL,[104] unless refuted, must be considered by the Court to be valid and sound.

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[101] *Id.* at 1106-1107.

[102] Petitioner Roy's Opposition and Reply to Interventions of Philippine Stock Exchange and SHAREPHIL dated June 30, 2016, *id*. at 1128.

[103] The PSE is an entity mandated to provide and maintain a convenient, economical, and suitable market for the exchange of stocks, to formulate and implement rules and regulations to ensure that the interests of all market participants are protected, and to provide an efficient and fair market for buyers and sellers alike. The PSE alleges that, in case the petitions are granted, it stands to be injured and there will be damaging consequences on the market, as it will force the reduction of foreign investment and restrict capital outflow. PSE's Comment-in-Intervention, p. 2, *id*. at 849.

[104] SHAREPHIL, as an association forwarding the rights and welfare of shareholders, alleges that it aims to protect shareholders who have direct

The Court in *Abacus Securities Corp. v. Ampil*[105] observed that: "[s]tock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest x x x."[106] The importance of the stock market in the economy cannot simply be glossed over.

In view of the foregoing, the pronouncement of the Court in the *Gamboa* Resolution — the constitutional requirement to apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation[107] — is clearly an *obiter dictum* that cannot override the Court's unequivocal definition of the term "capital" in both the *Gamboa* Decision and Resolution.

Nowhere in the discussion of the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution in the *Gamboa* Decision did the Court mention the 60% Filipino equity requirement to be applied to each class of shares. The definition of "Philippine national" in the FIA and expounded in its IRR, which the Court adopted in its interpretation of the term "capital," does not support such application. In fact, even the ***Final Word*** of the *Gamboa* Resolution does not even intimate or suggest the need for a clarification or re-interpretation.

To revisit or even clarify the unequivocal definition of the term "capital" as referring "only to shares of stock entitled to vote in the election of directors" and apply the 60% Filipino ownership requirement to each class of share is effectively and

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and substantial interest in this case and will no doubt be adversely affected by the restrictive re-interpretation of the *Gamboa* ruling forwarded by the petitioners. SHAREPHIL's Omnibus Motion [1] For Leave to Intervene; and [2] To Admit Attached Comment-in-Intervention, par. 5, p. 3, *id*. at 1082.

[105] 518 Phil. 478 (2006).

[106] *Id*. at 482.

[107] *Heirs of Wilson P. Gamboa v. Finance Secretary Teves*, *supra* note 3, at 339.

unwarrantedly amending or changing the *Gamboa* Decision and Resolution. The *Gamboa* Decision and Resolution Doctrine did NOT make any definitive ruling that the 60% Filipino ownership requirement was intended to apply to each class of share.

In *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*,[108] the Court stated:

> Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the **petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction**. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. In this connection, *Yu v. Judge Reyes-Carpio*, is instructive:
>
> > The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the **petitioner could manifestly show that such act was patent and gross**. x x x.

The onus rests on petitioners to clearly and sufficiently establish that the SEC, in issuing SEC-MC No. 8, acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction or that the SEC's abuse of discretion is so patent

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[108] 716 Phil. 500, 515-516 (2013). Emphasis supplied; citations omitted.

and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law and the *Gamboa* Decision and Resolution. **Petitioners miserably failed in this respect.**

The clear and unequivocal definition of "capital" in Gamboa has attained finality.

It is an elementary principle in procedure that the resolution of the court in a given issue as embodied in the dispositive portion or *fallo* of a decision controls the settlement of rights of the parties and the questions, notwithstanding statement in the body of the decision which may be somewhat confusing, inasmuch as the dispositive part of a final decision is definite, clear and unequivocal and can be wholly given effect without need of interpretation or construction.[109]

As explained above, the *fallo* or decretal/dispositive portions of both the *Gamboa* Decision and Resolution are definite, clear and unequivocal. While there is a passage in the body of the *Gamboa* Resolution that might have appeared contrary to the *fallo* of the *Gamboa* Decision — capitalized upon by petitioners to espouse a restrictive re-interpretation of "capital" — the definiteness and clarity of the *fallo* of the *Gamboa* Decision must control over the *obiter dictum* in the *Gamboa* Resolution regarding the application of the 60-40 Filipino-foreign ownership requirement to "each class of shares, regardless of differences in voting rights, privileges and restrictions."

The final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision because at the root of the doctrine that the premises must yield to the conclusion is, side by side with the need of writing *finis* to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give unimpeachable legal reasons."[110]

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[109] *Suntay v. Cojuangco-Suntay*, *supra* note 60, at 944-945 (1998).

[110] *Contreras and Gingco v. Felix and China Banking Corp.*, 78 Phil. 570, 577-578 (1947). Citations omitted.

Petitioners cannot, after *Gamboa* has attained finality, seek a belated correction or reconsideration of the Court's unequivocal definition of the term "capital." At the core of the doctrine of finality of judgments is that public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law and the very objects for which courts were instituted was to put an end to controversies.[111] Indeed, the definition of the term "capital" in the *fallo* of the *Gamboa* Decision has acquired finality.

Because the SEC acted pursuant to the Court's pronouncements in both the *Gamboa* Decision and *Gamboa* Resolution, then it could not have gravely abused its discretion. That portion found in the body of the *Gamboa* Resolution which the petitioners rely upon is nothing more than an *obiter dictum* and the SEC could not be expected to apply it as it was not — ***is not*** — a binding pronouncement of the Court.[112]

Furthermore, as opined by Justice Bersamin during the deliberations, the doctrine of immutability of judgment precludes the Court from re- examining the definition of "capital" under Section 11, Article XII of the Constitution. Under the doctrine of finality and 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 even if the modification is made by the court that rendered it or by the Highest Court of the land. Any act that violates the principle must be immediately stricken down.[113] The petitions have not succeeded in pointing to any exceptions to the doctrine of finality of judgments, under which the present case falls, to wit: (1) the correction of clerical errors; (2) the so-called *nunc*

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[111] *Id*. at 575.

[112] See *Land Bank of the Philippines v. Suntay*, 678 Phil. 879, 913-914 (2011).

[113] *FGU Insurance Corp. v. RTC of Makati City, Branch 66*, 659 Phil. 117, 123 (2011).

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.[114]

With the foregoing disquisition, the Court rules that SEC-MC No. 8 is ***not*** contrary to the Court's definition and interpretation of the term "capital". Accordingly, the petitions must be denied for failing to show grave abuse of discretion in the issuance of SEC-MC No. 8.

The petitions are second motions for Reconsideration, which are proscribed.

As Justice Bersamin further noted during the deliberations, the petitions are in reality second motions for reconsideration prohibited by the *Internal Rules of the Supreme Court*.[115] The parties, particularly intervenors Gamboa, *et al.*, could have filed a motion for clarification in *Gamboa* in order to fill in the perceived shortcoming occasioned by the non-inclusion in the dispositive portion of the *Gamboa* Resolution of what was discussed in the body.[116] The statement in the *fallo* of the *Gamboa*

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[114] *Id.*

[115] A.M. No. 10-4-20-SC, Rule 15, Sec. 3. *Second motion for reconsideration*. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

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[116] See *Spouses Mahusay v. B.E. San Diego, Inc.*, 666 Phil. 528, 536 (2011).

Resolution to the effect that "[n]o further pleadings shall be entertained" could not be a hindrance to a motion for clarification that sought an unadulterated inquiry arising upon an ambiguity in the decision.[117]

Closing

Ultimately, the key to nationalism is in the individual. Particularly for a public utility corporation or association, whether stock or non-stock, it starts with the Filipino shareholder or member who, together with other Filipino shareholders or members wielding 60% voting power, elects the Filipino director who, in turn, together with other Filipino directors comprising a majority of the board of directors or trustees, appoints and employs the all Filipino management team. This is what is envisioned by the Constitution to assure **effective control** by Filipinos. If the safeguards, which are already stringent, fail, i.e., a public utility corporation whose voting stocks are beneficially owned by Filipinos, the majority of its directors are Filipinos, and all its managing officers are Filipinos, is pro-alien (or worse, dummies), then that is not the fault or failure of the Constitution. It is the breakdown of nationalism in each of the Filipino shareholders, Filipino directors and Filipino officers of that corporation. No Constitution, no decision of the Court, no legislation, no matter how ultra-nationalistic they are, can guarantee nationalism.

WHEREFORE, premises considered, the Court **DENIES** the Petition and Petition-in-Intervention.

SO ORDERED.

Del Castillo, Perez, and *Reyes, JJ.*, concur.

Sereno, C. J., Velasco, Jr., and *Bersamin, JJ.*, see concurring opinions.

Carpio, Mendoza, and *Leonen, JJ.*, dissent, see dissenting opinions.

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[117] See *Commissioner on Higher Education v. Mercado*, 519 Phil. 399, 406 (2006).

Leonardo-de Castro and *Brion, JJ.*, join the dissent of *J.* Carpio.

Perlas-Bernabe, J., no part and on official leave.

Jardeleza, J., no part.

Peralta, J., on leave but left his vote.

CONCURRING OPINION

SERENO, *C.J.*:

The Petition for Certiorari before this Court assails the validity of Memorandum Circular No. 8, Series of 2013, issued by respondent Securities and Exchange Commission (SEC).

The SEC circular provides for the guidelines on compliance with the Filipino-foreign ownership requirements prescribed in the Constitution and/or existing laws by corporations engaged in nationalized and partly nationalized activities. The specific provision that operationalizes the ownership requirements reads:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to **BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors**. (Emphasis supplied)

Evidently, the circular limits the application of the ownership requirement only to the *number* of stocks in a corporation. It does not take into consideration the *par value*, which, in turn, affects the *dividends* or earnings of the shares.

The par value of shares is not always equal. The par value of common shares may be lower than that of preferred shares. The latter take any of a variety of forms — they may be cumulative, noncumulative, participating, nonparticipating, or convertible.

Their par values tend to differ depending on their features and entitlement to dividends.

The number **and** the par value of the permutation of shares definitely affect the issue of the stockholding of a corporation. As illustrated by Justice Antonio T. Carpio, preferred shares having higher par values and higher dividend declarations result in higher earnings than those of common shares. In his example, even if Filipinos own 120 shares (100 common, 20 preferred), which outnumber the 80 preferred shares of foreigners, it is possible that the latter would have higher earnings. This possibility would arise if preferred shares — although less in number — have greater par values and dividend earnings.

Thus, compliance on the basis of the number of shares alone, does not necessarily result in keeping the required degree of beneficial ownership in favor of Filipinos. The different combinations of shares with respect to the number, par value, and dividend earnings must also be taken into account.

For this reason, I reiterate our directive in *Gamboa* for the SEC to comply with its duty to ascertain the factual issues surrounding the ownership of the PLDT shares. The dispositive portion of our ruling in that case reads:

> Respondent Chairperson of the Securities and Exchange Commission is **DIRECTED** to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law. (Emphasis in the original)

From that determination, the SEC may be able to gather the necessary information to correctly classify various kinds of shares in different combinations of numbers, par values, and dividends. However, with the SEC considering only the matter of the number of shares under the assailed circular, and absent any deeper analysis of PLDT equity structure, any disposition in this case would be premature.

I would even venture that in the case of a company where 60% of stocks are voting and 40% are preferred, with each stock having the same par value, and which complies with the 60% Filipino voting share rule by requiring that all voting stocks be purely in the hands of Filipinos, the minority formula that would impose upon such companies another layer of nationality requirement by demanding that at least 60% of each category of shares be in Filipino hands would effectively drive up the nationality requirement to at least 84%. That this was not the intention of the Constitution is quite obvious.

The parties have pleaded with this Court to settle what is or is not doctrine in *Gamboa v. Teves*.[1] The discussion on the various permutations possible not only in this case but in many other cases drives home my point that the present case as pleaded by petitioners has prematurely attempted to make out a case of grave abuse of discretion by the SEC. Moreover, should we decide to grant a petition that could have such far-reaching consequences as this case appears to have, it is a threshold requirement that the shareholders be allowed to plead their cause.

WHEREFORE, I vote to **DENY** the petition.

CONCURRING OPINION

VELASCO, JR., *J.*:

Nature of the Case

Before the Court is a petition for Certiorari under Rule 65 of the Rules of Court assailing the constitutionality and validity of Memorandum Circular (MC) No. 8, entitled "Guidelines on Compliance with the Filipino-Foreign Ownership Requirements prescribed by the Constitution and/or Existing Laws by Corporations Engaged in Nationalized Activities," issued by the Securities and Exchange Commission (SEC).

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[1] *Gamboa v. Teves*, 668 Phil. 1 (2011) and *Heirs of Gamboa v. Teves*, 696 Phil. 276-485 (2012).

Factual Antecedents

On June 28, 2011, the Court issued a Decision in *Gamboa v. Teves*[1] on the matter of "whether the term 'capital' in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of voting and non-voting shares) of PLDT, a public utility."

Resolving the issue, the majority of the Court held that: "**The term 'capital' in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors**, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares."[2] The Court then directed the SEC to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in PLDT.

Several motions for reconsideration assailing the Decision in *Gamboa* were filed but, eventually, denied by the Court in its October 9, 2012 Resolution.

Pursuant to the Court's directive in *Gamboa*, the SEC prepared a draft memorandum circular on the guidelines to be followed in determining compliance with the constitutional and statutory limitations on foreign ownership in nationalized and partly nationalized industries. The SEC then invited the public to a dialogue and submit comments on the draft of the memorandum circular.[3]

Representatives from various organizations, government agencies, the academe and the private sector attended the public dialogue and submitted position papers and written comments on the draft to the SEC.

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[1] G.R. No. 176579, June 28, 2011, 652 SCRA 690 and October 9, 2012, 682 SCRA 397.

[2] Emphasis supplied.

[3] PLDT's Consolidated Memorandum, pp. 2-3, citing SEC Notice dated 6 November 2012.

On May 20, 2013, the SEC issued MC No. 8. Section 2 of the circular provides:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.
>
> Corporations covered by special laws which provide specific citizenship requirements shall comply with the provisions of said law.

Petitioner Jose Roy III takes exception to the foregoing provision alleging that it is not in accord with the ruling of the Court in *Gamboa*. He contends that the SEC committed grave abuse of discretion since Section 2 of MC No. 8 "fails to differentiate the varying classes of shares and does not require the application of the foreign equity limits to each class of shares issued by a corporation." Petitioner relies on a portion of the October 9, 2012 Resolution in *Gamboa* providing that "the 60-40 ownership requirement must apply to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares." He, thus, prays for this Court to declare MC No. 8 unconstitutional and to direct the SEC to issue new guidelines regarding the determination of compliance with Section 11, Article XII of the Constitution in accordance with *Gamboa*.

Petitioner further maintains that the SEC gravely abused its discretion in ruling that PLDT is compliant with the Constitutional rule on Foreign Ownership.

William Gamboa, Jr., Daniel Cartagena, John Wilson Gabinete, Antonio V. Pesina, Jr., Modesto Martin Y. Mamon III, Gerardo C. Erebaren and the Philippine Stock Exchange (PSE) sought, and were granted, intervention.

Issue

Considering that the Court is not a trier of facts and is not in a position to make a factual determination of PLDT's compliance with Section 11, Article XII of the Constitution, the Court can only address the pure question of law presented by the petitioner and petitioners-in-intervention: whether or not the SEC gravely abused its discretion in issuing MC No. 8.

I concur with the ruling in the *ponencia*.

The petition has not met the requisites for the exercise of judicial review

It is elementary that the power of judicial review is subject to certain limitations, which must be complied with by the petitioner before this Court may take cognizance of the case.[4] The Court held, thus:

> When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the lis mota of the case.[5]

The petitioner's failure to sufficiently allege, much less prove the existence of the first two requisites, warrants the outright dismissal of the petition.

To satisfy legal standing in assailing the constitutionality of a governmental act, the petitioner must prove the **direct and personal injury** that he might suffer if the act is permitted to

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[4] *In Re Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement*, UDK-15143, January 21, 2015.

[5] *Hon. Luis Mario M. General v. Hon. Alejandro S. Urro*, G.R. No. 191560, March 29, 2011 citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632 (2000).

stand. Petitioner Roy, however, merely glossed over this requisite, simply claiming that the law firm he represents is "a subscriber of PLDT." It is not even clear whether the law firm is a "subscriber" of PLDT's shares or purely of its various communication services.

Clearly, the very limited information provided by the petitioner does not sufficiently demonstrate how he is left to sustain or is in immediate danger of sustaining some direct injury as a result of the SEC's issuance of MC No. 8. As correctly argued by the respondents, assuming that his law firm is indeed a subscriber of PLDT shares of stocks, whether or not the constitutionality of MC No. 8 is upheld, his law firm's rights as a shareholder in PLDT will not be affected or altered. There is simply no rational connection between his law firm's rights as an alleged shareholder with the legality of MC No. 8.

The *locus standi* requisite is likewise not satisfied by the mere fact that petitioner Roy is a "concerned citizen, an officer of this Court and ... a taxpayer." We have previously emphasized that the *locus standi* requisite is not overcome by one's citizenship or membership in the bar. These supposed interests are too general, shared as they are by other groups and by the whole citizenry.[6]

The only "injury" attributable to petitioner Roy is that the position paper he submitted to the SEC was not adopted by the Commission in issuing MC No. 8. This injury, however, is not sufficient to clothe him with the requisite standing to invoke the Court's exercise of judicial power to review and declare unconstitutional the issuance of a governmental body.

Neither can petitioner Roy take refuge in his status as a taxpayer. Lest it is forgotten, a taxpayer's suit is proper only when the petitioner has established that the act complained of directly involves the illegal disbursement of public funds derived from taxation.[7] MC No. 8 does not involve an expenditure of

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[6] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, citing *Integrated Bar of the Philippines (IBP) v. Hon. Zamora*, 392 Phil. 618 (2000).

[7] *Automotive Industry Workers Alliance v. Romulo*, 489 Phil. 710, 719 (2005); *Gonzales v. Narvasa*, 392 Phil. 518, 525 (2000).

public funds. It does not even concern the taxing and spending power of the Congress. Hence, justifying the recourse as a taxpayer's suit is far-fetched and implausible, with petitioner ignoring the basic requirements of the concept.

In like manner, the petitioners-intervenors suffer the same infirmity as petitioner Roy. None of them alleged, let alone proved, even a remote link to the implementation of MC No. 8. Certainly, there is nothing by which this Court can ascertain their personality to challenge the validity of the SEC Issuance.

The casual invocation of the supposed "transcendental importance" of the questions posed by the petitioner and petitioners-in-intervention does not automatically justify the disregard of the stringent requirements for this Court's exercise of judicial power. Otherwise, the Court would be allowing the dilution of the settled doctrine of *locus standi* as every worthy cause is an interest shared by the general public.[8]

Indeed, while this Court has previously allowed the expansion of the boundaries of the rule on legal standing in matters of far-reaching implications, the Court cannot condone the trivial treatment of the element of *locus standi* as a mere technical requirement. The requirement of legal standing goes into the very essence of jurisdiction and the competence of this Court to intrude into matters falling within the executive realm. In *Galicto v. Aquino* III,[9] the Court explained the importance of the rule, *viz*:

... **The rationale for this constitutional requirement of locus standi is by no means trifle.** Not only does it assure the vigorous adversary presentation of the case; more importantly, **it must suffice to warrant the Judiciary's overruling the determination of a coordinate**, democratically elected **organ of government**, such as the President, and the clear approval by Congress, in this case. Indeed, the rationale goes to the very essence of representative democracies.[10] (emphasis supplied)

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[8] *Republic v. Roque*, G.R. No. 204603, September 24, 2013.

[9] G.R. No. 193978, February 28, 2012.

[10] Emphasis supplied.

The liberality of the Court in bypassing the *locus standi* rule cannot, therefore, be abused. If the Court is to maintain the respect demanded by the concept of separation of governmental powers, it must subject applications for exemptions from the requirements of judicial review to the highest possible judicial inquiry. In the present case, the anemic allegations of the petitioner and petitioners-in-intervention do not warrant the application of the exceptions rather than the rule on *locus standi*.

The Rule on the Hierarchy of Courts has been violated

In like manner, a hollow invocation of "transcendental importance" does not warrant the immediate relaxation of the rule on hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs.[11] Indeed, "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."[12] This Court has explained that the rationale for this strict policy is to prevent the following: (1) inordinate demands upon its time and attention, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.[13]

While direct recourse to the court has previously been allowed on exceptional grounds, the circumstances set forth in the petition and petition- in-intervention do not justify the disregard of the established policy. Worse, petitioner's allegation that there is little value in presenting the petition to another court is demeaning and less than fair to the lower courts. There is no reason to

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[11] *The Liga ng mga Barangay National v. The City Mayor of Manila*, G.R. No. 154599, January 21, 2004.

[12] *Vergara Sr. v. Suelto*, 240 Phil. 719, 732 (1987); *De Castro v. Santos*, G.R. No. 194994, April 16, 2013.

[13] *De Castro v. Santos*, *supra* note 12, citing *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633; and *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

doubt our trial court's ability and competence to determine the existence of grave abuse of discretion.

Section 4, Rule 65 of the Rules of Court itself provides that the RTC and the CA have concurrent jurisdiction to issue the writ of *certiorari*. For certainly, the issue of abuse of discretion is not so complex as to disqualify every court, except this Court, from deciding it. Thus, due deference to the competence of these courts and a becoming regard of the time-honored principle of the hierarchy of courts bars the present direct recourse to this Court.

Indispensable Parties are Being Denied their Rights to Due Process

Even assuming that the issue involved in the present recourse is of vital importance, it is dismissible for its failure to implead the indispensable parties.

Under Rule 3, Section 7 of the Rules of Court, an indispensable party is a party-in-interest, without whom there can be no final determination of an action. The interests of such indispensable party in the subject matter of the suit and the relief are so bound with those of the other parties that his legal presence as a party to the proceeding is an absolute necessity.[14] As a rule, an indispensable party's interest in the subject matter is such that a complete and efficient determination of the equities and rights of the parties is not possible if he is not joined.[15]

In the case at bar, it is alleged that the propriety of the SEC's enforcement of this Court's interpretation of "capital" is important as it affects corporations in nationalized and partly-nationalized industries. And yet, besides respondent PLDT, no other corporation subject to the same restriction imposed by Section 11, Article XII of the Constitution has been joined or impleaded by the present recourse. These corporations are in danger of

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[14] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56, December 4, 2009.

[15] *Id.*; citing *Galicia v. Mercado*, G.R. No. 146744, March 6, 2006, 484 SCRA 131, 136-137.

losing their franchises and property holdings if they are found not compliant with a revised interpretation of the nationality requirement. Nonetheless, they have not been afforded due notice, much less the opportunity to be heard, in the present case.

Worse, petitioner and petitioners-in-intervention failed to acknowledge that their restrictive interpretation of the Court's ruling in *Gamboa* affects not only the public utility corporations but, more so, the shareholders who will likely be divested of their stocks. The sheer number of foreign shareholders and the affected shareholdings have been illustrated by the Shareholder's Association of the Philippines, Inc. (SHAREPHIL) when it explained that, in five companies alone, more than One Hundred Fifty Billion Pesos (₱150,000,000,000.00) worth of shares have to be forcibly taken from foreign shareholders (and absorbed by Filipino investors).

The rights of these other corporations and numerous shareholders cannot simply be ignored in making a final determination on the constitutionality of MC No. 8. The petitioner's failure to implead is not just a simple procedural misstep but a patent denial of due process rights.[16]

The Constitution is clear as it is categorical. The State cannot proceed with depriving persons their property without first ensuring that compliance with due process requirements is duly observed.[17] This Court cannot, thus, sanction a restrictive interpretation of the nationality requirement without first affording the other public utility corporations and their shareholders an opportunity to participate in the present proceedings.

The SEC did not abuse its discretion in issuing MC No. 8

Even if the Court takes the lenient stance and turns a blind eye on all the numerous procedural infirmities of the petition, the petition still fails on the merits.

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[16] See *David v. Paragas*, G.R. No. 176973, February 25, 2015 and *Sy v. Court of Appeals*, G.R. No. 94285, August 31, 1999.

[17] *Id*.

The petition is anchored on the contention that the SEC committed grave abuse of discretion in issuing MC No. 8. By grave abuse of discretion, the petitioners must prove that the Commission's act was tainted with the quality of whim and caprice.[18] Abuse of discretion is not enough. It must be shown that the Commission exercised its power in an arbitrary or despotic manner because of passion or personal hostility that is so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.[19]

With this standard in mind, the petitioner and petitioners-in-intervention failed to demonstrate that the SEC's issuance of MC No. 8 was attended with grave abuse of discretion. On the contrary, the assailed circular sufficiently applied the Court's definitive ruling in *Gamboa*.

To recall, *Gamboa* construed the word "capital" and the nationality requirement in Section 11, Article XII of the Constitution, which states:

SECTION 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens**, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. **The participation**

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[18] *OKS Designtech, Inc. v. Caccam*, G.R. No. 211263, August 5, 2015.

[19] *Gold City Integrated Services, Inc. v. Intermediate Appellate Court*, G.R. Nos. 71771-73, March 31, 1989, citing *Arguelles v. Young*, G.R. No. 59880, September 11, 1987, 153 SCRA 690; *Republic v. Heirs of Spouses Molinyawe*, G.R. No. 217120, April 18, 2016; *Olaño v. Lim Eng Co*, G.R. No. 195835, March 14, 2016; *City of Iloilo v. Honrado*, G.R. No. 160399, December 9, 2015; *OKS Designtech, Inc. v. Caccam*, G.R. No. 211263, August 5, 2015.

of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (emphasis supplied)

The Court explained in the June 28, 2011 Decision in *Gamboa* that **the term "capital" in Section 11, Article XII refers "only to shares of stock entitled to vote in the election of directors."** The rationale provided by the majority was that this interpretation ensures that **control** of the Board of Directors stays in the hands of Filipinos, since foreigners can only own a maximum of 40% of said shares and, accordingly, can only elect the equivalent percentage of directors. As a necessary corollary, Filipino stockholders can always elect 60% of the Board of Directors which, to the majority of the Court, translates to control over the corporation. The June 28, 2011 Decision, thus, reads:

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term 'capital' in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because **the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors**.

This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation x x x.

The dispositive portion of the June 28, 2011 Decision in *Gamboa* clearly spelled out the doctrinal declaration of the Court on the meaning of "capital" in Section 11, Article XII of the Constitution, *viz*:

WHEREFORE, we PARTLY GRANT the petition and rule that the term **"capital"** in Section 11, Article XII of the 1987 Constitution

refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is DIRECTED to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law. (emphasis supplied)

The motions for reconsideration of the June 28, 2011 Decision filed by the movants in *Gamboa* argued against the application of the term "capital" to the voting shares alone and in favor of applying the term to the total outstanding capital stock (combined total of voting and non-voting shares). Notably, none of them contended or moved for the application of the capital or the 60-40 requirement to "each and every class of shares" of a public utility, as it was **never an issue in the case**.

In resolving the motions for reconsideration in *Gamboa*, it is relevant to stress that the majority **did not modify** the June 28, 2011 Decision. The *fallo* of the October 9, 2012 Resolution simply stated:

WHEREFORE, we DENY the motions for reconsideration WITH FINALITY. No further pleadings shall be entertained.

Clearly, the Court had no intention, express or otherwise, to amend the construction of the term "capital" in the June 28, 2011 Decision in *Gamboa*, much less in the manner proposed by petitioner Roy. Hence, no grave abuse of discretion can be attributed to the SEC in applying the term "capital" to the "voting shares" of a corporation.

The portion quoted by the petitioners is nothing more than an *obiter dictum* that has never been discussed as an issue during the deliberations in *Gamboa*. As such, it is not a binding pronouncement of the Court[20] that can be used as basis to declare the SEC's circular as unconstitutional.

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[20] *Ocean East Agency Corp. v. Lopez*, G.R. No. 194410, October 14, 2015.

This Court explained the concept and effect of an *obiter dictum* thusly:

> An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. **It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point.** It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.[21] (emphasis and underscoring supplied)

What is more, requiring the SEC to impose the 60-40 requirement to "each and every class of shares" in a public utility is not only unsupported by Section 11, Article XXI, it is also administratively and technically infeasible to implement and enforce given the variety and number of classes that may be issued by public utility corporations.

Common and preferred are the usual forms of stock. However, it is also possible for companies to customize and issue different classes of stock in any way they want. Thus, while all issued common shares may be voting, their dividends may be "deferred" or subject to certain conditions. Corporations can also issue "cumulative preferred shares" that are issued with the stipulation that any scheduled dividends that cannot be paid when due are carried forward and must be paid before the company can pay out ordinary share dividends. A company can likewise issue "hybrid stocks" or preferred shares that can be converted to a fixed number of common stocks at a specified time. These stocks may or may not be given voting rights. Further, some stocks may be embedded with derivative options so that a type of stock may be "called" or redeemed by the company at a specified time at a fixed price, while some stocks may be "puttable" or offered by the stockholder at a certain time, at a certain price.

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[21] *Landbank of the Philippines v. Suntay*, G.R. No. 188376, December 14, 2011.

Without a doubt, the classes and variety of shares that may be issued by a corporation are limited only by the bounds of the corporate directors' imagination. Worse, they can be classified and re-classified, *ad nauseam*, from time to time.

Thus, to require the SEC and other government agencies to keep track of the ever-changing capital classes of corporations would be impractical, if not downright impossible. Perhaps it is best to be reminded that the law does not require the impossible. (*Lex non cogit ad impossibilia*.)[22]

Neither can the petitioners rely on the concept of "beneficial ownership" to sustain their position. The phrase, "beneficial ownership," is nowhere found in Section 11, Article XII of the Constitution. Rather "beneficial ownership" was introduced in the Implementing Rules and Regulations of the Foreign Investment Act of 1991 (FIA), not even in the law itself. Suggesting that the phrase can expand, qualify and amend the intent of the Constitution is, bluntly, preposterous.

In defining a "Philippine National," the FIA stated, *viz*:

a) The term "Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty (60%) of the fund will accrue to the benefit of the Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stocks outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines, in order that the corporations shall be considered a Philippine national.

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[22] *Biraogo v. The Philippine Truth Commission*, G.R. Nos. 192935 and 193036, December 7, 2010.

The definition was taken a step further in the Implementing Rules and Regulations of the law where the phrase "beneficial ownership" was used, as follows:

b. Philippine national shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of the Philippine nationals; Provided, that where a corporation its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of both corporation must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. The control test shall be applied for this purpose.

The term Philippine national shall not include juridical entities organized and existing under the laws of any other country even if wholly owned by Philippine citizens.

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. <u>Full beneficial ownership</u> of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals. (emphasis and underscoring supplied)

While the foregoing provisions were cited in *Gamboa* in identifying the "capital stock outstanding and entitled to vote" as equivalent to "capital" in Section 11, Article XII of the Constitution, nothing in either provision requires the application of the 60% threshold to "each and every class of shares" of public utilities.

At most, as pointed out by the majority, "beneficial ownership" must be understood in the context in which it is used. Thusly, the phrase simply means that the **name and *full* rights of ownership** over the 60% of the voting shares in public utilities must belong to Filipinos. If either the voting rights or the right to dividends, among others, of voting shares registered in the name Filipino citizens or nationals are assigned or transferred to an alien, these shares shall not be included in the computation of the 60% threshold.

The Commission even went above and beyond the duty levied by the court and imposed the 60-40 requirement not only on the voting shares but also on the totality of the corporation's shareholding, thus ensuring that the public utilities are, in fact, "effectively controlled" by Filipinos given the added layers of protection given to ensure that Filipino stockholders have the full beneficial ownership and control of public utility corporations in accordance with the Constitution, thus:

> 1. Forty percent (40%) ceiling on foreign ownership in the capital stock that ensures sixty percent (60%) Filipino control over the capital stock which covers both voting and non-voting shares. As a consequence, Filipino control over the stockholders is assured. Thus, foreigners can own only up to 40% of the capital stock.
>
> 2. Forty percent (40%) ceiling on the right of foreigners to own and hold voting shares and elect board directors that guarantees sixty percent (60%) Filipino control over the Board of Directors.
>
> 3. Reservation to Filipino citizens of the executive and managing officers, regardless of the level of alien equity ownership to secure total Filipino control over the management

of the public utility enterprise. Thus, all executive and managing officers must be Filipinos.

In my opinion in *Heirs of Gamboa v. Teves*,[23] I pointed out the dire consequences of not imposing the 40% limit on foreign ownership on the totality of the shareholdings, *viz*:

> [L]et us suppose that the authorized capital stock of a public utility corporation is divided into 100 common shares and 1,000,000 non-voting preferred shares. Since, according to the Court's June 28, 2011 Decision, the word "capital" in Sec. 11, Art. XII refers only to the voting shares, then the 40% cap on foreign ownership applies only to the 100 common shares. Foreigners can, therefore, own 100% of the 1,000,000 non-voting preferred shares. But then again, the ponencia continues, at least, the "control" rests with the Filipinos because the 60% Filipino-owned common shares will necessarily ordain the majority in the governing body of the public utility corporation, the board of directors/trustees. Hence, Filipinos are assured of control over the day-to-day activities of the public utility corporation.
>
> Let us, however, take this corporate scenario a little bit farther and consider the irresistible implications of changes and circumstances that are inevitable and common in the business world. Consider the simple matter of a possible investment of corporate funds in another corporation or business, or a merger of the public utility corporation, or a possible dissolution of the public utility corporation. **Who has the "control" over these vital and important corporate matters?** The last paragraph of Sec. 6 of the Corporation Code provides:
>
> Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, **the holders of such (non-voting) shares shall nevertheless be entitled to vote on the following matters:**
>
> 1. Amendment of the articles of incorporation;
> 2. Adoption and amendment of by-laws;
> 3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
> 4. Incurring, creating or increasing bonded indebtedness;

[23] G.R. No. 176579, October 9, 2012, 682 SCRA 397.

5. Increase or decrease of capital stock;

6. Merger or consolidation of the corporation with another corporation or other corporations;

7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation. (Emphasis and underscoring supplied.)

In our hypothetical case, all 1,000,100 (voting and non-voting) shares are entitled to vote in cases involving fundamental and major changes in the corporate structure, such as those listed in Sec. 6 of the Corporation Code. Hence, with only 60 out of the 1,000,100 shares in the hands of the Filipino shareholders, control is definitely in the hands of the foreigners. The foreigners can opt to invest in other businesses and corporations, increase its bonded indebtedness, and even dissolve the public utility corporation against the interest of the Filipino holders of the majority voting shares. This cannot plausibly be the constitutional intent.

Consider further a situation where the majority holders of the total outstanding capital stock, both voting and non-voting, decide to dissolve our hypothetical public utility corporation. **Who will eventually acquire the beneficial ownership of the corporate assets upon dissolution and liquidation?** Note that Sec. 122 of the Corporation Code states:

> Section 122. Corporate liquidation. — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years ... to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.
>
> At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the

stockholders, members, creditors or other persons in interest. (Emphasis and underscoring supplied.)

Clearly then, the bulk of the assets of our imaginary public utility corporation, which may include private lands, will go to the beneficial ownership of the foreigners who can hold up to 40 out of the 100 common shares and the entire 1,000,000 preferred non-voting shares of the corporation. These foreign shareholders will enjoy the bulk of the proceeds of the sale of the corporate lands, or worse, exercise control over these lands behind the fa ade of corporations nominally owned by Filipino shareholders. Bluntly, while the Constitution expressly prohibits the transfer of land to aliens, foreign stockholders may resort to schemes or arrangements where such land will be conveyed to their dummies or nominees. Is this not circumvention, if not an outright violation, of the fundamental Constitutional tenet that only Filipinos can own Philippine land?

A construction of "capital" as referring to the total shareholdings of the company is an acknowledgment of the existence of numerous corporate control-enhancing mechanisms, besides ownership of voting rights, that limits the proportion between the separate and distinct concepts of **economic right** to the cash flow of the corporation **and** the right to corporate **control**(hence, they are also referred to as proportionality- limiting measures). This corporate reality is reflected in SRC Rule 3 (E) of the Amended Implementing Rules and Regulations (IRR) of the SRC and Sec. 3 (g) of The Real Estate Investment Trust Act (REIT) of 2009, 72 which both provide that control can exist **regardless of ownership of voting shares**. The SRC IRR states:

> **Control is the power to govern the financial and operating policies** of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one half of the voting power of an enterprise unless, in exceptional circumstances, it can be clearly demonstrated that such ownership does not constitute control. **Control also exists even when the parent owns one half or less of the voting power of an enterprise when there is:**
>
> i. **Power over more than one half of the voting rights** by virtue of an **agreement** with other investors;
>
> ii. **Power to govern the financial and operating policies** of the enterprise under a statute or an **agreement**;

iii. **Power to appoint or remove the majority of the members of the board** of directors or equivalent governing body;

iv. **Power to cast the majority of votes** at meetings of the board of directors or equivalent governing body. (Emphasis and underscoring supplied.)

As shown above, **ownership of voting shares or power alone <u>without</u> economic control of the company does not necessarily equate to corporate control**. A *shareholder's agreement* can effectively clip the voting power of a shareholder holding voting shares. In the same way, a *voting right ceiling*, which is "a restriction prohibiting shareholders to vote above a certain threshold irrespective of the number of voting shares they hold," 73 can limit the control that may be exerted by a person who owns voting stocks but who does not have a substantial economic interest over the company. So also does the use of *financial derivatives* with attached conditions to ensure the acquisition of corporate control separately from the ownership of voting shares, or the use of *supermajority provisions* in the by-laws and articles of incorporation or association. Indeed, there are innumerable ways and means, both explicit and implicit, by which the *control of a corporation can be attained and retained even with very limited voting shares*, i.e., there are a number of ways by which control can be disproportionately increased compared to ownership 74 so long as economic rights over the majority of the assets and equity of the corporation are maintained.

Hence, if We follow the construction of "capital" in Sec. 11, Art. XII stated in the ponencia of June 28, 2011 and turn a blind eye to these realities of the business world, **this Court may have veritably put a limit on the foreign ownership of common shares but have indirectly allowed foreigners to acquire greater economic right to the cash flow of public utility corporations**, which is a leverage to bargain for far greater control through the various enhancing mechanisms or proportionality-limiting measures available in the business world.

In our extremely hypothetical public utility corporation with the equity structure as thus described, since the majority recognized only the 100 common shares as the "capital" referred to in the Constitution, the entire economic right to the cash flow arising from the 1,000,000 non-voting preferred shares can be acquired by foreigners. With this

economic power, the foreign holders of the minority common shares will, as they easily can, bargain with the holders of the majority common shares for more corporate control in order to protect their economic interest and reduce their economic risk in the public utility corporation. For instance, they can easily demand the right to cast the majority of votes during the meeting of the board of directors. After all, money commands control.

The court cannot, and ought not, accept as correct a holding that routinely disregards legal and practical considerations as significant as above indicated. Committing an error is bad enough, persisting in it is worse.

Thus, **the zealous watchfulness demonstrated by the SEC in imposing another tier of protection for Filipino stockholders cannot, therefore, be penalized** on a misreading of the October 9, 2012 Resolution in *Gamboa*, which neither added nor subtracted anything from the June 28, 2011 Decision defining capital as "shares of stock entitled to vote in the election of directors."

Thus, I join the majority in ruling that there is no need to clarify the ruling in *Gamboa* nor hold the Commission liable for grave abuse of discretion. As it has manifested in *Gamboa*,[24] in issuing MC No. 8, the SEC abided by the Court's decision and deferred to the Court's definition of the term "capital" in Section 11, Article XII of the Constitution.

In view of all the foregoing, I vote to **DISMISS** the petition.

CONCURRING OPINION

BERSAMIN, *J.*:

Petitioner Jose M. Roy III (Roy) initiated this special civil action for *certiorari* and prohibition to seek the declaration of Memorandum Circular No. 8, Series of 2013 (MC No. 8), particularly Section 2 thereof issued by the Securities and Exchange Commission (SEC) unconstitutional. Allegedly, MC

[24] *Id.* at 414.

No. 8 was in contravention of the rule on the nationality of the shareholdings in a public utility pronounced in *Gamboa v. Teves*.[1]

According to Roy, MC No. 8 effectively limited the application of the 60-40 nationality rule to voting and other shares alone; and the SEC thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

Section 2 of MC No. 8 reads:

> Section 2. All covered corporations shall, at all times, observe The constitutional or statutory ownership requirement. For purposes of determining compliance therewith, **the required percentage of Filipino shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors**. (Bold underscoring supplied for emphasis)

I **CONCUR**.

I **VOTE TO DISMISS** the petition for *certiorari* and prohibition of Roy and the petition in intervention. The SEC did not abuse its discretion, least of all gravely, but, on the contrary, strictly complied with the language and tenor of the decision promulgated on June 28, 2011 in *Gamboa v. Teves* and of the resolution promulgated on October 9, 2012 in the same case.

Grave abuse of discretion means either that the judicial or quasi- judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion

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[1] G.R. No 176579, June 28, 2011, 652 SCRA 690; October 9, 2012 (resolution), 682 SCRA 397.

must be grave.[2] The SEC's strict compliance with the interpretation in *Gamboa v. Teves* of the term *capital* as used in Section 11, Article XII of the 1987 Constitution is an indication that it acted without arbitrariness, whimsicality or capriciousness.

In addition, I hereby respectfully give other reasons that compel my vote to dismiss Roy's petition for *certiorari* and prohibition as well as the petition in intervention.

1.

Neither *certiorari* nor prohibition is the proper remedy to assail MC No. 8

The remedies of *certiorari* and prohibition respectively provided for in Section 1[3] and Section 2[4] of Rule 65 of the *Rules of Court* are limited to the exercise of *judicial* or *quasi-*

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[2] *De los Santos v. Metropolitan Bank and Trust Corporation*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

[3] Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (1a)

[4] Section 2. *Petition for prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist

judicial functions (except that prohibition also applies to ministerial functions) by the respondent tribunal, board or officer that acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

It is hardly a matter to be disputed that the issuance by the SEC of MC No. 8 was in the exercise of its regulatory functions.[5] In such exercise, the SEC's quasi-judicial functions were not involved. A *quasi-judicial function* relates to the action, discretion, *etc.* of public administrative officers or bodies required to investigate facts, or to ascertain the existence of facts, to hold hearings, and to draw conclusions from the facts as the basis for official actions and for the exercise of discretion of a judicial nature.[6] Indeed, the quasi-judicial or adjudicatory functions of the SEC under its original and exclusive jurisdiction related only to the hearing and determination of controversies and cases involving: (a) intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments; (b) state and corporate affairs in relation to the legal existence of corporations, partnerships and associations or to their franchises; and (c) investors and corporate affairs, particularly in respect of devices and schemes, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms. They did not relate to the issuance of the regulatory measures like MC No. 8.

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from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (2a)

[5] See *Securities and Exchange Commission v. Court of Appeals*, G.R. Nos. 106425 & 106431-32, July 21, 1995, 246 SCRA 738, 740-741.

[6] *Securities and Exchange Commission v. Universal Rightfield Property Holdings, Inc.*, G.R. No. 181381, July 20, 2015.

In the context of the limitations on the remedies of *certiorari* and prohibition, Roy improperly challenged MC No. 8 by petition for *certiorari* and prohibition.

2.

The Court cannot take cognizance of the petitions for *certiorari* and prohibition in the exercise of its expanded jurisdiction

The Court cannot take cognizance of Roy's petition for *certiorari* and prohibition under its expanded jurisdiction provided in Section 1, paragraph 2,[7] of Article VIII of the Constitution. Such expanded jurisdiction of the Court is confined to reviewing whether or not another branch of the Government (that is, the Executive or the Legislature), including the responsible officials of such other branch, acted without or in excess of jurisdiction, or gravely abused its discretion amounting to lack or excess of jurisdiction.

The expanded jurisdiction of the Court was introduced in the 1987 Constitution precisely to impose on the Court the *duty* of judicial review as the means to neutralize the avoidance or non-interference approach based on the doctrine of political question whenever a controversy came before the Court. As explained in *Araullo v. Aquino III*:[8]

> The background and rationale of the expansion of judicial power under the 1987 Constitution were laid out during the deliberations of the 1986 Constitutional Commission by Commissioner Roberto R. Concepcion (a former Chief Justice of the Philippines) in his sponsorship of the proposed provisions on the Judiciary, where he said:—

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[7] Section 1. x x x x x x x x x

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[8] G.R. No. 209287, July 1, 2014, 728 SCRA 1, 68-69.

The Supreme Court, like all other courts, has one main function: to settle actual controversies involving conflicts of rights which are demandable and enforceable. There are rights which are guaranteed by law but cannot be enforced by a judicial party. In a decided case, a husband complained that his wife was unwilling to perform her duties as a wife. The Court said: "We can tell your wife what her duties as such are and that she is bound to comply with them, but we cannot force her physically to discharge her main marital duty to her husband. There are some rights guaranteed by law, but they are so personal that to enforce them by actual compulsion would be highly derogatory to human dignity."

This is why the first part of the second paragraph of Section 1 provides that:

> Judicial power includes the duty of courts to settle actual controversies involving rights which are legally demandable or enforceable...

The courts, therefore, cannot entertain, much less decide, hypothetical questions. **In a presidential system of government, the Supreme Court has, also, another important function. The powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy power to determine whether a given law is valid or not is vested in courts of justice.**

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to

> **settle matters of this nature, by claiming that such matters constitute a political question.** (Bold emphasis supplied)

Araullo did not stop there, however, and went on to discourse on the procedural aspect of enabling the exercise of the expanded jurisdiction in this wise:

> What are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution?
>
> The present *Rules of Court* uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and prohibition, and both are governed by Rule 65. A similar remedy of *certiorari* exists under Rule 64, but the remedy is expressly applicable only to the judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.
>
> The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:
>
> > In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.
> >
> > The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue

> the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of certiorari to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:
>
> x x x x x x x x x
>
> The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. x x x

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[9]

The SEC, albeit under the administrative supervision of the Department of Finance,[10] did not come under the terms *any branch or instrumentality of the Government* used in Section 1, Article VIII of the 1987 Constitution. Although it is an agency vested with adjudicatory as well as regulatory powers, its issuance of MC No. 8 cannot be categorized as an act of either an executive or a legislative character within the context of the phrase *any branch or instrumentality of the Government* used in Section 1, Article VIII of the 1987 Constitution.

Accordingly, the expanded jurisdiction of the Court under Section 1, paragraph 2, Article VIII of the 1987 Constitution was not properly invoked to decide whether or not the SEC had acted with grave abuse of discretion in issuing MC No. 8.

3.

The doctrine of immutability of judgment precludes the Court from re-evaluating the definition of *capital* under Section 11, Article XII of the 1987 Constitution

In focus is the term *capital* as used in Section 11, Article XII of the Constitution, which provides:

Section 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or**

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[9] *Id*. at 71-75.

[10] Section 1. Executive Order No. 37 dated April 19, 2011.

associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

In the decision promulgated on June 28, 2011 in *Gamboa v. Teves*, the Court explicitly defined the term *capital* as referring only to shares of stock entitled to vote in the election of directors.[11] In the case of Philippine Long Distance Telephone Company (PLDT), its capital — for purposes of complying with the constitutional requirement on nationality — should include only its common shares, not its total outstanding capital stock comprising both common and non-voting preferred shares.[12]

The Court clarified, however, that —

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term capital shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term capital in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations

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[11] 652 SCRA, at 723.

[12] *Id.*

of the Constitutional Commission, capital refers to the voting stock or **controlling interest** of a corporation, x x x:

x x x x x x x x x

Thus, 60 percent of the capital assumes, or should result in, **controlling interest** in the corporation. x x x

x x x x x x x x x

Mere legal title is insufficient to meet the 60 percent Filipino-owned capital required in the Constitution. **Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required.** The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is considered as non-Philippine national[s].[13]

In the June 28, 2011 decision, the Court disposed as follows:

WHEREFORE we PARTLY GRANT the petition and rule that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is DIRECTED to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.[14]

Acting subsequently on the motion for reconsideration, the Court promulgated its resolution of October 9, 2012 affirming the foregoing pronouncement of June 28, 2011, holding and disposing:

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[13] *Id*. at 726-730.

[14] *Id*. at 744.

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

x x x x x x x x x

x x x **Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos.** Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.

Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens. x x x

x x x x x x x x x

WHEREFORE, we DENY the motions for reconsideration WITH FINALITY. No further pleadings shall be entertained.

SO ORDERED.[15]

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[15] 682 SCRA at 443-470.

The SEC issued MC No. 8 to conform with the Court's pronouncement in its decision of June 28, 2011. As stated, Section 2 of MC No. 8 declared that "[f]or purposes of determining compliance therewith, the required percentage of Filipino shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors."

Roy and the intervenors submit herein, however, that MC No. 8 thereby defied the pronouncement in *Gamboa v. Teves* on the determination of foreign ownership of a public utility by failing "to make a distinction between different classes of shares, and instead offers only a general distinction between voting and all other shares."

I disagree with the submission of Roy and the intervenors.

The objective of the Court in defining the term *capital* as used in Section 11, Article XII of the Constitution was to ensure that both*controlling interest and beneficial ownership* were vested in Filipinos. The decision of June 28, 2011 pronounced that *capital* refers only to shares of stock that can vote in the election of directors (*controlling interest*) and owned by Filipinos (*beneficial ownership*). Put differently, 60 percent of the outstanding capital stock (whether or not entitled to vote in the election of directors), coupled with 60 percent of the voting rights, must rest in the hands of Filipinos.

The language and tenor of the assailed Section 2 of MC No. 8 strictly follow the definition of the term *capital* in *Gamboa v. Teves*. Such definition already attained finality at the time Roy filed his petition. The resolution of October 9, 2012 did not *in the least* modify such definition. Hence, the SEC did not abuse its discretion in issuing MC No. 8.

What Roy and the intervenors actually would have the Court do herein is to re-define *capital* so that the 60-40 ownership requirement would apply separately to each class of shares, as discussed in the *body* of the resolution promulgated on October

9, 2012.[16] Such a re-definition, because it would contravene the June 28, 2011 decision or the resolution of October 9, 2012, would actually reopen and relitigate *Gamboa v. Teves*.

Any attempt on the part of Roy and the intervenors to hereby re-define the concept of *capital* will unavoidably disregard the immutability of the final judgment in *Gamboa v. Teves*. That is not permissible. If the main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality, nothing serves this role better than the long established doctrine of immutability of judgments.[17] Under the doctrine of finality and 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 even if the modification is made by the court that rendered it or by the Highest Court of the land. Any act that violates this principle must be immediately struck down.[18] This is because the doctrine of immutability of a final judgment serves a *two-fold* purpose, namely: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, controversies cannot drag on indefinitely. The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.[19] Otherwise the rights and

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[16] *Id*. at 445, where the Court said:

x x x [T]he 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.

[17] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009, 607 SCRA 200, 212-213.

[18] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

[19] *Apo Fruits Corporation v. Court of Appeals*, *supra*, at 213-214.

obligations of every litigant could hang in suspense for an indefinite period of time.

The only time when the immutable and final judgment may be corrected or modified is when the correction or modification concerns: (1) merely clerical errors; (2) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[20]

The supposed conflict between the dispositive pmiion or *fallo* of the resolution promulgated on October 9, 2012 and the body of the resolution was not a sufficient cause to disregard the doctrine of immutability. To begin with, the dispositive portion or *fallo* prevails over body of the resolution. It is really fundamental that the dispositive part or *fallo* of a judgment that actually settles and declares the rights and obligations of the parties finally, definitively, and authoritatively controls, *regardless of the presence of inconsistent statements in the body that may tend to confuse*.[21] Indeed, the dispositive part or *fallo* is the final order, while the opinion is but a mere statement, ordering nothing.[22] As pointed out in *Contreras and Gingco v. Felix and China Banking Corp.*:[23]

> x x x More to the point is another well-recognized doctrine, that the final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, ... there

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[20] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Br. 66, supra*, at 56.

[21] *Light Rail Transit Authority v. Court of Appeals*, G.R. Nos. 139275-76 and 140949, November 25, 2004, 444 SCRA 125, 136.

[22] *PH Credit Corporation v. Court of Appeals*, G.R. No. 109648, November 22, 2001, 370 SCRA 155, 166.

[23] 78 Phil. 570, 577-578 (1947).

is a distinction between the findings and conclusions of a court and its judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 Freeman on Judgments, p. 6) At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing finis to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give [tmu] [un]impeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (The Theory of Judicial Decision, Pound, 36 Harv. Law Review, pp. 9, 51.) It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision.

There is also no need to try to harmonize the seeming conflict between the *fallo* of the October 9, 2012 resolution and its body in order to favor Roy and the intervenors. The dispositive portion of the resolution of October 9, 2012, which tersely stated that "we DENY the motions for reconsideration WITH FINALITY," was clear and forthright enough, and should prevail. The only time when the body of the decision or resolution should be controlling is when one can unquestionably find a persuasive showing in the body of the decision or resolution that there was a clear mistake in the dispositive portion.[24] Yet, no effort has been exerted herein to show that there was such an error or mistake in the dispositive portion or *fallo* of the October 9, 2012 resolution.

Under the circumstances, the dispositive portions of both the decision of June 28, 2011 and of the resolution of October 12, 2012 are controlling.

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[24] *Cobarrubias v. People*, G.R. No. 160610, August 14, 2009, 596 SCRA 77, 89-90.

4.

The petition is actually a disguised circumvention of the ban against a second motion for reconsideration

To me, the petition of Roy is an attempt to correct the failure of the dispositive portion of the resolution of October 9, 2012 to echo what was stated in the body of the resolution. In that sense, the petition is actually a second motion for reconsideration disguise as an original petition for *certiorari* and prohibition designed to accomplish something that the intervenors, who were the petitioners in *Gamboa v. Teves*, did not accomplish directly thereat. Hence, the dismissal of the petition and the petition in intervention is fully warranted, for what the intervenors could not do directly should not now be allowed to be done by them indirectly.

In this regard, we reiterate the rule that a second motion for reconsideration is prohibited from being filed in this Court. Section 3, Rule 15 of the *Internal Rules of the Supreme Court* expressly state so, to wit:

> Section 3 *Second motion for reconsideration*. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> x x x x x x x x x

Had the intervenors genuinely desired to correct the perceived omission in the resolution of October 9, 2012 in *Gamboa v. Teves*, their proper recourse was not for Roy to bring the petition herein, but to file by themselves a motion for clarification in

Gamboa v. Teves itself. As the Court observed in *Mahusay v. B.E. San Diego, Inc.*:[25]

> It is a settled rule is that a judgment which has acquired finality becomes immutable and unalterable; hence, it may no longer be modified in any respect except only to correct clerical errors or mistakes. **Clarification after final judgment is, however, allowed when what is involved is a clerical error, not a correction of an erroneous judgment, or dispositive portion of the Decision.** Where there is an ambiguity caused by an omission or mistake in the dispositive portion, the court may clarify such ambiguity, mistake, or omission by an amendment; and in so doing, it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision. (Bold emphasis supplied.)

The statement in the dispositive portion or *fallo* of the resolution of October 9, 2012 to the effect that "[n]o further pleadings shall be entertained" would not have been a hindrance to the filing of the motion for clarification because such statement referred only to motions that would have sought the reversal or modification of the decision on its merits, or to motions ill-disguised as requests for clarification.[26] Indeed, the intervenors as the petitioners in *Gamboa v. Teves* would not have been precluded from filing such motion that would have presented an unadulterated inquiry arising upon an ambiguity in the decision.[27]

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[25] G.R. No. 179675, June 8, 2011, 651 SCRA 539-540.

[26] See *Republic v. Unimex Micro Electronics GmBH*, G.R. Nos. 166309-10, November 25, 2008, 571 SCRA 537, 540.

[27] See *Commissioner on Higher Education v. Mercado*, G.R. No. 157877, March 10, 2006, 484 SCRA 424, 430-431.

SEPARATE DISSENTING OPINION

CARPIO, *J.*:

On 28 June 2011, the Court rendered a ruling in *Gamboa v. Tevez*[1] (*Gamboa Decision*) by defining for the first time for over 75 years the term "capital" which appears not only in Section 11, Article XII of the 1987 Constitution, prescribing the minimum nationality requirement for public utilities, but likewise in several provisions thereof, such as Section 2, Article XII; Section 10, Article XII; Section 11, Article XII; Section 4(2), Article XIV, and Section 11(2), Article XVI.

In the *Gamboa Decision*, the Court held that "[a]ny citizen or juridical entity desiring to operate a public utility must x x x meet the minimum nationality requirement prescribed in Section 11, Article XII of the Constitution. Hence, for a corporation to be granted authority to operate a public utility, at least 60 percent of its "capital" must be owned by Filipino citizens."[2] The 60 percent Filipino ownership of the "capital" assumes, or should result in, "**controlling interest**" in the corporation.

In the *Gamboa Decision*, the Court defined the term "capital" as referring to shares of stock that can vote in the election of directors. Voting rights translate to control. Otherwise stated, "the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors."[3]

In the same decision, the Court pointed out that "[m]ere legal title is insufficient to meet the 60 percent Filipino-owned 'capital' required in the Constitution."[4] Full beneficial ownership of 60

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[1] 668 Phil. 1 (2011).

[2] *Id*. at 45.

[3] *Id*. at 53.

[4] *Id*. at 57.

percent of the total outstanding capital stock, coupled with 60 percent of the voting rights, is the minimum constitutional requirement for a corporation to operate a public utility, thus:

> x x x. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. **The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate.** Otherwise, the corporation is "considered as non-Philippine national[s]."[5] (Emphasis supplied)

Significantly, in the 9 October 2012 Resolution in *Gamboa* (*Gamboa Resolution*)[6] denying the motion for reconsideration, the Court reiterated the twin requirement of full beneficial ownership of at least 60 percent of the outstanding capital stock and at least 60 percent of the voting rights. This is consistent with the Foreign Investments Act, as well as its Implementing Rules, thus:

> This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals." Likewise, Section 1(b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential.**"[7] (Emphasis in the original)

The Court further clarified, in no uncertain terms, that the 60 percent constitutional requirement of Filipino ownership applies uniformly and across the board to all classes of shares comprising the capital of a corporation. The 60 percent Filipino

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[5] *Id*.

[6] 696 Phil. 276 (2012).

[7] *Id*. at 338-339.

ownership requirement applies to each class of share, not to the total outstanding capital stock as a single class of share. The Court explained:

> Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.
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> x x x x x x x x x
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> x x x **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.
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> **Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens.** x x x.

As we held in our 28 June 2011 Decision, to construe broadly the term "capital" as the total outstanding capital stock, treated as a ***single*** class regardless of the actual classification of shares, grossly contravenes the intent and letter of the Constitution that the "State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos." We illustrated the glaring anomaly which would result in defining the term "capital" as the total outstanding capital stock of a corporation, treated as a ***single*** class of shares regardless of the actual classification of shares, to wit:

> Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.
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> In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. x x x.[8] (Emphasis supplied)

Clearly, in both *Gamboa Decision* and *Resolution*, the Court categorically declared that the 60 percent minimum Filipino ownership refers not only to voting rights but likewise to full beneficial ownership of the stocks. Likewise, the 60 percent Filipino ownership applies uniformly to each class of shares. Such interpretation ensures effective control by Filipinos of public utilities, as expressly mandated by the Constitution.

On 20 May 2013, the Securities and Exchange Commission (SEC), through respondent Chairperson Teresita J. Herbosa, issued Memorandum Circular No. 8, series of 2013, to implement the Court's directive in the *Gamboa Decision* and *Resolution*. Section 2 thereof pertinently provides:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of

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[8] *Id*. at 339, 341, 345.

determining compliance therewith, **the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors**. (Emphasis supplied)

SEC Memorandum Circular No. 8 provides for two conditions in determining whether a corporation intending to operate or operating a public utility complies with the mandatory 60 percent Filipino ownership requirement. It expressly states that the 60 percent Filipino ownership requirement "shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors." Section 2 of SEC Memorandum Circular No. 8 therefore mandates that the 60 percent Filipino ownership requirement shall be applied separately to **both** the total number of stocks with voting rights, and to the entire outstanding stock with **and** without voting rights. If the 60 percent Filipino ownership requirement is not met **either** by the outstanding voting stock **or** by the total outstanding voting and non-voting stock, then the Constitutional requirement is violated.

SEC Memorandum Circular No. 8 can be sustained as valid and fully compliant with the *Gamboa Decision* and *Resolution* only if (1) the stocks with voting rights and (2) the stocks without voting rights, which comprise the capital of a corporation operating a public utility, have **equal** par values. If the shares of stock have different par values, then applying SEC Memorandum Circular No. 8 would contravene the *Gamboa Decision* that the "**legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate**."

For example, assume that class "A" voting shares have a par value of ₱1.00, and class "B" non-voting preferred shares have a par value of ₱100.00. If 100 outstanding class "A" shares are all owned by Filipino citizens, and 80 outstanding class "B"

shares are owned by foreigners and 20 class "B" shares are owned by Filipino citizens, the 60-40 percent ownership requirement in favor of Filipino citizens for voting shares, as well as for the total voting and non-voting shares, will be complied with. If dividends are declared equivalent to the par value per share for all classes of shares, only 20.8 percent of the dividends will go to Filipino citizens while 79.2 percent of the dividends will go to foreigners, an absurdity or anomaly that the framers of the Constitution certainly did not intend. Such absurdity or anomaly will also be contrary to the *Gamboa Decision* that the "**legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate**."

Thus, SEC Memorandum Circular No. 8 is valid and constitutional provided that the par values of the shares with voting rights and the shares without voting rights are equal. If the par values vary, then the 60 percent Filipino ownership requirement must be applied to each class of shares in order that the "**legal and beneficial ownership of 60 percent of the outstanding capital stock x x x rests in the hands of Filipino nationals in accordance with the constitutional mandate**," as expressly stated in the *Gamboa Decision* and as reiterated and amplified in the *Gamboa Resolution*.

Finally, Section 11, Article XII of the Constitution is clear: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least **sixty per centum of whose *capital* is owned by such citizens**, x x x." The term "capital" in this constitutional provision does not refer to a specific class of share, as the Constitution does not distinguish between voting or non-voting, common or preferred shares of stock. Thus, the term "capital" refers to all shares of stock that are subscribed, which constitute the "capital" of a corporation.

Consequently, the 60 percent Filipino ownership requirement applies uniformly to all classes of shares that are subscribed.

A simple application of the 60 percent Filipino ownership requirement is to apply the same to the total capital, taken together regardless of different classes of shares, as what SEC Memorandum Circular No. 8 does. However, if the shares of stock have different par values, such a simple application will result in an absurdity or anomaly as explained in the example discussed above. It is hornbook doctrine that if a provision of the Constitution or the law is susceptible of more than one meaning, one resulting in an absurdity or anomaly and the other in a sensible meaning, the meaning that results in an absurdity or anomaly must be avoided,[9] particularly an absurdity or anomaly that frustrates the intent of the Constitution or the law. Thus, to avoid such an absurdity or anomaly, the 60 percent Filipino ownership requirement should be applied to each class of shares if their par values are different.

ACCORDINGLY, I vote to **GRANT** the petition **IN PART** SEC Memorandum Circular No. 8, series of 2013, is valid and constitutional if all the shares of stock have the same par values. However, if the shares of stock have different par values, the 60 percent Filipino ownership requirement must be applied to each class of shares.

DISSENTING OPINION

MENDOZA, *J.*:

The final ruling in a case includes not only the decision but also the clarifications and amplifications contained in subsequent resolutions before its finality. A party cannot isolate the decision and ignore the elucidations contained in the resolutions. It is only after the decision becomes final that it becomes immutable and unalterable.[1]

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[9] *Spouses Bela v. Philippine National Bank*, 405 Phil. 851 (2001); *Soriano v. Offshore Shipping and Manning Corp.*, 258 Phil. 309 (1989).

[1] 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

Accordingly, the June 28, 2011 Decision in *Gamboa v. Teves*[2] (*Gamboa Decision*) is not the final ruling in said case but includes the clarification and amplifications of the Court in its October 9, 2012 Resolution (*Gamboa Resolution*). Therefore, any regulation which ignores the Court's final ruling is not compliant with it. Hence

I dissent.

My position is that SEC MC No. 8 is non-compliant with the final Gamboa ruling and must be amended to conform thereto.

The Antecedents

The case of *Gamboa* was filed by the late Wilson Gamboa, questioning the sale of 111,415 shares of Philippine Telecommunications Investment Corporation (*PITC*) to First Pacific, a foreign corporation, as it was violative of Section 11, Article XII of the Constitution.[3] It was averred therein that PITC owned 6.3% of the Philippine Long Distance Telephone Company (*PLDT*), a public utility enterprise, and the acquisition by First Pacific of its entire shareholding would amount to the foreign ownership of the 6.3% common shares of PLDT. This

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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. (*Gomeco Metal Corp. v. Court of Appeals*, G.R. No. 202531, August 17, 2016.

[2] 668 Phil. 1 (2011) (Decision).

[3] **Section 11.** No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

would effectively increase the foreign ownership of common shares in PLDT to 81.47%.

On June 28, 2011, the Court rendered the Gamboa Decision, holding that for there to be compliance with the constitutional mandate, full beneficial ownership over sixty-percent (60%) of the total outstanding capital stock, coupled by sixty-percent (60%) control over shares with the right to vote in the election of directors, must be held by Filipinos. Thus, the decretal portion of the *Gamboa Decision* reads:

> **WHEREFORE**, we **PARTLY GRANT** the petition and rule that the term "*capital*" *in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares)*. Respondent Chairperson of the Securities and Exchange Commission is **DIRECTED** to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to Impose the appropriate sanctions under the law.[4]

Thereafter, motions for reconsideration were filed. In its Resolution[5] dated October 9, 2012 (*Gamboa Resolution*), the Court stressed that the 60-40 ownership requirement in favor of Filipino citizens in the Constitution to engage in certain economic activities applied **not only to voting control, but also to the beneficial ownership** of the corporation. The Court wrote that the same limits **must apply uniformly and separately to each class of shares, without regard to their restrictions or privileges**. Specifically, the Court explained:

> Since a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must **apply not only to shares**

[4] Decision, *supra* note 2.

[5] Resolution, G.R. No. 176579, October 9, 2012. (http://sc.judiciary.gov.ph/jurisprudence/2012/october2012/176579.pdf) (Last visited, April 21, 2015).

with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above. Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. In short, **the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares**. This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 6o percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution. [Emphases supplied]

Hence, the Court finally decreed:

WHEREFORE, we **DENY** the motions for reconsideration **WITH FINALITY**. No further pleadings shall be entertained.

SO ORDERED.[6]

Eventually, the definition of "capital," as finally amplified and elucidated by the Court in the *Gamboa Resolution*, became final and executory.

On March 25, 2013, the SEC issued a notice to the public, soliciting comments on, and suggestions to, the draft guidelines in compliance with the Filipino ownership requirement in public utilities prescribed in Section 11, Article XII of the Constitution.

On April 22, 2013, petitioner Atty. Jose M. Roy III (*Roy*) submitted his written comments[7] pursuant to the SEC Notice

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[6] Resolution, G.R. No. 176579, October 9, 2012. (http://sc.judiciary.gov.ph/jurisprudence/2012/October2012/176579.pdf) (Last visited, April 21, 2015).

[7] *Rollo*, pp. 270-272.

of March 25, 2013. He pointed out that the said guidelines (specifically Section 2 thereof) did not comply with the letter and spirit of the Court's final ruling in *Gamboa*. Roy claimed that he never received a reply from the SEC.

On May 20, 2013, the SEC, through Chairperson Teresita J. Herbosa, issued MC No.8. Section 2 thereof reads:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino shall be applied to **BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors**.[8] [Emphasis supplied]

The Subject Petition

Contending that the issuance of the assailed circular contradicted the intent and spirit of *Gamboa*, Roy, as a lawyer and taxpayer. filed the subject petition, contending that the assailed circular contradicted the intent and spirit of the final *Gamboa* ruling. He feared that the assailed circular would encourage circumvention of the constitutional limitation for it would allow the creation of several classes of voting shares with different degrees of beneficial ownership over the same, but at the same time, not imposing a forty percent (40%) limit on foreign ownership of the higher yielding stocks; and that permitting foreigners to benefit from equity structures with Filipinos being given merely voting rights, but not the full economic benefits, thwarts the constitutional directive of guaranteeing a self-reliant and independent national economy effectively controlled by Filipinos. The effect would be, as he wrote, that while Filipinos are given voting rights, they would be denied of the full economic benefits produced by the public utility company.

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[8] http://.sec.gov.ph/.../memorandumcircular/.../sec%20memo%20no.%208>(Last visited, April 21, 2015)

Petition-in-Intervention

Following the filing of the said petition by Roy, the Court granted the Motion to Leave to File Petition-in-Intervention filed by Wilson C. Gamboa, Jr., the son of the petitioner in *Gamboa*, together with lawyers Daniel V. Cartagena, John Warren P. Gabinete, Antonio V. Pesina, Jr., Modesto Martin Y. Manon, and Gerardo C. Erebaren (*Gamboa, et al*.). In their Petition-in-Intervention (For Certiorari),[9] dated July 16, 2013, Gamboa, et al. merely adopted the issues, arguments and prayer of Roy.

Both Roy and Gamboa, et al. (*petitioners*) claimed that by issuing MC No. 8, the SEC defied the final *Gamboa* ruling as to the determination of foreign ownership in a public utility corporation. They argued that MC No. 8 did not conform to the letter and spirit of the final Court ruling as the *Gamboa Resolution* clearly stated that the 60-40 ownership requirement must apply separately to each class of shares. MC No. 8, they asserted, failed "to make a distinction between different claims of shares, and instead offers only a general distinction between voting and all other shares."[10] They further pointed out that, as an effect of this faulty interpretation by the SEC, PLDT would be in direct violation of the Constitution as it did not comply with the 60-40 rule and, therefore, could not be considered a Filipino corporation.

Respondents' Position

The SEC, in its Consolidated Comment,[11] dated September 13, 2013, and PLDT, in its Comment (on the Petition dated 10 June 2013),[12] dated September 5, 2013, and Comment (on The Petition-in-Intervention, dated July 16, 2013)[13] submitted

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[9] *Rollo,* pp. 231-263.

[10] *Id.* at 11.

[11] *Id.* at 544-584.

[12] *Id.* at 466-524.

[13] *Id.* at 633-653.

basically the same arguments to support their prayer for the dismissal of the petition and the petition-in-intervention. They both questioned the jurisdiction of the Court over the petitions and invoked the doctrine of hierarchy of courts to show that direct resort to this Court by the petitioners could not be justified, and that they failed to exhaust administrative remedies. The SEC and PLDT also agreed that the petitioners did not possess the *locus standi* to question the constitutionality of MC No. 8, and that they could not invoke "transcendental importance" as a protective cloak. With regard to PLDT's compliance with the foreign ownership requirement laid down in *Gamboa*, the SEC and PLDT both argued that this requires the determination of facts, in effect, categorizing the petitions premature and improper.

The SEC also pointed out that the tenor of the decretal portion of the decision of the Court in *Gamboa*, as well as that of its October 9, 2012 resolution, was that the term capital should pertain to shares of stocks entitled to vote in the election of directors, and that there was nothing in there that mentioned about the 60-40 ownership requirement for each class of shares. It also argued that the omitted rule was a mere *obiter dictum* or one without any binding precedent The SEC emphasized that the *fallos* of the said decision and resolution must control.

Petitioners' Reply

On May 7, 2014, the petitioners filed their Joint Consolidated Reply with Motion for Issuance of Temporary Restraining Order[14] wherein they insisted that the Court had already determined the transcendental importance of the matters being raised, citing the rule that where there was already a finding that a case possessed transcendental importance, the *locus standi* requirement should be relaxed.

On May 22, 2014, PLDT filed its Rejoinder and Opposition.

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[14] *Id.* at 723-756.

Comment in Intervention by Philippine Stock Exchange

On June 18, 2014, the Philippine Stocks Exchange, Inc. (*PSEI*) filed its Motion to Intervene with Leave of Court[15] attaching thereto its Comment-in-Intervention. The PSEI took the same position as the SEC as to how capital in Section 11, Article XII of the 1987 Constitution was defined in *Gamboa*. It agreed with the SEC that the dispositive portion or the *fallo* of a decision should be the controlling factor.

Comment in Intervention by Sharephil

On June 1, 2016, Shareholders' Association of the Philippines, Inc. (*Sharephil*) filed an Omnibus Motion for Leave to Intervene and Admit attached Comment-in-Intervention. It sought intervention under Rule 19 of the Rules of Court[16] to protect the rights of shareholders against the effects of unlawful and unreasonable regulations.

As an association composed of shareholders of Philippine companies, Sharephil questions the propriety of the remedy

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[15] *Id.* at 839-847.

[16] **Section 1.** *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (2[a], [b]a, R12)

Section 2. *Time to intervene*. — The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties. (n)

Section 3. *Pleadings-in-intervention*. —The intervenor shall file a complaint-in-intervention if he asserts a claim against either or all of the original parties, or an answer-in-intervention if he unites with the defending party in resisting a claim against the latter. (2[c]a, R12)

Section 4. *Answer to complaint-in-intervention*. — The answer to the complaint-in-intervention shall be filed within fifteen (15) days from notice of the order admitting the same, unless a different period is fixed by the court.

availed of by the petitioners. It asserts that the proper remedy should have been a petition for declaratory relief, which is well within the jurisdiction of the Regional Trial Courts.[17]

On the merits, Sharephil rejects petitioners' contention that MC No. 8 deviated from the ruling of this Court in *Gamboa*. It argues that the SEC, in issuing the assailed circular, merely followed what the Court stated in the dispositive portion of the *Gamboa* Resolution[18] affirming the *Gamboa* Decision.[19]

On practical considerations, Sharephil seeks to bring to the attention of the Court the effects of declaring MC No. 8 as unconstitutional. It cites a market research study released by Deutsche Bank on October 16, 2012 which opined that if the Court would adopt an overly strict interpretation of the meaning of capital, not only PLDT but also a large number of listed companies with similar structures could also be affected. It cautions that in five (5) companies alone, 150 billion pesos worth of shares would have to be sold by foreign shareholders in a forced divestment, if the *obiter* in *Gamboa* were to be implemented.

Petitioners' Reply to the Comment-in-Intervention

In their Opposition and Reply to Intervention of Philippine Stock Exchange and Sharephil,[20] petitioners essentially argue that PSE and Sharephil have no legal standing to intervene. They submit that both intervenors have failed to establish sufficient legal interest in the petition; that while it is true that intervention is permissive, it should not be so lax as to admit of any whimsical or a mere passing interest in the issues at hand; that in the instances where interventions were allowed by this Court, the most cited reason was that the parties seeking intervention were indispensable in the case; and that in this case, PSEI and Sharephil are not indispensable parties as they

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[17] *Galicto v. Aquino*, 683 Phil. 141 (2012).

[18] Resolution, 696 Phil. 276 (2012).

[19] Decision, 668 Phil. 1 (2011).

[20] *Rollo.*

will not sustain direct injury capable or deserving judicial protection.

Moreover, petitioners assert that Sharephil's claims were broad and speculative as they were based solely on a perceived inconvenience that would be brought by this proceedings to their members; and that there was no showing of any direct injury or damage on the part of Sharephil considering that it is not involved in a constitutionally restricted economic activity.

As to the claim that a ruling in favor of the petitioners will result in an injury to PSE by reason of a sudden selling of shares in the market, they point out that the depreciation and fluctuation of the market and share prices are not an injury capable of legal protection in a proceeding involving the interpretation of the Constitution. At any rate, such movement in prices is normal.

Finally, in upholding the correct interpretation and implementation of the Constitution, the Philippines commits no breach against other states or their nationals under international law particularly in cases where no general or particular specific obligations limiting judicial interpretation of municipal law exists.

ISSUES

1. **WHETHER OR NOT SEC MEMORANDUM CIRCULAR NO. 8, SERIES OF 2013 CONFORMS TO THE LETTER AND SPIRIT OF THE DECISION AND RESOLUTION OF THIS HONORABLE COURT DATED 28 JUNE 2011 AND 9 OCTOBER 2012 IN G.R. NO. 176579 ENTITLED HEIRS OF WILSON GAMBOA v. FINANCE SECRETARY MARGARITO B. TEVES, ET AL.**

2. **WHETHER THE SEC GRAVELY ABUSED ITS DISCRETION IN RULING THAT PLDT IS COMPLIANT WITH THE CONSTITUTIONAL RULE ON FOREIGN OWNERSHIP.**

   A. THE PLDT BENEFICIAL TRUST FUND DOES NOT SATISFY THE EFFECTIVE CONTROL TEST FOR PURPOSES OF INCORPORATING BTF

HOLDINGS WHICH ACQUIRED THE 150 MILLION PREFERRED VOTING SHARES OF PLDT.

B. WHETHER PLDT, THROUGH ITS ALTER-EGOS MEDIAQUEST AND BTF HOLDINGS, INC., IS CIRCUMVENTING THE FOREIGN OWNERSHIP RESTRICTIONS PROVIDED FOR IN THE 1987 CONSTITUTION.

3. WHETHER RECOURSE TO THIS HONORABLE COURT IS JUSTIFIED BY THE TRANSCENDENTAL IMPORTANCE OF THE ISSUE RAISED BY THE PETITIONER.[21]

A reading of the contending pleadings discloses that the issues primarily raised are (1) whether the SEC gravely abused its discretion when it omitted in SEC MC No. 8 the uniform and separate application of the 60:40 rule in favor of Filipinos to each and every class of shares of a corporation; and (2) whether the constitutional prescription has been complied with in the case of PLDT.

Considering that this Court is not a trier of facts, questions pertaining to whether there was violation of the constitutional limits on foreign ownership by PLDT requires the reception and examination of evidence. As this is beyond the Court's jurisdiction, it will just confine itself to the first question.

Procedural Issues

Propriety of the Remedy

The SEC and PLDT raise two procedural issues that should bar the assumption of jurisdiction by this Court.

According to the SEC, a Rule 65 petition is not the appropriate remedy to assail the validity and constitutionality of MC No. 8. It posits that it may be invoked only against a tribunal, board or officer exercising judicial or quasi-judicial functions.

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[21] *Rollo*, Volume I, pp. 10-11.

Considering that the assailed circular was not issued in the exercise of quasi-judicial functions and was more of a quasi-legislative act, the SEC opines that the filing of a Rule 65 petition is not proper. Citing *Southern Hemisphere Engagement Network, Inc., v. Anti- Terrorism Council*,[22] where the Court dismissed the petition for *certiorari* and prohibition assailing the constitutionality of Republic Act (*R.A.*) No. 9372 and Executive Order (*E.O.*) No.7 for being an improper remedy as the said issuances did not involve a quasi-judicial or judicial act, the SEC argues that the appropriate remedy should have been a petition for declaratory relief under Rule 63 of the Rules of Court filed before a regional trial court.[23]

I cannot entirely agree.

Ordinarily, the remedies of special civil actions for *certiorari* and prohibition are used in cases where the inferior court or tribunal is said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.[24] Still, with the constitutionally expanded powers of judicial review, particularly the authority and duty to determine the existence of grave abuse of discretion on the part of the legislative and executive branches of government, it cannot be denied that the scope of the said remedies, as traditionally known, has changed.

The special civil actions for *certiorari* and prohibition under Rule 65 have been held by this Court as proper remedies through which the question of grave abuse of discretion can be heard regardless of how the assailed act has been exercised. In *Araullo v. Aquino*,[25] this Court stated that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct

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[22] 646 Phil. 452 (2010).

[23] *Rollo,* Volume II. pp. 564-566.

[24] *People v. Sandiganbayan*, G.R. No. 188165, December 11, 2013, 712 SCRA 359.

[25] G.R. No. 209287, July 1, 2014, 728 SCRA 1.

errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, **even if the latter does not exercise judicial, quasi-judicial or ministerial functions**." It was further stated that in discharging the duty "to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties."[26]

Hence, petitions for *certiorari*, as in this case, and prohibition are undeniably appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

As to PLDT's position that a petition for declaratory relief should have been the appropriate remedy, I find it to be without basis.

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. It gives a practical remedy to end controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs. The purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers.[27]

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[26] *Id.*

[27] *Malana v. Tappa*, 616 Phil. 177 (2009).

In this case, declaratory relief can no longer be availed of because the mere issuance of MC No. 8 is being viewed by the petitioners as a violation by itself of the Constitution and this Court's final directive in *Gamboa*. As it appears, the purpose of this petition is not to determine rights or obligations under the assailed circular for enforcement purposes, but to settle the very question on whether the issuance was made within the bounds of the Constitution which, if otherwise, would certainly amount to grave abuse of discretion. By that standard alone, a petition for declaratory relief clearly would not lie.

Hierarchy of Courts

The SEC and PLDT also contend that the Court should not assume jurisdiction over this case because the petitioners failed to observe the principle of hierarchy of courts. Under that principle, direct recourse to this Court is improper because the Court must remain the court of last resort to satisfactorily perform its constitutional functions. It allows the Court to devote its time and attention to matters within its exclusive jurisdiction and to prevent the overcrowding of its docket. Be that as it may, the invocation of this Court's original jurisdiction or plea for the dispensation of recourse to inferior courts having concurrent jurisdiction to issue writs of *certiorari* has been allowed in certain instances for special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.[28]

Exigent and compelling circumstances demand that this Court take cognizance of this case to put an end to the controversy and resolve the matter that could have pervasive effect on this nation's economy and security. Surely, this case is a litmus test for a regulatory framework that must conform to the final

[28] *Dy v. Judge Bibat-Palamos*, G.R. No. 196200, September 11, 2013, 705 SCRA 613.

Gamboa ruling and, above all, the Constitution. Not to be disregarded is the opportunity that this case seeks to clarify the dynamics of how to properly apply the nationality limits on public utilities. As Roy puts it, the fact that this case relates to, and involves, an interpretation of the final *Gamboa* ruling, makes it more necessary to immediately and finally settle the issues being raised. This provides the Court an adequate and compelling reason to justify direct recourse to this Court.

Justiciability of the Controversy

The Court's authority to take cognizance of the kind of questions presented in this case is not absolute. The Constitution prescribes that before the Court accepts a challenge to a governmental act, there must be first an actual case or controversy. In the words of the US Supreme Court, this is an "essential limit on our power [as] [i]t ensures that we act as judges, and do not engage in policymaking properly left to elected representatives."[29] For if the Court would rule in all cases despite lacking the requirement of an actual case, the Court might tread on forbidden grounds or matters on which it had no constitutional competence, these matters being reserved to a more appropriate branch of government pursuant to the established principle of separation of powers.

As ingrained in our jurisprudence, an actual case is one that is appropriate or ripe for determination, not conjectural or anticipatory.[30] "[C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging."[31] It has been said that any attempt at abstraction could only lead to dialectics and barren legal questions and to

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[29] *Hollingsworth v. Perry*, 133 S. Ct. 2652 (U.S. 2013).

[30] *Southern Hemisphere Engagement Network. Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per *J.* Carpio Morales, *En Banc*], citing *Republic Telecommunications Holding, Inc. v. Santiago*, 556 Phil. 83, 91-92 (2007).

[31] *Abdul v. Sandiganbayan*, G.R. No. 184496, December 2, 2013, 711 SCRA 246 citing *Mattel, Inc. v. Francisco*, 582 Phil. 492, 501 (2008).

sterile conclusions unrelated to actualities.[32] For said reasons, courts have no business issuing advisory opinions.

Traditionally, a justiciable controversy must involve countervailing interests pertaining to enforceable and demandable rights of adverse parties. But with the constitutionally granted expansion of the power of judicial review brought about to reflect the people's desire to have a proactive Judiciary that is ever vigilant with its duty to maintain the supremacy of the Constitution,[33] justiciable questions took an expanded form. As held in *Imbong v. Ochoa*,[34] the Judiciary would now have the constitutional authority to determine whether there had been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[35]

A cursory reading of the petition and petition-in-intervention reflects that this case falls within that category as grave abuse of discretion is being ascribed against the SEC in issuing MC No. 8. Section 2 of the said circular is being challenged for being in violation of the Constitution and of the letter and spirit of the final ruling in *Gamboa*. Considering the fact that MC No. 8 had already been issued by the SEC and such circular, although called merely as guidelines, carried with it a warning that failure to comply with it shall subject the juridical entity, any person, and the corporate officers responsible to sanctions provided in Section 14 of the Foreign Investments Act of 1991 (*FIA*), as amended, it is beyond doubt that the question before the Court qualifies as a justiciable controversy.

Legal Standing

As defined, *locus standi* or legal standing is the personal and substantial interest in a case such that the party has sustained

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[32] *Lozano v. Nograles*, 607 Phil. 334 (2009), citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[33] *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146.

[34] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

[35] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

or will sustain direct injury as a result of the governmental act that is being challenged.[36] The party must also demonstrate that the injury is likely to be redressed by a favorable action of the courts.[37] Absent this, the Court cannot consider a case. In every situation, the Court must scrutinize first whether a petitioner is suited to challenge a particular governmental act.

The petitioners' invocation of standing is based on being a citizen, lawyer, taxpayer, and additionally for petitioner Roy, a partner of a firm that patronizes PLDT for its telecommunication needs.

The SEC and PLDT claim that such justification is not enough to clothe the petitioners with legal standing because they failed to show that the implementation of the circular would cause them any direct or substantial injury. Citing *IBP v. Zamora*,[38] they also argue that standing cannot be based merely on being a lawyer, as membership in the Bar is too general an interest to satisfy the requirement of *locus standi*.

I find, however, that the petitioners as properly suited in their capacities as citizens.

In many cases, the legal standing of a citizen in the context of issues concerning constitutional questions was permitted by the Court. In *Imbong v. Ochoa*,[39] the Court stated that the citizen's standing to question the constitutionality of a law could be allowed even if they had only an indirect and general interest shared in common with the public, provided that it involved the assertion of a public right specifically in cases where the people themselves were regarded as the real parties-in-interest. The assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative

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[36] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, citing *Lozano v. Nograles*, 607 Phil. 334 (2009).

[37] *Anak Mindanao Party-List Group v. Exec. Sec. Ermita*, 558 Phil. 338, 351 (2007).

[38] 392 Phil. 618 (2000).

[39] G.R. No. 204819, April 8, 2014, 721 SCRA 146.

action rests on the theory that a citizen represents the public in general. Although such citizen may not be as adversely affected by the action complained against as are others, it is enough that there is demonstration of entitlement to protection or relief from the Court in the vindication of a public right.[40]

The collective interest of the Filipino in the compliance of the SEC, being the statutory regulator in charge of enforcing and monitoring observance with the Court's interpretation of the constitutional limits on foreign participation in public utilities, is a matter of public right. A manifest error in the implementation of what the Constitution demands, specifically in the crafting of a legal framework for corporate observance on nationality limits, lies grave abuse of discretion in its heart. This transcendentally important question requires the Court to determine whether MC No. 8 conforms to the final ruling in *Gamboa*. Thus, as citizens, petitioners have the proper standing to challenge the validity and constitutionality of the assailed circular.

Substantive Issues

For the reason that Filipinos must remain in effective control of a public utility company, I am of the strong view that the Court should have partly granted the petition and declared SEC MC No. 8 as non-compliant with the final *Gamboa* ruling.

The Gamboa Decision and Resolution

Mindful of the constitutional objective of ensuring that Filipinos remain in effective control of our national economy, the Court in *Gamboa* seized the opportunity to define the term capital as read in the context of the 1987 Constitution. In deciding the issue, the Court fundamentally recognized and employed the **control test**[41] as a primary method of determining compliance with the restrictions imposed by the Constitution on foreign

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[40] *Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014, 728 SCRA 1.

[41] As embodied in Sec. 3 of R.A. No. 7042 or the Foreign Investments Act of 1991.

equity participation. Under such test, one has to first look into the nationality of each stockholder as it appears in the books of the corporation because for a stockholder to have control over the shares, he must hold them as the duly registered owner in the stock and transfer book of a corporation. Thus, in *Gamboa*, the Court declared that the required Filipino control over the "capital" of a public utility meant 60% control over all shares with the right to elect the members of the board coupled with 60% control over the total outstanding capital stock. This would ensure that effective control over a public utility would remain in the hands of Filipinos.

The Court, however, further stated that even stockholders, deprived of the right to participate in the elections of directors, could still exert effective control through the power of their vote on fundamental corporate transactions as outlined under Section 6 of the Corporation Code.[42] For instance, stockholders, holding preferred shares, though not generally entitled to elect directors, can still exercise their undeniable right to approve or disapprove an amendment in the articles of incorporation.

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[42] The Corporation Code, Section 6. "*Classification of shares*. — The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: *Provided*, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code: *Provided, further*, that there shall always be a class or series of shares which have complete voting rights.

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"Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporation property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;

Foreigners can greatly control and influence corporate decision-making processes even if they do not have legal title to the shares. Non-stockholders or persons or entities that do not have shares of a subject corporation registered under their names can remain in effective control, albeit indirectly, of those with controlling interest by just having specific property rights ("use and title") in equity given to them while the legal title of the property given to another.[43] Thus, in the *Gamboa Resolution* it was clarified and stressed that:

> Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore **imperative** that **such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation**. Under the Corporation Code, capital stock consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.[44] [Emphases supplied]

The Court then went on to explain that "**[f]ull beneficial ownership** of 60 percent of the outstanding capital stock, coupled with 60% of the voting rights, is also required." In other words, not only should the 60% of the total outstanding capital stock and the shares with the right to elect the directors be registered in the names of Filipinos, but also the beneficial or equitable title to such shares must be *reasonably*[45] traced to Filipinos.

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7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

"Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

[43] *Black's Law Dictionary*. (2nd Pocket ed. 2001 p. 508)

[44] Resolution, *Gamboa v. Teves*, G.R. No. 176579, October 9, 2012, <http://sc.judiciary.gov.ph/jurisprudence/2012/october2012/176579.pdf> (Last visited, April 21, 2015).

[45] Resolution, *Narra Nickel Mining and Development Corp. v. Tesoro Mining and Development Inc., et al.*, G.R. No. 195580, January 28, 2015,

Thus, in *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.*,[46] the Court stated that if doubt exists as to the extent of control and beneficial ownership in a public utility, the **grandfather rule** can be applied to supplement the control test. The purpose of the test is to make further inquiry on the ownership of the corporate stockholders.[47] By satisfying beneficial ownership test through the employment of the grandfather rule, devious yet imaginative legal strategies used to circumvent the constitutional and statutory limits on foreign equity participation can be determined.[48]

<http://sc.judiciary.gov.ph/jurisprudence/2012october2012/176579.pdf> (Last visited, April 21, 2015). Parenthetically, it is advanced that the application of the Grandfather Rule is impractical as tracing the shareholdings to the point when natural persons hold rights to the stocks may very well lead to an investigation *ad infinitum*. Suffice it to say in this regard that, while the Grandfather Rule was originally intended to trace the shareholdings to the point where natural persons hold the shares, the SEC had already set up a limit as to the number of corporate layers the attribution of the nationality of the corporate shareholders may be applied.

[46] Resolution, G.R. No. 195580, January 28, 2015, <http://sc.judiciary.gov.ph/jurisprudence/2012/october2012/176579.pdf> (Last visited, April 21, 2015).

[47] Resolution, *Narra Nickel Mining and Development Corp. v. Tesoro Mining and Development Inc., et al.*. G.R. No. 195580, January 28, 2015, <http://sc.judiciary.gov.ph/jurisprudence/2012/october2012/176579.pdf> (Last visited, April 21, 2015).

[48] To illustrate:

Suppose that X corporation seeks to engage as a public utility company. It divided its total outstanding capital stock of 1000 into three classes of shares — 300 common shares, 200 preferred shares with the right to vote in the election of directors (Class A preferred), and 500 preferred without such right to elect the directors (Class B preferred). Another Corporation, Y, an entity considered as a Philippine national under the FIA on the assumption that 60% of its capital is owned by Filipinos, owns all common and class 8 preferred shares.

Three Hundred (300) common shares in the hands of Y, a Philippine national represents sixty percent (60%)control over all shares with the right to vote in the election of directors (sum of 200 Class A preferred shares and 300 common shares). Coupled with another 500 preferred Class B shares, Y can be considered in control of eighty-percent (80%) of the total outstanding capital stock of X.

The Assailed Circular as it relates to Gamboa Resolution

The petitioners strongly assert that the SEC gravely abused its discretion when it issued MC No. 8, with specific reference to Section 2, which is again quoted as follows:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino shall be applied to **BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors**.

Roy points out that the SEC did not include in the assailed circular the requirement of applying the 60-40 rule to each and every class of shares. He fears that although Filipinos will have

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Applying the control test leads to the conclusion that a Philippine national in the person of Y controls X both with respect to the total outstanding capital stock and the sum of all shares with the right to elect the directors. However, after applying beneficial ownership test, which means looking into each stockholders of Y through the grandfather rule, it would show insufficient Filipino equity of at least sixty-percent (60%) in X as required under the Constitution, Foreign Investments Act and the Court's ruling in Gamboa.

Since Y is only sixty-percent (60%) controlled by Filipinos, the Filipino Equity in X through Y would be as follows:

Sixty-percent (60%) of 300 common shares = 180 shares or 36% beneficial equity in all shares with the rights to vote in the election of directors (sum of 300 common shares and 200 Class A Preferred shares).

Sixty percent (60%) of 500 Class B preferred shares = 300 shares with the right to elect directors.

To compute total Filipino beneficial equity in the total outstanding capital stock, 300 shares plus the 180 shares as calculated above must be added. Thus, 300 shares + 180 shares = 480 shares or forty eight (48%) of the total outstanding capital stock of X.

In effect, the equity of Filipinos in X, after applying the grandfather rule, has been diluted to forty- eight percent (48%) of the total outstanding capital stock and thirty-six percent (36%) of all shares with the rights to vote in the election of directors. Clearly, it violates the constitutional limitation on foreign equity participation.

voting rights, they may remain deprived of the full economic benefits if the rule is not applied to all classes of shares.

I agree with the petitioners.

The Basis of the Uniform and Separate Application of 60:40 Rule to Each and Every Class of Shares

It has been said that economic rights give meaning to control. The general assumption is that control rights are always coupled with proportionate economic interest in a corporation. This proportionality gives stockholders theoretically an incentive to exercise voting power well, makes possible the market for corporate control and legitimates managerial property the managers do not own.[49]

The same theory is adhered to by the Constitution. The words "own and control," used to qualify the minimum Filipino participation in Section 11, Article XII of the Constitution, reflects the importance of Filipinos having both the ability to influence the corporation through voting rights and economic benefits. In other words, **full ownership up to 60% of a public utility** encompasses **both control** *and* **economic rights**, both of which must stay in Filipino hands. Filipinos, who own 60% of the **controlling interest**, must also own 60% of the **economic interest** in a public utility.

In a single class structured corporation, the proportionality required can easily be determined. In mixed class or dual structured corporations, however, there is variance in the proportion of stockholders' controlling interest vis-a-vis their economic ownership rights. This resulting variation is recognized by the Implementing Rules and Regulation (*IRR*) of the Securities Regulation Code,[50] which defined beneficial ownership as that

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[49] *Empty Voting and Hidden Ownership: Taxonomy, Implications, and Reforms*, Henry T.C. Hu,<www.law.yale.edu/documents/pdf/cbl/PM-6-Bus-Law-Hu-Black.pdf> (Last visited, April 23, 2015).

[50] Implementing Rules and Regulations of the Securities and Regulation Code, Rule III, Sec. 1.d. Beneficial owner or beneficial ownership means

may exist either through voting power **and/or** through investment returns. By using and/or in defining beneficial ownership, the IRR, in effect, recognizes a possible situation where voting power is not commensurate to investment power.

Disparity in privileges accorded to different classes of shares was best illustrated in the *Gamboa Resolution*. By operation of Section 6 of the Corporation Code,[51] preferred class of shares may be created with superior economic rights as compared to the other classes. Dissimilar shares, although similar in terms of number, can differ in terms of benefits. In such cases, holders of preferred shares, although constituting only a smaller portion of the total outstanding capital stock of the corporation, can have greater economic interest over those of common stockholders.

In the event that a public utility corporation restructures and eventually concentrates all foreign shareholdings solely to a preferred class of shares with high yielding investment power, foreigners would, in effect, have economic interests exceeding those of the Filipinos with less economically valuable common shares. Evidently, this was not envisioned by the framers of the Constitution. And for the reasons that follow, the Court considers such a situation as an affront to the Constitution.

To begin with, it dilutes the potency of Filipino control in a public utility.

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any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares: voting power, which includes the power to vote, or to direct the voting of, such security; and/or investment returns or power, which includes the power to dispose of, or to direct, the disposition of such security; xxx xxx xxx.

[51] The Corporation Code, Section 6. *Classification of shares*. — The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: *Provided*, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code. xxx xxx xxx."

Economic rights effectively encourage the controlling stockholders to exercise their control rights in accordance with their own interest. Necessarily, if Filipino controlling stockholders have dominance over both economic ownership and control rights, their decisions on corporate matters will mean independence from external forces.

Conversely, if Filipino controlling stockholders do not have commensurate level of interest in the economic gains of a public utility, the disparity would allow foreigners to intervene in the management, operation, administration or control of the corporation through means that circumvent the limitations imposed by the Constitution. It would foster the creation of falsely simulated existence of the required Filipino equity participation, an act prohibited under Section 2 of Commonwealth Act No. 108, commonly known as the Anti-Dummy Law,[52] effectively circumventing the *rationale* behind the constitutional limitations on foreign equity participation.

Moreover, the variation in the classes of shares would allow foreigners to acquire preferential interest and advantage in the remaining assets of the corporation after its dissolution or termination. This runs counter to the intent of the present constitution — the conservation and development of the national patrimony. Filipino stockholders should not only be entitled to the benefits generated by a public utility, they should equally have the right to receive the greater share in whatever asset that would be left should the corporation face its end.

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[52]The Anti-Dummy Law, Section 2. "In all cases in which a constitutional or legal provision requires that, in order that a corporation or association may exercise or enjoy a right, franchise or privilege, not less than a certain per centum of its capital must be owned by citizens of the Philippines or of any other specific country, it shall be unlawful to falsely simulate the existence of such minimum stock or capital as owned by such citizens, for the purpose of evading said provision. The president or managers and directors or trustees of corporations or associations convicted of a violation of this section shall be punished by imprisonment of not less than five nor more than fifteen years, and by a fine not less than the value of the right, franchise or privilege, enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos."

Clearly **the only way** to minimize, if not totally prevent disparity of control and economic rights given to Filipinos, and to obstruct consequences not envisioned by the Constitution, **is to apply the 60-40 rule separately to each class of shares of a public utility corporation**. It results in the equalization of Filipino interests, both in terms of control and economic rights, in each and every class of shares. By making the economic rights and controlling rights of Filipinos in a public utility paramount, directors and managers would be persuaded to act in the interest of the Filipino stockholders. In turn, the Filipino stockholders would exercise their corporate ownership rights in ways that would benefit the entire Filipino people cognizant of the trust and preference accorded to them by the Constitution.

Neither an Obiter Dictum or a Treaty Violation

The respondents claim that the statement that the 60-40 rule applies to each type of shares was a mere *obiter dictum*. As reference, they point to the dispositive portions of the *Gamboa Decision* and *Gamboa Resolution*, where there is no directive that the 60-40 rule should apply to each class of shares. They insisted that the controlling rule should be what was stated in the *fallo* of the decision in *Gamboa* that the 60-40 rule applied only to shares with the right to vote in the election of directors. PSEI also cautions this Court in upholding the application of the 60-40 rule to each type of shares because it would redefine what was stated in the *Gamboa Decision*. It would also affect the obligation of the State under different treaties and executive agreements, and could disastrously affect the stock exchange market and the state of foreign investments in the country.

Again, on this point, I differ. The majority disregarded the final ruling in *Gamboa*.

Jurisprudence is replete with the doctrine that a final and executory judgment may nonetheless be "clarified" by reference to other portions of the decision of which it forms a part; that a judgment must not be read separately but in connection with the other portions of the decision of which it forms a part.

Otherwise stated, a decision should be taken as a whole and considered in its entirety to get the true meaning and intent of any particular portion thereof.[53] It "must be construed as a whole so as to bring all of its parts into harmony as far as this can be done by fair and reasonable interpretation and so as to give effect to every word and part, if possible, and to effectuate the obvious intention and purpose of the Court, consistent with the provisions of the organic law."[54] A final ruling in *Gamboa*, therefore, includes the clarification and elucidation in the subsequent *Gamboa Resolution*, which was unquestioned until it lapsed into finality.

The claimed inconsistency in the definition of capital in the *Gamboa Decision* and *Gamboa Resolution* and on how the Court uses them in this case is more apparent than real. A deeper understanding of the Court's philosophical underpinning on the issue of capital is that capital must be construed in relation to the constitutional goal of securing the controlling interest in favor of Filipinos.

Plain from the Court's previous discussions is the conclusion that controlling interest in a public utility cannot be achieved by applying the 60-40 rule solely to shares with the right to vote in the election of directors; **it must be applied to all classes of shares**. Although applying the rule only to such shares gives an assurance that Filipinos will have control over the choice on who will manage the corporation, it does not mean that they also control the decisions that are fundamentally important to the corporation. If they would own 60% of all the shares of whatever class, they cannot be denied the right to vote on important corporate matters. To the Court, the only way by which Filipinos can be assured of having the controlling interest is to **apply the 60:40 rule to each class of shares regardless of restrictions or privileges present, with each class, being**

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[53] *La Campana Development Corp. v. Development Bank of the Phils.*, 598 Phil. 612-634 (2009).

[54] 49 C.J.S. 436, cited in *Republic v. De los Angeles*, 150-A Phil. 25-85 (1972).

considered as a distinct but indispensable and integral part of the entire capital of a public utility for the purpose of determining the nationality restrictions under the Constitution.

On the point of PSEI that a ruling in favor of the petitioners would lead to a violation of the obligation of the Philippines to provide fair and equitable treatment to foreign investors who have relied on the FIA and its IRR, as well as predecessor statutes, the Court believes otherwise. Basic is the rule that the Constitution is paramount above all else. It prevails not only over domestic laws, but also against treaties and executive agreements. It cannot be said either that due process and equal protection were violated. These constitutional limitations on foreign equity participation have been there all along.

Need for a Constitutional Amendment

Until the people decide, through a new constitution, to ease the restrictions on foreign participation in the public utility sector, the Court should resolve all doubts in favor of upholding the spirit and intent of the 1987 Constitution.

As the SEC Memorandum Circular No. 8 is non-compliant with the final *Gamboa* ruling, the omission by the SEC of the 60-40 rule application in favor of Filipinos to each and every class of shares of a public utility constituted, and should have been declared, a grave abuse of discretion.

In view of all the foregoing, the petition should have been granted and SEC Memorandum Circular No. 8 should have been declared as non-compliant with the final *Gamboa* ruling.

Accordingly, the Security and Exchange Commission should have been directed to strictly comply with the final *Gamboa* ruling, by including in the assailed circular the rule on the application of the 60-40 nationality requirement to each class of shares regardless of restrictions or privileges in accordance with the foregoing disquisition.

DISSENTING OPINION

LEONEN, *J.*:

I dissent from the Decision denying the Petition. Respondent Securities and Exchange Commission's Memorandum Circular No. 8, series of 2013 is inadequate as it fails to encompass each and every class of shares in a corporation engaged in nationalized economic activities. This is in violation of the constitutional provisions limiting foreign ownership in certain economic activities, and is in patent disregard of this Court's statements in its June 28, 2011 Decision[1] as further illuminated in its October 9, 2012 Resolution[2] in *Gamboa v. Finance Secretary Teves*. Thus, the Securities and Exchange Commission gravely abused its discretion.

A better considered reading of *both* the 2011 Decision and 2012 Resolution in *Gamboa* demonstrates this Court's adherence to the rule on which the present Decision turns: that the 60 per centum (or higher, in the case of Article XII, Section 10) Filipino ownership requirement in corporations engaged in nationalized economic activities, as articulated in Article XII and Article XIV[3] of the 1987 Constitution, must apply "to each class of

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[1] *Gamboa v. Finance Secretary Teves, et al.*, 668 Phil. 1 (2011) [Per *J.* Carpio, *En Banc*].

[2] *Heirs of Wilson P. Gamboa v. Finance Secretary Teves, et al.*, 696 Phil. 276 (2012) [Per *J.* Carpio, *En Banc*].

[3] CONST., Art. XII, Secs. 2, 10, 11, and Art. XIV, Sec. 4(2) provide:

ARTICLE XII. National Economy and Patrimony

... ...

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or

corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

... ...

SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to *corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe*, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to *corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens*, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

... ...

ARTICLE XIV. Education, Science and Technology, Arts, Culture, and Sports

... ...

SECTION 4.... (2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines *or corporations or associations at least sixty per centum of the capital of which is owned by such citizens*. The Congress may, however, require increased Filipino equity participation in all educational institutions[.] (Emphasis supplied)

shares, regardless of differences m voting rights, privileges and restrictions[.]"[4]

The 2011 Decision and 2012 Resolution in *Gamboa* concededly lend themselves to some degree of confusion. The dispositive portion in the 2011 Decision explicitly stated that "the term 'capital' in Section 11, Article XII of the 1987 Constitution refers *only* to shares of stock entitled to vote in the election of directors[.]"[5] The 2012 Resolution, for its part, fine-tuned this. Thus, it clarified that each class of shares, not only those entitled to vote in the election of directors, is subject to the Filipino ownership requirement.[6] However, the 2012 Resolution did not recalibrate the 2011 Decision's dispositive

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[4] *Heirs of Wilson P. Gamboa v. Finance Secretary Teves, et al.*, 696 Phil. 276, 341 (2012) [Per *J.* Carpio, *En Banc*].

[5] *Gamboa v. Finance Secretary Teves, et al.*, 668 Phil. 1, 69-70 (2011) [Per *J.* Carpio, *En Banc*]. This definition, stated in a *fallo*, was noted in my April 21, 2014 Dissent in *Narra Nickel Mining and Development Corp., et al. v. Redmont Consolidated Mines Corp.*, 733 Phil. 365, 420 (2014) [Per *J.* Velasco, Jr., Third Division]. This, however, was not the pivotal point in that Opinion.

[6] *Heirs of Wilson P. Gamboa v. Finance Secretary Teves, et al.*, 696 Phil. 276, 341 (2012) [Per *J.* Carpio, *En Banc*]. The Court stated, "[s]ince a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must apply not only to shares with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above. Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos. Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares. This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges

portion— inclusive of its definition of "capital." Rather, it merely stated that the motions for reconsideration were denied with finality and that no further pleadings shall be allowed.[7]

Nevertheless, a judgment must be read in its entirety; in such a manner as to bring harmony to all of its parts and to facilitate an interpretation that gives effect to its entire text. The brief statement in the dispositive portion of the 2012 Resolution that the motions for reconsideration were denied was not inconsistent with the jurisprudential fine-tuning of the concept of "capital." Neither was it inadequate; it succinctly stated the action taken by the court on the pending incidents of the case. The dispositive portion no longer needed to pontificate on the concept of "capital," for all that it needed to state to dispose of the case, at that specific instance—was that the motions for reconsideration had been denied.

The brevity of the 2012 Resolution's dispositive portion was certainly not all that there was to that Resolution. The Court's having promulgated an extended resolution (as opposed to the more commonplace minute resolutions issued when motions for reconsideration raise no substantial arguments or when the Court's prior decision or resolution on the main petition had already passed upon all the basic issues) is telling. It reveals that the Court felt it necessary to engage anew in an extended discussion because matters not yet covered, needing greater illumination, warranting re-calibration, or impelling fine-tuning, were then expounded on. This, even if the ultimate juridical result would have merely been the denial of the motions for reconsideration. It would be a disservice to the Court's own wisdom then, if attention was to be drawn solely to the disposition denying the motions for reconsideration, while failing to consider the rationale for that denial.

This position does not violate the doctrine on immutability of judgments. The *Gamboa* ruling is not being revisited or re-

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and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution."

[7] *Id*. at 363.

evaluated in such a manner as to alter it. Far from it, this position affirms and reinforces it. In resolving the validity of the Securities and Exchange Commission's Memorandum Circular No. 8, this position merely echoes the conception of capital already articulated in *Gamboa*; it does not invent an unprecedented idea. This echoing builds on an integrated understanding, rather than on a myopic or even isolationist emphasis on a matter that the dispositive portion no longer even needed to state.

In any case, the present Petition does not purport or sets itself out as a bare continuation of *Gamboa*. If at all, it accepts *Gamboa* as a settled matter, a fait accompli; and only sets out to ensure that the matters settled there are satisfied. This, then, is an entirely novel proceeding precipitated by a distinct action of an instrumentality of government that, as the present Petition alleges, deviates from what this Court has put to rest.

Memorandum Circular No. 8, an official act of the Securities and Exchange Commission, suffices to trigger a justiciable controversy. There is no shortage of precedents (e.g., *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*,[8] *Imbong v. Ochoa, Jr.*,[9] and *Disini, Jr., et al. v. The Secretary of Justice, et al*.[10] in which this Court appreciated a controversy as ripe for adjudication even when the trigger for judicial review were official enactments which supposedly had yet to occasion an actual violation of a party's rights. *Province of North Cotabato* is on point:

> The Solicitor General argues that there is no justiciable controversy that is ripe for judicial review in the present petitions, reasoning that
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> > The unsigned MOA-AD is simply a list of consensus points subject to further negotiations and legislative enactments as well as constitutional processes aimed at attaining a final peaceful

[8] 589 Phil. 387 (2008) [Per *J.* Carpio Morales, *En Banc*].

[9] G.R. No. 204819, April 8, 2014, 721 SCRA 146 [Per *J.* Mendoza, *En Banc*].

[10] 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

> agreement. Simply put, the MOA-AD remains to be a proposal that does not automatically create legally demandable rights and obligations until the list of operative acts required have been duly complied with. xxx
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> x x x x x x x x x
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> In the cases at bar, it is respectfully submitted that this Honorable Court has no authority to pass upon issues based on hypothetical or feigned constitutional problems or interests with no concrete bases. Considering the preliminary character of the MOA-AD, there are no concrete acts that could possibly violate petitioners' and intervenors' rights since the acts complained of are mere contemplated steps toward the formulation of a final peace agreement. Plainly, petitioners and intervenors' perceived injury, if at all, is merely imaginary and illusory apart from being unfounded and based on mere conjectures....
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> ... ...
>
> The Solicitor General's arguments fail to persuade.

Concrete acts under the MOA-AD are not necessary to render the present controversy ripe. In *Pimentel, Jr. v. Aguirre*, this Court held:

> x x x [B]y the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.
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> x x x x x x x x x
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> By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws x x x settling the dispute becomes the duty and the responsibility of the courts.
>
> In *Santa Fe Independent School District v. Doe*, the United States Supreme Court held that the challenge to the constitutionality of the school's policy allowing student-led prayers and speeches before games was ripe for adjudication, even if no public prayer had yet been led under the policy, because the policy was being challenged as unconstitutional on its face.

> That the law or act in question is not yet effective does not negate ripeness. For example, in *New York v. United States*, decided in 1992, the United States Supreme Court held that the action by the State of New York challenging the provisions of the Low-Level Radioactive Waste Policy Act was ripe for adjudication even if the questioned provision was not to take effect until January 1, 1996, because the parties agreed that New York had to take immediate action to avoid the provision's consequences.[11] (Underscoring and citations omitted)

The Court, here, is called to examine an official enactment that supposedly runs afoul of the Constitution's injunction to "conserve and develop our patrimony,"[12] and to "develop a self-reliant and independent national economy effectively controlled by Filipinos."[13] This allegation of a serious infringement of the Constitution compels us to exercise our power of judicial review.

A consideration of the constitutional equity requirement as applying to each and every single class of shares, not just to those entitled to vote for directors in a corporation, is more in keeping with the "philosophical underpinning"[14] of the 1987 Constitution, i.e., "that capital must be construed in relation to the constitutional goal of securing the controlling interest in favor of Filipinos."[15]

No class of shares is ever truly bereft of a measure of control of a corporation. It is true, as Section 6[16]of the Corporation Code permits, that preferred and/or redeemable shares may be

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[11] *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*, 589 Phil. 387 (2008) [Per *J.* Carpio Morales, *En Banc*].

[12] CONST., preamble.

[13] CONST., Art. II, Sec. 19.

[14] *J.* Mendoza, Dissenting Opinion, p. 21.

[15] *Id*.

[16] CORP. CODE, Sec. 6, par. 1 provides:

denied the right to vote extended to other classes of shares. For this reason, they are also often referred to as 'non-voting shares.' However, the absolutist connotation of the description "non-voting" is misleading. The same Section 6 provides that these "non- voting shares" are still entitled to vote on the following matters:

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this Code; and
8. Dissolution of the corporation.

In the most crucial corporate actions — those that go into the very constitution of the corporation — even so-called non-voting shares may vote. Not only can they vote; they can be pivotal in deciding the most basic issues confronting a corporation. Certainly, the ability to decide a corporation's framework of governance (i.e., its articles of incorporation and by-laws), viability (through the encumbrance or disposition of all or substantially all of its assets, engagement in another enterprise, or subjection to indebtedness), or even its very

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Section 6. Classification of shares. — The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That *no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares*, unless otherwise provided in this Code: Provided, further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may he provided for in the articles of incorporation: Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock. (Emphasis supplied)

existence (through its merger or consolidation with another corporate entity, or even through its outright dissolution) demonstrates not only a measure of control, but even possibly *overruling* control. "Non-voting" preferred and redeemable shares are hardly irrelevant in controlling a corporation.

It is in this light that I emphasize the necessity, not only of legal title, but more so of full beneficial ownership by Filipinos of the required percentage of capital in certain corporations engaged in nationalized economic activities. This has been underscored in *Gamboa*. This too, is a matter, which I emphasized in my Dissenting Opinion in the *Narra Nickel and Development Corp. v. Redmont Consolidated Mines Corp*[17] April 21, 2014 Decision.

I likewise emphasize "the [C]ontrol [T]est as a primary method of determining compliance with the restrictions imposed by the Constitution on foreign equity participation,"[18] along with a recognition of the Grandfather Rule as a "supplement"[19] to the Control Test.

My Dissent from the April 21, 2014 Decision in *Narra Nickel*, noted that "there are two (2) ways through which one may be a beneficial owner of securities, such as shares of stock: first, by having or sharing voting power; and second, by having or sharing investment returns or power."[20] This is gleaned from the definition of "beneficial owner or beneficial ownership" provided for in the Implementing Rules and Regulations of the Securities Regulation Code.[21]

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[17] *J.* Leonen, Dissenting Opinion in *Narra Nickel Mining and Development Corp., et al. v. Redmont Consolidated Mines Corp.*, 733 Phil. 365, 420 (2014) [Per *J.* Velasco, Jr., Third Division].

[18] *J.* Mendoza, Dissenting Opinion, p. 14.

[19] *Id.* at 16.

[20] *J.* Leonen, Dissenting Opinion in *Narra Nickel Mining and Development Corp., et al. v. Redmont Consolidated Mines Corp.*, 733 Phil. 365, 475 (2014) [Per *J.* Velasco, Jr., Third Division].

[21] SECURITIES CODE, Revised Implementing Rules and Regulations (2011), Rule 3(1)(A) provides:

Full beneficial ownership vis-a-vis capacity to control a corporation is self-evident in ownership of voting stocks: the investiture of the capacity to vote evinces involvement in the running of the corporation. Through it, a stockholder participates in corporate decision-making, or otherwise participates in the designation of directors — those individuals tasked with overseeing the corporation's activities.

Appreciating full beneficial ownership and control in a corporation may require a more nuanced approach when the subject of inquiry is investment returns or power. Control through the capacity to vote can be countervailed, if not totally negated, by reducing voting shares to empty shells that represent nominal ownership even as the corporation's economic gains actually redound to the holders of other classes of shares. There exist practices such as corporate layering which, can be used to undermine the Constitution's equity requirements.

It is in the spirit of ensuring that effective control is lodged in Filipinos that the dynamics of applying the Control Test and the Grandfather Rule must be considered.

As I emphasized in my twin dissents in the *Narra Nickel* April 21, 2014 Decision and January 28, 2015 Resolution,[22] with the 1987 Constitution's silence on the specific mechanism for reckoning Filipino and foreign equity ownership in corporations, the Control Test – statutorily established through Republic Act No. 8179, the Foreign Investments Act– "must govern in reckoning foreign equity ownership in corporations

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Rules 3 — Definition of Terms

1....

A. Beneficial owner or beneficial ownership means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security)[.]

[22] *J.* Leonen, Dissenting Opinion in *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.*, G.R. No. 195580, January 28, 2015, 748 SCRA 455, 492 [Per *J.* Velasco, Jr., Special Third Division].

engaged in nationalized economic activities."[23] Nevertheless, "the Grandfather Rule may be used ... as a further check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos."[24]

The Control Test was established by legislative fiat. The Foreign Investments Act "is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment."[25] Its Section 3(a) defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines[.]" In my Dissent in the *Narra Nickel* April 21, 2014 Decision:

> This is a definition that is consistent with the first part of paragraph 7 of the 1967 SEC Rules, which [originally articulated] the Control Test: "[s]hares belonging to corporations or partnerships at least 60 per cent of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality."[26]

The Control Test serves the purposes of ensuring effective control and full beneficial ownership of corporations by Filipinos, even as several corporations may be involved in the equity structure of another. As I explained in my Dissent from the April 21, 2014 Decision in *Narra Nickel*:

> It is a matter of transitivity that if Filipino stockholders control a corporation which, in turn, controls another corporation, then the Filipino stockholders control the latter corporation, albeit indirectly or through the former corporation.
>
> An illustration is apt.

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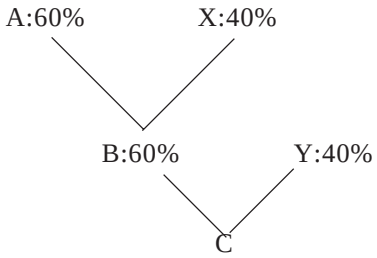
[23] *J.* Leonen, Dissenting Opinion in *Narra Nickel Mining and Development Corp. et al. v. Redmont Consolidated Mines Corp.*, 733 Phil. 365, 468 (2014) [Per *J.* Velasco, Jr., Third Division].

[24] *Id.* at 478.

[25] *Heirs of Wilson P Gamboa v. Finance Secretary Teves, et al.*, 696 Phil. 276, 332 (2012) [Per *J.* Carpio, *En Banc*].

[26] *J.* Leonen, Dissenting Opinion in *Narra Nickel Mining and Development Corp., et al. v. Redmont Consolidated Mines Corp.*, 733 Phil. 365, 467 (2014) [Per *J.* Velasco, Jr., Third Division].

Suppose that a corporation, "C", is engaged in a nationalized activity requiring that 60% of its capital be owned by Filipinos and that this 60% is owned by another corporation, "B", while the remaining 40% is owned by stockholders, collectively referred to as "Y". Y is composed entirely of foreign nationals. As for B, 60% of its capital is owned by stockholders collectively referred to as "A", while the remaining 40% is owned by stockholders collectively referred to as "X". The collective A, is composed entirely of Philippine nationals, while the collective X is composed entirely of foreign nationals. (N.b., in this illustration, capital is understood to mean "shares of stock entitled to vote in the election of directors," per the definition in *Gamboa*). Thus:



By owning 60% of B's capital, A controls B. Likewise, by owning 60% of C's capital, B controls C. From this, it follows, as a matter of transitivity, that A controls C; albeit indirectly, that is, through B.

This "control" holds true regardless of the aggregate foreign capital in B and C. As explained in *Gamboa*, control by stockholders is a matter resting on the ability to vote in the election of directors:

> Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation.

B will not be outvoted by Y in matters relating to C, while A will not be outvoted by X in matters relating to B. Since all actions taken by B must necessarily be in conformity with the will of A, anything that B does in relation to C is, in effect, in conformity with the will of A. No amount of aggregating the foreign capital in B and C will enable X to outvote A, nor Y to outvote B.

In effect, A controls C, through B. Stated otherwise, the collective Filipinos in A, *effectively* control C, through their control of B.[27] (Emphasis in the original)

Full beneficial ownership is addressed both with respect to voting power and investment returns or power.

As I explained, on voting power:

Voting power, as discussed previously, ultimately rests on the controlling stockholders of the controlling investor corporation. To go back to the previous illustration, voting power ultimately rests on A, it having the voting power in B which, in tum, has the voting power in C.[28]

As I also explained, on investment returns or power:

As to investment returns or power, it is ultimately A which enjoys investment power. It controls B's investment decisions — including the disposition of securities held by B and (again, through B) controls C's investment decisions.

Similarly, it is ultimately A which benefits from investment returns generated through C. Any income generated by C redounds to B's benefit, that is, through income obtained from C, B gains funds or assets which it can use either to finance itself in respect of capital and/or operations. This is a direct benefit to B, itself a Philippine national. This is also an indirect benefit to A, a collectivity of Philippine nationals, as then, its business — B — not only becomes more viable as a going concern but also becomes equipped to funnel income to A.

Moreover, beneficial ownership need not be direct. A controlling shareholder is deemed the indirect beneficial owner of securities (e.g., shares) held by a corporation of which he or she is a controlling shareholder. Thus, in the previous illustration, A, the controlling shareholder of B, is the indirect beneficial owner of the shares in C to the extent that they are held by B.[29]

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[27] *Id*. at 469-471, citing *Gamboa v. Finance Secretary Teves, et al.*, 668 Phil. 1, 51, 53, and 69-71 (2011) [Per *J.* Carpio, *En Banc*].

[28] *Id.* at 475.

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

Nevertheless, ostensible equity ownership does not preclude unscrupulous parties' resort to devices that undermine the constitutional objective of full beneficial ownership of and effective control by Filipinos. It is at this juncture that the Grandfather Rule finds application:

> Bare ownership of 60% of a corporation's shares would not suffice. What is necessary is such ownership as will ensure control of a corporation.
>
> ***... [T]he Grandfather Rule may be used as a supplement to the Control Test, that is, as a <u>further</u> check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos.***
>
> For instance, Department of Justice Opinion No. 165, series of 1984, identified the following "significant indicators" or badges of "dummy status":
>
> 1. That the foreign investor provides practically all the funds for the joint investment undertaken by Filipino businessmen and their foreign partner[;]
> 2. That the foreign investors undertake to provide practically all the technological support for the joint vebture [; and]
> 3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.
>
> In instances where methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise, the ostensible control vested by ownership of 60% of a corporation's capital may be pierced. Then, the Grandfather Rule allows for a further, more exacting examination of who actually controls and benefits from holding such capital.[30]

It is opportune that the present Petition has enabled this Court to clarify both the conception of capital, for purposes of compliance with the 1987 Constitution, and the mechanisms primarily the Control Test, and suppletorily, the Grandfather Rule through which such compliance may be assessed.

ACCORDINGLY, I vote to grant the Petition.

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[30] *Id*. at 478-479, citing DOJ Opinion No. 165, series of 1984, p. 5.

EN BANC

[G.R. No. 223625. November 22, 2016]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT (COA) and COA CHAIRPERSON MICHAEL G. AGUINALDO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC INDUSTRY REFORM ACT OF 2001 (EPIRA); SECTION 63 ON SEPARATION BENEFITS OF OFFICIALS AND EMPLOYEES DISPLACED BY THE RESTRUCTURING ELECTRICITY INDUSTRY AND PRIVATIZATION OF NPC ASSETS; APPLICATION TO NATIONAL TRANSMISSION CORPORATION (TRANSCO) EMPLOYEES. — It is undisputed that TransCo is a government owned and controlled corporationn (GOCC) as it was created by virtue of the EPIRA. As such, it was bound by civil service laws. Under the Constitution, the Civil Service Commission *(CSC)* is the central personnel agency of the government, including GOCCs. It primarily deals with matters affecting the career development, rights and welfare of government employees. x x x Section 63 of the EPIRA provides for the separation benefits to be awarded to officials and employees displaced by the restructuring electricity industry and privatization of NPC assets. x x x [B]ased on the EPIRA and its IRR that all employees of TransCo are entitled to separation benefits, with an additional requirement imposed on casual or contractual employees — their appointments must have been approved or attested by the CSC.

2. ID.; ID.; ID.; ID.; ID.; DISALLOWED SEPARATION BENEFIT ALREADY PAID NEED NOT BE REFUNDED BY RECEPIENT ON THE GROUND OF GOOD FAITH.— The Court finds TransCo and Miranda be excused from refunding the disallowed amount notwithstanding the propriety of the ND in question. In view of TransCo's reliance on *Lopez,* which the Court now abandons, the Court grants TransCo's petition *pro hac vice* and absolved it from any liability in refunding

the disallowed amount. On another note, even if the ND is to be upheld, Miranda should not be solidarily liable to refund the same. In *Silang v. COA*, the Court had ruled that passive recipients of the disallowed disbursements, who acted in good faith, are absolved from refunding the same x x x In the present case, Miranda was a mere passive recipient as he had no involvement when the BOD passed the resolution granting separation benefits to all TransCo employees. Thus, Miranda acted in good faith as he merely received the benefits to which he believed he was entitled to.

3. ID.; ID.; PUBLIC EMPLOYMENT AS DISTINGUISHED FROM PRIVATE EMPLOYMENT; EMPLOYER-EMPLOYEE RELATIONSHIP IN THE PUBLIC SECTOR IS PRIMARILY DETERMINED BY SPECIAL LAWS, CIVIL SERVICE LAWS, RULES AND REGULATIONS.— [T]he rules of employment in private practice differs from government service.[19] As astutely explained by our colleague Justice Marvic Leonen, that while a private employer should apply the four-fold test in determining employer-employee relationship as it is strictly bound by the labor code, a government employer or GOCC, must, apart from applying the four-fold test, comply with the rules of the CSC in determining the existence of employer-employee relationship. The difference between private and public employment is readily apparent in our legal landscape. For one, the Labor Code[20] recognizes that the terms and conditions of employment of all government employees, **including those of GOCCs**, shall be governed by the civil service law, rules and regulations. Particularly, in cases of GOCCs created by special law, the terms and conditions of employment of its employees are particularly governed by its charter.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Noel Z. De Leon, et al., for petitioner.
The Solicitor General for public respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for *certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the March 19, 2015 Decision[1] and December 23, 2015 Resolution[2] of the Commission on Audit *(COA)* which affirmed the August 7, 2013 Decision[3] of the COA Corporate Government Sector Cluster 3 *(COA-CGS)*.

Petitioner National Transmission Corporation *(TransCo)* is a government owned and controlled corporation *(GOCC)* created under Republic Act *(R.A.)* No. 9136 or the Electric Industry Reform Act of 2001 *(EPIRA)*.[4] On March 1, 2003, it began to operate and manage the power transmission system that links power plants to the electric distribution utilities nationwide.[5]

On April 1, 2003, TransCo engaged the services of Benjamin B. Miranda *(Miranda)* until his services were terminated on June 30, 2009. From April 1, 2003 to March 21, 2004, however, Miranda was a contractual employee with the position of Senior Engineer pursuant to the Service Agreement.[6]

In December 2007, a public bidding was conducted which awarded the concession to the National Grid Corporation of the Philippines*(NGCP),* which was eventually granted a congressional franchise to operate the transmission network through the enactment of R.A. No. 9511. On February 28, 2008, the Power Sector Assets and Liabilities Management and TransCo

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[1] Concurred in by Officer-in-Charge Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia; *rollo,* pp. 31-39.

[2] *Id*. at 40.

[3] Penned by Director IV Rufina S. Laquindanum; *id*. at 49-52.

[4] *Id*. at 4.

[5] *Id*. at 6.

[6] *Id*. at 41.

executed a Concession Agreement with NGCP setting forth the parties' rights and obligations for the concession.[7]

On January 15, 2009, TransCo turned over the management and operation of its nationwide transmission system to NGCP. As such, several TransCo personnel, including Miranda, were terminated on June 30, 2009.[8] Miranda received his separation pay benefits in the aggregate amount of ₱401,911.90 pursuant to TransCo Resolution No. TC 2009-005.[9]

On January 26, 2011, TransCo received the Notice of Disallowance *(ND)* No. 11-003-(10),[10] which disallowed in audit the amount of ₱55,758.26 corresponding to inclusion of Miranda's service from April 1, 2003 to April 15, 2004 in computing his separation benefits. Aggrieved, it appealed the said ND to the COA-CGS.

COA-CGS Ruling

In its August 7, 2013 decision, the COA-CGS upheld the ND. It noted that the terms of the Service Agreement clearly stated that there shall be no employer-employee relationship between Miranda and TransCo and that the services rendered are not considered or will not be credited as government service. The COA-CGS ruled that TransCo Board Resolution No. 2009-005 cannot be used as basis as it did not conform to the laws, rules or regulations pertinent to the grant of separation benefits. Thus, it concluded that the TransCo Board of Directors *(BOD)* erred in including the contractual employees in availing separation benefits.

Unconvinced, TransCo appealed before the COA.

COA Ruling

In its March 19, 2015 decision, the COA sustained the COA-CGS decision. It emphasized that the grant of separation benefits

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

[8] *Id*. at 7.

[9] *Id*. at 53-56.

[10] *Id*. at 46-48.

to separated or displaced TransCo employees as a result of the restructuring of the electric industry must be in accordance with the EPIRA. The COA noted that under the EPIRA and its implementing rules and regulations *(IRR)*, separation benefits may be extended to casual or contractual employees, provided their appointments were approved or attested to by the Civil Service Commission *(CSC)*, and they had rendered services for at least one (1) year at the time of the effectivity of the EPIRA. It explained that Miranda was not entitled to separation benefits for the period in question as there was nothing in the records which would prove that his appointment was duly approved or attested to by the CSC.

Moreover, the COA expounded that the Service Agreement explicitly stated that no employer-employee relationship existed between Miranda and TransCo and that he was not entitled to the benefits enjoyed by government employees. Likewise, it averred that the BOD of TransCo cannot issue resolutions contrary to the provisions of the EPIRA. The COA highlighted Section 63 of the EPIRA which requires that the creation of new positions and the levels of or increase in salaries and all other emoluments and benefits of TransCo personnel shall be subject to the approval of the President.

Lastly, the COA ruled that good faith cannot be appreciated in favor of Miranda and the BOD of TransCo. As such, it concluded that Miranda and the BOD should be held solidarily liable for the disallowed amount.

TransCo moved for reconsideration but it was denied by the COA in its December 23, 2015 resolution.

Hence, this present petition raising the following issues:

ISSUES

I

WHETHER OR NOT THE GRANT OF FINANCIAL ASSISTANCE/SEPARATION BENEFIT TO FORMER TRANSCO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS IS PROHIBITED;

II

WHETHER OR NOT IT IS WITHIN THE TRANSCO BOARD'S POWER TO GRANT FINANCIAL ASSISTANCE/SEPARATION BENEFIT TO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS; AND

III

WHETHER OR NOT COA COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED DECISION NO. 2013-04 AND NOTICE OF DISALLOWANCE NO. 11-003(10).[11]

TransCo argues that it was within its corporate powers to grant separation benefits to its personnel separated due to the privatization of its operations. It explains that it was for this reason it passed the resolution providing separation benefit to all employees, whether appointed on permanent, contractual or casual basis. TransCo bewails that Miranda was entitled to the separation benefits despite the provisions of the service contract, and the fact this his appointment lacked CSC approval.

It cites *Lopez v. MWSS*[12] *(Lopez)* where the Court had ruled that therein petitioners were entitled to severance pay notwithstanding the fact the contracts of service stated that they were not government employees, and that the same was not approved by the CSC. Thus, TransCo argues that similar to the employees in *Lopez*, Miranda was a regular employee entitled to separation benefits. Moreover, it manifests that neither the EPIRA nor R.A. No. 9511 limit to permanent employees the award of separation benefits. Lastly, TransCo faults the COA in not appreciating good faith in the disbursements in question.

In its Comment,[13] dated July 29, 2016, the COA countered that it did not commit grave abuse of discretion in upholding the subject ND as the disbursement in question was contrary to law. It explained that Miranda's appointment from April 1,

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

[12] 501 Phil. 115 (2005).

[13] *Rollo,* pp. 92-109.

2003 to April 15, 2004 was neither approved nor attested to by the CSC. The COA surmised that pursuant to the EPIRA and its IRR, casual and contractual employees are entitled to separation benefits only if their contract of service had been approved or attested by the CSC. It reiterated that the contract of service explicitly stated that Miranda's services shall not be deemed as government service and that no employer-employee relationship existed.

The COA disagreed that good faith may be appreciated in favor of Miranda and the approving officials. It noted that the concerned officials granted the subject benefit notwithstanding the knowledge that, under the service agreement and the clear provisions of the EPIRA and its IRR, Miranda was not entitled to the same. Likewise, the COA opined that Miranda was bound to refund the excess of his separation benefits on the principle of *solutio indebiti* because he had no legal right to receive and retain the questioned benefits.

In its Reply,[14] dated August 30, 2016, TransCo argued that the IRR cannot expand the provisions of the EPIRA because the latter did not qualify which employees are entitled to separation benefits—specifically for casual and contractual employees. It opined that the provisions of the EPIRA should govern, and, thus, all employees of the national government service who are displaced from service as a result of the restructuring of the electricity industry are entitled to separation benefits.

TransCo emphasized that the lack of CSC approval did not negate the presence of an employer-employee relationship. It posited that the approving officials acted in good faith as they were merely implementing the provisions of the EPIRA, and wished to provide financial assistance to its displaced employees. Further, TransCo averred that Miranda acted in good faith as it was his honest intention that he was entitled to receive the disallowed benefits.

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[14] *Id*. at 115-124.

The Court's Ruling

The denial of the subject disbursement is anchored primarily on two things: *first*, that the service contract of Miranda categorically stated that the service shall not be deemed as government service and that no employer-employee relationship exists; *second*, that as a contractual employee, Miranda is entitled to separation benefits under the EPIRA and its IRR only if his appointment had been approved or attested to by the CSC.

On the other hand, TransCo argued that Miranda, based on the nature of his functions, was a regular employee entitled to separation benefits pursuant to the EPIRA. It relied on the pronouncements made by this Court in *Lopez.*

The Court finds that the COA did not gravely abuse its discretion in upholding the questioned ND.

GOCCs employees are bound by the provisions of the GOCC 's special charter and civil service laws

It is undisputed that TransCo is a GOCC as it was created by virtue of the EPIRA. As such, it was bound by civil service laws.[15] Under the Constitution,[16] the Civil Service Commission *(CSC)* is the central personnel agency of the government, including GOCCs. It primarily deals with matters affecting the career development, rights and welfare of government employees.[17]

In addition, TransCo is bound by the provisions of its charter. Thus, a review of the law creating TransCo and pertinent CSC issuances is in order to determine the propriety of the benefits Miranda received.

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[15] *Obusan v. PNB,* 639 Phil. 554, 563 (2010).

[16] Sections 2(1) and 3, Article IX-B.

[17] *Funa v. Duque III,* G.R. No. 191672, November 25, 2014, 742 SCRA 166.

Section 63 of the EPIRA provides for the separation benefits to be awarded to officials and employees displaced by the restructuring electricity industry and privatization of NPC assets, to wit:

SECTION 63. *Separation Benefits of Officials and Employees of Affected Agencies.* – National Government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits **in accordance with existing laws, rules or regulations** or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act."

With respect to employees who are not retained by NPC, the Government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs. [Emphasis supplied]

In turn, Rule 33, Section 1 of the IRR of the EPIRA provides:

SECTION 1. *General Statement on Coverage.* –

This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: *Provided, however,* That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

Thus, it is clear that based on the EPIRA and its IRR that all employees of TransCo are entitled to separation benefits, with an additional requirement imposed on casual or contractual employees — their appointments must have been approved or attested by the CSC. Hence, the COA correctly disallowed Miranda's separation benefit in the amount of ₱55,758.26 because it pertained to services rendered under the service contract which was not attested to by the CSC.

Lopez revisited

In an attempt to justify the award of separation benefits covering the entire period of Miranda's employment, TransCo relies on the pronouncement of this Court in *Lopez*. In the said case, the Court ruled that the lack of CSC approval or attestation alone could not negate government employment, *viz:*

> Petitioners are indeed regular employees of the MWSS. **The primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Likewise, the repeated and continuing need for the performance of the job has been deemed sufficient evidence of the necessity, if not indispensability of the activity to the business.** Some of the petitioners had rendered more than two decades of service to the MWSS. The continuous and repeated rehiring of these bill collectors indicate the necessity and desirability of their services, as well as the importance of the role of bill collectors in the MWSS.
>
> We agree with the CSC when it stated that the authority of government agencies to contract services is an authority recognized under civil service rules. However, said authority cannot be used to circumvent the laws and deprive employees of such agencies from receiving what is due them.
>
> The CSC goes further to say that petitioners were unable to present proof that their appointments were contractual in nature and submitted to the CSC for its approval, and that submission to and approval of the CSC are important as these show that their services had been credited as government service. The point is of no moment. Petitioners

were able to attach only two of such *Agreements* which bore the stamp of approval by the CSC and these are simply inadequate to prove that the other agreements were similarly approved. Even petitioners admit that subsequently *such Agreements* were no longer submitted to the CSC for its approval. **Still, the failure to submit the documents for approval of the CSC cannot militate against the existence of employer-employee relationship between petitioners and MWSS.** MWSS cannot raise its own inaction to buttress its adverse position.[18] [Emphases supplied]

In finding for therein petitioners that they were regular government employees, the Court applied the four-fold test, and found that the functions they performed reasonably necessary to the business of the MWSS. For the said reasons, they were considered regular government employees despite the absence of approval or attestation by the CSC.

It must be remembered, however, that the rules of employment in private practice differs from government service.[19] As astutely explained by our colleague Justice Marvic Leonen, that while a private employer should apply the four-fold test in determining employer-employee relationship as it is strictly bound by the labor code, a government employer or GOCC, must, apart from applying the four-fold test, comply with the rules of the CSC in determining the existence of employer-employee relationship.

The difference between private and public employment is readily apparent in our legal landscape. For one, the Labor Code[20] recognizes that the terms and conditions of employment of all government employees, **including those of GOCCs**, shall be governed by the civil service law, rules and regulations. Particularly, in cases of GOCCs created by special law, the terms and conditions of employment of its employees are particularly governed by its charter.

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[18] *Supra* note 12.

[19] *CSC v. Magnaye, Jr.*, 633 Phil. 353, 363 (2010).

[20] Article 282 (formerly Article 276).

Thus, it is high time that the pronouncements in *Lopez* be abandoned. The authorities cited in the said case pertained to private employers. As such, it was expected that the four-fold test, the reasonable necessity of the duties performed and other standards set forth in the Labor Code were used in determining employer-employee relationship. None of the cases cited involved the government as the employer, which poses a different employer-employee relationship from that which is present in private employment.

Also, the *Lopez* case was never cited as an authority in determining employer-employee relationship between the government and its employees. Consequently, it is best that *Lopez* be abandoned because it sets a precarious precedent as it fixes employer-employee relationship in the public sector in disregard of civil service laws, rules and regulations.

To summarize, employer-employee relationship in the public sector is primarily determined by special laws, civil service laws, rules and regulations. While the four-fold test and other standards set forth in the labor code may aid in ascertaining the relationship between the government and its purported employees, they cannot be overriding factors over the conditions and requirements for public employment as provided for by civil service laws, rules and regulations.

Disallowed amount need not be refunded

The Court, nevertheless, finds that TransCo and Miranda be excused from refunding the disallowed amount notwithstanding the propriety of the ND in question. In view of TransCo's reliance on *Lopez*, which the Court now abandons, the Court grants TransCo's petition *pro hac vice* and absolved it from any liability in refunding the disallowed amount.

On another note, even if the ND is to be upheld, Miranda should not be solidarily liable to refund the same. In *Silang v. COA,*[21] the Court had ruled that passive recipients of the

[21] G.R. No. 213189, September 8, 2015.

disallowed disbursements, who acted in good faith, are absolved from refunding the same,*viz:*

> **By way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts if they received the same in good faith.** Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. In *Lumayna v. COA*, the Court declared that notwithstanding the disallowance of benefits by COA, the affected personnel who received the said benefits in good faith should not be ordered to refund the disallowed benefits. xxx
>
> In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and *bona fide* members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. **Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case.** Therefore, said petitioners should not be held liable to refund what they had unwittingly received. [Emphases supplied]

In the present case, Miranda was a mere passive recipient as he had no involvement when the BOD passed the resolution[22] granting separation benefits to all TransCo employees. Thus, Miranda acted in good faith as he merely received the benefits to which he believed he was entitled to.

WHEREFORE, the petition is **GRANTED *pro hac vice.*** The March 19, 2015 Decision and December 23, 2015 Resolution

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[22] *Rollo,* pp. 53-56.

of the Commission on Audit are **REVERSED** and **SET ASIDE**. The Notice of Disallowance No. 11-003-(10) is **DISMISSED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Perez, Reyes, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Peralta, and *Perlas-Bernabe, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 161425. November 23, 2016]

ANIANO DESIERTO (Substituted by Simeon V. Marcelo) and MAUCENCIA ORDONEZ, *petitioners, vs.* **RUTH EPISTOLA and RODOLFO GAMIDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; A CASE IS CONSIDERED MOOT AND ACADEMIC WHEN IT CEASES TO PRESENT A JUSTICIABLE CONTROVERSY BY VIRTUE OF SUPERVENING EVENTS, THAT ADJUDICATION THEREOF WOULD BE OF NO PRACTICAL VALUE.— A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

2. ID.; EVIDENCE; FACTUAL FINDINGS OF THE OFFICE OF THE OMBUDSMAN ARE CONCLUSIVE WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— Findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Its factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of its special knowledge and expertise over matters falling under its jurisdiction. Substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case, or evidence beyond reasonable doubt as is required in criminal cases, it should be enough for a reasonable mind to support a conclusion.

3. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GROSS MISCONDUCT; PENALTY.— Section 420 of the Local Government Code empowers the barangay chairman to administer oaths only in matters relating to all proceedings in the implementation of the Katarungang Pambarangay. There was no record of a barangay conciliation proceeding where both parties appeared before the barangay chairman for an amicable settlement. Gamido thus had no business administering the oath in Jhomel's affidavit of retraction. x x x Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence. It is clear that Gamido took advantage of his position as barangay chairman to commit the unlawful acts charged against him. His administration of the oath in the affidavit is a blatant abuse of his power as the authority granted to him by law pertains only to matters relating to the barangay conciliation proceedings. The penalty for grave misconduct under Section 52(A)(2) of Rule IV of the Uniform

Rules on Administrative Cases in the Civil Service is dismissal from service. We affirm the penalty of suspension for one year imposed by the Ombudsman who took into consideration that respondents were first time offenders.

4. ID.; OMBUDSMAN ACT OF 1989 (RA 6770); SECTION 20 (5) ON WHEN THE OFFICE OF THE OMBUDSMAN MAY NOT CONDUCT THE NECESSARY INVESTIGATION OF ANY ADMINISTRATIVE ACT OR OMISSION COMPLAINED OF; MERELY DIRECTORY AND THE OMBUDSMAN IS NOT PROHIBITED FROM CONDUCTING INVESTIGATION A YEAR AFTER THE SUPPOSED ACT WAS COMMITTED.— In the case of *Office of the Ombudsman v. Andutan, Jr.*, the Court stressed that the provisions of Section 20(5) are merely directory and that the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed. x x x Furthermore, it was settled in the case of *Office of the Ombudsman v. Medrano* that the administrative disciplinary authority of the Ombudsman over a public school teacher is not an exclusive power but is concurrent with the proper committee of the Department of Education. The fact that a referral to the proper committee would have been the prudent thing to do does not operate to divest the Ombudsman of its constitutional power to investigate government employees including public school teachers.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
E.C. Rasing Law Office for respondent Rodolfo Gamido.

R E S O L U T I O N

PEREZ, *J.*:

This is a petition for review on certiorari assailing the Decision[1] dated 16 December 2003 of the Court of Appeals in CA-G.R.

[1] *Rollo*, pp. 34-49; Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes and Edgardo P. Cruz concurring.

SP No. 68508 which reversed the Office of the Deputy Ombudsman for Luzon's (Ombudsman) finding that respondents are administratively liable for simple neglect of duty and grave misconduct.

Respondent Ruth Epistola (Epistola), now deceased, was a public school teacher and class adviser, while Rodolfo Gamido (Gamido) was a Barangay Captain. Respondents are related.

This case arose from the death of Rustom Ordoñez (Rustom) due to drowning when he went to the river to gather water lilies for a class project. Rustom was a Grade V student at Bone North Elementary School in Aritao, Nueva Vizcaya. According to Rustom's classmate, Jhomel Patinio (Jhomel), Rustom, Harold Rafanan, Jayson Acosta and Rolly Fei Acosta were ordered by their class adviser Epistola to gather water lilies for the beautification of the school lagoon on 12 March 1999.[2] On the following day, Rustom sought permission from his grandmother Maucencia Ordoñez (Maucencia) to collect water lilies. Maucencia forbade Rustom from going but the latter sneaked out of the house and went to the river to gather lilies. Rustom drowned and instantaneously died.

Armed with Jhomel's 22 July 1999 Sworn Statement, Maucencia filed a criminal complaint on 8 December 1999 against Epistola before the Office of the Deputy Ombudsman for Luzon for reckless imprudence.

On 22 February 2000, Jhomel retracted his previous statement and attested that he heard Epistola assign Harold, and not Rustom, to gather water lilies. His Affidavit was sworn before Gamido.

Yet, on 16 June 2000, Jhomel executed another affidavit repudiating his earlier retraction. He explained that he was coerced into signing by respondents, along with five (5) other teachers, namely: Lorna Caser, Delia Cacal, Manuel Esperanza, Marilyn Serapon and Ernesto Gamido, inside the principal's office.

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[2] *Id*. at 35.

On 12 July 2000, Maucencia filed an administrative complaint against respondents and five other teachers of Bone North before the Office of the Deputy Ombudsman for Luzon for coercing Jhomel to retracting his statement on Epistola's complicity in Rustom's death.

Epistola strongly denied that she instructed Rustom to collect water lilies because the latter was then wearing a thick pair of eyeglasses. She claimed to have instructed only Harold and Jayson to gather water lilies.

Jayson executed an affidavit on 22 March 1999 before Barangay Captain Gamido narrating that he was one of those assigned by Epistola to gather water lilies; that he went to the house of Maucencia to fetch Rustom who earlier asked to accompany them to the field. Rustom was not allowed to go but the latter caught up with the group of Jayson when they reached the first irrigation canal. When the group was able to get some water lilies, Rustom insisted on going to the river to get more lilies. Upon reaching the river, Rustom immediately undressed and dived into the water. Rustom was able to reach the deep portion of the river before he started screaming for help because he was drowning. The group tried to rescue him but to no avail.

To counter Jhomel's accusation that he was coerced into signing the retraction, his classmate Harold executed an Affidavit on 3 October 2000 stating that he and Jayson were assigned by Epistola to gather water lilies. On the following day, Harold went to the fields where he was able to collect a sack full of lilies. He learned later in the day that his classmate Rustom drowned while bathing in the big river. Sometime in February 2000, Harold recalled that he and some of his classmates were summoned to the principal's office to meet the barangay captain of Bone North. He denied seeing the other teachers who could have intimidated Jhomel into retracting his prior statement.[3]

Two days earlier or on 1 October 2000, a purported affidavit from Jhomel made the following clarifications: that he was made

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

to sign a prepared affidavit on 16 June 2000 in the house of Maucencia; that the same was not explained to him nor did he appear before the Notary Public; that his statement on 22 February 2000 given at the principal's office in the presence of Gamido was not obtained by force, intimidation or threat for it was voluntarily given and even read and explained to him by his father; and that his 22 July 1999 retraction was also signed in the house of Maucencia.[4]

However, Jhomel executed an Affidavit dated 22 January 2001 denying that he executed or signed the 1 October 2000 affidavit. He alleged that his signature appearing thereon was forged.[5]

In lieu of a formal hearing, the parties submitted their respective memorandum.

On 7 June 2001, the Office of the Deputy Ombudsman for Luzon found Epistola guilty of simple neglect of duty for ordering Rustom to gather water lilies. Epistola, along with Gamido, was also found guilty of grave misconduct for tampering with evidence. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this office finds and so hold respondent Ruth Epistola guilty of simple neglect of duty for her act of ordering her pupil Rustom Ordonez to gather water lilies. Thus, her negligence to observe the demands of a substitute parent for her pupil, she is hereby meted the penalty of Suspension for One Month.

FURTHERMORE, respondent Barangay Captain Rodolfo Gamido and Ruth Epistola, acting in conspiracy for forging the signature of Jhomel Patinio, are also found guilty of Grave Misconduct. But since they are first offenders, they are hereby meted the penalty of one (1) year suspension without pay, there being no aggravating circumstances.

The charge against the other respondents is hereby recommended to be dismissed for lack of substantial evidence.[6]

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

[5] *Id*. at 12.

[6] *Id*. at 56.

The Ombudsman gave credence to Jhomel's declaration that Epistola did instruct Rustom to gather water lilies, which ultimately caused his death. In doing so, Epistola was instrumental in exposing her students to such danger that resulted in the death of Rustom; hence, she was found guilty of simple neglect of duty. Moreover, respondents were also found to have attempted to perverse the truth by executing retraction affidavits and falsifying Jhomel's signature; thus, they were found to have committed grave misconduct.

Respondents filed a Motion for Reconsideration but it was denied by the Ombudsman on 17 October 2001.

Respondents elevated the case to the Court of Appeals.

On 16 December 2003, the Court of Appeals reversed and set aside the Decision and Resolution of the Ombudsman. The appellate court gave more credence to Harold's sworn declaration that he and Jayson were the only ones assigned to gather the water lilies. The appellate court also considered the affidavit of Rustom's other companions that the latter had intended to swim and not to gather water lilies when he went into the river, resulting in his early demise. The appellate court chose to disregard Jhomel's conflicting statements. With respect to Gamido, the appellate court held that his relationship with Epistola does not by itself taint the proceeding in the principal's office in light of Jhomel's classmates' sworn declaration that no undue pressure was exerted upon Jhomel. Finally, the appellate court ruled that under the Ombudsman Law, the Ombudsman had no authority to conduct an investigation over the case because the complaint was filed one year after the occurrence of the act complained of. The appellate court added that it should have been the committee referred to in Section 9 of the Magna Carta for Public School Teachers that conducted the investigation of the administrative complaint.

The Ombudsman filed a petition for review on 18 February 2004 defending its factual findings as to the administrative liability of respondents. In particular, the Ombudsman insists that Gamido interfered and used his authority as Barangay

Chairman to compel the witness to retract his statement. The Ombudsman also stresses that Gamido participated in the falsification of the second affidavit of retraction by signing in the joint answer knowing that the affidavit attached thereto was falsified. The Ombudsman maintains that it exercises discretion in the conduct of administrative investigation.

Epistola died on 19 December 2006 while Gamido was no longer the Barangay Captain of Bone North as of 14 March 2003.

With respect to Epistola, the Court issued a Resolution dated 24 August 2009 dismissing the instant petition against her.[7]

In his Memorandum, Gamido denies coercing, intimidating or influencing Jhomel to execute the questioned affidavits. Gamido asserts that the Ombudsman merely focused on Jhomel's flip-flopping statements and failed to consider the accounts of the other witnesses to the case. Significantly, Gamido alleges that assuming he is guilty, his suspension is already moot and academic because he is no longer the barangay chairman of Bone North.

We deny the Petition for being moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[8]

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[7] *Id.* at 262.

[8] *Penafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, G.R. No. 208660, 5 March 2014, 718 SCRA 212, 217-218.

In the instant case, Gamido is no longer the incumbent barangay chairman of Bone North as far back as 2003. The expiration of his term as barangay chairman operates as a supervening event that mooted the present petition. The validity or invalidity of his suspension could no longer affect his tenure.

Notwithstanding the mootness of the petition, we shall make a categorical resolution on whether Gamido committed grave misconduct during his tenure as barangay chairman.

Findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Its factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of its special knowledge and expertise over matters falling under its jurisdiction.[9]

Substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case, or evidence beyond reasonable doubt as is required in criminal cases, it should be enough for a reasonable mind to support a conclusion.[10]

In finding that Gamido's actuations are tantamount to grave misconduct, the Ombudsman ratiocinated, thus:

> Relative to the Charge of Grave Misconduct arising from the alleged act of pressuring or unduly influencing Jhomel Patinio to execute retraction affidavits and to the extent of allegedly falsifying his signature, we find that, there was such an attempt to perverse the truth. The version of Jhomel Patinio that he was unduly pressured to execute the retraction affidavit is in full accord with the other

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[9] *Miro v. Vda. De Erederos*, 721 Phil. 772, 784 (2013).

[10] *Ombudsman Marcelo v. Bungubung*, 575 Phil. 538, 557-558 (2008).

corroborative evidence. These are: the undue interest exerted by Barangay Captain Gamido in taking, preparing and administering the first retraction affidavit of Jhomel Patinio when the said case was never referred to his office for official action and the variance in the signature of Jhomel Patinio in his retraction affidavit dated October 1, 2000 favoring respondent against his admitted usual signatures. The interest of respondent Barangay Captain is explained by the fact that he and respondent Ruth Epistola are relatives. The variance in Jhomel's signature, which was never sufficiently explained by the respondents with competent evidence, such as the employment of an "expert", suggests that there was falsification of his signature. The fact also that during the preliminary conference, Jhomel Patinio was with complainant and ready to testify for her, adds weight to complainant's allegation that the subject affidavit of retraction was given involuntarily by Jhomel Patinio.[11]

A review of the records of the case shows that the factual findings of the Ombudsman upon which its decision on Gamido's administrative liability was based are supported by the evidence on record. Gamido indeed administered Jhomel's retraction on 22 February 2000 at the principal's office. Section 420[12] of the Local Government Code empowers the barangay chairman to administer oaths only in matters relating to all proceedings in the implementation of the Katarungang Pambarangay. There was no record of a barangay conciliation proceeding where both parties appeared before the barangay chairman for an amicable settlement. Gamido thus had no business administering the oath in Jhomel's affidavit of retraction. Furthermore, the blood relationship between Gamido and Epistola emboldened the former to interfere in the case in favor of his relative by exerting undue influence on Jhomel to first retract his first sworn statement implicating Epistola in the death of Rustom.

Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior

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[11] *Rollo*, p. 56.

[12] SECTION 420. *Power to Administer Oaths*. – The Punong Barangay, as chairman of the Lupong Tagapamayapa, and the members of the pangkat are hereby authorized to administer oaths in connection with any matter relating to all proceedings in the implementation of the katarungang pambarangay.

or gross negligence by a public officer. Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.[13] It is clear that Gamido took advantage of his position as barangay chairman to commit the unlawful acts charged against him. His administration of the oath in the affidavit is a blatant abuse of his power as the authority granted to him by law pertains only to matters relating to the barangay conciliation proceedings.

The penalty for grave misconduct under Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service is dismissal from service. We affirm the penalty of suspension for one year imposed by the Ombudsman who took into consideration that respondents were first time offenders.

Lastly, we correct the erroneous interpretation and application by the Court of Appeals of Section 20(5) of Republic Act (R.A.) No. 6770 or the Ombudsman Act of 1989, which reads:

> Section 20. *Exceptions*. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
>
> (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
>
> (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
>
> (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
>
> (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
>
> (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

The Court of Appeals declared that the administrative complaint was filed beyond the period prescribed under R.A. No. 6770 when it was only filed on 12 July 2000, more than

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[13] *Lagoc v. Malaga*, 738 Phil. 623, 640 (2014).

one year after Epistola gave the questioned instruction on 12 March 1999.

In the case of *Office of the Ombudsman v. Andutan, Jr.*,[14] the Court stressed that the provisions of Section 20(5) are merely directory and that the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed. The Court expounded, thus:

> The issue of whether Section 20(5) of R.A. 6770 is mandatory or discretionary has been settled by jurisprudence. In Office of the Ombudsman v. De Sahagun, the Court, speaking through Justice Austria-Martinez, held:
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> > [W]ell-entrenched is the rule that administrative offenses do not prescribe [Concerned Taxpayer v. Doblada, Jr., A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218; Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476; Heck v. Judge Santos, 467 Phil. 798, 824 (2004); Floria v. Sunga, 420 Phil. 637, 648-649 (2001)]. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; Remolona v. Civil Service Commission, 414 Phil. 590, 601 (2001)].
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> Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:
>
> SEC. 20. Exceptions. – The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
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> x x x x x x x x x
>
> (5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)
>
> proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

[14] 670 Phil. 169 (2011).

In Melchor v. Gironella [G.R. No. 151138, February 16, 2005, 451 SCRA 476], the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; Jaramilla v. Comelec, 460 Phil. 507, 514 (2003)]. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; National Federation of Labor v. National Labor Relations Commission, 383 Phil. 910, 918 (2000)].

In Filipino v. Macabuhay [G.R. No. 158960, November 24, 2006, 508 SCRA 50], the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

> Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.
>
> Petitioner's argument is without merit.
>
> The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of

one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.[15]

Furthermore, it was settled in the case of *Office of the Ombudsman v. Medrano*[16] that the administrative disciplinary authority of the Ombudsman over a public school teacher is not an exclusive power but is concurrent with the proper committee of the Department of Education. The fact that a referral to the proper committee would have been the prudent thing to do does not operate to divest the Ombudsman of its constitutional power to investigate government employees including public school teachers.

All told, we reiterate that there is no justiciable controversy in view of the mootness of the suspension due to the fact that Gamido is no longer the barangay chairman of Bone North.

WHEREFORE, the Petition is **DENIED** for being moot and academic.

SO ORDERED.

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

Peralta, J., on wellness leave.

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[15] *Id.* at 179-181.

[16] 590 Phil. 762, 777 (2008).

THIRD DIVISION

[G.R. No. 169967. Novemebr 23, 2016]

COCA-COLA BOTTLERS PHILS., INC., EMMANUEL CURA, ANGEL LABAO, ALMEDO LOPEZ, and RUSTOM ALEJANDRINO, *petitioners, vs.* **IBM LOCAL I, REGNER SANGALANG and ROLANDO NACPIL**, *respondents.*

[G.R. No. 176074. November 23, 2016]

REGNER A. SANGALANG and ROLANDO V. NACPIL, *petitioners, vs.* **COCA-COLA BOTTLERS PHILS., INC. (CCBPI), EMMANUEL CURA, ANGEL LABAO, and RUSTOM ALEJANDRINO**, *respondents.*

[G.R. No. 176205. November 23, 2016]

COCA-COLA BOTTLERS PHILS., INC., EMMANUEL CURA, ANGEL LABAO, and RUSTOM ALEJANDRINO, *petitioners, vs.* **REGNER A. SANGALANG and ROLANDO NACPIL**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEAL TO THE COURT OF APPEALS; THE CA IS EMPOWERED TO REVIEW RULINGS EVEN IF THEY WERE NOT ASSIGNED AS ERRORS IN THE APPEAL.—** Undoubtedly, Section 8 of Rule 51 of the Revised Rules of Court recognizes the expansive discretionary power of the CA to consider errors not assigned on appeal. x x x Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving

at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. x x x Indeed, in the spirit of liberality infused in the Rules, the appellate court may overlook the lack of proper assignment of errors and consider errors not assigned in the appeal.

2. ID.; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; CONFLICT IN THE FINDINGS OF FACTS.— This Court is not unmindful that in a petition under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised. Where the findings of the NLRC contradict those of the LA, however, this Court, in the exercise of equity jurisdiction, may look into the records of the case and re-examine the questioned findings. In the instant case, the Court is constrained to re-examine the factual findings of both the LA and the CA, and that of the NLRC since they have different appreciations of the facts of the case.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROSS INSUBORDINATION; ELEMENTS.— In *Bascon v. CA*, this Court outlines the elements of gross insubordination as follows: As regards the appellate court's finding that petitioners were justly terminated for gross insubordination or willful disobedience, Article 282 of the Labor Code provides in part: An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. However, willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: **(1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.**

4. ID.; ID.; REQUIRES JUST AND VALID CAUSE, SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.— In *Zagala v. Mikado Philippines Corporation*, the Court ruled that: "[w]hile the power to dismiss is a formal prerogative of the employer, this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees, and dismissals must not be arbitrary and capricious. Due process must be observed and employers should respect and protect the rights of their employees which include the right to labor. Indeed, to effect a valid dismissal, the law requires not only that there be just and valid cause; it must also be supported by clear and convincing evidence."

5. ID.; ID.; ILLEGAL DISMISSAL; TWIN RELIEFS OF BACKWAGES AND REINSTATEMENT; IF REINSTATEMENT IS NOT VIABLE; SEPARATION PAY IS AWARDED.— An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.

6. ID.; ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES ARE RECOVERABLE ONLY WHERE THE DISMISSAL WAS ATTENDED BY BAD FAITH.— In *Audion Electric Co., Inc. v. NLRC*, the Court held that moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. A dismissal may be contrary to law but by itself alone; it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process. The person claiming moral

damages must prove the existence of bad faith by clear and convincing evidence for the law always presume good faith.

7. ID.; ID.; ID.; ID.; ATTORNEY'S FEES; PROPER WHERE THE COMPLAINANTS WERE FORCED TO LITIGATE TO SEEK REDRESS OF THEIR GRIEVANCES.— With respect to the award of attorney's fees, the Court finds the same, proper given the circumstances prevailing in the instant case, as well as the fact that the complainants have been forced to litigate from the LA to the NLRC, in the CA and all the way up to this Court in order to seek redress of their grievances. In *San Miguel Corporation v. Aballa*, this Court held that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article III of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules, and paragraph 7, Article 2208 of the Civil Code. Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from September 26, 2000 (date of termination) until fully paid.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for Coca-Cola Bottlers Phils. Inc., *et al.*

Nenita C. Mahinay for respondents Regner A. Sangalang & Rolando Nacpil.

D E C I S I O N

REYES, *J.*:

These three (3) consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court stemmed from a complaint for illegal dismissal filed by Regner A. Sangalang (Sangalang) and Rolando Nacpil (Nacpil) (collectively, the complainants) against Coca-Cola Bottlers Philippines, Inc. (CCBPI).

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[1] *Rollo* (G.R. No. 169967), pp. 5-49; *rollo* (G.R. No. 176074), pp. 10-36; *rollo* (G.R. No. 176205), pp. 15-44.

Antecedents

The facts are as follows:

Sangalang and Nacpil were hired by CCBPI on July 1, 1983 and July 16, 1972, respectively, as assistant syrupmen. They were assigned at the syrup room production department of CCBPI's San Fernando City, Pampanga plant.[2] The assistant syrupman in CCBPI had the following duties and responsibilities,[3] to wit:

1. PERFORMS ALL DUTIES OF THE SYRUP MAN AS MAY BE ASSIGNED OR DELEGATED BY THE SYRUP MAN OR BY THE PRODUCTION SUPERVISOR.
2. ACTS AS SYRUP MAN IN THE LATTER'S ABSENCE AND MEALBREAKS.
3. RESPONSIBLE FOR THE MAINTENANCE, CLEANLINESS, AND SMOOTH OPERATION OF THE SUGAR DUMPER AND ITS ACCES[S]ORIES.
4. RESPONSIBLE FOR THE PROPER HOUSEKEEPING AND CLEANLINESS OF THE PLAIN SYRUP ROOM, FILTER PRESS ROOM, AND FLAVORED SYRUP ROOM.
5. RESPONSIBLE FOR THE MAINTENANCE, CLEANLINESS, AND SMOOTH OPERATION OF THE VENTILATION FANS AND AIR CONDITIONING UNITS.
6. DUMPS THE REQUIRED AMOUNT AND TYPE OF SUGAR IN THE PLAIN SYRUP TANK DURING SYRUP PREPARATION.
7. POURS THE FLAVORING MATERIALS ON THE FLAVORED SYRUP TANK AS PER STANDARD MIXING INSTRUCTIONS.
8. CHECKS THE TOP OF SYRUP TANKS FOR OIL LEAKS FROM THE SPEED REDUCER OF THE PROPELLER.
9. RESPONSIBLE FOR THE PROPER STOCKING OF ALL MATERIALS IN THE SYRUP ROOM.

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[2] *Rollo* (G.R. No. 176205), pp. 539-540.

[3] *Rollo* (G.R. No. 169967), pp. 62-63.

10. REMOVES ALL EMPTY FIGALS, JUGS, BOXES, SEALS FROM THE FLAVORING MATERIALS USED AND DISPOSE THEM PROPERLY OUTSIDE THE SYRUP ROOM.

11. DURING THE WEEKEND MAINTENANCE AND CLEANING ACTIVITIES.

12. PERFORMS OTHER RELATED TASKS AND DUTIES THAT MAY BE ASSIGNED BY THE PRODUCTION SUPERVISOR.[4]

As a nationwide company practice, the duty of dumping caps/crowns belonged to the assistant syrupmen. In CCBPI's San Fernando City plant, however, this activity was passed on to the utility men sometime in 1982. After the positions of utility men were abolished, CCBPI engaged the services of independent contractors to perform the said activity and other allied services.[5]

On July 13, 2000, Quality Control Superintendent Angel T. Labao and Process Supervisor Jose P. Diaz held a meeting with the assistant syrupmen to advise the concerned employees of the management's decision to revert the duty of dumping caps/crowns to the assistant syrupmen which was supposed to be among the duties and responsibilities incumbent in said position in all of CCBPI's plants. The employees concerned, however, suggested that CCBPI instead regularize the contractual employees who were performing the dumping task because they feared that they might be held responsible for damages that CCBPI may suffer in carrying out two important tasks of production, namely, the preparation of syrup and dumping caps/crown at the cap bin.[6]

On August 16, 2000, another meeting was held to notify the assistant syrupmen that the proposed dumping activity was within their job description. The assistant syrupmen were likewise

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[4] *Id.* at 63.

[5] *Rollo* (G.R. No. 176205), pp. 541-542.

[6] *Id.* at 542.

informed that a dry run will be held on August 17, 2000 and its full implementation shall commence on August 21, 2000.[7] The following day after the dry run, CCBPI issued a Memorandum containing the dumping activity schedule which was sent to and received by the concerned employees, including the complainants.[8]

On August 22, 2000, Line 1 Production Supervisor Jovir Tomanan sent a Memorandum[9] to the management to report that the complainants refused to comply with CCBPI's order pertaining to the dumping of caps/crown on the ground that the same was not part of their responsibilities.

On the same day, CCBPI immediately sent a Notice to Explain[10] to the complainants, requiring them to explain in writing why no disciplinary action should be imposed against them for violating CCBPI's Code of Disciplinary Rules and Regulation (Code of Discipline). The notice reads as follows:

> Please explain in writing within twenty[-]four (24) hours, upon receipt hereof, why no disciplinary action should be imposed against you for violation of Section 22, Rule 003-85-Insubordination or Willful disobedience in complying with, or carrying out reasonable and valid order or instruction of superiors.
>
> As per attached incident report of Mr. Jovir Tomanan you refused to dump resealable caps closures at the cap bin of Line 1 causing stoppage of bott[l]ing operations during the 2nd shift operation of Line 1 on August 21, 2000 based on the schedule of crowns and caps dumping as per memo dated August 18, 2000.[11]

Section 22, Rule 003-85 of CCBPI's Code of Discipline provides:

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[7] *Id*. at 76.

[8] *Rollo* (G.R. No. 169967), p. 82.

[9] *Rollo* (G.R. No. 176205), p. 79.

[10] *Id*. at 80-81.

[11] *Id.*

Sec. 22. Insubordination or willful disobedience in complying with, or carrying out reasonable and valid order or instructions of superiors, whether committed within a calendar year or not, analogous cases:

First offense	15 days suspension
Second offense	30 days suspension
Third offense	DISCHARGE[12]

On the same day, the complainants submitted a letter and denied that the stoppage of the bottling operations was attributable to them. They claimed that the same was deliberately stopped by the Bottling Supervisor with the intention of passing the blame to them as a result of their refusal to perform the dumping activity. Also, the letter stated that they will submit the required written explanation after consultation with their counsel.[13]

On August 23, 2000, the complainants did not again perform the dumping activity by refusing to accept the key to the dumping area when the Line 1 Production Supervisor on duty, Edgar M. Reyes, handed it to them.[14] On the same day, CCBPI issued a Notice of Investigation[15] to the complainants for violation of Section 22, Rule 003-85 of CCBPI's Code of Discipline on August 21, 2000.

Meanwhile, on August 24, 2000, the complainants were served a second Notice to Explain[16] for violation of the same Code of Discipline's provision for their failure to perform the dumping activity on August 23, 2000.

On August 24, 2000, the complainants again refused to accept the key to the dumping area and perform the assigned duty to dump caps/crowns. Accordingly, a third Notice to Explain[17] dated August 25, 2000 was served to require them to explain why they should not be held liable for violation of the Code of

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[12] *Rollo* (G.R. No. 169967), p. 60.

[13] *Rollo* (G.R. No. 176205), p. 82.

[14] *Id.* at 85.

[15] *Id.* at 83-84.

[16] *Id.* at 87-88.

[17] *Id.* at 92.

Discipline. Additionally, the complainants were placed under preventive suspension for 30 days from August 26, 2000 to September 24, 2000 pursuant to Article III, Section 4 of the Collective Bargaining Agreement and Sections 3 and 4 of Rule XIV, Book V of the Implementing Rules and Regulations of the Labor Code. Also, on the same day, CCBPI issued a second Notice of Investigation[18] against the complainants for their August 23, 2000 violation.

On September 1, 2000, CCBPI issued a Notice of Consolidation of Investigation[19] informing the complainants of the scheduled investigation on September 4, 2000 for their alleged insubordination during the scheduled dumping of cap/crowns on August 21, 23, and 24, 2000. The same, however, was re-scheduled to September 5, 2000 upon the request of the union's counsel and union officer Alfredo Maranon.[20]

On September 5, 2000, the consolidated investigation for violation of Section 22, Rule 003-85 of the CCBPI's Code of Discipline in relation to Article 282 of the Labor Code on insubordination, willful disobedience, and serious misconduct was conducted. During the investigation, the complainants' counsel opted to submit a joint affidavit in lieu of a question and answer type of investigation.[21]

After review and deliberations, CCBPI issued on September 22, 2000 an Inter-Office Memorandum,[22] where it found the complainants guilty of the offenses charged and meted a penalty of dismissal effective on September 25, 2000. Consequently, the complainants filed a Complaint[23] for illegal dismissal where they asked, among others, to be reinstated to their former positions.

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

[19] *Id*. at 94-95.

[20] *Id*. at 100-101.

[21] *Id*. at 110-113.

[22] *Id*. at 114-121.

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

On December 14, 2001, the Labor Arbiter (LA) rendered a Decision[24] declaring the complainants to have been illegally dismissed after finding CCBPI's order for the reversion of the duty of dumping caps/crown to the assistant syrupmen unreasonable and unlawful. Thus, the LA ruled that the complainants' refusal to perform such additional duty was justified. The dispositive portion reads as follows:

> **WHEREFORE**, foregoing premises considered, judgment is hereby rendered declaring as illegal the termination of the complainants. Respondents [CCBPI], Virgilio Olivarez, Emmanuel L. Cura, Angel Labao, Almedo Lopez and Rustum R. Alejandrino are hereby ordered to cause the immediate actual or payroll reinstatement of the complainants. Further, the named respondents are hereby enjoined to jointly and solidarily pay complainants the total amount of **FOUR HUNDRED FIVE THOUSAND and FORTY[-]THREE PESOS AND 30/100 (₱405,043.30)** representing complainants' full backwages. Further, respondents are ordered to pay complainants attorney's fees equivalent to ten [percent] (10%) of the total monetary award.
>
> In the event that reinstatement could no longer be attained, respondents are hereby ordered to pay complainants their separation pay in the total amount of **SIX HUNDRED NINE THOUSAND THREE HUNDRED TWELVE PESOS AND 08/100 (₱609,312.08)** in addition to their backwages.
>
> SO ORDERED.[25]

Aggrieved, CCBPI consequently filed its appeal to the National Labor Relations Commission (NLRC). On June 28, 2002, the NLRC issued a Decision[26] reversing the LA's decision. The NLRC declared that the LA encroached on CCBPI's prerogative

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[24] Rendered by Executive Labor Arbiter Eduardo J. Carpio; *rollo* (G.R. No. 176074), pp. 279-290.

[25] *Id.* at 289-290.

[26] Penned by Commissioner Ireneo B. Bernardo, with Presiding Commissioner Lourdes C. Javier and Tito F. Genilo concurring; *rollo* (G.R. No. 169967), pp. 292-307.

to conduct its business when it ruled that CCBPI should have just instead regularized its contractual employees who were already carrying out the said task. Further, the NLRC ruled that the LA erred when it considered the three-day refusal of the complainants as one act of insubordination. It ruled that in three occasions, the complainants were found by CCBPI to have violated its Code of Discipline, which clearly merits the penalty of dismissal. However, the NLRC stated that the offense did not involve moral turpitude; thus, it ordered CCBPI to award the complainants separation pay. It disposed, to wit:

> WHEREFORE, premises considered, the 14 [December] 2001 [Decision] of Executive [LA] is hereby Reversed and Set Aside and a new one entered Dismissing the instant complaint for lack of merit. Respondents, however, is directed to grant financial assistance to the complainants in the amount equivalent to one-half (1/2) month salary per year of service.
>
> SO ORDERED.[27]

Both parties moved for the reconsideration[28] of the NLRC decision. On October 18, 2004, the NLRC issued a Decision[29] denying both motions for reconsiderations but with modification that the complainants be awarded financial assistance of one (1) month salary for every year of service.

> WHEREFORE, complainants-appellees' Motion for Reconsideration and respondents-appellants' Motion for Reconsideration are DENIED.
>
> Accordingly, We AFFIRM our June 28, 2002 decision with the modification that [the complainants] are awarded financial assistance of one (1) month salary for every year of service.
>
> SO ORDERED.[30]

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[27] *Id*. at 306.

[28] *Id*. at 308-314, 315-349.

[29] *Id*. at 351-363.

[30] *Id*. at 363.

Unable to agree, both parties filed their respective petitions for *certiorari* under Rule 65 with the Court of Appeals (CA) assailing the decision of the NLRC.[31]

CCBPI's appeal to the CA was docketed as CA-G.R. SP. No. 88026, assigned to the 3rd Division of the CA. CCBPI questioned the decision of the NLRC as to the award of financial assistance in favor of the complainants in the amount of one (1) month pay for every year of service.[32]

Meanwhile, the complainants' appeal was docketed as CA-G.R. SP No. 87997, assigned to the CA 17th Division. They claimed that the NLRC erred and committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it reversed the decision of the LA, which was contrary to law and evidence on records. They likewise assailed the decision of the NLRC in denying their claim for damages and litigation costs.[33]

Regrettably, these two appeals of the parties were not consolidated in the CA.

CA-G.R. SP. No. 88026

On June 28, 2005, acting on CCBPI's appeal, the CA 3rd Division in CA-G.R. SP. No. 88026 set aside the NLRC decision and reinstated the judgment rendered by the LA.[34] Thus, the CA disposed:

WHEREFORE, the Decisions of the NLRC are hereby **SET ASIDE**, and the judgment rendered by the Executive [LA] is **REINSTATED** and **AFFIRMED in all respect**.

SO ORDERED.[35]

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[31] *Id*. at 364-389, 398-421.

[32] *Id*. at 387.

[33] *Id*. at 419.

[34] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. Delos Santos and Arturo D. Brion concurring; *id*. at 424-437.

[35] *Id*. at 437.

The CA 3rd Division ruled that the punishment of dismissal for a first-time offense was too harsh citing CCBPI's Code of Discipline where it was stated that the penalty for first time offense is only for 15 days of suspension. It also ruled that the behavior of the complainants did not constitute the "wrongful and perverse attitude" that merited dismissal considering that the surrounding circumstances indicate that they were only motivated by their honest belief that the dumping activity was not among their official duties and responsibilities. CCBPI filed a Motion for Reconsideration (MR)[36] but the same was denied by the CA in a Resolution[37] dated September 21, 2005.

Hence, CCBPI went up to this Court assailing said decision of the CA 3rd Division in CA-G.R. SP. No. 88026. This was docketed as G.R. No. 169967.

CA-G.R. SP No. 87997

With respect to the complainants' appeal, the CA 17th Division in CA-G.R. SP No. 87997 rendered a Decision[38] on August 31, 2006, annulling and setting aside the NLRC's decision and reinstating the LA's decision. It, however, modified the same by deleting the award of backwages and, instead, ordered CCBPI to pay the complainants separation pay. The dispositive portion of which reads as follows:

> **WHEREFORE**, the assailed decision of public respondent NLRC is **ANNULLED** and **SET ASIDE**. The [LA's] Decision is **REINSTATED** but **MODIFIED** by the deletion of the award of backwages and in its stead, private respondent [CCBPI] is **ORDERED** to pay [the complainants] separation pay, for the reasons earlier stated.
>
> **SO ORDERED**.[39]

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[36] *Id.* at 440-453.

[37] *Id.* at 456-458.

[38] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rebecca De Guia-Salvador and Ramon R. Garcia concurring; *rollo* (G.R. No. 176275), pp. 539-552.

[39] *Id.* at 551.

The CA 17th Division conceded that CCBPI was merely exercising a valid management prerogative in requiring the complainants to perform the disputed additional task. However, the penalty of dismissal was too harsh under the circumstances. The CA found tenable the complainants' argument that the insubordination committed by them merely constituted a single violation which warranted the penalty of only 15 days suspension following the schedule of penalties provided for in Section 22 of the Code of Discipline.

From this decision of the CA 17th Division in CA-G.R. SP. Nos. 87997, CCBPI filed a petition for review with this Court, docketed as G.R. No. 176205. The complainants, likewise, filed their own petition for review, docketed as G.R. No. 176074.[40]

On March 28, 2007, this Court issued a Resolution[41] consolidating the three petitions.

The Issues

The following are the assigned errors of the CA:

In G.R. No. 169967:

I. THE CA SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING AND SETTING ASIDE THE DECISIONS OF THE NLRC AND IN REINSTATING THE DECISION OF THE LA NOTWITHSTANDING THE FACT THAT THE PETITION FOR *CERTIORARI* DID NOT OPEN THE WHOLE CASE FOR REVIEW AS THE SAME WAS LIMITED [sic] A DETERMINATION OF THE PROPRIETY OF THE AWARD OF FINANCIAL ASSISTANCE OF ONE (1) MONTH SALARY FOR EVERY YEAR OF SERVICE IN FAVOR OF THE COMPLAINANTS DESPITE THE FINDING THAT THE DISMISSAL WAS VALID AND LEGAL.

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[40] *Rollo* (G.R. No. 176074), pp. 10-36.

[41] *Rollo* (G.R. No. 176205), p. 604.

II. THE CA SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING AND SETTING ASIDE THE DECISIONS OF THE NLRC AND REINSTATING THE DECISION OF THE LA NOTWITHSTANDING THE FACT THAT THE NLRC CORRECTLY RULED THAT THE COMPLAINANTS' CONTINUING INSUBORDINATION OF THE LAWFUL ORDERS OF THE COMPANY WARRANT THE PENALTY OF DISMISSAL FROM SERVICE UNDER SECTION 22, RULE 003-85 OF THE CODE OF DISCIPLINE.

III. THE CA SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION IN DISMISSING THE PETITION FOR *CERTIORARI* NOTWITHSTANDING THE FACT THAT THE AWARD OF FINANCIAL ASSISTANCE EQUIVALENT TO ONE (1) MONTH PAY FOR EVERY YEAR OF SERVICE IN FAVOR OF THE COMPLAINANTS HAS NO BASIS IN FACT OR IN LAW.[42]

In G.R. No. 176074:

I. THE HONORABLE CA 17TH DIVISION SERIOUSLY ERRED IN METING THE PENALTY OF DISMISSAL TO THE COMPLAINANTS, DESPITE ITS CLEAR FINDING THAT THEY HAVE COMMITTED ONLY A SINGLE ACT OF INSUBORDINATION WHICH MERELY WARRANTS THE PENALTY OF SUSPENSION FOR A PERIOD OF 15 DAYS, CONTRARY TO LAW AND COMPANY RULES AND REGULATIONS.

II. THE HONORABLE CA SERIOUSLY ERRED IN FAILING TO RESOLVE THE COMPLAINANTS' CLAIM FOR DAMAGES, AND LITIGATION COSTS.[43]

In G.R. No. 176205:

I. THE QUESTIONED DECISION AND RESOLUTION OF THE CA SHOULD BE REVERSED AND SET ASIDE

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[42] *Rollo* (G.R. No. 169967), pp. 23-24.

[43] *Rollo* (G.R. No. 176074), p. 23.

CONSIDERING THAT THE AWARD OF SEPARATION PAY IN FAVOR OF THE COMPLAINANTS IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.[44]

Ruling of the Court

The CA is empowered to review rulings even if they were not assigned as errors in the appeal.

Before this Court proceeds in deciding the case, it is imperative to resolve first the procedural issue raised by CCBPI, wherein it argued that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled on the legality of the complainants' termination despite the fact that the only issue raised on appeal pertains to the monetary judgment rendered by the NLRC. To support their argument, CCBPI relies upon the sound procedural precept that only errors specifically assigned may be considered on appeal.

Undoubtedly, Section 8 of Rule 51 of the Revised Rules of Court recognizes the expansive discretionary power of the CA to consider errors not assigned on appeal. It provides:

> 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.

Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case

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[44] *Rollo* (G.R. No. 176205), p. 36.

or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[45]

The instant case falls squarely under the third exception. Since CCBPI appealed the matter of financial assistance which was based on the termination of the complainants, the legality of their termination was therefore open to further evaluation.

Indeed, in the spirit of liberality infused in the Rules, the appellate court may overlook the lack of proper assignment of errors and consider errors not assigned in the appeal.[46]

The complainants' refusal to perform the additional duties of dumping caps/crowns is a single continuous act which constitutes only a single offense of insubordination

This Court is not unmindful that in a petition under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised.[47] Where the findings of the NLRC contradict those of the LA, however, this Court, in the exercise of equity jurisdiction, may look into the records of the case and re-examine the questioned findings.[48]

In the instant case, the Court is constrained to re-examine the factual findings of both the LA and the CA, and that of the

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[45] *Buñing v. Santos*, 533 Phil. 610, 615-616 (2006).

[46] *Dee Hwa Liong Electronics Corporation (DEECO) and/or Dee v. Papiona*, 562 Phil. 451, 456 (2007).

[47] *Land Bank of the Philippines v. Spouses Chico*, 600 Phil. 272, 285 (2009).

[48] *Abel v. Philex Mining Corporation*, 612 Phil. 203, 213 (2009).

NLRC since they have different appreciations of the facts of the case.

CCBPI argues that since the complainants deliberately refused to perform their additional assigned task of dumping caps/crowns on three (3) different occasions: August 21, August 23, and August 24, 2000, they have already committed three (3) offenses of insubordination which warrants a penalty of dismissal from service pursuant to Section 22, Rule 003-85 of CCBPI's Code of Discipline.[49]

The argument is without merit.

The CA correctly ruled that the failure of the complainants to perform their additional assigned task on three (3) separate instances constitutes merely a single offense. The Court quotes:

> We take notice of the company's efforts to comply with the two-notice requirement that would otherwise validate a dismissal from employment by its act of serving upon [the complainants] three (3) notices requiring them to explain the commission of three (3) alleged acts of insubordination committed on three (3) separate dates. But bearing in mind the constitutionally enshrined mandate to afford protection to labor, **this Court finds that the refusal of [the complainants] to abide by the schedule of dumping caps/crowns on separate dates constitutes only a single continued defiance of the company's lawful order**. The circumstances in this case show that although [the complainants] refused to carry out the task on three separate dates, it must be noted that what they were, in fact, rejecting was the new activity which they truly believed was not part of their job description.[50] (Emphasis ours)

Moreover, the records of the case clearly show that what the complainants opposed was the implementation of the additional task of dumping caps/crowns given to the assistant syrupmen and not the schedule of the dumping activity. As it is, their continuous refusal to perform such additional task merely translates to one single offense, *i.e.* the performance of the dumping activity. This is even supported by the fact that the

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[49] *Rollo* (G.R. No. 169967), p. 60.

[50] *Rollo* (G.R. No. 176205), p. 548.

complainants did not even attempt to perform the dumping activity since the start of its implementation.

CCBPI's termination of the complainants for insubordination is illegal.

In *Bascon v. CA*,[51] this Court outlines the elements of gross insubordination as follows:

> As regards the appellate court's finding that petitioners were justly terminated for gross insubordination or willful disobedience, Article 282 of the Labor Code provides in part:
>
> An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
>
> However, willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two requisites: **(1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude**; and **(2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge**.[52] (Emphasis ours)

In the present case, CCBPI argues that the position description of the assistant syrupmen requires the complainants to "perform other related tasks and duties that may be assigned by the Production Supervisor." Moreover, CCBPI contends that they have been considerate in taking time to discuss the re-alignment of activities with all syrup room personnel prior to its implementation.

The Court, however, finds CCBPI's contention untenable.

On the first requisite, an examination of the position description for the assistant syrupmen clearly indicates that

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[51] 466 Phil. 719 (2004).

[52] *Id*. at 730.

the additional tasks and duties allowed to be given to the employees are limited to the performance of activities related to the responsibilities of assistant syrupmen. In the present case, the other duties and responsibilities of the assistant syrupmen, which CCBPI did not controvert, refer to syrup preparation, tanks sanitation, batching of syrup, slow pouring of concentrates, maintenance of the plain and flavored syrup room, withdrawal of concentrates, and any work/job inside the plain and flavored syrup room.[53] Clearly, these additional responsibilities mainly refer to works related to the syrup preparation and not to dumping caps/crowns.

The second requisite is also lacking in the present case. The refusal of the complainants was not without basis. According to them, their apprehensions to perform the additional task were based on their legitimate fear of handling two equally critical and sensitive positions. Apparently, their behavior did not constitute the wrongful and perverse attitude that would sanction their dismissal. The surrounding circumstances indicate that the complainants were motivated by their honest belief that the Memorandum was indeed unlawful and unreasonable.

In sum, the Court agrees that the complainants were indeed bound to obey the lawful orders of CCBPI, but only as long as these pertain to the duties as indicated in their position description. The order to perform the additional task of dumping caps/crowns, however, while being lawful, is not part of their duties as assistant syrupmen.

In *Zagala v. Mikado Philippines Corporation*,[54] the Court ruled that: "[w]hile the power to dismiss is a formal prerogative of the employer, this is without limitations. The employer is bound to exercise caution in terminating the services of his employees, and dismissals must not be arbitrary and capricious. Due process must be observed and employers should respect and protect the rights of their employees which include the right to labor. Indeed, to effect a valid dismissal, the law requires

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[53] *Rollo* (G.R. No. 176074), pp. 542-543.

[54] 534 Phil. 711 (2006).

not only that there be just and valid cause; it must also be supported by clear and convincing evidence."[55]

At any rate, dismissal was too harsh a penalty for the omission imputed to them. Considering that CCBPI's own rules provide for a progression of disciplinary measures to be meted out on erring employees, there is no showing that CCBPI imposed on the complainants the lesser penalties first, before imposing on them the extreme penalty of termination from employment. Also, this Court observes that the complainants had been in the service of CCBPI for the past 20 years and nowhere in the records does it appear that they committed any previous infractions of company rules and regulations.

Considering that the complainants were illegally terminated, they are entitled to backwages and separation pay.

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[56]

In the present case, the NLRC found that actual animosity existed between the complainants and CCBPI as a result of the filing of the illegal dismissal case. Such finding, especially when affirmed by the appellate court as in the case at bar, is

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[55] *Id.* at 721-722.

[56] *General Milling Corp. v. Casio, et al.*, 629 Phil. 12, 38 (2010).

binding upon the Court, consistent with the prevailing rules that this Court will not try facts anew and that findings of facts of quasi-judicial bodies are accorded great respect, even finality. Clearly then, the complainants are entitled to backwages *and* separation pay as their reinstatement has been rendered impossible due to strained relations.

The complainants are not entitled to damages.

In *Audion Electric Co., Inc. v. NLRC*,[57] the Court held that moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[58]

A dismissal may be contrary to law but by itself alone; it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presume good faith.[59]

After a careful review of the case, however, the Court finds that the complainants failed to present clear and convincing evidence to show that their termination had been carried out in an arbitrary, capricious and malicious manner. As such, the awards of moral and exemplary damages are not warranted.

The award of attorney's fees is proper under the circumstances.

With respect to the award of attorney's fees, the Court finds the same proper given the circumstances prevailing in the instant

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[57] 367 Phil. 620 (1999).

[58] *Id.* at 635.

[59] *Manila Water Company, Inc. v. Pena*, 478 Phil. 68, 84 (2004).

case, as well as the fact that the complainants have been forced to litigate from the LA to the NLRC, in the CA and all the way up to this Court in order to seek redress of their grievances.

In *San Miguel Corporation v. Aballa*,[60] this Court held that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules, and paragraph 7, Article 2208 of the Civil Code.[61]

Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from September 26, 2000 (date of termination) until fully paid.[62]

WHEREFORE, premises considered, the consolidated petitions are hereby **DENIED**. The Decision dated December 14, 2001 of the Executive Labor Arbiter is **REINSTATED and AFFIRMED in all respect**. Coca-Cola Bottlers Philippines, Inc. is further **ORDERED to PAY** attorney's fees in the amount of ten percent (10%) of the total monetary award; and that legal interest shall be imposed on the monetary award at the rate of six percent (6%) *per annum* from September 26, 2000 (date of termination) until fully paid.

SO ORDERED.

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

Peralta, J., on official leave.

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[60] 500 Phil. 170 (2005).

[61] *Id*. at 210.

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

[*] Designated additonal Member per Raffle dated February 2, 2015 *vice* Associated Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 194417. November 23, 2016]

HEIRS OF TEODORO CADELIÑA, represented by SOLEDAD CADIZ VDA. DE CADELIÑA, *petitioners, vs.* **FRANCISCO CADIZ, CELESTINO DELA CRUZ, ANTONIO VICTORIA, HEIRS OF TELESFORO VILLAR represented by SAMUEL VILLAR, FRANCISCO VICTORIA and MAGNO GANTE,** *respondents;* **HON. JOSE C. REYES, JR., in his capacity as Presiding Justice, HON. NORMANDIE PIZARRO, in his capacity as Member, and HON. RICARDO R. ROSARIO, in his capacity as Member of the Court of Appeals Special Former Third Division,** *public respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* UNAVAILING WHERE APPEAL IS THE PROPER REMEDY AND APPEAL PERIOD HAS LAPSED; EXCEPTIONS.— It does not escape us that the right recourse against the dismissal of petitioners' appeal with the CA is an appeal by *certiorari* under Rule 45, and not *certiorari* under Rule 65, of the Revised Rules of Court. The Assailed Decisions were final and appealable judgments, which disposed of petitioners' appeal in a manner left nothing more to be done by the CA. As a rule, the existence and availability of this right to appeal precludes the resort to *certiorari* since a petition for *certiorari* under Rule 65 of the Revised Rules of Court may only be resorted to in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. x x x Nevertheless, when we are convinced that substantial justice will be defeated by the strict application of procedural rules that are, ironically, intended for the *just*, speedy and inexpensive disposition of cases on the merits, we will not hesitate to overlook the procedural technicalities. While ordinarily, *certiorari* is unavailing where the appeal period has lapsed, there are exceptions, as when: (a) the public welfare and the advancement

of public policy dictates; (b) *the broader interest of justice so requires*; (c) the writs issued are null and void; or (d) the questioned order amounts to an oppressive exercise of judicial authority.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE (RA 3844) SUPERSEDING LEASEHOLD AND SHARE TENANCY (RA 1199); THE DETERMINATION OF THE EXISTENCE OF AN AGRICULTURAL LEASEHOLD RELATION IS NOT ONLY A FACTUAL ISSUE BUT ALSO AN ISSUE DETERMINED BY LAW; HOW ESTABLISHED AND REQUISITES.— Under RA No. 3844 otherwise known as the Agriculture Land Reform Code, which superseded RA No. 1199, the determination of the existence of an agricultural leasehold relation is not only a factual issue, but is also an issue determined by the terms of the law. RA No. 3844 provides that agricultural leasehold relation is established: (1) by operation of law in accordance with Section 4 of the said act as a result of the abolition of the agricultural share tenancy system under RA No. 1199, and the conversion of share tenancy relations into leasehold relations; or (2) by oral or written agreement, either express or implied. x x x For agricultural tenancy or agricultural leasehold to exist, the following requisites must be present: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is an agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between landowner and tenant or agricultural lessee. The absence of any of the requisites does not make an occupant, cultivator, or a planter, a *de jure* tenant which entitles him to security of tenure or to coverage by the Land Reform Program of the government under existing tenancy laws. In *Cunanan v. Aguilar*, we held that a tenancy relationship can only be created with the true and lawful landowner who is the owner, lessee, usufructuary or legal possessor of the land.

APPEARANCES OF COUNSEL

Dumlao-Duque Law Offices for petitioners.
Melosino L. Respicio for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for *certiorari*[1] under Rule 65 of the Revised Rules of Court seeking to nullify the Court of Appeals' (CA) May 25, 2009 Resolution[2] and September 22, 2010 Resolution[3] in CA-G.R. SP No. 108414 (collectively, Assailed Resolutions). The Assailed Resolutions dismissed the petition for review under Rule 43 of the Revised Rules of Court filed by the Heirs of Teodoro Cadeliña represented by Soledad Cadiz Vda. De Cadeliña (petitioners), against the July 5, 2006 Decision[4] and the March 11, 2009 Resolution[5] of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Cases Nos. 10543 and 10554.[6] The DARAB granted the complaint[7] filed by Francisco Cadiz, Celestino Dela Cruz, Antonio Victoria and heirs of Telesforo Villar, represented by Samuel Villar, (respondents) for reinstatement of possession as farmer tenants.

The Facts

Respondents filed complaints for reinstatement of possession as farmer tenants against petitioners with the DARAB-Region

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[1] *Rollo,* pp. 4-18.

[2] *Id.* at 97-98; penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Martin S. Villarama, Jr. and Normandie B. Pizarro.

[3] *Id.* at 99-101; penned by Associate Justice Jose C. Reyes, and concurred in by Associate Justices Normandie B. Pizarro and Ricardo R. Rosario.

[4] CA *rollo,* pp. 14-20.

[5] *Rollo,* pp. 91-93.

[6] The May 25, 2009 Resolution of the CA identified the DARAB cases as DARAB Cases Nos. 1053-1043. *Id.* at 97.

[7] *Id.* at 73-76.

2, San Fermin, Cauayan, Isabela docketed as DARAB Cases Nos. II-2063-ISA 2000 and II-2064-ISA 2000.[8] Respondents alleged that they were the farmers/tillers of portions[9] of Lot No. 7050, Cad. 211, Santiago Cadastre (properties), "ownership then claimed by Nicanor Ibuna, Sr. [who is] their landowner," since 1962 until around the end of 1998 when they were deprived of their respective possessions, occupations and tillage of the properties.[10] This was allegedly brought about by the execution of the decision of the CA in a previous case (CA-G.R. CV No. 42237)[11] ordering the transfer of the properties to Teodoro Cadeliña (Teodoro) and his heirs, petitioners herein.

Petitioners moved to dismiss the complaint on the ground that respondents cannot be considered as tenants under land reform law because they were instituted by Nicanor Ibuna, Sr. (Ibuna) whose rights were declared by the court illegal and unlawful in CA-G.R. CV No. 42237 and that the DARAB has no jurisdiction to entertain the case for lack of tenancy relationship between the parties.[12]

In its Decision[13] dated October 24, 2000, the DARAB, Region 2, San Fermin, Cauayan, Isabela ruled in favor of respondents. The DARAB declared Ibuna as legal possessor of the properties who had the right to institute respondents as tenants of the properties. The DARAB said, "[w]hile the title of the late Nicanor Ibuna was subsequently declared null and void by the [CA in CA-G.R. CV No. 42237], he is deemed considered as legal possessor of the subject land" and "[a]s legal possessor, the late Ibuna has the right to grant to the herein plaintiffs the cultivation of the land pursuant to Section 6 of [Republic Act

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[8] *Id.* at 8; 94.

[9] The portions are the following: (1) Francisco Cadiz – Lot A since 1962; (2) Celestino Dela Cruz – Lot B since 1972; (3) Antonio Victoria – Lot E since 1962; (4) Teodoro Villar – Lot 1 since 1972. *Id.* at 73-74.

[10] *Id.*

[11] *Id.* at 19-62.

[12] *Id.* at 79.

[13] *Id.* at 78-83.

(RA) No.] 3844, as amended, otherwise known as the Agricultural Land Reform Code."[14] As a result, respondents are entitled to security of tenure in working on the properties. Thus, the DARAB: (1) declared respondents the tenants of the properties; (2) ordered petitioners, their heirs, agent, or any person(s) acting on their behalf to vacate the land in issue and to deliver the possession and cultivation of said lands to respondents; (3) ordered respondents to pay lease rentals to petitioners in accordance with Section 34 of RA No. 3844; and (4) ordered petitioners to pay respondents attorney's fees and honoraria in the amount of ₱20,000.00.[15]

This was appealed before the DARAB Quezon City (DARAB Cases Nos. 10543-10544) which denied the appeal in its Decision dated July 5, 2006. A motion for reconsideration was also denied in the March 11, 2009 Resolution. Thereafter, petitioners filed the petition for review under Rule 43 before the CA.

On May 25, 2009, the CA dismissed the petition for not being sufficient in form and in substance.[16] In their Motion for Reconsideration,[17] petitioners attached the missing special power of attorney in favor of Enor C. Cadeliña and the certified original copies of the pertinent DARAB decisions and resolution, and

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[14] *Id.* at 80.

[15] *Id.* at 83.

[16] *Id.* at 97-98.The CA dismissed the petition for the following reasons: (1) no special power of attorney was attached to the petition showing that the signatory, Enor C. Cadeliña, was authorized to sign the verification and certification against forum shopping for and on behalf of petitioners; (2) no concise statement of facts and issues involved and grounds relied upon for the review as required by Section 6(b) Rule 43 of the Revised Rules of Court; (3) the petition was not accompanied by pertinent and important documents and pleadings to support its allegations thereof as required by Section 6(c) Rule 43 of the Revised Rules of Court; (4) the attached assailed decision and resolution of the DARAB were mere photocopies; (5) no explanation as to why personal service of the petition was not resorted as required by Section 11, Rule 13 of the Revised Rules of Court; and (6) the addresses of the parties were not indicated in the petition.

[17] CA *rollo*, pp. 124-142.

cited inadvertence and excusable negligence for the other procedural lapses. The CA, however, denied the motion in the September 22, 2010 Resolution which petitioners received on September 29, 2010.[18]

Hence, this petition filed on November 26, 2010,[19] where petitioners argue that the CA committed grave abuse of discretion in dismissing the petition based on procedural grounds, and for ignoring the merits of the petition. According to them, there is a conflict between the decision in CA G.R. CV No. 42237 annulling the titles of respondents and declaring the homestead patents of Teodoro lawful, and the DARAB Decision dated October 24, 2000 declaring respondents as tenants.[20]

The Issue

Whether the CA committed grave abuse of discretion in dismissing the petition for review based on procedural grounds.

Our Ruling

We grant the petition.

Technical rules of procedure may be set aside in order to achieve substantial justice.

It does not escape us that the right recourse against the dismissal of petitioners' appeal with the CA is an appeal by *certiorari* under Rule 45, and not *certiorari* under Rule 65, of the Revised Rules of Court.[21] The Assailed Decisions were final and appealable judgments, which disposed of petitioners' appeal in a manner left nothing more to be done by the CA.[22] As a rule, the existence and availability of this right to appeal precludes

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[18] *Rollo*, p. 5.

[19] *Id.* at 4.

[20] *Id.* at 13.

[21] See *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 577-579.

[22] *Id*. at 577.

the resort to *certiorari* since a petition for *certiorari* under Rule 65 of the Revised Rules of Court may only be resorted to in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[23] Corollarily, we have repeatedly ruled that *certiorari* is not and cannot be made a substitute for a lost appeal. As such, this case would have been dismissed outright for failure of petitioners to avail of the proper remedy.

Nevertheless, when we are convinced that substantial justice will be defeated by the strict application of procedural rules that are, ironically, intended for the *just*, speedy and inexpensive disposition of cases on the merits, we will not hesitate to overlook the procedural technicalities. While ordinarily, *certiorari* is unavailing where the appeal period has lapsed, there are exceptions, as when: (a) the public welfare and the advancement of public policy dictates; (b) *the broader interest of justice so requires*; (c) the writs issued are null and void; or (d) the questioned order amounts to an oppressive exercise of judicial authority.[24] Thus, we said in *Pahila-Garrido v. Tortogo*:[25]

> We also observe that the rule that a petition should have been brought under Rule 65 instead of under Rule 45 of the *Rules of Court* (or *vice versa*) is not inflexible or rigid. The inflexibility or rigidity of application of the rules of procedure is eschewed in order to serve the higher ends of justice. Thus, substance is given primacy over form, for it is paramount that the rules of procedure are not applied in a very rigid technical sense, but used only to help secure, not override, substantial justice. **If a technical and rigid enforcement of the rules is made, their aim is defeated. Verily, the strict application of procedural technicalities should not hinder the speedy disposition of the case on the merits.** To institute a guideline, therefore, the *Rules of Court* expressly mandates that the rules of procedure "shall be liberally construed in order to promote their

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[23] *Id.* at 576-578.

[24] *Associated Anglo-American Tobacco Corporation v. Court of Appeals*, G.R. No. 167237, April 23, 2010, 619 SCRA 250, 257.

[25] G.R. No. 156358, August 17, 2011, 655 SCRA 553.

objective of securing a just, speedy and inexpensive disposition of every action and proceeding."[26] (Emphasis supplied.)

The record shows that the facts of this case are undisputed and we are only presented with questions of law which we are readily able to decide. The issues only involve the determination of whether respondents are *de jure* tenants entitled to security of tenure under our land reform laws, and consequently, of the jurisdiction of the DARAB to order the restoration of possession of petitioners' properties to respondents. After review, we hold that since the merits of the petition far outweigh the rigid application of the rules, there is a need to suspend the rules in this case to achieve substantial justice.

This is all the more true when the strict application of technical rules of procedure will result in a decision that will disturb already settled cases. We are mindful of the impact that the dismissal of this petition may have on the final and executory decisions not only in CA-G.R. CV No. 42237 (declaring Ibuna's title as void, and upholding petitioners' homestead over the properties), but also in a much earlier case involving the denial of the free patent application of Ibuna over the properties (which also declared his title void) in Department of Agriculture and Natural Resources (DANR) Case No. 2411.[27] We take notice that we affirmed this order of the Secretary of DANR in DANR Case No. 2411 in our Resolution in G.R. No. L-30916 dated April 25, 1988.[28]

Respondents are not agricultural leasehold lessees entitled to security of tenure.

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[26] *Id.* at 572, citing *Salinas, Jr. v. National Labor Relations Commission*, G.R. No. 114671, November 24, 1999, 319 SCRA 54; *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166; and *Caraan v. Court of Appeals*, G.R. No. 124516, April 24, 1998, 289 SCRA 579.

[27] *Rollo*, pp. 23-24.

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

We first address petitioners' claim that there is inconsistency between respondents' position of claiming ownership in CA-G.R. CV No. 42237, and their claim of tenancy relationship in this case. While we have previously held that "[t]enancy relationship is inconsistent with the assertion of ownership,"[29] this is not applicable in the case of respondents. Records show that respondents were previously issued title (albeit nullified in CA-G.R. CV No. 42237) under Section 3[30] of Presidential Decree No. 152,[31] which gives a share tenant actually tilling the land the preferential right to acquire the portion actually tilled by him.[32] Respondents' assertions of ownership over the properties in CA-G.R. CV No. 42237 were only but a consequence of their previous status as alleged tenants of Ibuna; their claims of tenancy status and ownership were successive, and not simultaneous. Thus, particular to the circumstances of their case, there was no conflict between their assertion of ownership in CA-G.R. CV No. 42237 and of tenancy in this case.

Nevertheless, respondents' claim of tenancy relationship fails.

Under RA No. 3844,[33] otherwise known as the Agriculture Land Reform Code, which superseded RA No. 1199,[34] the

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[29] *Arzaga v. Copias*, G.R. No. 152404, March 28, 2003, 400 SCRA 148, 153.

[30] 3. Lands covered by application or grants that have been rejected, cancelled or revoked for violation of this Decree shall be disposed of to other qualified persons who will till the land themselves but **the share tenant actually tilling the land shall be entitled to preferential right to acquire the portion actually tilled by him if he is not otherwise disqualified to apply for the same** under the provisions of the Public Land Act. (Emphasis supplied.)

[31] Prohibiting the Employment or the Use of Share Tenants in Complying with Requirements of Law Regarding Entry, Occupation, Improvement and Cultivation of Public Lands, Amending for the Purpose Certain Provisions of Commonwealth Act No. 141, as amended, Otherwise Known as the Public Land Act (1973).

[32] *Rollo*, p. 48.

[33] RA No. 3844 took effect on August 8, 1963.

[34] An Act to Govern the Relations Between Landholders and Tenants of Agricultural Lands (Leaseholds and Share Tenancy) (1954).

determination of the existence of an agricultural leasehold relation is not only a factual issue, but is also an issue determined by the terms of the law. RA No. 3844 provides that agricultural leasehold relation is established: (1) by operation of law in accordance with Section 4 of the said act as a result of the abolition of the agricultural share tenancy system under RA No. 1199, and the conversion of share tenancy relations into leasehold relations; or (2) by oral or written agreement, either express or implied.[35] While petitioners Cadiz and Victoria claim to be instituted as tenants in 1962 or during the effectivity of RA No. 1199, and petitioners Villar and Dela Cruz claim to be instituted in 1972 or during the effectivity of RA No. 3844, the principles in establishing such relationship in cases before us have been the same for both laws.

For agricultural tenancy or agricultural leasehold to exist, the following requisites must be present: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is an agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between landowner and tenant or agricultural lessee.[36] The absence of any of the requisites does not make an occupant, cultivator, or a planter, a *de jure* tenant which entitles him to security of tenure or to coverage by the Land Reform Program of the government under existing tenancy laws.[37]

In *Cunanan v. Aguilar*,[38] we held that a tenancy relationship can only be created with the true and lawful landowner who is

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[35] *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, G.R. No. 169589, June 16, 2009, 589 SCRA 236, 247-248. Citations omitted.

[36] *Rodriguez v. Salvador*, G.R. No. 171972, June 8, 2011, 651 SCRA 429, 437.

[37] *Reyes v. Heirs of Pablo Floro*, G.R. No. 200713, December 11, 2013, 712 SCRA 692, 705.

[38] G.R. No. L-31963, August 31, 1978, 85 SCRA 47.

the owner, lessee, usufructuary or legal possessor of the land, to wit:

> Under the foregoing factual milieu, private respondent's claims—(1) that petitioner was not agricultural tenant, and (2) that the recognition by the Court of Agrarian Relations of his alleged tenancy status has been secured thru misrepresentation and suppression of facts—must prevail.
>
> (1) By petitioner's own claim filed with the CAR in 1970 he was constituted as tenant on the land by Pragmacio Paule. Paule was, however, ordered to vacate the holding and surrender the same to private respondents herein, the heirs of Ciriaco Rivera, as early as December 8, 1964 by the final and executory judgment in Civil Case No. 1477. Therefore, Paule's institution of petitioner as tenant in the holding did not give rise to a tenure relationship. **Tenancy relationship can only be created with the consent of the true and lawful landowner who is the owner, lessee, usufructuary or legal possessor of the land. It cannot be created by the act of a supposed landowner, who has no right to the land subject of the tenancy, much less by one who has been dispossessed of the same by final judgement.**[39] (Emphasis supplied; citations omitted.)

In this case, Ibuna's institution of respondents as tenants did not give rise to a tenure relationship because Ibuna is not the lawful landowner, either in the concept of an owner or a legal possessor, of the properties. It is undisputed that prior to the filing of the complaint with the DARAB, the transfers of the properties to Ibuna and his predecessor, Andres Castillo, were declared void in separate and previous proceedings.[40] Since the transfers were void, it vested no rights whatsoever in favor of Ibuna, either of ownership and possession. It is also for this reason that the DARAB erred in declaring Ibuna as a legal possessor who may furnish a landholding to respondents. That which is inexistent cannot give life to anything at all.[41]

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[39] *Id.* at 58.

[40] *Rollo*, p. 80.

[41] See *Tongoy v. Court of Appeals*, G.R. No. L-45645, June 28, 1983, 123 SCRA 99, 121.

Notably, upholding Ibuna as the legal possessor of the properties is inconsistent with petitioners' homestead since a homestead applicant is required to occupy and cultivate the land for his own and his family's benefit, and not for the benefit of someone else.[42] Also, it must be recalled that the CA, in CA-G.R. CV No. 42237, ordered respondents to reconvey the properties to petitioners herein.[43] Upholding respondents' claim for tenancy, and consequently their possession of the properties, would frustrate this final and executory decision of the CA.

There being no agricultural tenancy relationship between petitioners and respondents, the DARAB acted beyond its jurisdiction when it ordered petitioners, among other things, to restore possession of the lands to respondents.

WHEREFORE, the petition is **GRANTED**. The DARAB Quezon City Decision dated July 5, 2006 and the Resolution dated March 11, 2009 in DARAB Cases Nos. 10543 and 10544, as well as the affirmed Decision of the DARAB-Region 2 dated October 14, 2000, are hereby **SET ASIDE**. The complaints in DARAB Case Nos. II-2063-ISA 2000 and II-2064-ISA 2000 are **DISMISSED**.

No costs.

SO ORDERED.

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

Peralta, J., on official leave.

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[42] *Saltiga de Romero v. Court of Appeals*, G.R. No. 109307, November 25, 1999, 319 SCRA 180, 190-191, citing Section 90(e) of the Public Land Act. Section 90(e) provides:

Sec. 90. Every application under the provisions of this Act shall be made under oath and shall set forth: x x x

(e) That the application is made for the exclusive benefit of the application and not, either directly or indirectly, for the benefit of any other person or persons, corporation, association, or partnership.

[43] *Rollo,* p. 61.

FIRST DIVISION

[G.R. No. 198664. November 23, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-Appellee, vs.* **OWEN MARCELO CAGALINGAN and BEATRIZ B. CAGALINGAN,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THE TRIAL COURT, RESPECTED.—** The factual findings of the CA are accepted because the Court is not a trier of facts. Such findings, which affirmed those of the RTC as the trial court, are now even binding on us. This is because the RTC had the unique advantage to observe the witnesses' demeanor while testifying, and the personal opportunity to test the accuracy and reliability of their recollections of past events, both of which are very decisive in a litigation like this criminal prosecution for the serious crime of illegal recruitment committed in large scale where the parties have disagreed on the material facts. The Court may revise such findings in its rare and extraordinary role of a trier of facts only when the appellants convincingly demonstrate that such findings were either erroneous, or biased, or unfounded, or incomplete, or unreliable, or conflicted with the findings of fact of the CA. Alas, that demonstration was not made herein.

2. **ID.; EVIDENCE; DENIAL; FAILS AS AGAINST AFFIRMATIVE ASSERTIONS.—** In contrast, the accused-appellants offered only denial. Such defense was futile because denial, essentially a negation of a fact, did not prevail over the affirmative assertions of the fact. The courts — trial as well as appellate — have generally viewed denial in criminal cases with considerable caution, if not outright rejection. This dismissive judicial attitude comes from the recognition that denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. Denial, to be worthy of consideration at all, should be substantiated by clear and convincing evidence. Hence, the appeal of the accused should also fail because it relied solely on negative

and self-serving negations. Verily, the denial carried no weight in law and had no greater evidentiary value than the testimonies of credible witnesses of the Prosecution who testified on affirmative matters.

3. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS' ACT; ILLEGAL RECRUITMENT IN LARGE SCALE; PENALTY.— Under Section 7 (b) of the *Migrant Workers' Act*, the penalty for illegal recruitment in large scale is life imprisonment and fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. Although Republic Act No. 10022, approved on March 8, 2010, has since introduced an amendment to the *Migrant Workers' Act* to raise the imposable fine to not less than ₱2,000,000.00 nor more than ₱5,000,000.00, the amendment does not apply herein because the illegal recruitment subject of this case was committed in October and November, 2002, or long before the amendment took effect. Accordingly, we hold that the RTC and CA correctly imposed life imprisonment and fine of ₱1,000,000.00.

4. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; PENALTY.— For the three counts of *estafa*, the relevant legal provision is Article 315, first paragraph, of the *Revised Penal Code* x x x The minimum of the indeterminate sentence for each count of *estafa* is fixed within the range of the penalty next lower to that prescribed by Article 315 of the *Revised Penal Code*, which is *prision correccional* in its minimum period to *prision correccional* in its medium period (*i.e.*, six months and one day to four years and two months). The RTC imposed the minimum of four years, nine months, and eleven days of *prision correccional*, thereby exceeding the legal range for the minimum of the indeterminate sentence. Accordingly, the minimum of the indeterminate sentence is reduced to four years of *prision correccional* considering the absence of any modifying circumstances. As to the maximum term for each count of *estafa* under the *Indeterminate Sentence Law*, the maximum period of the prescribed penalty is first determined, and the incremental penalty of one year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00 is then added, provided that the total penalty shall not exceed 20 years. To compute the maximum period of the prescribed penalty, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three

equal portions, with each portion forming a period. Based on the computation, the maximum period for *prision correccional* maximum to *prision mayor* minimum is from six years, eight months, and 21 days to eight years. The incremental penalty, when proper, shall thus be added to anywhere from six years, eight months, and 21 days to eight years, at the discretion of the court. In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year is disregarded. For the maximum term of the three counts of *estafa*, the RTC imposed nine years. We note that the RTC ordered the gravest imposable penalty within the range (eight years of *prision mayor* plus the one-year incremental penalty). However, because neither the RTC nor the CA found the attendance of any modifying circumstance, we reduce the maximum to six years, eight months, and 21 days of *prision mayor* and add the incremental penalty of one year, or a total of seven years, eight months, and 21 days. Finally, in line with prevailing jurisprudence, the accused-appellants shall pay interest of 6% *per annum* on the respective amounts due to each of the complainants, reckoned from the finality of this decision until the amounts are fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

Illegal recruitment is a crime committed by a person who, not having the valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers, undertakes any of the activities within the meaning of "recruitment and placement" mentioned in Article 13(b) of the *Labor Code*, or any of the prohibited practices enumerated in Section 6 of Republic Act No. 8042 (*Migrant Workers' Act*), against three or more persons, individually or as a group.

The Case

The accused-appellants assail the decision promulgated on March 18, 2011,[1] whereby the Court of Appeals (CA) affirmed their convictions for illegal recruitment in large scale and three counts of *estafa* handed down on November 25, 2004 by the Regional Trial Court (RTC), Branch 18, in Cagayan de Oro City.[2]

Antecedents

The factual and procedural antecedents, as summarized by the CA, are as follows:

> Accused-appellants Owen Marcelo Cagalingan (Owen) and Beatriz B. Cagalingan (Beatriz) (accused spouses) were charged with Illegal Recruitment in Large Scale before the Regional Trial Court of Cagayan de Oro City in a complaint initiated by private complainants Reynalyn B. Cagalingan (Reynalyn), Roselle Q. Cagalingan (Roselle), Laarni E. Sanchez (Laarni), Norma R. Cagalingan (Norma); and Arcele J. Bacorro (Arcele). Accused-appellants were likewise indicted for three (3) counts of *estafa* in the same court by private complainants Reynalyn, Roselle, and Arcele, docketed as Criminal Case Nos. 2003-124, 2003-125, and 2003-238, respectively.
>
> The information in Criminal Case No. 2003-173, which charged the accused with illegal recruitment in large scale reads, as follows:
>
> > "That on or about and during the period from the months of October up to November, 2002, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, representing themselves to have the capacity to contract, enlist, hire and transport Filipino workers for employment in Macau, China, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement to the following persons:

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[1] *Rollo,* pp. 3-24; penned by Associate Justice Rodrigo F. Lim, Jr. (retired), with Associate Justice Angelita A. Gacutan (retired) and Associate Justice Nina G. Antonio-Valenzuela concurring.

[2] CA *rollo,* pp. 75-99; penned by Presiding Judge Edgardo T. Lloren (now a Member of the Court of Appeals).

1. Reynalyn B. Cagalingan
2. Roselle Q. Cagalingan
3. Laarni E. Sanchez
4. Norma R. Cagalingan; and
5. Arcele J. Bacorro

Without first having secured or obtained the required license or authority from the government agency.

Contrary to and in Violation of Section 6, in relation to Section 7(b) of RA 8042, the Migrant Workers and Overseas Filipinos Act of 1995."

That in Criminal Case No. 2003-124 for the crime of *estafa*, the information reads:

"That on or about November 23, 2002 in the City of Cagayan de Oro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud Reynalyn Cagalingan in the following manner, to wit: the said accused, by means of false manifestation and fraudulent representations which they made to said Reynalyn Cagalingan to the effect that they had the power and capacity to recruit and employ her abroad as a worker in Macao, China and could facilitate the pertinent papers, if given the necessary amount, to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing the said Reynalyn Cagalingan to give and deliver, as in fact the latter gave and deliver (sic), to said accused the amount of Php 40,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of Php 40,000.00 which amount once in their possession, with intent to defraud, they willfully, unlawfully and feloniously appropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said Reynalyn Cagalingan in the aforesaid amount of Php 40,000.00, Philippine Currency.

Contrary to Article 315 (2)(a) of the Revised Penal Code."

That in Criminal Case No. 2003-125 for the crime of *estafa*, the information reads:

"That on or about November 22, 2002 in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud Roselle Cagalingan in the following manner, to wit: the said accused, by means of false manifestation and fraudulent representations which they made to said Roselle Cagalingan to the effect that they had the power and capacity to recruit and employ her abroad as a worker in Macau, China and could facilitate the pertinent papers, if given the necessary amount, to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing the said Roselle Cagalingan to give and deliver, as in fact the latter gave and deliver (sic), to said accused the amount of Php 40,000.00 on the strength of said manifestation and fraudulent representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of Php 40,000.00 which amount once in their possession, with intent to defraud, they willfully, unlawfully and feloniously appropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said Roselle Cagalingan in the aforesaid amount of Php. 40,000.00, Philippine Currency.

CONTRARY to Article 315 (2)(a) of the Revised Penal Code."

And that in Criminal Case No. 2003-238 for *estafa*, the information reads:

"That on October 28, 2002, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud Arcele J. Bacorro in the following manner, to wit: accused by means of false pretenses and fraudulent representations, which they made to said Arcele J. Bacorro representing that they had the power and capacity to recruit and employ her to work at Macau, China and by means of their similar deceits, induced and succeeded in inducing the said Arcele J. Bacorro to give and deliver, as in fact the latter did give and deliver (sic), to said accused the amount of Php 40,000.00 as placement fee well-knowing that their representations were false and fraudulent and made solely to

obtain, as in fact they did obtain the amount of Php 40,00.00 which amount once in their possession, accused willfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal, use, gain and benefit, to the damage and prejudice of the offended party Arcele J. Bacorro in the aforesaid sum of ₱40,000.00, Philippine Currency.

Contrary to and in violation of Article 315 (2)(a) of the Revised Penal Code."

Warrants of arrest against accused spouses were issued on various dates and accused spouses were arrested on May 26, 2003 in Vigan, Ilocos Sur. Nevertheless, due to budgetary constraints, accused spouses were brought to the court *a quo* only on June 4, 2004.

Thereafter, upon arraignment both accused assisted by counsel pleaded "not guilty" to the crimes charged. Joint trial ensued thereafter.

The prosecution presented as witnesses the following: private complainants Arcele, Reynalyn, Laarni, and Roselle; Leonardo G. Rodrigo (Leonardo), Officer-in-Charge of the Philippine Overseas Employment Administration (POEA)-Regional Extension Unit-10, Cagayan de Oro City; and Marichu Damasing (Marichu), Branch Clerk of Court, Branch 1, MTCC–Cagayan de Oro City. The evidence presented by the prosecution established the following facts.

On different dates and occasions, private complainants were recruited by Accused Spouses to work in Macau, China for a fee. Accused spouses Owen and Beatriz were from Vigan, Ilocos Sur but Owen grew up and finished his high school education in Cagayan de Oro City. Owen is the first cousin of the husbands of private complainants Reynalyn and Roselle and the nephew of the husband of private complainant Norma.

Private complainant Arcele testified that she met accused spouses on October 28, 2002 at around 12 o'clock noon, at the house of private complainant Norma. The latter introduced accused spouses to her and she was told by accused Owen that her wife, accused Beatriz, was asked by her employer, a certain Lu Ting Hoi Simon, of Macau, China to hire office workers who are computer literate to work at Mandarin Oriental Hotel. Beatriz confirmed this information and added that she was even given a leave of absence by her employer just to come home in order to hire workers. It was Owen who explained to her about the job and the requirements like: passport, bio-data, Diploma in lieu of Transcript of Records, and Forty Thousand Pesos

(₱40,000.00) for roundtrip tickets and documentation fees as Beatriz could not speak Visayan.

On November 6, 2002, Arcele paid Fifteen Thousand Pesos (₱15,000.00) to accused Owen and subsequently, another ₱5,000.00 after she mortgaged her house in order to raise the required amount. She was issued a receipt for the ₱20,000.00 and was told that the balance of ₱20,0000.00 was needed for the documentation fee. She was likewise told that her departure for Manila would be on November 22, 2002 and on November 23, 2002 for Macau, China. Nonetheless, as she was not able to pay the ₱20,000.00 before the scheduled date, her departure was postponed. Hence, on November 23, 2002, she paid in full the balance of ₱20,000.00 without receipt as she trusted accused spouses. The departure was rescheduled on November 29, 2002 for Manila at 3 o'clock in the afternoon and on November 30, 2002 for Macau, China. They further agreed that Accused Spouses would fetch her at her house at 12 o'clock noon on November 29, 2002. Unfortunately, on the said date and time, accused spouses failed to appear. Hence, she decided to proceed to Cagayan de Oro City airport and look for accused spouses but the latter were not around. Instead, she met the other recruits at the airport and they all realized that they were victims of illegal recruitment. She and the other private complainants went home aggrieved and humiliated.

Private complainant Reynalyn likewise recounted that accused Owen was the first cousin of her husband and accused spouses were introduced to her by her parents-in-law on October 4, 2002 as the latter stayed at the house of her parents-in-law located adjacent to her house. Accused Owen offered to help her find work in Macau, China as accused Beatriz was allegedly asked by her employer to find Filipino workers who could replace the Taiwanese and Protuguese workers in Mandarin Oriental Hotel at Macau, China. As Reynalyn was not a college graduate, she was told that she could be assigned at the laundry section with a salary rate equivalent to Eighteen Thousand Pesos (₱18,000.00) per month. She was told to secure her passport, to fill-up the bio-data with Chinese character and to pay ₱40,000.00 for plane tickets and other documents. She paid accused spouses the said amount and a receipt was issued to her. However, on the scheduled date of departure to Manila on November 29, 2002, she waited for accused spouses at the airport but to her disappointment, the latter failed to show up.

Another prosecution witness, private complainant Laarni, also testified that it was private complainant Roselle who informed her

that accused spouses were recruiting workers for Macau, China. On October 21, 2002, she met Roselle together with accused spouses and the latter asked her if she was willing to work in Macau. She was asked about her educational background and upon knowing that she is an AB Journalism graduate, and took up computer informatics, Beatriz assured her that she could work in Macau. She was offered as office secretary for a two (2) years contract with a salary of ₱18,000.00 a month. She was then given a bio-data with Chinese characters with a corresponding English translation to fill up and was required to submit her transcript of records, diploma, certificate of employment and a photocopy of her passport. She was also required to pay ₱40,000.00 for the processing fee, plane ticket and documentation. Thereafter, accused spouses made follow-ups at the office of her father at Branch 1, MTCC-Cagayan de Oro City.

On November 20, 2002, she met accused spouses again at the office of her father and she told accused spouses that she might not proceed with her application as she was able to raise only ₱11,500.00 and the said amount was even borrowed from a lending institution. Accused Spouses nonetheless accepted the said amount and told her that the balance of the payment would be deducted from her salary in Macau, China. Thereafter, Accused Spouses issued a receipt and she was told that her departure for Manila would be on November 29, 2002 and they would just meet at Cagayan de Oro airport at 1 o'clock in the afternoon. However, on the said date, she did not find accused spouses at the airport and upon inquiry from the airline counter she was informed that their names were not on the plane manifest.

The testimony of Laarni as to the receipt of ₱11,500.00 was collaborated by prosecution witness Marichu Damasing. She testified that the said amount was received by Beatriz and the latter even counted the money at her table. The receipt was prepared by Laarni's father and was signed by Beatriz and witnessed by her. She further testified that upon receipt of the said amount, accused spouses left the office.

Corollarily, private complainant Roselle narrated that she met accused spouses on October 4, 2002 at the house of her mother-in-law. Accused spouses told her that they would be hiring workers for Macau, China and considering that at that time she was jobless, she told them of her interest to apply for work. She was then offered the position of an office clerk for two (2) years with a monthly salary

of ₱22,000.00 and was asked to submit the required documents and to pay ₱40,000.00 as placement fee. Albeit it was the first time she met them, yet, she trusted them considering that Owen was the first cousin of his husband and they were staying at the same house. On November 20, 2002, she initially paid ₱20,000.00 and on November 26, 2002, the balance of ₱20,000.00. A receipt was issued to her and she was told that her departure to Manila would be on November 29, 2002. Upon the request of accused spouses, a "despidida" party was held on November 28, 2002 at the house of private complainant Reynalyn located just beside the house of her mother-in-law.

She further narrated that on November 29, 2002, accused spouses left the house of her mother-in-law at about 8 o'clock in the morning and told her that they would go to Gusa, Cagayan de Oro City to attend another "despidida" party and they would just meet at the airport. Accordingly, at about 12 o'clock noon, she and other private complainants were already at the Cagayan de Oro City airport but accused spouses were not around. They stayed at the airport until 5 o'clock in the afternoon but still accused spouses did not show up. Together with the other private complainants, they proceeded to Macabalan, Cagayan de Oro City at the house of Arcele and stayed there until 12 o'clock midnight as she was ashamed of her neighbours (sic). When she finally got home, she and her family checked the bag of accused spouses which was left at the house of her mother-in-law and to their surprise, the bag contained pillows only. Hence, she reported the incident and upon verification with the POEA she learned that Accused Spouses were not licensed recruiters.

The prosecution likewise presented Leonardo, the officer-in-charge of the POEA–Regional Extension Unit-10. At the trial, he issued certifications upon requests of private complainants Reynalyn, Roselle, Arcele and Norma certifying that upon verification of their computer database, accused spouses were neither licensed nor authorized to recruit workers and/or applicants for employment abroad.

On the other hand, the accused spouses denied the charges against them and argued that they neither recruited nor promised private complainants any work in Macau and explained that it was very difficult to find work in Macau, China unless they have relatives or siblings working there who could find work for them and who could recommend them to their employers. Albeit they admitted to be in Cagayan de Oro City sometime in August and September 2002, yet, they denied being in Cagayan de Oro City sometime in October and November

2002 as alleged by private complainants. They admitted that they met private complainants on different occasions while they were in Cagayan de Oro City as some of them were relatives of accused Owen but they asserted that they neither offered any work nor required private complainants to submit any documents and pay any amount for possible work in Macau. In fact, it was private complainants who requested them to find work for them in Macau but they turned down their requests as it was very difficult to find work in said place. They likewise denied having received any money from private complainants because they were not in Cagayan de Oro City when the alleged payments were made and as indicated in the receipts and they further testified that some of the private complainants were hard up and were incapable of producing the said amount. They could not think of any reason why private complainants accused them and filed charges against them except that they turned down their requests for job placements in Macau, China.[3]

Judgment of the RTC

On November 25, 2004, the RTC rendered judgment convicting the accused-appellants,[4] disposing:

IN THE LIGHT OF ALL THE FOREGOING, the court finds accused OWEN MARCELO CAGALINGAN and BEATRIZ B. CAGALINGAN **GUILTY beyond reasonable doubt** of violating Section 6 of Republic Act 8042, otherwise known as "Migrant Workers and Overseas Filipinos Act of 1995" (Criminal Case No. 2003-173). Accordingly, they are hereby sentenced and are **SO ORDERED** to suffer the penalty of **LIFE IMPRISONMENT**, and for each accused to pay a fine of One Million Pesos (₱1,000,000.00).

Both accused are jointly and severally directed and **SO ORDERED** to pay to Mrs. Arcele J. Bacorro the sum of Forty Thousand Pesos (₱40,000.00), with legal interest to start from the date of the promulgation of this judgement until fully satisfied, as refund for the plane ticket and documentation fee; **SO ORDERED** to pay Mrs. Reynalyn Cagalingan the sum of Forty Thousand Pesos (₱40,000.00), with legal interest to start from the date of promulgation until fully satisfied as refund for the plane ticket and affidavit of support; **SO**

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[3] *Rollo,* pp. 5-17.

[4] *Supra* note 2.

ORDERED to pay Mrs. Roselle Q. Cagalingan the sum of Forty Thousand Pesos (₱40,000.00), with legal interest to start from the date of the promulgation until fully satisfied, as refund for the plane ticket and affidavit of support; **SO ORDERED** to pay Miss Laarni E. Sanchez the sum of Eleven Thousand Five Hundred Pesos (₱11,500.00), with legal interest to start from the promulgation until fully satisfied, as refund for the processing fee.

The Court likewise finds OWEN MARCELO CAGALINGAN and BEATRIZ B. CAGALINGAN **GUILTY beyond reasonable doubt** (in Criminal Case No. 2003-124) of violating paragraph 2(a) of Article 315 of the Revised Penal Code, for swindling Reynalyn Cagalingan the sum of ₱40,000.00 with the promised (sic) to employ her in Macao, (sic) China. Accordingly, after applying the Indeterminate Sentence law, both accused are hereby sentenced and **SO ORDERED** to suffer the imprisonment of *Four (4) Years Nine Months and Eleven (11) days of Prision Correccional, as the Minimum, to Nine (9) years of Prision Mayor, as the maximum, including its accessory penalty.*

The Court likewise finds OWN MARCELO CAGALINGAN and BEATRIZ B. CAGALINGAN **GUILTY beyond reasonable doubt** (in Criminal Case No. 2003-125) of violating paragraph 2(a) of Article 315 of the Revised Penal Code, for swindling Roselle Cagalingan the sum of ₱40,000.00 with the promised (sic) to employ her in Macao (sic), China. Accordingly, after applying the Indeterminate Sentence Law, both accused are hereby sentenced and **SO ORDERED** to suffer the imprisonment of *Four (4) Years Nine (9) Months and Eleven (11) days of Prision Correccional, as the Minimum, to Nine (9) years of Prision Mayor, as the Maximum, including its accessory penalty.*

The Court likewise finds OWEN MARCELO CAGALINGAN and BEATRIZ B. CAGALINGAN **GUILTY beyond reasonable doubt** (in Criminal Case No. 2003-238) of violating paragraph 2(a) of Article 315 of the Revised Penal Code, for swindling Arcele J. Bacorro the sum of ₱40,000.00 with the promised to employ her in Macao (sic), China. Accordingly, after applying the Indeterminate Sentence Law, both accused are hereby sentenced and **SO ORDERED** to suffer the imprisonment of *Four (4) Years Nine (9) Months and Eleven (11) days of Prision Correccional, as the Minimum, to Nine (9) years of Prision Mayor, as the Maximum, including its accessory penalty.*

The Court declines to award damages in ***estafa*** cases since they were provided already in the case of Illegal Recruitment in Large Scale.

SO ORDERED.[5]

Decision of the CA

On March 18, 2011, the CA affirmed the convictions of the accused-appellants by the RTC,[6] *viz.*:

WHEREFORE, premises foregoing, the instant appeal is **DISMISSED** for lack of merit.

SO ORDERED.[7]

Hence, this appeal.

Issue

The accused-appellants assign the sole error that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RTC DECISION FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH BEYOND REASONABLE DOUBT ALL THE ELEMENTS OF THE CRIMES CHARGED.[8]

The accused-appellants insist that the complainants well knew that they were not connected to any recruitment agency, or that they were not recruiters themselves; that they did not represent themselves to the latter as having the capability to deploy workers overseas;[9] that they did not commit any act of fraudulent misrepresentations essential in the *estafa* for which they were convicted; and that they simply assisted in processing the papers of the latter to help them realize their desire to work abroad.[10]

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[5] *Id*. at 96-99.

[6] *Rollo*, pp. 3-24.

[7] *Id*. at 24.

[8] *Id.* at 45.

[9] *Id.* at 46-48.

[10] *Id*. at 50.

Did the CA correctly affirm the convictions of the accused-appellants for illegal recruitment in large scale and for three counts of *estafa*?

Ruling of the Court

The appeal lacks merit.

We find no reason to disturb the factual findings and legal conclusions by the CA affirming the factual findings of the RTC, to wit:

> To constitute illegal recruitment in large scale, three **elements** must concur: **(a)** the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; **(b)** the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section 6 of Republic Act No. 8042); and, **(c)** the offender committed the same against three (3) or more persons, individually or as a group.
>
> x x x x x x x x x
>
> In the case at bench, all three (3) elements were established during trial. First, it was proved by private complaints that accused spouses were not licensed or authorized to engage in recruitment activities. This fact was substantiated by POEA's Certifications and as testified to by the Officer-in-Charge of the POEA who issued the same. Second, private complainants testified and proved that indeed accused spouses undertook acts constituting recruitment and placement as defined under Article 13 (b) of the Labor Code. They testified that they were induced, offered and promised by accused spouses employment in Macau, China for two (2) years for a fee. They were made to believe that accused spouses were authorized to hire them and capable of sending them to Macau for work with higher pays. They paid accused spouses for documentation and processing fees, yet, they were unable to go abroad. These testimonies, as well as the documentary evidence they submitted consisting of the receipts issued to them by accused spouses, all proved that the latter were engaged in recruitment and placement activities. And third, there are five (5) complainants against whom accused spouses are alleged to have recruited.

Moreover, the defense proffered by accused spouses consisted merely of alibi and denial. It is however noteworthy to state that denial, like alibi, is inherently a weak defense and it is not at all persuasive. Accused spouses did not deny being in Cagayan de Oro City, albeit they asserted to have arrived months earlier than the alleged date, and they likewise did not deny having met private complainants on different occasions as some of the private complainants were even relatives of accused Owen.

x x x x x x x x x

Parenthetically, there is no question that accused spouses are likewise liable for *estafa* under Article 315 (2) (a) of the Revised Penal Code. We are convinced that the prosecution proved beyond reasonable doubt Accused Spouses' guilt for three (3) counts of *Estafa*.

x x x x x x x x x

There are three ways of committing *estafa* under Article 315 (a) of the Revised Penal Code: **(1)** by using a fictitious name; **(2) by falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions;** and **(3)** by means of other similar deceits. Under this class of *estafa*, the element of deceit is indispensable. Likewise, it is essential that the false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing of value.

In the present case, private complainants were led to believe by accused spouses that they possessed the power and qualifications to provide them with work in Macau when in fact they were neither licensed nor authorized to do so. Accused spouses made it appear to private complainants that Beatriz was requested by her employer to hire workers for Macau, when in fact she was not. They even recruited their own relatives in the guise of helping them get better jobs with higher pays abroad for them to improve their standard of living. Likewise, private complainants were deceived by accused spouses by pretending that the latter could arrange their employment in Macau, China. With these misrepresentations, false assurances and deceit, they suffered damages and they were forced to part with their hard-earned money, as one of them even testified to have mortgaged her house and another, to have borrowed money from a lending institution just to raise the alleged processing fees.[11]

[11] *Id*. at 19-23.

The factual findings of the CA are accepted because the Court is not a trier of facts. Such findings, which affirmed those of the RTC as the trial court, are now even binding on us. This is because the RTC had the unique advantage to observe the witnesses' demeanor while testifying, and the personal opportunity to test the accuracy and reliability of their recollections of past events, both of which are very decisive in a litigation like this criminal prosecution for the serious crime of illegal recruitment committed in large scale where the parties have disagreed on the material facts.[12] The Court may revise such findings in its rare and extraordinary role of a trier of facts only when the appellants convincingly demonstrate that such findings were either erroneous, or biased, or unfounded, or incomplete, or unreliable, or conflicted with the findings of fact of the CA.[13] Alas, that demonstration was not made herein.

The records show that the Prosecution presented the complainants themselves to establish that the accused-appellants had made the complainants believe that they could deploy them abroad for a fee despite their having had no license or authority to do so from the proper government agency; receipts; and the certification from the POEA on the lack of the license to recruit having been issued in favor of the accused-appellants.

In contrast, the accused-appellants offered only denial. Such defense was futile because denial, essentially a negation of a fact, did not prevail over the affirmative assertions of the fact. The courts – trial as well as appellate – have generally viewed denial in criminal cases with considerable caution, if not outright rejection. This dismissive judicial attitude comes from the recognition that denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. Denial, to be worthy of consideration at all, should be substantiated by clear and convincing evidence. Hence, the appeal of the accused should also fail because it relied solely on negative and self-serving negations. Verily,

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[12] *People v. Inovero*, G.R. No. 195668, June 25, 2014, 727 SCRA 257, 268.

[13] *People v. Reyes*, G.R. No. 173307, July 17, 2013, 701 SCRA 455, 461.

the denial carried no weight in law and had no greater evidentiary value than the testimonies of credible witnesses of the Prosecution who testified on affirmative matters.[14]

We next ascertain if the CA properly affirmed the imposition of the penalties for illegal recruitment in large scale and the three counts of *estafa*.

Under Section 7(b)[15] of the *Migrant Workers' Act*, the penalty for illegal recruitment in large scale is life imprisonment and fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. Although Republic Act No.10022,[16] approved on March 8, 2010, has since introduced an amendment to the *Migrant Workers' Act* to raise the imposable fine to not less than ₱2,000,000.00 nor more than ₱5,000,000.00, the amendment does not apply herein because the illegal recruitment subject of this case was committed in October and November, 2002, or long before the amendent took effect. Accordingly, we hold that the RTC and CA correctly imposed life imprisonment and fine of ₱1,000,000.00.[17]

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[14] *People v. Inovero*, note 12, at 268-269; *People v. Bensig*, G.R. No. 138989, September 17, 2002, 389 SCRA 182, 194.

[15] Section 7. PENALTIES. – x x x

x x x x x x x x x

(b) The penalty of life imprisonment and a fine not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

x x x x x x x x x

[16] Section 6. Section 7 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 7. *Penalties.* – x x x

x x x x x x x x x

(b) The penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

x x x x x x x x x

[17] CA *rollo*, p. 97.

For the three counts of *estafa*, the relevant legal provision is Article 315, first paragraph, of the *Revised Penal Code*, which provides:

> Article 315. Swindling (*estafa*). – Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
>
> x x x x x x x x x

The minimum of the indeterminate sentence for each count of *estafa* is fixed within the range of the penalty next lower to that prescribed by Article 315 of the *Revised Penal Code*,[18] which is *prision correccional* in its minimum period to *prision correccional* in its medium period (*i.e.*, six months and one day to four years and two months). The RTC imposed the minimum of four years, nine months, and eleven days of *prision correccional*, thereby exceeding the legal range for the minimum of the indeterminate sentence. Accordingly, the minimum of the indeterminate sentence is reduced to four years of *prision correccional* considering the absence of any modifying circumstances.

As to the maximum term for each count of *estafa* under the *Indeterminate Sentence Law*, the maximum period of the prescribed penalty is first determined, and the incremental penalty of one year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00 is then added, provided that the total penalty shall not exceed 20 years. To compute the maximum period of the

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[18] *People v. Bayker*, G.R. No. 170192, February 10, 2016.

prescribed penalty, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period.[19] Based on the computation, the maximum period for *prision correccional* maximum to *prision mayor* minimum is from six years, eight months, and 21 days to eight years. The incremental penalty, when proper, shall thus be added to anywhere from six years, eight months, and 21 days to eight years, at the discretion of the court. In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00. Any fraction of a year is disregarded.[20]

For the maximum term of the three counts of *estafa*, the RTC imposed nine years. We note that the RTC ordered the gravest imposable penalty within the range (eight years of *prision mayor* plus the one-year incremental penalty). However, because neither the RTC nor the CA found the attendance of any modifying circumstance,[21] we reduce the maximum to six years, eight months, and 21 days of *prision mayor* and add the incremental penalty of one year, or a total of seven years, eight months, and 21 days.

Finally, in line with prevailing jurisprudence,[22] the accused-appellants shall pay interest of 6% *per annum* on the respective

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[19] Accordingly, the **minimum period** ranges from four years, two months and one day to five years, five months and 10 days; the **medium period**, from five years, five months and 11 days to six years, eight months and 20 days; and the **maximum period**, from six years, eight months and 21 days to eight years.

[20] *People v. Ocden*, G.R. No. 173198, June 1, 2011, 650 SCRA 124, 151; *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 299.

[21] See *People v. Bayker*, note 18 ("x x x the floor of the maximum period — **six years, eight months and 21 days** — is fixed **in the absence of any aggravating circumstance, or of any showing of the greater extent of the evil produced by the crime**, to which is then added the incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00. x x x").

[22] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

amounts due to each of the complainants, reckoned from the finality of this decision until the amounts are fully paid.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on March 18, 2011 **IN ALL RESPECTS** subject to the following **MODIFICATIONS**:

1. In Criminal Case No. 2003-173, the accused-appellants shall suffer the penalty of life imprisonment and fine of ₱1,000,000.00 each;

2. In each of Criminal Case No. 2003-124, Criminal Case No. 2003-125, and Criminal Case No. 2003-238, the accused-appellants shall suffer an indeterminate penalty of four years of *prision correcional*, as minimum, to seven years, eight months, and 21 days of *prision mayor*;

3. The accused-appellants shall indemnify complainants Arcele J. Bacorro, Reynalyn Cagalingan, Roselle Q. Cagalingan, and Laarni E. Sanchez in the respective amounts of ₱40,000.00, ₱40,000.00, ₱40,000.00, and ₱11,500.00 plus interest of 6% *per annum* from the finality of this decision until the amounts are fully paid; and

4. The accused-appellants shall pay the costs of suit.

SO ORDERED.

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

Perlas-Bernabe, J., on leave.

SECOND DIVISION

[G.R. No. 203770. November 23, 2016]

MANUELA AZUCENA MAYOR, *petitioner*, *vs.* **EDWIN TIU and DAMIANA CHARITO MARTY,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; ARTIFICIAL PERSONS; ESTATE OF THE DECEASED PERSON IS A JURIDICAL PERSON SEPARATE AND DISTINCT FROM THE PERSON OF THE DECEDENT AND ANY OTHER CORPORATION.— Artificial persons include (1) a collection or succession of natural persons forming a corporation; and (2) a collection of property to which the law attributes the capacity of having rights and duties. This class of artificial persons is recognized only to a limited extent in our law. Example is the estate of a bankrupt or deceased person. From this pronouncement, it can be gleaned that the estate of the deceased person is a juridical person separate and distinct from the person of the decedent and any other corporation. This status of an estate comes about by operation of law. This is in consonance with the basic tenet under corporation law that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected.

2. ID.; ID.; DOCTRINE OF PIERCING THE CORPORATE VEIL; DISCUSSED.— [Under the] doctrine of piercing the corporate veil, x x x the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same. The purpose behind piercing a corporation's identity is to remove the barrier between the corporation and the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield

for undertaking certain proscribed activities. x x x Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of a corporation is not of itself a sufficient reason for disregarding the fiction of separate corporate personalities. Moreover, to disregard the separate juridical personality of a corporation, the wrongdoing cannot be presumed, but must be clearly and convincingly established.

3. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; THE QUESTION OF OWNERSHIP WAS AN EXTRANEOUS MATTER WHICH THE PROBATE COURT COULD NOT RESOLVE WITH FINALITY.— A probate court is not without limits in the determination of the scope of property covered in probate proceedings. In a litany of cases, the Court had defined the parameters by which a probate court may extend its probing arms in the determination of the question of title in probate proceedings. In *Pastor, Jr. vs. Court of Appeals*, the Court explained that, as a rule, the question of ownership was an extraneous matter which the probate court could not resolve with finality. Thus, for the purpose of determining whether a certain property should, or should not, be included in the inventory of estate properties, the probate court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title. It is a well-settled rule that a probate court or one in charge of proceedings, whether testate or intestate, cannot adjudicate or determine title to properties claimed to be part of the estate but which are equally claimed to belong to outside parties. It can only determine whether they should, or should not, be included in the inventory or list of properties to be overseen by the administrator. If there is no dispute, well and good; but if there is, then the parties, the administrator and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so.

4. ID.; ID.; ID.; ID.; TORRENS TITLE IN SPECIAL PROCEEDINGS FOR THE SETTLEMENT OF THE ESTATE OF DECEASED PERSONS; PRESUMPTIVE CONCLUSIVENESS OF SUCH TITLE SHOULD BE GIVEN DUE WEIGHT.— The existence of a Torrens title

may not be discounted as a mere incident in special proceedings for the settlement of the estate of deceased persons. Put clearly, if a property covered by Torrens title is involved, "the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title." Additionally, Presidential Decree *(P.D.)* No. 1529 proscribes a collateral attack on a Torrens title: Sec. 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.

5. COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF PIERCING THE CORPORATE VEIL; PROPER ONLY DURING THE TRIAL AFTER THE COURT HAS ALREADY ACQUIRED JURISIDICTION OVER THE CORPORATION.— Piercing the veil of corporate entity applies to determination of liability not of jurisdiction; it is basically applied only to determine established liability. It is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be even applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. Hence, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. Resultantly, any proceedings taken against the corporation and its properties would infringe on its right to due process.

APPEARANCES OF COUNSEL

Sigiuon Reyna Montecillo & Ongsiako for petitioner.
Pacifico Borja for respondent Tiu.
Chavez Miranda Aseoche Law Offices for respondent Marty.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the October 5, 2011[1] and September 24, 2012[2] Resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 06256, which dismissed the petition filed by Remedios Tiu (*Remedios*) and Manuela Azucena Mayor (*Manuela*) for procedural infirmities. The said CA petition challenged the January 20, 2011[3] and June 10, 2011[4] Orders of the Regional Trial Court, Branch 6, Tacloban City (*RTC-Br. 6*), in **Sp. Proc. No. 2008-05-30**, a case for Probate of Last Will and Testament and Issuance of Letters of Testamentary.

The Antecedents:

On May 25, 2008, Rosario Guy-Juco Villasin Casilan (*Rosario*), the widow of the late Primo Villasin (*Primo*), passed away and left a holographic Last Will and Testament,[5] wherein she named her sister, Remedios Tiu (*Remedios*), and her niece, Manuela Azucena Mayor (*Manuela*), as executors. Immediately thereafter, Remedios and Manuela filed a petition for the probate of Rosario's holographic will[6] with prayer for the issuance of letters testamentary (*probate proceedings*). The petition was raffled to the Regional Trial Court, Branch 9, Tacloban City

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[1] *Rollo*, pp. 80-82. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles of the Eighteenth Division, Court of Appeals, Cebu City.

[2] *Id.* at 84-85. Penned by Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Carmelita Salandanan Manahan.

[3] *Id*. at 536-541.

[4] *Id.* at 113-114.

[5] *Id*. at 681-683.

[6] *Id.* at 116-118.

(*RTC-Br. 9*) and docketed as **Sp. Proc. No. 2008-05-30**. They averred that Rosario left properties valued at approximately ₱2.5 million.

On May 29, 2008, respondent Damiana Charito Marty (*Marty*) claiming to be the adopted daughter of Rosario, filed a petition for letters of administration before the RTC, Branch 34, Tacloban City (*RTC-Br. 34*), docketed as **Sp. Proc. No. 2008-05-32**, but it was not given due course because of the probate proceedings. Per records, this dismissal is subject of a separate proceeding filed by Marty with the CA Cebu City, docketed as CA- G.R. SP No. 04003.[7]

On June 12, 2008, in its Order,[8] the RTC-Br. 9 found the petition for probate of will filed by Remedios and Manuela as sufficient in form and substance and set the case for hearing.

Consequently, Marty filed her Verified Urgent Manifestation and Motion,[9] dated June 23, 2008, stating that Remedios kept the decedent Rosario a virtual hostage for the past ten (10) years and her family was financially dependent on her which led to the wastage and disposal of the properties owned by her and her husband, Primo. Marty averred that until the alleged will of the decedent could be probated and admitted, Remedios and her ten (10) children had no standing to either possess or control the properties comprising the estate of the Villasins. She prayed for the probate court to: 1) order an immediate inventory of all the properties subject of the proceedings; 2) direct the tenants of the estate, namely, Mercury Drug and Chowking, located at Primrose Hotel, to deposit their rentals with the court; 3) direct Metrobank, P. Burgos Branch, to freeze the accounts in the name of Rosario, Primrose Development Corporation (*Primrose*) or Remedios; and 4) lock up the Primrose Hotel in order to preserve the property until final disposition by the court.

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[7] *Id.* at 51.

[8] *Id*. at 123.

[9] *Id*. at 124-127.

On July 8, 2008, Remedios and Manuela filed their Comment/Opposition[10] to the urgent manifestation averring that Marty was not an adopted child of the Villasins based on a certification issued by the Office of the Clerk of Court of Tacloban City, attesting that no record of any adoption proceedings involving Marty existed in their records. They also argued that the probate court had no jurisdiction over the properties mistakenly claimed by Marty as part of Rosario's estate because these properties were actually owned by, and titled in the name of, Primrose. Anent the prayer to direct the tenants to deposit the rentals to the probate court, Remedios and Manuela countered that the probate court had no jurisdiction over properties owned by third persons, particularly by Primrose, the latter having a separate and distinct personality from the decedent's estate.

In her Reply,[11] dated July 15, 2008, Marty cited an order of the Court of First Instance of Leyte (*CFI Leyte*) in SP No. 1239,[12] claiming that as early as March 3, 1981, the veil of corporate entity of Primrose was pierced on the ground that it was a closed family corporation controlled by Rosario after Primo's death. Thus, Marty alleged that "piercing" was proper in the case of Rosario's estate because the incorporation of Primrose was founded on a fraudulent consideration, having been done in contemplation of Primo's death.

Further, on July 22, 2008, in her Opposition to the Petition for the Approval of the Will of the Late Rosario Guy-Juco Villasin Casilan,[13] Marty impugned the authenticity of her holographic will.

Meanwhile, Edwin Tiu (*Edwin*), a son of Remedios, also filed his Opposition,[14] dated June 13, 2008.

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[10] *Id.* at 133-140.

[11] *Id*. at 168-177.

[12] Entitled In the Matter of the Intestate Estate of Primo A. Villasin Avestruz Villasin.

[13] *Rollo*, pp. 144-146.

[14] *Id*. at 147-151.

After a protracted exchange of pleadings, the parties submitted their respective memoranda.

The January 14, 2009 Order

In its January 14, 2009 Order,[15] the RTC-Br. 9 granted the motion of Marty and appointed the OIC Clerk of Court as special administrator of the Estate. The Probate Court also ordered Mercury Drug and Chowking to deposit the rental income to the court and Metrobank to freeze the bank accounts mentioned in the motion of Marty. The doctrine of piercing the corporate veil was applied in the case considering that Rosario had no other properties that comprised her estate other than Primrose. According to the probate court, for the best interest of whoever would be adjudged as the legal heirs of the Estate, it was best to preserve the properties from dissipation.

On January 22, 2009, Remedios and Manuela filed their Motion for Inhibition[16] on the ground of their loss of trust and confidence in RTC-Br. 9 Presiding Judge Rogelio C. Sescon (*Judge Sescon*) to dispense justice. Later, they also filed their Motion for Reconsideration *Ad Cautelam*,[17] dated February 3, 2009, arguing that Rosario's estate consisted only of shares of stock in Primrose and not the corporation itself. Thus, the probate court could not order the lessees of the corporation to remit the rentals to the Estate's administrator. With regard to the appointment of a special administrator, Remedios and Manuela insisted that it be recalled. They claimed that if ever there was a need to appoint one, it should be the two of them because it was the desire of the decedent in the will subject of the probation proceedings.

In its Order,[18] dated March 27, 2009, the RTC-Br. 9 denied the motion for reconsideration for lack of merit and affirmed

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[15] *Id*. at 277-284.

[16] *Id.* at 285-297.

[17] *Id*. at 304-324.

[18] *Id.* at 337-342.

its January 14, 2009 Order. The presiding judge, Judge Sescon, also granted the motion for inhibition and ordered that the records of the case be referred to the RTC Executive Judge for reraffling. The case was later re-raffled to RTC-Br.6, Judge Alphinor C. Serrano, presiding judge.

Aggrieved by the denial of their motion for reconsideration, Remedios and Manuela filed a petition for *certiorari* with the CA in Cebu City, docketed as CA-G.R. S.P. No. 04254, assailing the January 14, 2009 and March 27, 2009 Orders of the RTC-Br. 9.[19]

Ruling of the CA

In its October 16, 2009 Decision,[20] the CA *reversed* the assailed orders of the RTC Br. 9, except as to the appointment of a special administrator insofar as this relates to properties specifically belonging to the "Estate." It held that **Primrose had a personality separate and distinct from the estate of the decedent and that the probate court had no jurisdiction to apply the doctrine of piercing the corporate veil**.

According to the CA, nowhere in the assailed orders of the probate court was it stated that its determination of the title of the questioned properties was only for the purpose of determining whether such properties ought to be included in the inventory. When the probate court applied the doctrine of "piercing," in effect, it adjudicated with finality the ownership of the properties in favor of the Estate. The CA stated that RTC-Br. 9 had no jurisdiction to adjudicate ownership of a property claimed by another based on adverse title; and that questions like this must be submitted to a court of general jurisdiction and not to a probate court.

The CA added that assuming that the probate court's determination on the issue of ownership was merely intended to be provisional, Marty's contentions still had no merit. The

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[19] *Id.* at 343-369.

[20] *Id*. at 420-433.

properties, which she claimed to be part of the estate of Rosario and over which she claimed co-ownership, comprised of real properties registered under the Torrens system. As such, Primrose was considered the owner until the titles to those properties were nullified in an appropriate ordinary action. The CA further stated that the RTC erroneously relied on the order issued by the CFI Leyte in 1981, in the probate proceedings involving the estate of Primo. Whatever determination the CFI made at the time regarding the title of the properties was merely provisional, hence, not conclusive as to the ownership.

By reason of the favorable decision by the CA, Remedios and Manuela filed their Motion to Partially Revoke the Writ of Execution Enforcing the January 14, 2009 Order of the Honorable Court and Manifestation in Compliance with the October 21, 2009 Order (*Ad Cautelam*),[21] dated October 27, 2009.

In its Order,[22] dated November 17, 2009, the RTC-Br. 6 *partially granted* the motion as it revoked the power of the special administrator to oversee the day-to-day operations of Primrose. It also revoked the order with respect to Mercury Drug and Chowking, reasoning out that the said establishments dealt with Primrose, which had a personality distinct and separate from the estate of the decedent. In the said order, Atty. Blanche A. Salino nominated by oppositors Marty and Edwin, was appointed special administrator to oversee the day-to-day operations of the estate. The same order also upheld the January 14, 2009 Order, as to the conduct and inventory of all the properties comprising the estate.

This order was not questioned or appealed by the parties.

Omnibus Motion

On September 24, 2010, or almost ten (10) months after the November 17, 2009 Order of the probate court was issued, Marty, together with her new counsel, filed her Omnibus Motion,[23]

[21] *Id.* at 437-442.

[22] *Id*. at 456-459.

[23] *Id*. at 460-475.

praying for the probate court to: 1) order Remedios and Manuela to render an accounting of all the properties and assets comprising the estate of the decedent; 2) deposit or consign all rental payments or other passive income derived from the properties comprising the estate; and 3) prohibit the disbursement of funds comprising the estate of the decedent without formal motion and approval by the probate court.

Ruling of the RTC-Br. 6

In its January 20, 2011 Order, the RTC-Br. 6 granted Marty's Omnibus Motion. Although it agreed with the October 16, 2009 CA Decision reversing the January 14, 2009 Order of the RTC-Br. 9, nonetheless, it acknowledged the urgency and necessity of appointing a special administrator. According to the probate court, considering that there was clear evidence of a significant decrease of Rosario's shares in the outstanding capital stock of Primrose,[24] prudence dictated that an inquiry into the validity of the transfers should be made. A final determination of this matter would be outside the limited jurisdiction of the probate court, but it was likewise settled that the power to institute an action for the recovery of a property claimed to be part of the estate was normally lodged with the executor or administrator. Thus, the probate court disposed:

WHEREFORE, for the reasons aforestated, and so as not to render moot any action that the special administrator, or the regular administrator upon the latter's qualification and appointment, may deem appropriate to take on the matter (i.e. Whether or not to institute in the name of the estate the appropriate action for the recovery of the shares of stock), this Court hereby **GRANTS** Oppositor Marty's Omnibus Motion, dated September 24, 2010, and thus hereby:

1. DIRECTS petitioners, either individually or jointly, to: **(a) RENDER AN ACCOUNTING** of all the properties and assets comprising the estate of the decedent that may have come into their possession; and, **(b) DEPOSIT OR CONSIGN** all the rentals payments or such other passive incomes from the properties and assets registered in the name of Primrose Development Corporation, including all

[24] As reported in the General Information Sheet for 2008.

income derived from the Primrose Hotel and the lease contracts with Mercury Drug and Chowking Restaurant, both within fifteen (15) days from receipt of this Order;

2. DIRECTS the Special Administrator to take possession and charge of the properties comprising the decedent's estate, specially those pertaining to the sharesholding of the decedent in Primrose Development Corporation, to determine whether or not action for the recovery of the shares of stock supposedly transferred from the decedent to petitioners Remedios Tiu, Manuela Azucena Mayor should be instituted in the name of the estate against the said transferees and to submit a Report on the foregoing matters to this Court, within fifteen (15) days from receipt of this Order; and,

3. ORDERS that no funds comprising the estate of the decedent shall be disbursed without formal Motion therefor, with the conformity of the Special Administrator, duly approved by this Court.

SO ORDERED.[25] [Underscoring supplied]

The partial motion for reconsideration of the above order filed by Remedios and Manuela was denied in the other assailed order of the RTC-Br. 6, dated June 10, 2011.[26]

Dissatisfied, Remedios and Manuela availed of the special civil action of *certiorari* under Rule 65, and filed a petition before the CA.

Action by the CA

The CA, however, in its October 5, 2011 Resolution,[27] dismissed the same based on the following infirmities: 1) there was no proper proof of service of a copy of the petition on the respondents which was sent by registered mail; 2) petitioners failed to indicate on the petition the material date when the motion for reconsideration was filed; 3) the copy of the assailed order was not certified true and correct by the officer having custody of the original copy; and 4) the serial number of the

[25] *Rollo*, pp. 540-541.

[26] *Id*. at 113-114.

[27] *Id*. at 80-82.

commission of the notary public, the province-city where he was commissioned, the office address of the notary public and the roll of attorney's number were not properly indicated on the verification and certification of non-forum shopping.

Remedios and Manuela moved for reconsideration of the assailed CA resolution, but to no avail, as the appellate court denied the motion in its September 24, 2012 Resolution.

Hence, this petition before the Court, filed only by Manuela as Remedios had also passed away, and anchored on the following

GROUNDS

I.

THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN THE APPLICATION OF LAW AND THE RULES WARRANTING REVIEW WHEN IT MISAPPLIED SECTION 13, RULE 13 OF THE RULES OF COURT AND DECLARED THAT THERE WAS NO PROPER PROOF OF SERVICE BY REGISTERED MAIL.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN THE APPLICATION OF LAW AND THE RULES WARRANTING REVIEW WHEN IT MISAPPLIED JURISPRUDENCE AND RULE 65 AND IT HELD THAT PETITIONER MAYOR DID NOT COMPLY WITH THE MATERIAL DATE RULE.

III.

THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN THE APPLICATION OF LAW AND THE RULES WARRANTING REVIEW WHEN IT DECLARED THAT PETITIONER MAYOR FAILED TO COMPLY WITH THE REQUIREMENT OF SECTION 1, RULE 65 FOR FAILING TO ATTACH CERTIFIED TRUE COPY OF THE ORDER OF THE TRIAL COURT.

IV.

THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN THE APPLICATION OF LAW AND THE RULES WARRANTING REVIEW WHEN IT DECLARED THAT PETITIONER MAYOR DID NOT COMPLY WITH THE REQUIREMENT OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.

V.

THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN THE APPLICATION OF LAW AND THE RULES WARRANTING REVIEW WHEN IT ALLOWED TECHNICALITIES TO BE USED TO DEFEAT SUBSTANTIAL RIGHT OF THE PARTIES.

VI.

PETITIONERS HAVE GOOD CAUSE AND A MERITORIOUS CASE AGAINST HEREIN RESPONDENTS AS PARAGRAPH 1(B) OF THE DISPOSITIVE PORTION OF THE *FIRST ASSAILED ORDER* SHOULD HAVE BEEN REVERSED BECAUSE IT OVERTURNS THE DECISION OF THE COURT OF APPEALS DATED 16 OCTOBER 2009 WHICH HAS LONG BECOME FINAL AND EXECUTORY.[28]

Petitioner Manuela argued that:

1) There was actual compliance with Section 13, Rule 13 of the Rules of Court. The CA petition was accompanied by a notarized affidavit of service and filing of registered mail. At the time the petition was filed, this was the best evidence of the service. The other registry receipts for the other parties were also attached to the petition. Further, the available registry return card was furnished the CA in the motion for reconsideration.[29]

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[28] *Id*. at 58-59.

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

2) The failure of the petition to comply with the rule on a statement of material dates could be excused because the dates were evident from the records.[30]

3) The petitioner went to the RTC of Tacloban to secure certified true copies of the assailed orders. Only the stamped name of the Clerk of Court, however, appeared thereon, because the particular branch had no stamp pad which had the phrase for certification. The branch did not even have a typewriter in order to affix the phrase on the copies. These inadequacies could not be attributed to the petitioners.[31]

4) The lack of information pertaining to the notary public in the verification and certification against forum-shopping should not invalidate the same because, again, it was not attributable to the parties.[32]

5) Technicalities should never be used to defeat the substantive rights of a party.[33]

In its January 23, 2013 Resolution[34] the Court ordered the respondents to file their respective comments. Marty, in her Comment, insisted that the petitioner failed to comply with the procedural requirements as stated by the CA.[35]

In her Reply to Comment,[36] petitioner Manuela clarified that the affidavit of service was executed on August 31, 2011, which

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[30] *Id*. at 62-64.

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

[32] *Id*. at 66-68.

[33] *Id*. at 68-70.

[34] *Id.* at 1265-1266.

[35] That petitioners did not comply with the requirement of the rules on service of its petition before the CA; That petitioners did not comply with the material date rule; That the petitioners failed to attach a certified true copy of he assailed Order in their petition with the CA; That the verification and certification of non-forum shopping attached to the petition with the CA is defective.

[36] *Rollo,* pp. 1292-1301.

was after the petition was signed by the lawyers and after it was verified by the petitioner herself. After contesting Marty's arguments on the alleged procedural infirmities of the petitions with the CA and this Court, Manuela asserted that the final and executory October 16, 2009 Decision of the CA already held that Primrose had a personality separate and distinct from the estate of decedent Rosario.

Meanwhile, in his Manifestation,[37] dated May 29, 2013, Edwin affirmed that he and Manuela decided to patch up their differences and agreed to settle amicably. Accordingly, he manifested that he was withdrawing from the case pursuant to their agreement.

On June 18, 2014, Manuela filed her Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction[38] on the ground that a flurry of orders had been issued by the RTC-Br. 6 in the implementation of the assailed January 20, 2011 Order, such as the Order,[39] dated May 27, 2013, wherein the probate court vaguely ordered "the inventory of the exact extent of the 'decedent's estate.'" Then another order was issued appointing an auditing firm to conduct an inventory/audit of the Estate including the rentals and earnings derived from the lease of Mercury Drug and Chowking Restaurant, as tenants of Primrose.[40] According to petitioner Manuela, although an inventory of the assets of the decedent was proper, the probate court ordered an inventory of the assets of Primrose, a separate and distinct entity. Manuela asserts that it was clearly in error.

In her Supplement to the Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction,[41] dated June 17, 2013, Manuela informed the Court that the inventory and accounting of Primrose would already commence on June 19, 2013.

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[37] *Id.* at 1347-1349.

[38] *Id.* at 1322-1328.

[39] *Id.* at 1333-1337.

[40] *Id.* at 1338-1339.

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

Marty filed her Opposition,[42] dated July 3, 2013, stating that the petition of Manuela had been rendered moot and academic as the probate court had declared her as the sole heir of Rosario and appointed her administrator of the estate. She argued that an injunctive relief would work injustice to the estate because of the total assimilation by petitioner of the shareholdings of the decedent in Primrose and her share in the corporation's income corresponding to her shareholdings.

Finding that the requisites for preliminary injunctive relief were present,[43] the Court issued the TRO[44] in favor of Manuela on October 14, 2013. At the outset, the Court was convinced that the rights of Primrose sought to be protected by the grant of injunctive relief were material and substantial and the TRO was issued in order to prevent any irreparable damage to a corporate entity that could arise from the conduct of an accounting by the court-appointed inventory.

The Court's Ruling

The Court now resolves the subject case by the issuance of a permanent injunction, as prayed for by petitioner Manuela. This position is supported by law and jurisprudence, as follows:

First. Artificial persons include (1) a collection or succession of natural persons forming a corporation; and (2) a collection of property to which the law attributes the capacity of having rights and duties. This class of artificial persons is recognized only to a limited extent in our law. Example is the estate of a bankrupt or deceased person.[45] From this pronouncement, it can be gleaned that the estate of the deceased person is a juridical

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[42] *Id.* at 1360-1368.

[43] The requisites for preliminary injunctive relief are: a) the invasion of right sought to be protected is material and substantial; b) the right of the complainant is clear and unmistakable; and c) there is an urgent and paramount necessity for the writ to prevent serious damage.

[44] *Rollo*, pp. 1373-1376.

[45] 2 Rapalje & L. Law Dict. 954., as cited in *Limjoco v. Intestate Estate of Pedro O. Fragante*, G.R. No. L-770, April 27, 1948.

person separate and distinct from the person of the decedent and any other corporation. This status of an estate comes about by operation of law. This is in consonance with the basic tenet under corporation law that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected.[46]

Second. The doctrine of piercing the corporate veil has no relevant application in this case. Under this doctrine, the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.[47] The purpose behind piercing a corporation's identity is to remove the barrier between the corporation and the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.[48]

Here, instead of holding the decedent's interest in the corporation separately as a stockholder, the situation was reversed. Instead, the probate court ordered the lessees of the corporation to remit rentals to the estate's administrator without taking note of the fact that the decedent was not the absolute owner of Primrose but only an owner of shares thereof. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of a corporation is not

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[46] *Concept Builder's Inc. v. NLRC*, 326 Phil. 955, 964 (1996).

[47] *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, citing *General Credit Corporation v. Alsons Development and Investment Corporation*, 542 Phil. 219, 231 (2007).

[48] *Francisco Motors Corporation v. Court of Appeals*, 368 Phil. 374, 385 (1999).

of itself a sufficient reason for disregarding the fiction of separate corporate personalities.[49] Moreover, to disregard the separate juridical personality of a corporation, the wrongdoing cannot be presumed, but must be clearly and convincingly established.[50]

Third. A probate court is not without limits in the determination of the scope of property covered in probate proceedings. In a litany of cases, the Court had defined the parameters by which a probate court may extend its probing arms in the determination of the question of title in probate proceedings. In *Pastor, Jr. vs. Court of Appeals*,[51] the Court explained that, as a rule, the question of ownership was an extraneous matter which the probate court could not resolve with finality. Thus, for the purpose of determining whether a certain property should, or should not, be included in the inventory of estate properties, the probate court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title. It is a well-settled rule that a probate court or one in charge of proceedings, whether testate or intestate, cannot adjudicate or determine title to properties claimed to be part of the estate but which are equally claimed to belong to outside parties. It can only determine whether they should, or should not, be included in the inventory or list of properties to be overseen by the administrator. If there is no dispute, well and good; but if there is, then the parties, the administrator and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so.[52]

In this case, respondent Marty argues that the subject properties and the parcel of land on which these were erected should be included in the inventory of Rosario's estate. More so, the arrears

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[49] *Traders Royal Bank v. Court of Appeals*, 336 Phil. 15, 29 (1997).

[50] *Mataguina Integrated Wood Products Inc. v. Court of Appeals*, 331 Phil. 795, 814 (1996).

[51] 207 Phil. 758 (1983).

[52] *Morales v. CFI of Cavite*, 230 Phil. 456, 465 (1986).

from the rental of these properties were later on ordered to be remitted to the administrator of the estate grounded on the allegation that Rosario had no other properties other than her interests in Primrose. To the Court's mind, this holding of the probate court was in utter disregard of the undisputed fact the subject land is registered under the Torrens system in the name of Primrose, a third person who may be prejudiced by the orders of the probate court. In *Valera vs. Inserto*:[53] the Court stated:

> x x x, settled is the rule that a Court of First Instance (now Regional Trial Court), acting as a probate court, exercises but limited jurisdiction, and thus has no power to take cognizance of and determine the issue of title to property claimed by a third person adversely to the decedent, unless the claimant and all the other parties having legal interest in the property consent, expressly or impliedly, to the submission of the question to the probate court for adjudgment, or the interests of third persons are not thereby prejudiced, the reason for the exception being that the question of whether or not a particular matter should be resolved by the Court in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (e.g. probate, land registration, etc.), is in reality not a jurisdictional but in essence of procedural one, involving a mode of practice which may be waived.
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> x x x **These considerations assume greater cogency where, as here, the Torrens title to the property is not in the decedent's names but in others, a situation on which this Court has already had occasion to rule.**[54] [Emphasis and underscoring supplied]

Thus, the probate court should have recognized the incontestability accorded to the Torrens title of Primrose over Marty's arguments of possible dissipation of properties. In fact, in the given setting, even evidence purporting to support a claim of ownership has to yield to the incontestability of a Torrens title, until after the same has been set aside in the manner indicated in the law itself. In other words, the existence of a Torrens title may not be discounted as a mere incident in special proceedings

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[53] 233 Phil. 552 (1987).

[54] *Id*. at 562-563.

for the settlement of the estate of deceased persons. Put clearly, if a property covered by Torrens title is involved, "the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title."[55]

Additionally, Presidential Decree (*P.D.*) No. 1529[56] proscribes a collateral attack on a Torrens title:

> Sec. 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.

In *Cuizon vs. Ramolete*,[57] the property subject of the controversy was duly registered under the Torrens system. To this, Court categorically stated:

> Having been apprised of the fact that the property in question was in the possession of third parties and more important, covered by a transfer certificate of title issued in the name of such third parties, **the respondent court should have denied the motion of the respondent administrator and excluded the property in question from the inventory of the property of the estate. It had no authority to deprive such third persons of their possession and ownership of the property**.[58] x x x [Emphasis and underscoring supplied]

A perusal of the records of this case would show that that no compelling evidence was ever presented to substantiate the position of Marty that Rosario and Primrose were one and the same, justifying the inclusion of the latter's properties in the

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[55] *Bolisay v. Alcid*, 174 Phil. 463, 470 (1978).

[56] The Property Registration Decree.

[57] 214 Phil. 436 (1984).

[58] *Id*. at 442.

inventory of the decedent's properties. This has remained a vacant assertion. At most, what Rosario owned were shares of stock in Primrose. In turn, this boldly underscores the fact that Primrose is a separate and distinct personality from the estate of the decedent. Inasmuch as the real properties included in the inventory of the estate of Rosario are in the possession of, and are registered in the name of, Primrose, Marty's claims are bereft of any logical reason and conclusion to pierce the veil of corporate fiction.

Fourth. The probate court in this case has not acquired jurisdiction over Primrose and its properties. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction; it is basically applied only to determine established liability. It is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case.[59] This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be even applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation.[60]

Hence, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. Resultantly, any proceedings taken against the corporation and its properties would infringe on its right to due process.

In the case at bench, the probate court applied the doctrine of piercing the corporate veil ratiocinating that Rosario had no other properties that comprise her estate other than her shares in Primrose. Although the probate court's intention to protect the decedent's shares of stock in Primrose from dissipation is laudable, it is still an error to order the corporation's tenants to remit their rental payments to the estate of Rosario.

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[59] *Kukan International Corporation v. Hon. Amor Reyes*, 646 Phil. 210, 234 (2010).

[60] A. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines* 18 (1991).

Considering the above disquisition, the Court holds that a permanent and final injunction is in order in accordance with Section 9, Rule 58 of the Rules of Court which provides that "[i]f 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." Undoubtedly, Primrose stands to suffer an irreparable injury from the subject order of the probate court.

WHEREFORE, the petition is **GRANTED**. The Temporary Restraining Order, dated June 14, 2013, is hereby made **PERMANENT**, effective immediately. The Regional Trial Court, Branch 6, Tacloban City, is **ENJOINED** from enforcing and implementing its January 20, 2011 and June 10, 2011 Orders, insofar as the corporate properties of Primrose Development Corporation are concerned, to avert irreparable damage to a corporate entity, separate and distinct from the Estate of Rosario Guy-Juco Villasin Casilan.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] *del Castillo*, and *Leonen, JJ.*, concur.

SECOND DIVISION

[G.R. No. 204197. November 23, 2016]

FRUEHAUF ELECTRONICS PHILIPPINES CORPORATION, *petitioner, vs.* **TECHNOLOGY ELECTRONICS ASSEMBLY AND MANAGEMENT PACIFIC CORPORATION,** *respondent.*

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[*] Designated additional member per Raffle dated September 17, 2014.

SYLLABUS

1. REMEDIAL LAW; ARBITRATION PROCEEDINGS; ARBITRATION AS AN ALTERNATIVE MODE OF DISPUTE RESOLUTION OUTSIDE OF THE REGULAR COURT SYSTEM; IMPORTANT CHARACTERISTICS OF ARBITRATION.— Arbitration is an alternative mode of dispute resolution **outside of the regular court system.** Although adversarial in character, arbitration is technically not litigation. It is a voluntary process in which one or more arbitrators — appointed according to the parties' agreement or according to the applicable rules of the Alternative Dispute Resolution *(ADR)* Law — resolve a dispute by rendering an award. x x x [T]his **contractual** and **consensual** character means that the parties cannot implead a third-party in the proceedings even if the latter's participation is necessary for a complete settlement of the dispute. [T]here also was no authority to decide on issues that the parties did not submit (or agree to submit) for its resolution. As a **purely private mode of dispute resolution,** arbitration proceedings, including the records, the evidence, and the arbitral award, are confidential x x x The contractual nature of arbitral proceedings affords the parties substantial **autonomy over the proceedings. x x x** The parties likewise **appoint the arbitrators** based on agreement. There are no other legal requirements as to the competence or technical qualifications of an arbitrator. Their only legal qualifications are: (1) being of legal age; (2) full-enjoyment of their civil rights; and (3) the ability to read and write. The parties can tailor-fit the tribunal's composition to the nature of their dispute. Thus, a specialized dispute *can* be resolved by experts on the subject. However, because arbitrators do not necessarily have a background in law, they cannot be expected to have the legal mastery of a magistrate. There is a greater risk that an arbitrator might misapply the law or misappreciate the facts *en route* to an erroneous decision. This *risk of error* is compounded by the **absence of an effective appeal mechanism.** The errors of an arbitral tribunal are not subject to correction by the judiciary. As a private alternative to court proceedings, **arbitration is meant to be an end, *not the beginning,* of litigation.** Thus, the arbitral award is final and binding on the parties by reason of their contract — the arbitration agreement.

2. ID.; ID.; AN ARBITRAL TRIBUNAL DOES NOT EXERCISE QUASI-JUDICIAL POWERS; QUASI-JUDICIAL BODIES ARE CREATURES OF LAW WHILE AN ARBITRAL TRIBUNAL IS A CREATURE OF CONTRACT.— Quasi-judicial or administrative adjudicatory power is the power: (1) to hear and determine *questions of fact* to which legislative policy is to apply, and (2) to decide in accordance with the *standards laid down by the law itself in enforcing and administering the same law*. Quasi-judicial power is only exercised by administrative agencies — legal organs of the government. Quasi-judicial bodies can only exercise such powers and jurisdiction as are expressly or by necessary implication conferred upon them by their enabling statutes. Like courts, a quasi-judicial body's jurisdiction over a subject matter is conferred by law and exists independently from the will of the parties. As government organs necessary for an effective legal system, a quasi-judicial tribunal's legal existence continues beyond the resolution of a specific dispute. In other words, quasi-judicial bodies are ***creatures of law.*** As a contractual and consensual body, the *arbitral tribunal does not have any inherent powers over the parties.* It has no power to issue coercive writs or compulsory processes. Thus, there is a need to resort to the regular courts for interim measures of protection and for the recognition or enforcement of the arbitral award. The arbitral tribunal acquires jurisdiction over the parties and the subject matter through stipulation. Upon the rendition of the final award, the tribunal becomes *functus officio* and — save for a few exceptions — ceases to have any further jurisdiction over the dispute. The tribunal's powers (or in the case of *ad hoc* tribunals, their very existence) stem from the obligatory force of the arbitration agreement and its ancillary stipulations. Simply put, **an arbitral tribunal** is a **creature of contract.**

3. ID.; ID.; COMMERCIAL ARBITRATORS UNDER THE ARBITRATION LAW AND THE ADR LAW ARE DIFFERENT FROM VOLUNTARY ARBITRATORS UNDER THE LABOR CODE.— Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law. Unlike purely commercial relationships, the relationship between capital and labor are *heavily impressed*

with public interest.[105] Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority. On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* instead of government instrumentalities wielding quasi-judicial powers. *Moreover*, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators. x x x By contrast, the subject--matter jurisdiction of commercial arbitrators is stipulated by the parties. These account for the legal differences between "ordinary" or "commercial" arbitrators under the Arbitration Law and the ADR Law, and "voluntary arbitrators" under the Labor Code. The two terms are not synonymous with each other. Interchanging them with one another results in the logical fallacy of *equivocation* - using the same word with different meanings.

4. ID.; ID.; STATE'S POLICY IS UPHOLDING THE AUTONOMY OF ARBITRATION PROCEEDINGS AND THEIR CORRESPONDING ARBITRAL AWARDS; EXCEPTIONS; ONLY THOSE PROVIDED UNDER SECTION 24 OF THE ARBITRATION LAW AND ARTICLE 34 OF THE 1985 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) MODEL LAW.— Neither the Arbitration Law nor the ADR Law allows a losing party to appeal from the arbitral award. The statutory absence of an appeal mechanism reflects the State's policy of upholding the autonomy of arbitration proceedings and their corresponding arbitral awards. This Court recognized this when we enacted the *Special Rules of Court on Alternative Dispute Resolution* in 2009: x x x More than a decade earlier in ***Asset Privatization Trust v. Court of Appeals***, we likewise defended the autonomy of arbitral awards through our policy of non-intervention on their substantive merits: x x x Nonetheless, an arbitral award is not absolute. Rule 19.10 of the Special ADR Rules - by referring to Section 24 of the Arbitration Law and Article 34 of the 1985 United Nations

Commission on International Trade Law (*UNCITRAL*) Model Law - recognizes the very limited exceptions to the autonomy of arbitral awards: x x x The grounds for **vacating** a domestic arbitral award under Section 24 of the Arbitration Law contemplate the following scenarios: (a) when the award is procured by corruption, fraud, or other undue means; or (b) there was evident partiality or corruption in the arbitrators or any of them; or (c) the arbitrators were guilty of misconduct that materially prejudiced the rights of any party; or (d) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. The award may also be vacated if an arbitrator who was disqualified to act willfully refrained from disclosing his disqualification to the parties. Notably, none of these grounds pertain to the correctness of the award but relate to the *misconduct of arbitrators*. x x x The RTC may also set aside the arbitral award based on Article 34 of the UNCITRAL Model Law. These grounds are reproduced in Chapter 4 of the *Implementing Rules and Regulations (IRR) of the 2004 ADR Act*: x x x applies particularly to International Commercial Arbitration. However, the abovementioned grounds taken from the UNCITRAL. Model Law are specifically made applicable to domestic arbitration by the Special ADR Rules. Notably, these grounds are not concerned with the correctness of the award; they go into the validity of the arbitration agreement or the regularity of the arbitration proceedings. These grounds for vacating an arbitral award are exclusive. Under the ADR Law, courts are obliged to disregard any other grounds invoked to set aside an award.

5. ID.; ID.; SPECIAL ADR RULES; ARBITRAL AWARD; REMEDY AGAINST A FINAL DOMESTIC ARBITRAL AWARD.— The Special ADR Rules allow the RTC to correct or modify an arbitral award pursuant to Section 25 of the Arbitration Law. However, this authority cannot be interpreted as jurisdiction to review the merits of the award. The RTC can modify or correct the award only in the following cases: a. Where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; b. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; c. Where the arbitrators

have omitted to resolve an issue submitted to them for resolution; or d. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the Court. x x x [T]he Special ADR Rules are a self-contained body of rules. The parties cannot invoke remedies and other provisions under the Rules of Court unless they were incorporated in the Special ADR Rules. x x x In sum, the only remedy against a final domestic arbitral award is to file petition to vacate or to modify/correct the award not later than thirty (30) days from the receipt of the award. Unless a ground to vacate has been established, the RTC must confirm the arbitral award as a matter of course.

6. ID.; ID.; ID.; REMEDIES AGAINST AN ORDER CONFIRMING, VACATING, CORRECTING OR MODIFYING AN ARBITRAL AWARD.— Once the RTC orders the confirmation, vacation, or correction/modification of a domestic arbitral award, the aggrieved party may move for reconsideration within a non-extendible period of fifteen (15) days from receipt of the order. The losing party may also opt to appeal from the RTC's ruling instead. Under the Arbitration Law, the mode of appeal was via petition for review on *certiorari:* x x x The Arbitration Law did not specify which Court had jurisdiction to entertain the appeal but left the matter to be governed by the Rules of Court. As the appeal was limited to questions of law and was described as "certiorari proceedings," the mode of appeal can be interpreted as an Appeal by *Certiorari* to this Court under Rule 45. When the **ADR Law was enacted in 2004,** it specified that the appeal shall be made to the CA in accordance with the rules of procedure to be promulgated by this Court. 131 The Special ADR Rules provided that the mode of appeal from the RTC's order confirming, vacating, or correcting/modifying a domestic arbitral award was through a petition for review with the CA. 132 However, the **Special ADR Rules only took effect on October 30, 2009.**

7. ID.; ID.; ID.; SIMPLE ERRORS OF FACT, OR LAW, OR OF FACT AND LAW COMMITTED BY THE ARBITRAL TRIBUNAL ARE NOT JUSTICIABLE ERRORS.— None of the grounds to vacate an arbitral award are present in this case and as already established, the *merits* of the award cannot be reviewed by the courts. x x x There is no law granting the

judiciary authority to review the merits of an arbitral award. x x x The CA reversed the arbitral award — *an action that it has no power to do* — because it disagreed with the tribunal's factual findings and application of the law. However, the alleged incorrectness of the award is insufficient cause to vacate the award, given the State's policy of upholding the autonomy of arbitral awards. x x x Assuming *arguendo* that the tribunal's interpretation of the contract was incorrect, the errors would have **been simple errors of law.** It was the tribunal — not the RTC or the CA — that had jurisdiction and authority over the issue by virtue of the parties' submissions; x x x Whether or not the arbitral tribunal correctly passed upon the issues is irrelevant. [A] simple error of law remains a simple error of law. Courts are precluded from revising the award in a particular way, revisiting the tribunal's findings of fact or conclusions of law, or otherwise encroaching upon the independence of an arbitral tribunal.x x x In other words, simple errors of fact, of law, or of fact and law committed by the arbitral tribunal are not justiciable errors in this jurisdiction.

DEL CASTILLO, *J., dissenting opinion*:

1. **REMEDIAL LAW; ARBITRAL TRIBUNAL; ARBITRATORS DO NOT NECESSARILY HAVE A BACKGROUND IN LAW AND THEY CANNOT BE EXPECTED TO HAVE THE LEGAL MASTERY OF A MAGISTRATE.—** To adopt the views presented in the Majority Opinion is tantamount to this **Highest Court** surrendering its jurisdiction or capitulating to the decision or rulings of an arbitrator. I cannot in conscience trade this Court's judicial power in favor of an arbitrator especially since as the Majority Opinion itself admits, "arbitrators do not necessarily have a background in law [and] they cannot be expected to have the legal mastery of a magistrate;" in fact, "[t]here are no other legal requirements as to the competence or technical qualifications of an arbitrator. Their only legal qualifications are: (1) being of legal age; (2) full enjoyment of their civil rights; and (3) ability to read and write." Significantly, the Majority Opinion acknowledges that "because arbitrators do not necessarily have a background in law, x x x [t]here is a greater risk that an arbitrator might misapply the law or mis[-]appreciate the facts *en route* to an erroneous decision."

2. ID.; ID.;RULE 43 COVERS DECISIONS OF A VOLUNTARY ARBITRATOR "AUTHORIZED BY LAW".— I also take the position that the Court did not commit the fallacy of equivocation in the *ABS-CBN* case. Rule 43 covers decisions of a voluntary arbitrator **"authorized by law".** Under Article 2042 of the Civil Code, arbitration is allowed as a mode of settling controversies, and for this purpose, "[t]he same persons who may enter into a compromise may submit their controversies to one or more arbitrators for decision." Applied well, basic logic should enable one to reach the conclusion that any arbitrator/s appointed by parties by mutual agreement or contract to settle their differences would have to be a voluntary arbitrator "authorized by law" — that is, Article 2042 of the Civil Code. This simple legal tenet should dispel any notion that "commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* instead of government instrumentalities wielding quasi-judicial powers." A profound examination of RA 9285 which came into effect in 2004, the *ABS-CBN* case which was promulgated in 2008, and the Special ADR Rules (Special Rules of Court on Alternative Dispute Resolution) which was issued in 2009, would reveal that there is no conflict. In particular, the Special ADR Rules cannot be said to have superseded the pronouncement in the *ABS-CBN* case; quite the contrary, the latter merely echo the conclusions arrived at in the former. In fact, the Special ADR Rules tends to support my position on the availability of the remedies of a petition for review and a petition for *certiorari*.

3. ID.; ID.; ARBITRAL AWARD CAN BE ASSAILED WHEN THE ARBITRATORS EXCEEDED THEIR POWERS OR SO IMPERFECTLY EXECUTED THEM.— I am aware that an arbitral award can be assailed based on limited grounds, among which is when "the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made." This is exactly what happened in this case and this was the ground upon which the vacation of the arbitral award should be anchored on. The Arbitral Tribunal's "imperfect execution of powers" and "excessive exercise of arbitral power" are valid grounds for vacating the arbitral award.

APPEARANCES OF COUNSEL

Benedict A. Litonjua and *Jose Ma. Rosendo A. Solis* for petitioner.

Ermitaño Manzano & Associates for respondent.

D E C I S I O N

BRION, *J.*:

The fundamental importance of this case lies in its delineation of the extent of permissible judicial review over arbitral awards. We make this determination from the prism of our existing laws on the subject and the prevailing state policy to uphold the autonomy of arbitration proceedings.

This is a petition for review on *certiorari* of the Court of Appeals' (*CA*) decision in **CA-G.R. SP. No. 112384** that reversed an arbitral award and dismissed the arbitral complaint for lack of merit.[1] The CA breached the bounds of its jurisdiction when it reviewed the substance of the arbitral award outside of the permitted grounds under the Arbitration Law.[2]

Brief Factual Antecedents

In 1978, Fruehauf Electronics Philippines Corp. (*Fruehauf*) leased several parcels of land in Pasig City to Signetics Filipinas Corporation (*Signetics*) for a period of 25 years (until May 28, 2003). Signetics constructed a semiconductor assembly factory on the land on its own account.

In 1983, Signetics ceased its operations after the Board of Investments (*BOI*) withdrew the investment incentives granted to electronic industries based in Metro Manila.

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[1] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Ramon A. Cruz.

[2] *An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators, and the Procedure for Arbitration in Civil Controversies, and for Other Purposes*, Republic Act No. 876, [THE ARBITRATION LAW] (1953).

In 1986, Team Holdings Limited (THL) bought Signetics. THL later changed its name to Technology Electronics Assembly and Management Pacific Corp. (*TEAM*).

In March 1987, Fruehauf filed an unlawful detainer case against TEAM. In an effort to amicably settle the dispute, both parties executed a Memorandum of Agreement (*MOA*) on June 9, 1988.[3] Under the MOA, TEAM undertook to pay Fruehauf 14.7 million pesos as unpaid rent (for the period of December 1986 to June 1988).

They also entered a 15-year lease contrac[4] (expiring on June 9, 2003) that was renewable for another 25 years upon mutual agreement. The contract included an arbitration agreement:[5]

17. ARBITRATION

In the event of any dispute or disagreement between the parties hereto involving the interpretation or implementation of any provision of this Contract of Lease, the dispute or disagreement shall be referred to arbitration by a three (3) member arbitration committee, one member to be appointed by the LESSOR, another member to be appointed by the LESSEE, and the third member to be appointed by these two members. The arbitration shall be conducted in accordance with the Arbitration Law (R.A. No. 876).

The contract also authorized TEAM to sublease the property. TEAM subleased the property to Capitol Publishing House (*Capitol*) on December 2, 1996 after notifying Fruehauf.

On May 2003, TEAM informed Fruehauf that it would not be renewing the lease.[6]

On May 31, 2003, the sublease between TEAM and Capitol expired. However, Capitol only vacated the premises on March 5, 2005. In the meantime, the master lease between TEAM and Fruehauf expired on June 9, 2003.

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[3] *Rollo*, pp. 147-150.

[4] *Id*. at 151-159.

[5] *Id.* at 159.

[6] *Id*. at 170.

On March 9, 2004, Fruehauf instituted **SP Proc. No. 11449** before the Regional Trial Court (*RTC*) for "*Submission of an Existing Controversy for Arbitration*."[7] It alleged: (1) that when the lease expired, the property suffered from damage that required extensive renovation; (2) that when the lease expired, TEAM failed to turn over the premises and pay rent; and (3) that TEAM did not restore the property to its original condition as required in the contract. Accordingly, the parties are obliged to submit the dispute to arbitration pursuant to the stipulation in the lease contract.

The RTC granted the petition and directed the parties to comply with the arbitration clause of the contract.[8]

Pursuant to the arbitration agreement, the dispute was referred to a three-member arbitration tribunal. TEAM and Fruehauf appointed one member each while the Chairman was appointed by the first two members. The tribunal was formally constituted on September 27, 2004 with retired CA Justice Hector L. Hofileña, as chairman, retired CA Justice Mariano M. Umali and Atty. Maria Clara B. Tankeh Asuncion as members.[9]

The parties initially submitted the following issues to the tribunal for resolution:[10]

1. Whether or not TEAM had complied with its obligation to return the leased premises to Fruehauf after the expiration of the lease on June 9, 2003.

   1.1. What properties should be returned and in what condition?

2. Is TEAM liable for payment of rentals after June 9, 2003?

   2.1. If so, how much and for what period?

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[7] *Id*. at 171.

[8] *Id*. at 180.

[9] *Id.* at 183.

[10] *Id*. at 184-185.

3. Is TEAM liable for payment of real estate taxes, insurance, and other expenses on the leased premises after June 9, 2003?
4. Who is liable for payment of damages and how much?
5. Who is liable for payment of attorney's fees and how much?

Subsequently, the following issues were also submitted for resolution after TEAM proposed[11] their inclusion:

1. Who is liable for the expenses of arbitration, including arbitration fees?
2. Whether or not TEAM has the obligation to return the premises to Fruehauf as a "complete, rentable, and fully facilitized electronic plant."

The Arbitral Award[12]

On December 3, 2008, the arbitral tribunal awarded Fruehauf: (1) 8.2 million pesos as (the balance of) unpaid rent from June 9, 2003 until March 5, 2005; and (2) 46.8 million pesos as damages.[13]

The tribunal found that Fruehauf made several demands for the return of the leased premises before and after the expiration of the lease[14] and that there was no express or implied renewal of the lease after June 9, 2003. It recognized that the sub-lessor, Capitol, remained in possession of the lease. However, relying on the commentaries of Arturo Tolentino on the subject, the tribunal held that it was not enough for lessor to simply vacate the leased property; *it is necessary that he place the thing at*

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[11] *Id.*

[12] *Id.* at 181-353.

[13] *Id.* at 352-353.

[14] *Id.* at 304.

the disposal of the lessor, so that the latter can receive it without any obstacle.[15]

For failing to return the property to Fruehauf, TEAM remained liable for the payment of rents. However, if it can prove that Fruehauf received rentals from Capitol, TEAM can deduct these from its liability.[16] Nevertheless, the award of rent and damages was without prejudice to TEAM's right to seek redress from its sub-lessee, Capitol.[17]

With respect to the improvements on the land, the tribunal viewed the situation from two perspectives:

First, while the Contract admitted that Fruehauf was only leasing the land and not the buildings and improvements thereon, it nevertheless obliged TEAM to deliver the buildings, installations and other improvements existing at the inception of the lease upon its expiration.[18]

The other view, is that the MOA and the Contract recognized that TEAM owned the existing improvements on the property and considered them as separate from the land for the initial 15-year term of the lease.[19] However, Fruehauf had a vested right to become the owner of these improvements at the end of the 15-year term. Consequently, the contract specifically obligated TEAM not to remove, transfer, destroy, or in any way alienate or encumber these improvements without prior written consent from Fruehauf.[20]

Either way, TEAM had the obligation to deliver the existing improvements on the land upon the expiration of the lease. However, there was no obligation under the lease to return the

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[15] *Id.* at 320, citing TOLENTINO, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, p. 239, citing Vera 151.

[16] *Id*. at 320.

[17] *Id*. at 350.

[18] *Id.* at 306 and 307.

[19] *Id.* at 309 and 310.

[20] *Id.* at 310.

premises as a "*complete, rentable, and fully facilitized electronis plant*."[21] Thus, TEAM's obligation was to vacate the leased property and deliver to Fruehauf the buildings, improvements, and installations (including the machineries and equipment existing thereon) in the same condition as when the lease commenced, save for what had been lost or impaired by the lapse of time, ordinary wear and tear, or any other inevitable cause.[22]

The tribunal found TEAM negligent in the maintenance of the premises, machineries, and equipment it was obliged to deliver to Fruehauf.[23] For this failure to conduct the necessary repairs or to notify Fruehauf of their necessity, the tribunal held TEAM accountable for damages representing the value of the repairs necessary to restore the premises to a condition "*suitable for the use to which it has been devoted*" less their depreciation expense.[24]

On the other issues, the tribunal held that TEAM had no obligation to pay real estate taxes, insurance, and other expenses on the leased premises considering these obligations can only arise from a renewal of the contract.[25] Further, the tribunal refused to award attorney's fees, finding no evidence that either party acted in bad faith.[26] For the same reason, it held both parties equally liable for the expenses of litigation, including the arbitrators' fees.[27]

TEAM moved for reconsideration[28] which the tribunal denied.[29] Thus, TEAM petitioned the RTC to partially vacate

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[21] *Id*. at 317.

[22] *Id*. at 318.

[23] *Id*. at 348.

[24] *Id.* at 328-332, 340.

[25] *Id*. at 325.

[26] *Id.* at 352.

[27] *Id.*

[28] *Id*. at 354.

[29] *Id.* at 376-380.

or modify the arbitral award.[30] It argued that the tribunal failed to properly appreciate the facts and the terms of the lease contract.

The RTC Ruling

On April 29, 2009, the RTC[31] found ***insufficient legal grounds*** under Sections 24 and 25 of the Arbitration Law to modify or vacate the award.[32] It denied the petition and CONFIRMED, the arbitral award.[33] TEAM filed a Notice of Appeal.

On July 3, 2009,[34] the RTC refused to give due course to the Notice of Appeal because according to Section 29[35] of the Arbitration Law, an ordinary appeal under Rule 41 is not the proper mode of appeal against an order confirming an arbitral award.[36]

TEAM moved for reconsideration but the RTC denied the motion on November 15, 2009.[37] Thus, TEAM filed a petition for *certiorari*[38] before the CA arguing that the RTC gravely abused its discretion in: (1) denying due course to its notice of appeal; and (2) denying the motion to partially vacate and/or modify the arbitral award.[39]

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[30] *Id*. at 381-408.

[31] RTC, Pasig City, Branch 161 acting through Judge Nicanor A. Manalo, Jr. in **Sp. Proc. No. 11449**.

[32] *Rollo*, p. 130.

[33] *Id*.

[34] *Id*. at 527.

[35] THE ARBITRATION LAW:

Section 29. *Appeals*. – **An appeal** may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award **through certiorari proceedings, but such appeals shall be limited to questions of law**. The proceedings upon such appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable.

[36] *Rollo*, p. 132.

[37] *Id*. at 133.

[38] *Id*. at 65-126.

[39] *Id*. at 87.

TEAM argued that an ordinary appeal under Rule 41 was the proper remedy against the RTC's order confirming, modifying, correcting, or vacating an arbitral award.[40] It argued that Rule 42 was not available because the order denying its motion to vacate was not rendered in the exercise of the RTC's appellate jurisdiction. Further, Rule 43 only applies to decisions of quasi-judicial bodies. Finally, an appeal under Rule 45 to the Supreme Court would preclude it from raising questions of fact or mixed questions of fact and law.[41]

TEAM maintained that it was appealing the RTC's order denying its petition to partially vacate/modify the award, **not the arbitral award itself**.[42] Citing Rule 41, Section 13 of the Rules of Court, the RTC's authority to dismiss the appeal is limited to instances when it was filed out of time or when the appellant fails to pay the docket fees within the reglementary period.[43]

TEAM further maintained that the RTC gravely abused its discretion by confirming the Arbitral Tribunal's award when it evidently had legal and factual errors, miscalculations, and ambiguities.[44]

The petition was docketed as **CA-G.R. SP. No. 112384**.

The CA decision[45]

The CA initially dismissed the petition.[46] As the RTC did, it cited Section 29 of the Arbitration Law:

Section 29. *Appeals*. – **An appeal may be taken** from an order made in a proceeding under this Act, or from a judgment entered upon an

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[40] *Id*. at 91.

[41] *Id*. at 94.

[42] *Id*. at 92.

[43] *Id*. at 88.

[44] *Id*. at 95.

[45] *Id*. at 30-45.

[46] *Id*. at 47-63.

award through **certiorari proceedings**, but such appeals shall be **limited to questions of law**. The proceedings upon such appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable.

It concluded that the appeal contemplated under the law is an appeal by *certiorari* limited only to questions flaw.[47]

The CA continued that TEAM failed to substantiate its claim as to the "evident miscalculation of figures." It further held that disagreement with the arbitrators' factual determinations and legal conclusions does not empower courts to amend or overrule arbitral judgments.[48]

However, the CA amended its decision on October 25, 2012 upon a motion for reconsideration.[49]

The CA held that Section 29 of the Arbitration Law does not preclude the aggrieved party from resorting to other judicial remedies.[50] Citing *Asset Privatization Trust v. Court of Appeals*,[51] the CA held that the aggrieved party may resort to a petition for *certiorari* when the RTC to which the award was submitted for confirmation has acted without jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy remedy in the course of law.[52]

The CA further held that the mere filing of a notice of appeal is sufficient as the issues raised in the appeal were not purely questions of law.[53] It further cited Section 46 of the Alternative Dispute Resolution (*ADR*) Law:[54]

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[47] *Id*. at 60.

[48] *Id.* at 62.

[49] *Id*. at 30-45.

[50] *Id*. at 33.

[51] 360 Phil. 768 (1998).

[52] *Rollo*, p. 33.

[53] *Id*.

[54] *Id*. at 34.

SEC. 46. ***Appeal from Court Decisions on Arbitral Awards.*** – A decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellant court to post counterbond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.[55]

However, the CA made no further reference to A.M. No. 07-11-08-SC, the Special Rules of Court on Alternative Dispute Resolution (*Special ADR Rules*) which govern the appeal procedure.

The CA further revisited the merits of the arbitral award and found several errors in law and in fact. It held: (1) that TEAM was not obliged to pay rent because it was Capitol, not TEAM, that remained in possession of the property upon the expiration of the lease;[56] and (2) that Fruehauf was not entitled to compensation for the repairs on the buildings because it did not become the owner of the building until after the expiration of the lease.[57]

Also citing Tolentino, the CA opined: (1) that a statement by the lessee that he has abandoned the premises should, as a general rule, constitute sufficient compliance with his duty to return the leased premises; and (2) that any new arrangement made by the lessor with another person, such as the sub-lessor, operates as a resumption of his possession.[58]

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[55] Sec. 46, 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, Republic Act No. 9285, [ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004] (2004).

[56] *Id.* at 35.

[57] *Id.* at 44.

[58] *Id.* at 38, citing TOLENTINO, p. 239.

On the issue of damages, the CA held that TEAM can never be liable for the damages for the repairs of the improvements on the premises because they were owned by TEAM itself (through its predecessor, Signetics) when the lease commenced.[59]

The CA **REVERSED AND SET ASIDE** the arbitral award and **DISMISSED** the arbitral complaint for lack of merit.[60]

This CA action prompted Fruehauf to file the present petition for review.

The Arguments

Fruehauf argues that courts do not have the power to substitute their judgment for that of the arbitrators.[61] It also insists that an ordinary appeal is not the proper remedy against an RTC's order confirming, vacating, correcting or modifying an arbitral award but a petition for review on *certiorari* under Rule 45.[62]

Furthermore, TEAM's petition before the CA went beyond the permissible scope of *certiorari* — the existence of grave abuse of discretion or errors jurisdiction — by including questions of fact and law that challenged the merits of the arbitral award.[63]

However, Fruehauf inconsistently argues that the remedies against an arbitral award are (1) a petition to vacate the award, (2) a petition for review under Rule 43 raising questions of fact, of law, or mixed questions of fact and law, or (3) a petition for *certiorari* under Rule 65.[64] Fruehauf cites an article from the Philippine Dispute Resolution Center[65] and *Insular Savings Bank v. Far East Bank and Trust, Co.*[66]

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[59] *Id.* at 41.

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

[61] *Id.* at 13.

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

[63] *Id.* at 21, 23, 24, 449 and 450.

[64] *Id.* at 461.

[65] *Id.* at 454.

[66] *Id.* at 461.

TEAM counters that the CA correctly resolved the substantive issues of the case and that the arbitral tribunal's errors were sufficient grounds to vacate or modify the award.[67] It insists that the RTC's misappreciation of the facts from a patently erroneous award warranted an appeal under Rule 41.[68]

TEAM reiterates that it "**disagreed with the arbitral award mainly on questions of fact and not only on questions of law**," specifically, "**on factual matters relating to specific provisions in the contract on ownership of structures and improvements thereon, and the improper award of rentals and penalties**."[69] Even assuming that it availed of the wrong mode of appeal, TEAM posits that its appeal should still have been given due course in the interest of substantial justice.[70]

TEAM assails the inconsistencies of Fruehauf's position as to the available legal remedies against an arbitral award.[71] However, it maintains that Section 29 of the Arbitration Law does not foreclose other legal remedies (aside from an appeal by *certiorari*) against the RTC's order confirming or vacating an arbitral award pursuant to *Insular Savings Bank* and *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*[72]

The Issues

This case raises the following questions:

1. What are the remedies or the modes of appeal against an unfavorable arbitral award?
2. What are the available remedies from an RTC decision confirming, vacating, modifying, or correcting an arbitral award?

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[67] *Id.* at 450, 524 and 530.

[68] *Id.* at 453.

[69] *Id.* at 455.

[70] *Id.*

[71] *Id.* at 454.

[72] *Id.* at 455.

3. Did the arbitral tribunal err in awarding Fruehauf damages for the repairs of the building and rental fees from the expiration of the lease?

Our Ruling

The petition is meritorious.

Arbitration is an alternative mode of dispute resolution ***outside of the regular court system***. Although adversarial in character, arbitration is technically not litigation. It is a voluntary process in which one or more arbitrators — appointed according to the parties' agreement or according to the applicable rules of the Alternative Dispute Resolution (*ADR*) Law — resolve a dispute by rendering an award.[73] While arbitration carries many advantages over court litigation, in many ways these advantages also translate into its disadvantages.

Resort to arbitration is voluntary. It requires ***consent from both parties*** in the form of an arbitration clause that ***pre-existed the dispute*** *or a* ***subsequent submission agreement***. This written arbitration agreement is an independent and legally enforceable contract that must be complied with in good faith. By entering into an arbitration agreement, the parties agree to submit their dispute to an arbitrator (or tribunal) of their own choosing and be bound by the latter's resolution.

However, this **contractual** and **consensual** character means that the parties cannot implead a third-party the proceedings even if the latter's participation is necessary for a complete settlement of the dispute. The tribunal does not have the power to compel a person to participate in the arbitration proceedings without that person's consent. It also has no authority to decide on issues that the parties did not submit (or agree to submit) for its resolution.

As a **purely private mode of dispute resolution**, arbitration proceedings, including the records, the evidence, and the arbitral

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[73] Sec. 3(d), ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

award, are confidential[74] unlike court proceedings which are generally public. This allows the parties to avoid negative publicity and protect their privacy. Our law highly regards the confidentiality of arbitration proceedings that it devised a judicial remedy to prevent or prohibit the unauthorized disclosure of confidential information obtained therefrom.[75]

The contractual nature of arbitral proceedings affords the parties substantial **autonomy over the proceedings**. The parties are free to agree on *the procedure to be observed* during the proceedings.[76] This lends considerable flexibility to arbitration proceedings as compared to court litigation governed by the Rules of Court.

The parties likewise **appoint the arbitrators** based on agreement. There are no other legal requirements as to the competence or technical qualifications of an arbitrator. Their only legal qualifications are: (1) being of legal age; (2) full-enjoyment of their civil rights; and (3) the ability to read and write.[77] The parties can tailor-fit the tribunal's composition to the nature of their dispute. Thus, a specialized dispute *can* be resolved by experts on the subject.

However, because arbitrators do not necessarily have a background in law, they cannot be expected to have the legal mastery of a magistrate. There is a greater risk that an arbitrator might misapply the law or misappreciate the facts *en route* to an erroneous decision.

This *risk of error* is compounded by the **absence of an effective appeal mechanism**. The errors of an arbitral tribunal are not subject to correction by the judiciary. As a private alternative to court proceedings, **arbitration is meant to be**

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[74] Sec. 23, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[75] Sec. 23, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[76] Art. 5.18, *Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004*, Department of Justice (*DOJ*) Circular No. 98, series of 2009, [IRR OF ADR ACT] (2009).

[77] Sec. 10, THE ARBITRATION LAW.

an end, *not the beginning*, of litigation.[78] Thus, the arbitral award is final and binding on the parties by reason of their contract the arbitration agreement.[79]

An Arbitral Tribunal does not exercise quasi-judicial powers

Quasi-judicial or administrative adjudicatory power is the power: (1) to hear and determine *questions of fact* to which legislative policy is to apply, and (2) to decide in accordance with the *standards laid down by the law itself in enforcing and administering the same law*.[80] Quasi-judicial power is only exercised by administrative agencies — legal organs of the government.

Quasi-judicial bodies can only exercise such powers and jurisdiction as are expressly or by necessary implication conferred upon them by their enabling statutes.[81] Like courts, a quasi-judicial body's jurisdiction over a subject matter is conferred by law and exists independently from the will of the parties. As government organs necessary for an effective legal system, a quasi-judicial tribunal's legal existence continues beyond the resolution of a specific dispute. In other words, quasi-judicial bodies are ***creatures of law***.

As a contractual and consensual body, the *arbitral tribunal does not have any inherent powers over the parties*. It has no power to issue coercive writs or compulsory processes. Thus, there is a need to resort to the regular courts for interim measures

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[78] *Asset Privatization Trust v. CA, supra* note 51, at 792, reiterated in *RCBC Capital Corporation v. Banco de Oro Unibank, Inc.*, 700 Phil. 687, 725 (2012).

[79] Rule 19.7, *Special Rules of Court on Alternative Dispute Resolution*, A.M. No. 07-11-08-SC, [SPECIAL ADR RULES], (2009).

[80] *Bedol v. Commission on Elections*, 621 Phil, 498, 510 (2009) citing *Dole Philippines, Inc. v. Esteva*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 369-370.

[81] *Radio Communications of the Philippines, Inc. v. Board of Communications*, 170 Phil. 493, 496 (1977).

of protection[82] and for the recognition or enforcement of the arbitral award.[83]

The arbitral tribunal acquires jurisdiction over the parties and the subject matter through stipulation. Upon the rendition of the final award, the tribunal becomes *functus officio* and — save for a few exceptions[84] — ceases to have any further jurisdiction over the dispute.[85] The tribunal's powers (or in the case of *ad hoc* tribunals, their very existence) stem from the obligatory force of the arbitration agreement and its ancillary stipulations.[86] Simply put, **an arbitral tribunal** is a ***creature of contract***.

Deconstructing the view that arbitral tribunals are quasi-judicial agencies

We are aware of the contrary view expressed by the late Chief Justice Renato Corona in *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*.[87]

The ABS-CBN Case opined that a voluntary arbitrator is a "quasi-judicial instrumentality" of the government[88] pursuant to *Luzon Development Bank v. Association of Luzon Development*

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[82] Or for the implementation of interim measures of protection issued by the tribunal.

[83] Secs. 28 and 29, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[84] Art. 4.32, 4.33, and 4.34, IRR OF ADR ACT.

[85] Article 32, 1985 Model Law in relation to Sec. 33, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[86] CIVIL CODE:

Article 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

[87] 368 Phil. 282, 294 (2008).

[88] *Id*. at 291-292.

Bank Employees,[89] *Sevilla Trading Company v. Semana*,[90] *Manila Midtown Hotel v. Borromeo*,[91] and *Nippon Paint Employees Union-Olalia v. Court of Appeals*.[92] Hence, voluntary arbitrators are included in the Rule 43 jurisdiction of the Court of Appeals:

> SECTION 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and **voluntary arbitrators authorized by law**.[93] (emphasis supplied)

Citing *Insular Savings Bank v. Far East Bank and Trust Co.*,[94] the *ABS-CBN Case* pronounced that the losing party in an arbitration proceeding may avail of three alternative remedies: (1) a petition to vacate the arbitral award before the RTC; (2) a petition for review with the CA under Rule 43 of the Rules of Court raising questions, of fact, of law, or of both; and (3) a petition for *certiorari* under Rule 65 should the arbitrator act beyond its jurisdiction or with grave abuse of discretion.[95]

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[89] 319 Phil. 262, 270-271 (1995).

[90] G.R. No. 152456, 28 April 2004, 428 SCRA 239, 243.

[91] 482 Phil. 137 (2004).

[92] 485 Phil. 675, 680 (2004).

[93] Rule 43, Sec. 1 of the RULES OF COURT.

[94] 525 Phil. 238, 249 (2006).

[95] *ABS-CBN Broadcasting Corp. v. World Interactive Network Systems (WINS), Japan Co., supra* note 87, at 294.

At first glance, the logic of this position appears to be sound. However, a critical examination of the supporting authorities would show that the conclusion is wrong.

First, the pronouncements made in *the ABS-CBN Case* and in the *Insular Savings Bank Case* (which served as the authority for the ABS-CBN Case) were both *obiter dicta*.

In the ***ABS-CBN Case***, we sustained the CA's dismissal of the petition because it was filed as an "*alternative petition for review under Rule 43 or petition for certiorari under Rule 65*."[96] We held that it was an *inappropriate* mode of appeal because, a petition for review and a petition for *certiorari* are mutually exclusive and not alternative or successive.

In the ***Insular Savings Bank case***, the *lis mota* of the case was the RTC's jurisdiction over an appeal from an arbitral award. The parties to the arbitration agreement agreed that the rules of the arbitration provider[97] — which stipulated that the RTC shall have jurisdiction to review arbitral awards — will govern the proceedings.[98] The Court ultimately held that the RTC does not have jurisdiction to review the merits of the award because legal jurisdiction is conferred by law, not by mere agreement of the parties.

In both cases, the pronouncements as to the remedies against an arbitral award were unnecessary for their resolution. Therefore, these are *obiter dicta* – judicial comments made in passing which are not essential to the resolution of the case and cannot therefore serve as precedents.[99]

Second, even if we disregard the *obiter dicta* character of both pronouncements, a more careful scrutiny deconstructs their legal authority.

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[96] *Id.* at 294.

[97] The Philippine Clearing House Corporation's Arbitration Committee.

[98] *Insular Savings Bank v. Far East Bank and Trust Co., supra* note 94, at 250.

[99] *Obiter Dictum, Black's Law* 8th Ed. (2004).

The **ABS-CBN Case** committed the classic ***fallacy of equivocation***. It equated the term "voluntary arbitrator" used in Rule 43, Section 1 and in the cases of *Luzon Development Bank v. Association of Luzon Development Bank Employees, Sevilla Trading Company v. Semana, Manila Midtown Hotel v. Borromeo,* and *Nippon Paint Employees Union-Olalia v. Court of Appeals* with the term "arbitrator/arbitration tribunal."

The first rule of legal construction, *verba legis*, requires that, wherever possible, the words used in the Constitution or in the statute must be given their ordinary meaning *except where technical terms are employed*.[100] Notably, all of the cases cited in the *ABS-CBN Case*involved **labor disputes**.

The term "*Voluntary Arbitrator*" does not refer to an ordinary "*arbitrator*" who voluntarily agreed to resolve a dispute. It is a technical term with a specific definition under the Labor Code

> Art. 212 **Definitions. xxx**
>
> 14. "Voluntary Arbitrator" means any person accredited by the Board as such or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.[101]

Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining

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[100] *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, G.R. No. L-21064, February 18, 1970, 31 SCRA 413, 422-423; *Abas Kida v. Senate*, 683 Phil. 198, 218 (2012) citing *Francisco v. House of Representatives*, 460 Phil. 830, 884 (2003).

[101] Art. 219 (renumbered from 212), *A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice*, Presidential Decree No. 442 [LABOR CODE OF THE PHILIPPINES] as amended (1974).

Agreements.[102] These disputes were specifically excluded from the coverage of both the Arbitration Law[103] and the ADR Law.[104]

Unlike purely commercial relationships, the relationship between capital and labor are *heavily impressed with public interest*.[105] Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.

On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* instead of government instrumentalities wielding quasi-judicial powers.

Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code

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[102] Arts. 274 and 275 (renumbered from 261 and 262), LABOR CODE OF THE PHILIPPINES.

[103] THE ARBITRATION LAW:

Section 3. *Controversies or cases not subject to the provisions of this Act*. — This Act shall not apply to controversies and to cases which are **subject to the jurisdiction of the Court of Industrial Relations** or which have been submitted to it as provided by Commonwealth Act Numbered One hundred and three, as amended.

[104] ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004:

SEC. 6. ***Exception to the Application of this Act***. — The provisions of this Act shall not apply to resolution or settlement of the following: **(a) labor disputes covered by Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended and its Implementing Rules and Regulations**; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation; e) the jurisdiction of courts: (f) future legitime; (g) criminal liability; and (h) those which by law cannot be compromised.

[105] Art. 1700, NEW CIVIL CODE; *Halagueña v. Philippine Airlines, Inc.*, 617 Phil. 502 (2009).

itself confers subject-matter jurisdiction to Voluntary Arbitrators.[106]

Notably, the other arbitration, body listed in Rule 43 the Construction Industry Arbitration Commission (*CIAC*) - is also a government agency[107] attached to the Department of Trade and Industry.[108] Its jurisdiction is likewise conferred by statute.[109] By contrast, the subject – matter jurisdiction of commercial arbitrators is stipulated by the parties.

These account for the legal differences between "ordinary" or "commercial" arbitrators under the Arbitration Law and the ADR Law, and "voluntary arbitrators" under the Labor Code. The two terms are *not* synonymous with each other. Interchanging them with one another results in the logical fallacy of *equivocation* — using the same word with different meanings.

Further, Rule 43, Section 1 enumerates quasi-judicial tribunals whose decisions are appealable to the CA instead of the RTC. But where legislation provides for an appeal from decisions of certain *administrative* bodies to the CA, it means that *such bodies are co-equal with the RTC in terms of rank and stature, logically placing them beyond the control of the latter*.[110]

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[106] Arts. 274 and 275 (renumbered from 261 and 262), LABOR CODE OF THE PHILIPPINES.

[107] *Creating an Arbitration Machinery in the Construction Industry of the Philippines*, Executive Order No. 1008, [CONSTRUCTION INDUSTRY ARBITRATION LAW], (1985).

[108] Book IV, Title X, Chapter 5, Sec. 12, REVISED ADMINISTRATIVE CODE (1987).

[109] Sec. 4, CONSTRUCTION INDUSTRY ARBITRATION LAW; AS A QUASI-JUDICIAL BODY, THE CIAC'S AWARDS ARE SPECIFICALLY MADE APPEALABLE TO THIS COURT BY LAW, SEE SEC. 19, CONSTRUCTION INDUSTRY ARBITRATION LAW.

[110] *Springfield Development v. Hon. Presiding Judge*, 543 Phil. 298, 311 (2007); *Board of Commissioners v. Dela Rosa*, 274 Phil. 1156, 1191-1192 (1991); *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344, 355 (1989).

However, arbitral tribunals and the RTC are *not co-equal* bodies because the RTC is authorized to confirm or to vacate (but not reverse) arbitral awards.[111] If we were to deem arbitrators as included in the scope of Rule 43, we would effectively place it on equal footing with the RTC and remove arbitral awards from the scope of RTC review.

All things considered, there is no legal authority supporting the position that commercial arbitrators are quasi-judicial bodies.

What are remedies from a final domestic arbitral award?

The right to an appeal is neither a natural right nor an indispensable component of due process; it is a mere statutory privilege that cannot be invoked in the absence of an enabling statute. Neither the Arbitration Law nor the ADR Law allows a losing party to appeal from the arbitral award. The statutory absence of an appeal mechanism reflects the State's policy of upholding the autonomy of arbitration proceedings and their corresponding arbitral awards.

This Court recognized this when we enacted the *Special Rules of Court on Alternative Dispute Resolution* in 2009:[112]

> **Rule 2.1.** *General policies*. – It is the policy of the State to actively promote the use of various modes of ADR and to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts. xxx
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> The Court shall exercise the power of judicial review as provided by these Special ADR Rules. **Courts shall intervene only in the cases allowed by law or these Special ADR Rules.**[113]
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> x x x x x x x x x

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[111] Secs. 40 and 41, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[112] A.M. No. 7-11-08-SC, effective October 30, 2009.

[113] Rule 2.1, SPECIAL ADR RULES.

Rule 19.7. *No appeal or certiorari on the merits of an arbitral award.* — An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding. Consequently, a party to an arbitration is **precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award.**[114] **(emphasis supplied)**

More than a decade earlier in ***Asset Privatization Trust v. Court of Appeals***, we likewise defended the autonomy of arbitral awards through our policy of non-intervention on their substantive merits:

As a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts. Courts are **without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators**. They will not review the findings of law and fact contained in an award, and **will not undertake to substitute their judgment for that of the arbitrators**, since any other rule would make an award the commencement, not the end, of litigation. Errors of law and fact, or an erroneous decision of matters submitted to the judgment of the arbitrators, are **insufficient to invalidate an award fairly and honestly made**. Judicial review of an arbitration is, thus, more limited than judicial review of a trial.[115]

Nonetheless, an arbitral award is not absolute. Rule 19.10 of the Special ADR Rules — by referring to Section 24 of the Arbitration Law and Article 34 of the 1985 United Nations Commission on International Trade Law (*UNCITRAL*) Model Law — recognizes the very limited exceptions to the autonomy of arbitral awards:

Rule 19.10. ***Rule on judicial review on arbitration in the Philippines.*** — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award

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[114] Rule 19.7, SPECIAL ADR RULES.

[115] *Asset Privatization Trust v. CA, supra* note 51, at 792 reiterated in *RCBC Capital Corporation v. Banco de Oro Unibank, Inc., supra* note 78, at 725.

under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration **on any ground other than those provided in the Special ADR Rules**, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award **only if the same amounts to a violation of public policy**.

The court **shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal**.[116]

The grounds for **vacating** a domestic arbitral award under Section 24 of the Arbitration Law contemplate the following scenarios:

(a) when the award is procured by corruption, fraud, or other undue means; or

(b) there was evident partiality or corruption in the arbitrators or any of them; or

(c) the arbitrators were guilty of misconduct that materially prejudiced the rights of any party; or

(d) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[117]

The award may also be vacated if an arbitrator who was disqualified to act willfully refrained from disclosing his disqualification to the parties.[118] Notably, none of these grounds pertain to the correctness of the award but relate to the *misconduct of arbitrators*.

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[116] Rule 19.10, SPECIAL ADR RULES.

[117] Section 24, THE ARBITRATION LAW.

[118] Art. 5.35 (iv), IRR OF ADR ACT.

The RTC may also set aside the arbitral award based on Article 34 of the UNCITRAL Model Law. These grounds are reproduced in Chapter 4 of the *Implementing Rules and Regulations (IRR) of the 2004 ADR Act*:

(i) the party making the application furnishes proof that:

(aa) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Philippines; or

(bb) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(cc) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only the part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(dd) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ADR Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with ADR Act; or

(ii) The Court finds that:

(aa) the subject-matter of the dispute is **not capable of settlement by arbitration under the law of the Philippines**; or

(bb) the award is ***in conflict with the public policy*** of the Philippines.[119]

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[119] Art. 4.34, IRR OF ADR ACT.

Chapter 4 of the IRR of the, ADR Act applies particularly to International Commercial Arbitration. However, the abovementioned grounds taken from the UNCITRAL. Model Law are specifically made applicable to domestic arbitration by the Special ADR Rules.[120]

Notably, these grounds are not concerned with the correctness of the award; they go into the validity of the arbitration agreement or the regularity of the arbitration proceedings.

These grounds for vacating an arbitral award are exclusive. Under the ADR Law, courts are obliged to disregard any other grounds invoked to set aside an award:

SEC. 41. *Vacation Award.* — A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. **Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.**[121]

Consequently, the winning party can generally expect the enforcement of the award. This is a stricter rule that makes Article 2044[122] of the Civil Code regarding the finality of an arbitral award redundant.

As established earlier, an arbitral award is not appealable via Rule 43 because: (1) there is no statutory basis for an appeal from the final award of arbitrators; (2) arbitrators are not quasi-judicial bodies; and (3) the Special ADR Rules specifically prohibit the filing of an appeal to question the merits of an arbitral award.

The Special ADR Rules allow the RTC to correct or modify an arbitral award pursuant to Section 25 of the Arbitration Law. However, this authority cannot be interpreted as jurisdiction

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[120] Rule 19.10, SPECIAL ADR RULES.

[121] Sec. 41, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[122] Art. 2044. Any stipulation that the arbitrators' award or decision shall be final, is valid, without prejudice to Articles 2038, 2039, and 2040.

to review the merits of the award. The RTC can modify or correct the award only in the following cases:

a. Where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

b. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;

c. Where the arbitrators have omitted to resolve an issue submitted to them for resolution; or

d. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the Court.[123]

A losing party is likewise precluded from resorting to *certiorari* under Rule 65 of the Rules of Court.[124] *Certiorari* is a prerogative writ designed to correct errors of jurisdiction committed by a judicial or quasi-judicial body.[125] Because an arbitral tribunal is ***not a government organ*** exercising judicial or quasi-judicial powers, it is removed from the ambit of Rule 65.

Not even the Court's expanded *certiorari* jurisdiction under the Constitution[126] can justify judicial intrusion into the merits

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[123] Rule 11.4, SPECIAL ADR RULES.

[124] Rule 19.7, SPECIAL ADR RULES.

[125] Rule 65, Sec. 1, RULES OF COURT.

[126] Art. VIII, CONSTITUTION:

SECTION 1. The Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction **on the part of any branch or instrumentality of the Government**.

of arbitral awards. While the Constitution expanded the scope of *certiorari* proceedings, this power remains limited to a review of the acts of "*any branch or instrumentality of the Government*." As a purely private creature of contract, an arbitral tribunal remains outside the scope of *certiorari*.

Lastly, the Special ADR Rules are a self-contained body of rules. The parties cannot invoke remedies and other provisions from the Rules of Court unless they were incorporated in the Special ADR Rules:

> Rule 22.1. *Applicability of Rules of Court*. — The provisions of the Rules of Court **that are applicable** to the proceedings enumerated in Rule 1.1 of these Special ADR Rules **have either been included and incorporated in these Special ADR Rules or specifically referred to herein**.
>
> In Connection with the above proceedings, the Rules of Evidence shall be liberally construed to achieve the objectives of the Special ADR Rules.[127]

Contrary to TEAM's position, the Special ADR Rules actually forecloses against other remedies outside of itself. Thus, a losing party cannot assail an arbitral award through, a petition for review under Rule 43 or a petition for *certiorari* under Rule 65 because these remedies are not specifically permitted in the Special ADR Rules.

In sum, the only remedy against a final domestic arbitral award is to file petition to vacate or to modify/correct the award not later than thirty (30) days from the receipt of the award.[128] Unless a ground to vacate has been established, the RTC must confirm the arbitral award as a matter of course.

The remedies against an order confirming, vacating, correcting, or modifying an arbitral award

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[127] Rule 22.1, SPECIAL ADR RULES.

[128] Rule 11.2, SPECIAL ADR RULES.

Once the RTC orders the confirmation, vacation, or correction/modification of a domestic arbitral award, the aggrieved party may move for reconsideration within a non-extendible period of fifteen (15) days from receipt of the order.[129] The losing party may also opt to appeal from the RTC's ruling instead.

Under the Arbitration Law, the mode of appeal was via petition for review on *certiorari*:

> **Section 29.** *Appeals*. — **An appeal** may be taken from an order made in a proceeding under this Act, or from judgment entered upon an award through ***certiorari* proceedings**, but such appeals **shall be limited to questions of law**. The proceedings upon such appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable.[130]

The Arbitration Law did not specify which Court had jurisdiction to entertain the appeal but left the matter to be governed by the Rules of Court. As the appeal was limited to questions of law and was described as "*certiorari* proceedings," the mode of appeal can be interpreted as an Appeal By Certiorari to this Court under Rule 45.

When the **ADR Law was enacted in 2004**, it specified that the appeal shall be made to the CA in accordance with the rules of procedure to be promulgated by this Court.[131] The Special ADR Rules provided that the mode of appeal from the RTC's order confirming, vacating, or correcting/modifying a domestic arbitral award was through a petition for review with the CA.[132] However, the **Special ADR Rules only took effect on October 30, 2009**.

In the present case, the RTC disallowed TEAM's notice of appeal from the former's decision confirming the arbitral award on July 3, 2009. TEAM moved for reconsideration which was

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[129] Rule 19.1 and 19.2, SPECIAL ADR RULES.

[130] Section 29, THE ARBITRATION LAW.

[131] Sec. 46, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004.

[132] Rule 19.12, SPECIAL ADR RULES.

likewise denied on November 15, 2009. In the interim, the Special ADR Rules became effective. Notably, the Special ADR Rules apply retroactively in light of its procedural character.[133] TEAM filed its petition for *certiorari* soon after.

Nevertheless, whether we apply, Section 29 of the Arbitration Law, Section 46 of the ADR Law, or Rule 19.12 of the Special ADR Rules, there is no legal basis that an ordinary appeal (via notice of appeal) is the correct remedy from an order confirming, vacating, or correcting an arbitral award. Thus, there is no merit in the CA's ruling that the RTC gravely abused its discretion when it refused to give due course to the notice of appeal.

The correctness or incorrectness of the arbitral award

We have deliberately refrained from passing upon the merits of the arbitral award — not because the award was erroneous but because it would be improper. None of the grounds to vacate an arbitral award are present in this case and as already established, the *merits* of the award cannot be reviewed by the courts.

Our refusal to review the award is not a simple matter of putting procedural technicalities over the substantive merits of a case; it goes into the very legal substance of the issues. There is no law granting the judiciary authority to review the merits of an arbitral award. If we were to insist on reviewing the correctness of the award (*or consent to the CA's doing so*), it would be tantamount to expanding our jurisdiction without the benefit of legislation. This translates to judicial legislation — a breach of the fundamental principle of separation of powers.

The CA **reversed** the arbitral award - *an action that it has no power to do* — because it disagreed with the tribunal's factual findings and application of the law. However, the alleged incorrectness of the award is insufficient cause to vacate the award, given the State's policy of upholding the autonomy of arbitral awards.

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[133] Rule 24.1, SPECIAL ADR RULES.

The CA passed upon questions such as: (1) whether or not TEAM effectively returned the property upon the expiration of the lease; (2) whether or not TEAM was liable to pay rentals after the expiration of the lease; and (3) whether or not TEAM was liable to pay Fruehauf damages corresponding to the cost of repairs. These were the same questions that were specifically submitted to the arbitral tribunal for its resolution.[134]

The CA disagreed with the tribunal's factual determinations and legal interpretation of TEAM's obligations under the contract — particularly, that TEAM's obligation to turn over the improvements on the land at the end of the lease in the same condition as when the lease commenced translated to an obligation to make ordinary repairs necessary for its preservation.[135]

Assuming *arguendo* that the tribunal's interpretation of the contract was incorrect, the errors would have **been simple errors of law**. It was the tribunal — not the RTC or the CA — that had jurisdiction and authority over the issue by virtue of the parties' submissions; the CA's substitution of its own judgment for the arbitral award cannot be more compelling than the overriding public policy to uphold the autonomy of arbitral awards. Courts are precluded from disturbing an arbitral tribunal's factual findings and interpretations of law.[136] The CA's ruling is an unjustified judicial intrusion in excess of its jurisdiction — a judicial overreach.[137]

Upholding the CA's ruling would weaken our alternative dispute resolution mechanisms by allowing the courts to "throw their weight around" whenever they disagree with the results. It *erodes* the obligatory force of arbitration agreements by allowing the losing parties to "forum shop" for a more favorable ruling from the judiciary.

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[134] *Rollo*, pp. 184-185.

[135] *Id.* at 41.

[136] Rule 11.9, SPECIAL ADR RULES.

[137] *Korea Technologies, Co. v. Lerma*, 566 Phil. 1, 35 (2008).

Whether or not the arbitral tribunal correctly passed upon the issues is irrelevant. Regardless of the amount, of the sum involved in a case, a simple error of law remains a simple error of law. Courts are precluded from revising the award in a particular way, revisiting the tribunal's findings of fact or conclusions of law, or otherwise encroaching upon the independence of an arbitral tribunal.[138] At the risk of redundancy, we emphasize Rule 19.10 of the Special ADR Rules promulgated by this Court *en banc*:

Rule 19.10. *Rule on judicial review on arbitration in the Philippines*. — As a general rule, the court **can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration**, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award **only if the same amounts to a violation of public policy**.

The court **shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal**.

In other words, simple errors of fact, of law, or of fact and law committed by the arbitral tribunal are not justiciable errors in this jurisdiction.[139]

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[138] Rule 11.9 and 19.7, SPECIAL ADR RULES.

[139] A survey of prevailing arbitration laws in other jurisdictions reveal the absence of an appeal mechanism from the merits of an arbitral award. As in the Philippines, the remedy is to vacate or set aside the award based on the lack of jurisdiction of the tribunal (based on the arbitral agreement and the submissions), procedural irregularities and misconduct committed by the tribunal, the arbitrability of the issue, extrinsic fraud, or the existence

TEAM agreed to submit their disputes to an arbitral tribunal. It understood all the risks - *including the absence of an appeal mechanism* and found that its benefits (both legal and economic) outweighed the disadvantages. Without a showing that any of the grounds to vacate the award exists or that the same amounts to a violation of an overriding public policy, the award is subject to confirmation as a matter of course.[140]

WHEREFORE, we **GRANT** the petition. The CA's decision in **CA-G.R. SP. No. 112384 is SET ASIDE** and the RTC's order**CONFIRMING** the arbitral award in **S.P. Proc. No. 11449** is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Mendoza, and *Leonen, JJ.*, concurring.

Del Castillo, J., dissents, see dissenting opinion.

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of an overriding public policy. This is owed primarily to the widespread adoption of the UNCITRAL Model Law:
See:
United States of America, U.S. FEDERAL ARBITRATION ACT, 9 U.S.C. §10 and 11
The People's Republic of China, ARBITRATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, Art. 58 (1994) [*notably, the PRC allows the setting aside of the award if a litigant commits fraud against the tribunal itself*]
Hong Kong Special Administrative Region of the People's Republic of China, THE ARBITRATION ORDINANCE, Cap 609 § 81 (2011)
The Republic of China (Taiwan), The Republic of China Arbitration Law, Art. 38 and 40 (2015)
[*the ROC does not grant an appeal on the merits but notably allows the Courts to revoke the award if a litigant commits fraud against the tribunal or when the award relies on a judgment/ruling that was subsequently reversed or materially altered*];
The Republic of India, Ss. 34 & 37, THE ARBITRATION AND CONCILIATION ACT, 1996 (as amended);
The Republic of Singapore, INTERNATIONAL ARBITRATION ACT (Cap 143A, 2002 Rev Ed) s 24.
However, in a few jurisdictions, an appeal based on a **question of law** is permitted *if* (1) all the parties agree to the appeal and (2) the court grants leave to the appeal.
See:
New South Wales, *Commercial Arbitration Act 2010* (NSW), pt7 34A; England, Wales, and Northern Ireland, ENGLISH ARBITRATION ACT OF 1996, § 69.

[140] Rule 11.9, SPECIAL ADR RULES.

DISSENTING OPINION

DEL CASTILLO, *J.*:

The Majority Opinion declares that "errors of an arbitral tribunal are not subject to correction by the judiciary;"[1] "the arbitral award is final and binding on the parties"[2] and that courts have no jurisdiction to review the merits of the award.[3] In particular, it holds that "[n]ot even the Court's expanded *certiorari* jurisdiction xxx can justify judicial intrusion into the merits of arbitral awards."[4] Thus, the CA as well as this Court had no power to substitute its own judgment for the arbitral award as the same would amount to an unjustified judicial intrusion in violation of state-sanctioned policy on autonomy of arbitral tribunals.[5] The Majority Opinion holds that courts should not be allowed to "throw their weight around" if they disagree with the results.[6]

With due respect, I disagree.

To adopt the views presented in the Majority Opinion is tantamount to this **Highest Court** surrendering its jurisdiction or capitulating to the decision or rulings of an arbitrator. I cannot in conscience trade this Court's judicial power in favor of an arbitrator especially since as the Majority Opinion itself admits, "arbitrators do not necessarily have a background in law [and] they cannot be expected to have the legal mastery of a magistrate;"[7] in fact, "[t]here are no other legal requirements as to the competence or technical qualifications of an arbitrator. Their only legal qualifications are: (1) being of legal age; (2)

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[1] *Ponencia*, p. 11.

[2] *Id*.

[3] *Id*. at 22.

[4] *Id*. at 20.

[5] *Id*. at 23.

[6] *Id*.

[7] *Id*. at 11.

full enjoyment of their civil rights; and (3) ability to read and write."[8] Significantly, the Majority Opinion acknowledges that "because arbitrators do not necessarily have a background in law, xxx [t]here is a greater risk that an arbitrator might misapply the law or mis[-]appreciate the facts *en route* to an erroneous decision."[9]

Moreover, the ruling of the Majority Opinion is contrary to the pronouncement of this Court in *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co. Ltd*.[10]

In the *ABS-CBN* case, the Court classified a voluntary arbitrator as a quasi-judicial instrumentality;[11] as such "decisions handed down by voluntary arbitrators fall under the exclusive appellate jurisdiction of the [Court of Appeals] xxx [under] Rule 43 xxx."[12] The Court held therein that "the proper remedy from the adverse decision of a voluntary arbitrator if errors of fact and/or law are raised, is a petition for review under Rule 43 of the Rules of Court."[13]

In the same *ABS-CBN* casethe Court further declared that the remedy of a petition for *certiorari* may also be availed in assailing the decision of a voluntary arbitrator, *viz*.:

> As may be gleaned from the above stated provision, it is well within the power and jurisdiction of the Court to inquire whether any instrumentality of the Government, such as a voluntary arbitrator, has gravely abused its discretion in the exercise of its functions and prerogatives. Any agreement stipulating that 'the decision of the arbitrator shall be final and unappealable' and that no further judicial recourse if either party disagrees with the whole or any part of the

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[8] *Id*.

[9] *Id*.

[10] 568 Phil. 282 (2008).

[11] *Id*. at 291-292.

[12] *Id*. at 292.

[13] *Id*.

arbitrator's award may be availed of cannot be held to preclude in proper cases the power of judicial review which is inherent in courts. We will not hesitate to review a voluntary arbitrator's award where there is a showing of grave abuse of authority or discretion and such is properly raised in a petition for *certiorari* and there is no appeal, nor any plain, speedy remedy in the course of law.

Significantly, *Insular Savings Bank v. Far East Bank and Trust Company* definitively outlined several judicial remedies an aggrieved party to an arbitral award may undertake:

(1) a petition in the proper RTC to issue an order to vacate the award on the grounds provided for in Section 24 of RA 876;

(2) a petition for review in the CA under Rule 43 of the Rules of Court on questions of fact, of law, or mixed questions of fact and law; and

(3) a petition for certiorari under Rule 65 of the Rules of Court should the arbitrator have acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[14]

I disagree with the Majority Opinion's ruling that the foregoing pronouncements regarding remedies against an arbitral award are mere *obiter dicta*. The *ABS-CBN* case came out in 2008, or after Republic Act No. 9285 (or the Alternative Dispute Resolution Act of 2004; RA 9285) was enacted on April 2, 2004. The *ABS-CBN* merely interpreted the law, and added to it principles already known, accepted and deemed read into or included in every law passed — it cannot be obsolete or wrong jurisprudence. The pronouncement in the *ABS–CBN* case cannot be *obiter dicta*. The Majority Opinion's view that arbitral awards of "commercial arbitrators" in "commercial arbitrations" are beyond judicial review effectively places these individuals, who are no better than "voluntary arbitrators authorized by law" in a position which is beyond scrutiny by this Court.

I also take the position that the Court did not commit the fallacy of equivocation in the *ABS-CBN* case. Rule 43 covers

[14] *Id*. at 293-294.

decisions of a voluntary arbitrator "**authorized by Law.**" Under Article 2042 of the Civil Code, arbitration is allowed as a mode of settling controversies, and for this purpose, "[t]he same persons who may enter into a compromise may submit their controversies to one or more arbitrators for decision." Applied well, basic logic should enable one to reach the conclusion that any arbitrator/s appointed by parties by mutual agreement or contract to settle their differences would have to be a voluntary arbitrator "authorized by law" — that is, Article 2042 of the Civil Code. This simple legal tenet should dispel any notion that "commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* instead of government instrumentalities wielding quasi-judicial powers."[15]

A profound examination of RA 9285 which came into effect in 2004, the *ABS-CBN* case which was promulgated in 2008, and the Special ADR Rules (Special Rules of Court on Alternative Dispute Resolution)[16] which was issued in 2009, would reveal that there is no conflict. In particular, the Special ADR Rules cannot be said to have superseded the pronouncement in the *ABS-CBN* case; quite the contrary, the latter merely echo the conclusions arrived at in the former. In fact, the Special ADR Rules tends to support my position on the availability of the remedies of a petition for review and a petition for *certiorari*.

In particular, Part VI, Rule 19 of the Special ADR Rules, on Motion for Reconsideration Appeal and *Certiorari*, provides:

> Rule 19.8. *Subject matter and governing rules*. — The remedy of an appeal through a petition for review or the remedy of special civil action of certiorari from a decision of the Regional Trial Court made under the Special ADR Rules shall be allowed in the instances, and instituted only in the manner, provided under this Rule.
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> x x x x x x x x x
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> Rule 19.12. *Appeal to the Court of Appeals*. — An appeal to the Court of Appeals through a petition for review under this Special

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[15] *Ponencia*, p. 15.

[16] A.M. No. 07-11-08-SC, September 1, 2009.

Rule shall only be allowed from the following final orders of the Regional Trial Court:

x x x x x x x x x

e. Confirming, vacating or correcting/modifying a domestic arbitral award;

x x x x x x x x x

Rule 19.26. *Certiorari to the Court of Appeals*. — When the Regional Trial Court, in making a ruling under the Special ADR Rules, has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, a party may file a special civil action for *certiorari* to annul or set aside a ruling of the Regional Trial Court.

A special civil action for *certiorari* may be filed against the following orders of the court.

x x x x x x x x x

f. Confirming, vacating or correcting a domestic arbitral award;

x x x x x x x x x

E. APPEAL BY CERTIORARI TO THE SUPREME COURT

Rule 19.36. *Review discretionary*. — A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:

a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

Finally, I am aware that an arbitral award can be assailed based on limited grounds,[17] among which is when "the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made."[18] This is exactly what happened in this case and this was the ground upon which the vacation of the arbitral award should be anchored on. The Arbitral Tribunal's imperfect execution of powers and "excessive exercise of arbitral power" are valid grounds for vacating the arbitral award.

At this juncture, it might help to stress that the arbitral award is patently null and void. It failed to distinguish the land which is the object of the lease from the improvements thereon which are owned by the lessee, Technology Electronics Assembly and Management Pacific Corporation (TEAM). The lease contract expressly stated that the buildings and structures on the land were built and owned by the lessee. Fruehauf Electronics Philippines, Corporation's (Fruehauf) President even made an admission that there was no specific provision in the lease contract requiring the lessee to return the structures in their original state, *i.e.*, as a complete, rentable and fully facilitized electronics plant. The only condition stated in the lease contract was that title to said improvements shall *ipso facto* transfer to the lessor upon expiration of the lease. There was also no basis in ordering TEAM to pay rent for the period July 9, 2003 to March 5, 2005. Capitol Publishing House, Inc.'s (Capitol) sublease with TEAM expired on May 31, 2003; TEAM properly advised Fruehauf of such termination. Thereafter, Fruehauf negotiated directly with Capitol. When their negotiations bogged down, Fruehauf posted armed guards in the premises; it effectively took control over the facility. Fruehauf also filed an ejectment suit against

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[17] *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co. Ltd*, *supra* note 10 at 290.

[18] *Id.*

Capitol, without impleading TEAM. The CA eventually dismissed the ejectment suit; said CA Decision became final and executory. Meanwhile, the Arbitral Tribunal ordered TEAM to pay rent based on the Metropolitan Trial Court's (MeTC) pronouncement in the ejectment case between Capitol and Fruehauf. TEAM was never a party to the case; the MeTC/ Regional Trial Court Decision was even reversed by the CA on appeal. More important, the Arbitrators did not properly determine the amount since they were not sure whether Fruehauf already collected from Capitol, for how much, and whether Fruehauf returned said collections to Capitol. In the end, the amount to be paid was ambiguous. Based on the foregoing, the arbitral award clearly has no basis in law, contract, fact, experience, and logic/common sense. It is unjust, and it unduly deprives the respondent of its property without due process of law. It enables unjust enrichment of petitioner at respondent's expense. Plainly, all the foregoing shows that "the arbitrators exceeded their powers, or so imperfectly executed them", a valid ground for vacating the arbitral award.

ACCORDINGLY, I vote to **DENY** the Petition and **AFFIRM** the October 25, 2012 Amended Decision of the Court of Appeals in CA-G.R. S.P. No. 112384.

SECOND DIVISION

[G.R. No. 207315. Novemeber 23, 2016]

INTERADENT ZAHNTECHNIK PHILIPPINES, INC., BERNARDINO G. BANTEGUI, JR. and SONIA J. GRANDEA, *petitioners, vs.* **REBECCA F. SIMBILLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE NLRC, GENERALLY RESPECTED; EXCEPTIONS; WHERE EVIDENCE DOES NOT SUPPORT THE FINDINGS.— As a rule, factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect but also finality because of the special knowledge and expertise gained by these agencies from handling matters under their specialized jurisdiction. However, well-settled is the rule that for want of substantial basis, in fact or in law, these factual findings cannot be given the stamp of finality and conclusiveness normally accorded to it. Hence, the CA can review the factual findings or legal conclusions of the NLRC and "is not proscribed from 'examining evidence anew to determine whether the factual findings of the NLRC are supported by the evidence presented and the conclusions derived therefrom accurately ascertained'." In the exercise of its power to review decisions of the NLRC, the CA can make its own factual determination when it finds that the NLRC gravely abused its discretion in overlooking or disregarding the evidence which are material to the controversy. In the instant case, the Court agrees with the CA that the conclusions arrived at by the Labor Arbiter and the NLRC are manifestly erroneous because the evidence does not support their findings.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE FOR MANAGERIAL EMPLOYEE MUST BE BASED ON WILLFUL BREACH OF TRUST; NOT PRESENT IN CASE AT BAR.— As a managerial employee, the existence of a basis for believing that Simbillo has breached the trust of petitioners

justifies her dismissal. However, to be a valid ground, loss of trust and confidence must be based on willful breach of trust, that is, done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. x x x In this case, the act alleged to have caused the loss of trust and confidence of petitioners in Simbillo was her Facebook post which supposedly suggests that Interadent was being "feasted on" by the BIR and also contains insulting statements against a co-worker and hence has compromised the reputation of the company. According to petitioners, there was disclosure of confidential information that gives the impression that Interadent is under investigation by the BIR for irregular transactions. However, we agree with the CA's observation that the Facebook entry did not contain any corporate record or any confidential information.

3. ID.; ID.; BURDEN OF PROOF IS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL WAS FOR A VALID CAUSE.— Simbillo's failure to substantiate her claim that the Facebook entry was posted for a friend who consulted her on a predicament she has with her company and that the term *"b_i_r_"* represents "*bwitre*" will not weaken her case against petitioners. It must be emphasized at this point that in illegal dismissal cases, the burden of proof is upon the employer to show that the employee's dismissal was for a valid cause. "The employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them."

APPEARANCES OF COUNSEL

Roxas Delos Reyes Laurel Rosario & Leagogo for petitioners.
The Law Firm of Chan Robles & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the January 4, 2013 Decision[2] and May 24, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 120474, which set aside the March 24, 2011[4] and May 19, 2011[5] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC No. 12-003076-10. The NLRC affirmed the October 29, 2010 Decision[6] of the Labor Arbiter declaring respondent Rebecca F. Simbillo's (Simbillo) dismissal by petitioners Interadent Zahntechnik Philippines, Inc. (Interadent) and its officers Bernardino G. Bantegui, Jr. (Bantegui) and Sonia J. Grandea (Grandea), as President and Human Resource & Organizational Development Manager, respectively, valid on the ground of loss of trust and confidence.

Antecedent Facts

Simbillo worked at Interadent as a rank-and-file employee from May 2, 2004 up to March 2006. In April 2008, she was rehired by Interadent as its Accounting Manager. On April 16, 2010, she was promoted to the position of Finance and Accounting Manager. She was also Interadent's Treasurer upon being elected by the Board of Directors on March 31, 2010.

On July 23, 2010, Interadent sought a company-wide implementation of the following security measures: body

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[1] *Rollo,* pp. 9-45.

[2] CA *rollo*, pp. 752-773; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr.

[3] *Id*. at 875-877.

[4] NLRC records, Vol. 1, pp. 765-777; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Napoleon M. Menese.

[5] *Id*. at 821-822.

[6] *Id*. at 354-373; penned by Labor Arbiter Aliman D. Mangandog.

frisking and bag/personal items inspection of all employees upon ingress and egress of office, disconnection of all USB ports and prohibition of cellular phone usage.[7] The immediate implementation of these security procedures was brought about by an alleged leakage of security information uncovered by Interadent's external auditors.

On July 28, 2010, upon the directive of Bantegui, all network and internet connections in Interadent's Accounting Department were removed and disabled. Simbillo's electronic mail (email) account was likewise suspended.[8]

On July 29, 2010, petitioners served Simbillo a Memorandum[9] (Notice to Explain) requiring her to submit a written explanation and to attend an administrative hearing on August 2, 2010, regarding a message she posted on her Facebook account "referring to company concerns with the Bureau of Internal Revenue (BIR) and insulting statements against a co-worker." In the Notice to Explain, Simbillo was reminded that as Treasurer, as well as Finance and Accounting Manager, she should observe the highest degree of confidentiality in handling sensitive information. She was preventively suspended for seven days effective July 29, 2010 to August 6, 2010.

On the following day, Simbillo, through counsel, wrote a reply-letter[10] arguing that she was already constructively dismissed even prior to her receipt of the Notice to Explain considering the discriminatory acts committed by petitioners starting July 23, 2010 when certain security procedures were directed exclusively and solely against her. Simbillo claimed that the Notice to Explain was defective and was only used to disguise the intent to dismiss her; hence there was no need for

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[7] See Minutes of Administration Meeting conducted by Interadent on July 23, 2010, *id*. at 65.

[8] See Network Systems Administrator and the Administrative Manager Incident Report for "security breach" dated August 2, 2010, *id*. at 69.

[9] *Id*. at 70 and 174.

[10] *Id.* at 71-85 and 175-189.

her to submit an answer or attend the hearing. Simbillo further asserted that she committed no violation of any rule or law relative to the message she posted on her personal and private Facebook account that would justify any disciplinary action.

In a letter[11] dated August 6, 2010, petitioners extended Simbillo's suspension up to August 25, 2010 in view of her failure to submit a written explanation and to attend the scheduled hearing. In a reply-letter[12] dated August 9, 2010, Simbillo reiterated her claim of constructive dismissal and that there was no need for her to answer and attend the hearing.

On August 9, 2010, Simbillo filed with the Labor Arbiter a Complaint[13] for constructive illegal dismissal, non-payment of service incentive leave pay, 13th month pay, illegal suspension, claims for moral and exemplary damages and attorney's fees against petitioners.

On August 24, 2010, petitioners issued a Second Notice[14] informing Simbillo of her termination from service effective August 25, 2010 on the ground of loss of trust and confidence. Petitioners found Simbillo to have disclosed sensitive and confidential information when she posted on her Facebook account on July 15, 2010, the following:

Sana maisip din nila na ang kompanya kailangan ng mga taong di tulad nila, nagtatrabaho at di puro #$,% ang pinaggagagawa, na kapag super demotivated na yung tao nayun baka iwan narin nya ang kawawang kumpanya na pinagpepyestahan ng mga b_i_r_. Wala na ngang credibility wala pang conscience, portraying so respectable and so religious pa. Hay naku talaga, nakakasuka, puro nalang animus lucrandi ang laman ng isip.*[15]

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[11] *Id.* at 190.

[12] *Id*. at 86-92 and 191-197.

[13] *Id*. at 1-3.

[14] *Id*. at 93-96 and 198-201.

[15] *Id*. at 66.

Parties' Respective Positions

Simbillo asserted that her dismissal was without just cause or compliance with procedural due process since the alleged loss of trust and confidence was based on self-serving allegations and mere speculation. She averred that the Facebook entry cannot support the charge of breach of trust since it did not mention Interadent or any of its personnel. She maintained that the message actually pertained to a friend's predicament in another company. She explained that the term *"ng mga b_i_r_"* in the Facebook message was short for *"bwitre"* and certainly did not refer to the BIR. She claimed that the sentiments that she expressed did not refer to herself or her work. She denied having been penalized for a past infraction which involved disclosure of confidential information.

Petitioners, for their part, denied Simbillo's claim of constructive dismissal for absence of proof. They asserted that the security measures were implemented company-wide without favoring or discriminating against anyone.

Moreover, Simbillo was terminated for a valid and just cause and with compliance with procedural due process. As a managerial and confidential employee of Interadent, the highest degree of professionalism and confidentiality was expected of Simbillo and the presence of the basis for the loss of the trust and confidence reposed upon her has warranted her dismissal. Petitioners posited that Simbillo's Facebook message implying that the BIR is "feasting on" the company was derogatory because it compromised the company's reputation, making it vulnerable to ridicule and suspicion particularly in its dealings with government agencies. Such act violated the company's Code of Conduct as well as the Code of Ethics for Professional Accountants. Furthermore, Simbillo's second infraction of divulging sensitive and confidential financial information has merited the penalty of termination.

Petitioners maintained that they observed due process by serving Simbillo both the Notice to Explain and the Second Notice of Termination. Simbillo was afforded the opportunity

to answer but instead waived her chance to do so by opting not to submit an answer and attend the hearing.

Ruling of the Labor Arbiter

In a Decision[16] dated October 29, 2010, the Labor Arbiter ruled that Simbillo was not constructively dismissed because she failed to prove her claim of discrimination. The security measures were implemented as part of management prerogative to preserve the integrity of Interadent's network system and encompassed all employees as gleaned from a poster[17] Simbillo herself submitted. The Labor Arbiter sustained Simbillo's preventive suspension since her continued presence during investigation posed an imminent threat to the company's confidential information and records.

The Labor Arbiter also ruled that Simbillo was validly dismissed. He held that there was no need for an actual leakage of confidential information for Simbillo to be held accountable; her mere laxity and carelessness in posting a statement on her Facebook account that exposed the company to ridicule already rendered her unworthy of the trust and confidence reposed on her. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, we uphold the legality of the dismissal of complainant. No pronouncement as to costs.[18]

Ruling of the National Labor Relations Commission

In a Resolution[19] dated March 24, 2011, the NLRC affirmed the ruling of the Labor Arbiter that Simbillo was not constructively dismissed but was validly dismissed for loss of trust and confidence. The NLRC held that the Facebook entry was "indeed alarming" as it compromised Interadent's reputation and was sufficient basis for the finding of willful breach of

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[16] *Id.* at 354-373.

[17] *Id*. at 172.

[18] *Id*. at 372.

[19] *Id*. at 765-777.

trust. It also ruled that Simbillo was not denied due process and that she was the one who did not avail herself of the opportunity to explain her side. The dispositive portion of the NLRC ruling reads as follows:

> WHEREFORE, premises considered, the appeal is hereby DISMISSED, and the appealed decision AFFIRMED.
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> SO ORDERED.[20]

Simbillo filed a Motion for Reconsideration which was, however, denied in the NLRC Resolution[21] dated May 19, 2011.

Ruling of the Court of Appeals

Aggrieved, Simbillo filed a Petition for *Certiorari*[22] before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction in upholding the legality of her dismissal.

The CA, in a Decision[23] dated January 4, 2013, found merit in Simbillo's Petition. It ruled that to constitute a valid cause for dismissal, the breach of trust should be willful and intentional, which petitioners failed to prove in this case. It rejected petitioners' allegation that Simbillo divulged confidential company information. It noted that the Facebook entry did not contain any corporate record or confidential information but was merely "a vague expression of feelings or opinion towards a person or entity, which was not even identified with certainty."[24] It pointed out that the term "*b_i_r_*" in the entry cannot be construed as the acronym "B.I.R." or the Bureau of Internal Revenue. Finding no willful breach of trust, the CA held that Simbillo's dismissal was illegal and ordered the payment of her separation pay in lieu of reinstatement due to strained relations

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[20] *Id*. at 777.

[21] *Id*. at 821-822.

[22] CA *rollo*, pp. 3-56.

[23] *Id*. at 752-773.

[24] *Id*. at 771.

of the parties plus backwages. The dispositive portion of the CA Decision reads:

> WHEREFORE, the instant petition of GRANTED. The Resolutions dated March 24, 2011 and May 19, 2011 of the National Labor Relations Commission, are hereby SET ASIDE. Finding private respondent Interadent Zahntechnik Philippines, Inc. to have dismissed petitioner Rebecca Simbillo without valid or just cause, Interadent is hereby ordered to pay her a separation pay in lieu of reinstatement, of one (1) month salary for every year of service plus full backwages, inclusive of allowances and other benefits or their monetary equivalent from the time her compensation was withheld until the finality of this decision.
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> SO ORDERED.[25]

Petitioners filed a Motion for Reconsideration but was denied by the CA in its Resolution[26] dated May 24, 2013.

Hence, petitioners filed this Petition for Review on *Certiorari*[27] and a Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[28] to restrain the implementation of the CA Decision and Resolution.

Issues

Petitioners raise the question on whether the CA may reverse the factual declarations of both the Labor Arbiter and the NLRC that there was substantial evidence of willful and intentional breach of trust. According to petitioners, the CA has no power to revisit the findings of fact of the NLRC by making the following erroneous interpretations in its Decision: a) that the Facebook entry "does not contain any corporate record or confidential information;" b) that the entry is "[a]t worst, x x x a vague expression of feelings or opinion towards a person or entity, which was not even identified with certainty;"[29] and

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[25] *Id*. at 772-773.

[26] *Id*. at 875-877.

[27] *Rollo*, pp. 9-45.

[28] *Id*. at 918-927.

[29] CA *rollo*, p. 771.

(c) that the term "*b_i_r_*" "does not, in any way, represent the acronym 'B.I.R.' or Bureau of Internal Revenue."[30] In essence, they insist that, on account of such Facebook post, Simbillo has failed to observe the degree of cautiousness expected of a manager like herself and therefore may be dismissed on the ground of loss of trust and confidence.

Our Ruling

The Petition lacks merit.

As a rule, factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect but also finality because of the special knowledge and expertise gained by these agencies from handling matters under their specialized jurisdiction.[31] However, well-settled is the rule that for want of substantial basis, in fact or in law, these factual findings cannot be given the stamp of finality and conclusiveness normally accorded to it.[32] Hence, the CA can review the factual findings or legal conclusions of the NLRC and "is not proscribed from 'examining evidence anew to determine whether the factual findings of the NLRC are supported by the evidence presented and the conclusions derived therefrom accurately ascertained'."[33] In the exercise of its power to review decisions of the NLRC, the CA can make its own factual determination when it finds that the NLRC gravely abused its discretion in overlooking or disregarding the evidence which are material to the controversy.[34] In the instant case, the Court agrees with the CA that the conclusions arrived at by the Labor Arbiter and the NLRC are manifestly erroneous because the evidence does not support their findings.

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[30] *Id*. at 771-772.

[31] *General Milling Corporation v. Viajar,* 702 Phil. 532, 540 (2013).

[32] *Vicente v. Court of Appeals (Former 17th Div.),* 557 Phil. 777, 784 (2007).

[33] *Phil. Journalists, Inc. v. National Labor Relations Commission,* 532 Phil. 531, 549 (2006).

[34] *Pepsi-Cola Products Philippines Inc. v. Molon,* 704 Phil. 120, 133-134 (2013).

As a managerial employee, the existence of a basis for believing that Simbillo has breached the trust of petitioners justifies her dismissal.[35] However, to be a valid ground, loss of trust and confidence must be based on willful breach of trust, that is, done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.[36]

> It bears emphasizing that the right of an employer to dismiss its employees on the ground of loss of trust and confidence must not be exercised arbitrarily. For loss of trust and confidence to be a valid ground for dismissal, it must be substantial and founded on clearly established facts. Loss of confidence must not be used as a subterfuge for causes which are improper, illegal or unjustified; it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith. Because of its subjective nature, this Court has been very scrutinizing in cases of dismissal based on loss of trust and confidence because the same can easily be concocted by an abusive employer. x x x[37]

In this case, the act alleged to have caused the loss of trust and confidence of petitioners in Simbillo was her Facebook post which supposedly suggests that Interadent was being "feasted on" by the BIR and also contains insulting statements against a co-worker and hence has compromised the reputation of the company. According to petitioners, there was disclosure of confidential information that gives the impression that Interadent is under investigation by the BIR for irregular transactions. However, we agree with the CA's observation that the Facebook entry did not contain any corporate record or any confidential information. Otherwise stated, there was really no actual leakage of information. No company information or corporate record was divulged by Simbillo.

Simbillo's failure to substantiate her claim that the Facebook entry was posted for a friend who consulted her on a predicament

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[35] *Gana v. National Labor Relations Commission,* 577 Phil. 344, 351 (2008).

[36] *Surigao del Norte Electric Cooperative v. National Labor Relations Commission,* 368 Phil. 537, 553 (1999).

[37] *The Coca-Cola Export Corporation v. Gacayan,* 653 Phil. 45, 66 (2010).

she has with her company and that the term "*b_i_r_*" represents "*bwitre*" will not weaken her case against petitioners. It must be emphasized at this point that in illegal dismissal cases, the burden of proof is upon the employer to show that the employee's dismissal was for a valid cause.[38] "The employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them."[39] The Facebook entry did not mention any specific name of employer/ company/ government agency or person. Contrary to petitioners' insistence, the intended subject matter was not clearly identifiable. As acknowledged by petitioners themselves, Simbillo's Facebook account contained a list of her former and present employers. If anything, the entry would merely merit some suspicion on the part of Interadent being the present employer, but it would be far-fetched to conclude that Interadent may be involved in anomalous transactions with the BIR. Clearly, petitioners' theory was based on mere speculations.

If at all, Simbillo can only be said to have acted "carelessly, thoughtlessly, heedlessly or inadvertently" in making such a comment on Facebook; however, such would not amount to loss of trust and confidence as to justify the termination of her employment. When the breach of trust or loss of confidence conjectured upon is not borne by clearly established facts, as in this case, such dismissal on the ground of loss of trust and confidence cannot be upheld.

Petitioners' contention that Simbillo's second offense of divulging confidential company information merits her termination deserves scant consideration. Other than self-serving allegations of petitioners, there was no concrete proof that Simbillo had a past infraction involving disclosure of confidential information of the company. If indeed Simbillo has been found

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[38] *Lopez v. Bodega City (Video-Disco Kitchen of the Phils.)*, 558 Phil. 666, 674 (2007).

[39] *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, 687 Phil. 351, 369 (2012).

guilty for not being trustworthy due to an incident that happened in July 2009 as alleged by petitioners, she should not have been promoted to a higher position as Finance and Accounting Manager in April 2010 and elected as Treasurer in March 2010. Moreover, she was given salary and merit increases for the period covering June 2009-May 2010,[40] which is an indication of her high performance rating.

All told, we find no reversible error on the CA in finding that Simbillo was illegally dismissed. The allegation of loss of trust and confidence was not supported by substantial evidence, hence, we find Simbillo's dismissal unjustified. A lighter penalty would have sufficed for Simbillo's laxity and carelessness. As this Court has held, termination of employment is a drastic measure reserved for the most serious of offenses.[41]

WHEREFORE, the Petition is **DENIED**. The January 4, 2013 Decision and May 24, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120474 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 212656-57. November 23, 2016]

MAYOR AMADO CORPUZ, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN,** *respondents.*

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[40] See Table for Merit Increases for the period June 2009-May 2010, NLRC records, Vol. 1, p. 171.

[41] *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission, supra* note 39 at 371.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PROSECUTION CANNOT BE ALLOWED TO DRAW STRENGTH FROM THE WEAKNESS OF THE DEFENSE'S EVIDENCE FOR IT HAS THE ONUS PROBANDI IN ESTABLISHING BEYOND REASONABLE DOUBT THE FACT OF THE COMMISSION OF THE CRIME CHARGED, OR THE PRESENCE OF ALL THE ELEMENTS OF THE OFFENSE, AND THE FACT THAT THE ACCUSED WAS THE PERPETRATOR OF THE CRIME. —** [T]he Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. The prosecution cannot be allowed to draw strength from the weakness of the defense's evidence for it has the *onus probandi* in establishing the guilt of the accused — *ei incumbit probatio qui elicit, non que negat* — he who asserts, not he who denies, must prove. In other words, the burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence. Worthy to mention that in every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.

2. **CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF A PUBLIC DOCUMENT; ELEMENTS.—** It bears emphasis that what is punished in falsification of a public document is the violation of the public faith and the destruction of the truth as solemnly proclaimed in it. Generally, the elements of Article 171 are: (1) the offender is a public officer, employee, or notary public; (2) he takes advantage of his official position; and (3) that he falsifies a document by committing any of the ways it is done. Specifically, paragraph 4 of the said Article requires that: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) the offender

has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by the offender are absolutely false. In addition to the aforecited elements, it must also be proven that the public officer or employee had taken advantage of his official position in making the falsification. In falsification of public document, the offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE SANDIGANBAYAN ARE CONCLUSIVE UPON THE COURT; EXCEPTIONS; PRESENT.— We are not unaware that settled is the rule that factual findings of the SB are conclusive upon this Court. However, there are exceptions to said rule, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record; and (6) said findings of fact are conclusions without citation of specific evidence on which they are based. A perusal of the offered and admitted evidence, testimonial and documentary, reveals some misappreciation of facts of which if considered may result in a different conclusion. In other words, there were findings grounded entirely on speculation and/or premised on want of evidence that are needed to be resolved in the case before us. Hence, we rule to reverse the SB's ruling of conviction against petitioner.

4. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; IT IS NOT ONLY THE RIGHT OF THE ACCUSED TO BE FREED, BUT ALSO THE COURT'S CONSTITUTIONAL DUTY TO ACQUIT HIM WHERE THE PROSECUTION FAILS TO DISCHARGE ITS HEAVY BURDEN OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— [T]he burden of proof in establishing that petitioner made an untruthful

statement in the marriage certificate in order to be convicted of the crime of falsification of public instrument solely lies on the prosecution. If only to stress the merit of this petition, we repeat the axioms that the Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the prosecution is required to adduce against him nothing less than proof beyond reasonable doubt. If the prosecution fails to discharge its heavy burden, then it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.

5. CIVIL LAW; THE FAMILY CODE OF THE PHILIPPINES; MARRIAGE; THE VALIDITY OF MARRIAGE CANNOT BE COLLATERALLY ATTACKED, AS THE SAME MAY BE QUESTIONED ONLY IN A DIRECT ACTION IN ORDER TO PREVENT CIRCUMVENTION OF THE SUBSTANTIVE AND PROCEDURAL SAFEGUARDS OF MARRIAGE.— [C]onsidering that the subject public instrument in this case refers to the marriage certificate, we find it apropos to point out that the validity of marriage cannot be collaterally attacked since under existing laws and jurisprudence, the same may be questioned only in a direct action. A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws. In declaring that the one who solemnized the subject marriages had no authority to do so would indirectly result in the declaration that said marriages are void. This is what our jurisdiction intends to prevent.

6. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE STATE HAS THE BURDEN OF PROOF TO SHOW THE CORRECT IDENTIFICATION OF THE AUTHOR OF A CRIME, AND THE ACTUALITY OF THE COMMISSION OF THE OFFENSE WITH THE PARTICIPATION OF THE ACCUSED.— [I]t is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probation, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove, and as a means of respecting the presumption of innocence in favor of the man

or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of a crime, and (2) the actuality of the commission of the offense with the participation of the accused. All these facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. That the defense the accused puts up may be weak is inconsequential if, in the first place, the State has failed to discharge the onus of his identity and culpability. The presumption of innocence dictates that it is for the prosecution to demonstrate the guilt and not for the accused to establish innocence. Indeed, the accused, being presumed innocent, carries no burden of proof on his or her shoulders.

7. ID.; ID.; ID.; IF THE INCULPATORY FACTS AND CIRCUMSTANCES ARE CAPABLE OF TWO OR MORE INTERPRETATIONS, ONE OF WHICH BEING CONSISTENT WITH THE INNOCENCE OF THE ACCUSED AND THE OTHER OR OTHERS CONSISTENT WITH HIS GUILT, THEN THE EVIDENCE IN VIEW OF THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE HAS NOT FULFILLED THE TEST OF MORAL CERTAINTY AND IS THUS INSUFFICIENT TO SUPPORT A CONVICTION.— [I]t has been consistently ruled that "[c]ourts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions." It is iniquitous to base petitioner's guilt on the presumptions of the prosecution's witnesses for the Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.

8. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF PUBLIC DOCUMENTS; ELEMENTS THEREOF NOT ESTABLISHED; ACQUITTAL OF THE ACCUSED, WARRANTED.— [T]he circumstantial evidence presented by the prosecution in this case failed to pass the test of moral certainty necessary to warrant petitioner's conviction. Accusation

is not synonymous with guilt. Not only that, where the inculpatory facts and circumstances are capable of two or more explanations or interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not meet or hurdle the test of moral certainty required for conviction. Accordingly, the prosecution failed to establish the elements of falsification of public documents. With the prosecution having failed to discharge its burden of establishing petitioner's guilt beyond reasonable doubt, this Court is constrained, as is its bounden duty when reasonable doubt persists, to acquit him.

APPEARANCES OF COUNSEL

Napoleon Uy Galit and Associates for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Sandiganbayan (SB) in Criminal Case Nos. SB-12-CRM-0171 and SB-12-CRM-0172 dated 27 February 2014 and 23 May 2014, respectively, finding petitioner Mayor Amado Corpuz, Jr. guilty beyond reasonable doubt for two (2) counts of Falsification of Public Document under Article 171, paragraph 4 of the Revised Penal Code (RPC).

The Facts

Petitioner, in his official capacity as the Municipal Mayor of Cuyapo, Nueva Ecija, was indicted with two (2) counts of the abovementioned criminal offense. The accusatory portions of the two (2) separate Informations filed against him before the SB are as follows:

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[1] *Rollo* , pp. 90-110; Penned by Associate Justice Efren N. Dela Cruz with Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos concurring.

[2] *Id*. at 194-201.

CRIM. CASE NO. SB-12-CRM-0171

That on 28 October 2009 or sometime prior or subsequent thereto, in Cuyapo, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named [petitioner], a public officer, being the Municipal Mayor of Cuyapo, Nueva Ecija, acting in relation to his office and taking advantage of his official position, did there and then deliberately, willfully and feloniously, falsify the Certificate of Marriage of Manny Asuncion and Dina Lumanlan by certifying therein that it was he who solemnized their marriage when in truth and in fact, he was not the one who solemnized the same but rather Thelmo O. Corpuz, Sr., Local Civil Registrar (of) Cuyapo, Nueva Ecija, to the damage and prejudice of the said couple and of public interest.

CRIM. CASE NO. SB-12-CRM-0172

That on 18 December 2009 or sometime prior or subsequent thereto, in Cuyapo, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named [petitioner], a public officer, being the Municipal Mayor of Cuyapo, Nueva Ecija, acting in relation to his office and taking advantage of his official position, did there and then deliberately, willfully and feloniously, falsify the Certificate of Marriage of Alex Pascual and Esperanza Arizabal by certifying therein that it was he who solemnized their marriage when in truth and in fact, he was not the one who solemnized the same but rather Thelmo O. Corpuz, Sr., Local Civil Registrar (of) Cuyapo, Nueva Ecija, to the damage and prejudice of the said couple and of public interest.[3]

As petitioner pleaded not guilty to both charges, trial ensued with the prosecution presenting five (5) witnesses, and the defense presenting three (3) witnesses, inclusive of documentary evidence admitted therein, in order to resolve the jointly proposed issue of "who among the parties – the complainant on the one hand, [and] the married couples and the sponsors who attest to the fact that it was the accused who solemnized the said marriage – is telling the truth?"

At the trial, the prosecution presented complainant Arsenio Flores, a retired government employee who testified that being

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

one of the wedding sponsors of Alex Pascual and Esperanza Arizabal, he attended and witnessed the actual ceremony of their wedding which was solemnized by Thelmo Corpuz, Sr., the Municipal Registrar, and not petitioner, at the Municipal Registrar's Office where it was held; that with the knowledge that said Municipal Registrar was not authorized to solemnize marriage, he did not sign as a witness their marriage certificate, and thereafter searched for documents, including pictures and invitation cards, in order to establish such illegal acts; that based on the documents he gathered, it was made to appear that petitioner was the one who solemnized said marriages because of his signature appearing on the corresponding marriage certificates; and that he could not explain why the subject marriage certificate was already signed by petitioner when in fact he was not around during the ceremony, and was immediately given to them on the same day.[4] His testimony was corroborated by Honorato M. Tolentino, the brother-in-law of Alex Pascual, who testified that he rendered his services for free as a photographer during said wedding, and witnessed the actual ceremony, with the observation that it was Thelmo Corpuz, Sr. who solemnized the same.[5]

As to the marriage ceremony of Manny Asuncion and Dina Lumanlan, Jorge N. Lazaro, a freelance photographer and pilot, testified that the latter and her mother engaged his services as a photographer, and even requested his live-in partner, Tessie Atayde, to stand as one of the principal sponsors; that while taking photos for the event, he naturally witnessed the actual ceremony which was held at the Senior Citizen Building (now called Multi-Purpose Building); and that it was Thelmo Corpuz, Sr., the Municipal Registrar of Cuyapo, Nueva Ecija, who actually solemnized said marriage.[6]

Lastly, the prosecution presented as rebuttal witness, Thelmo O. Corpuz, Sr., who testified that complainant Arsenio Flores

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[4] *Id*. at 94-95.

[5] *Id*. at 95-96.

[6] *Id*. at 92-93.

filed a case for usurpation of official functions against him before the Municipal Trial Court (MTC) in connection with the marriages of the couples, which he allegedly solemnized; that he changed his plea of NOT GUILTY to that of GUILTY, in order to have a peace of mind and to reveal the truth that it was actually him who solemnized said marriages; that it was actually him who was standing in front of both couples as shown by the pictures presented as evidence; that after pleading guilty, he immediately filed a Petition for Probation before the same court; that he did not execute any affidavit of desistance to that effect; and that his son Thelmo Corpuz III was already separated from the government service, and that in the recent local elections, the latter sided with the political rival of petitioner.[7] The above narration was corroborated and attested to by witness Felicisima D. Almonte, Clerk of Court of the MTC, with the stipulation of the parties on the authenticity and due execution of its 15 July 2013 Decision. On cross-examination, she affirmed that as part of the records of the case, that there was a counter-affidavit attached therewith by Thelmo O. Corpuz, Sr., but without an affidavit of recantation against his previous counter-affidavit denying such accusations against him; and that during the last local election, both Thelmo O. Corpuz, Sr., and his son, Thelmo Corpuz, Jr., persuaded her to vote for petitioner's opponent.[8]

In his defense, petitioner himself testified. He insisted that he actually solemnized at his office the marriage of spouses Pascual and that of spouses Asuncion; that spouses Asuncion executed a joint affidavit of cohabitation based on Article 34 of the Family Code making them exempted from securing a marriage license as appearing in their marriage contract; that complainant Arsenio Flores was not present at the mayor's office when the wedding of spouses Pascual took place; that in the subject weddings, all signatures appearing on the marriage certificates were actually signed in his presence; that as a mayor

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[7] *Id*. at 97-98.

[8] *Id*. at 96.

for eighteen (18) years, he knew that the power to solemnize marriage cannot be delegated; and that he is aware that a case for usurpation of official function was filed against Thelmo O. Corpuz, Sr., but has no knowledge about his change of plea. The above testimonies were further bolstered by no other than the parties themselves of said marriage ceremonies. Both Alex Y. Pascual and Manny M. Asuncion appeared and testified that petitioner was indeed the one who solemnized their respective marriage; that their respective marriage is valid and legal; that both ceremonies were held at the mayor's office; and that, as reflected in the pictures shown by the prosecution, they appeared before Thelmo O. Corpuz, Sr. only to receive marriage counseling and to be taught on how to act during the actual ceremony, before they went to the mayor's office for the actual solemnization by petitioner.[9]

From the foregoing testimonial and documentary evidence, including the stipulations between the parties, the facts, as taken and appreciated by the SB, are presented as follows:

> At the time material to the Informations, the [petitioner] was the incumbent Mayor of the Municipality of Cuyapo, Nueva Ecija, while Thelmo O. Corpuz, Sr. was the Municipal Civil Registrar until his retirement from the service in 2011.
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> As set forth on the invitation for the Asuncion-Lumanlan Nuptials, the couple was united in matrimony on October 28, 2009 at around 9:30 in the morning at Cuyapo Town Hall, Cuyapo, Nueva Ecija. Jorge N. Lazaro attended the occasion along with his live-in partner Tessie Atayde, who was one of the principal sponsors. Lazaro was hired as photographer for the event and was able to capture the actual ceremony. A marriage certificate was then issued to Spouses Asuncion, duly signed by the [petitioner] as the solemnizing officer.
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> Another wedding which took place at the Municipal Hall of Cuyapo, Nueva Ecija on December 18, 2009 at around 9:00 o'clock in the morning was that of Alex Pascual and Esperanza Arizabal. Among those present was Arsenio Flores who stood as one of the principal sponsors. The ceremony was similarly witnessed by Honorato M. Tolentino, a brother-in-law of the groom who was also hired as

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[9] *Id*. at 98-100.

photographer for the said wedding. As proof of the wedding, a marriage certificate bearing the signature of the [petitioner] as solemnizing officer was thereafter issued to spouses Pascual.

Displeased with what transpired during the wedding ceremony of Alez and Esperanza, Arsenio Flores came up with a complaint-affidavit, dated February 8, 2010, setting forth the violations committed by the [petitioner] and that of Thelmo O. Corpuz, Sr., the former as mere signatory of the marriage certificates, and the latter acting as the solemnizing officer on behalf of the mayor. Flores' declaration with respect to the Pascual-Arizabal nuptial was corroborated by the affidavit, dated March 22, 2010, of Honorato M. Tolentino, Sr., who covered the said wedding. Flores included in his affidavit other nuptials specifically that of Manny and Dina which was held on October 28, 2009 and which was also solemnized by Thelmo Corpuz, Sr. His statement was supported by Jorge Lazaro's affidavit, dated March 22, 2010, inclusive of snapshots he personally took on that day. In view of Thelmo O.Corpuz's entry of plea of guilty for two (2) counts of usurpation of official functions filed against him before the Municipal Trial Court of Cuyapo, Nueva Ecija, the court, in its Decision dated July 15, 2013, duly considered his plea of guilty as a mitigating circumstance, and imposed on him the straight penalty of one (1) year imprisonment for each case.

DISCUSSION

In his memorandum, the [petitioner] maintains his innocence as he questions the trustworthiness and reliability of the prosecution's witnesses. According to him, the presumption of authenticity of public documents, the marriage certificates in these cases, should prevail over the inconsistent testimonies of the witnesses for the prosecution that it was not him who officiated these ceremonies. According to him also, the couples themselves through Alex and Manny, who are definitely in the best position to attest that it was the [petitioner] himself who solemnized their marriage, did so in open court and expressed such fact in their Joint Affidavits. Further, the rebuttal evidence of the prosecution *sans* the affidavit of recantation of Thelmo O. Corpuz, Sr., did not alter his previous declaration that he did not solemnize the subject weddings but the herein [petitioner] who rightfully certified his deed in the marriage certificates. With these, the defense avers that the prosecution failed to establish the guilt of the [petitioner] beyond reasonable doubt and, therefore, the [petitioner] should be acquitted.

On the other hand, in its memorandum, the prosecution asserts that from the pieces of evidence presented and the testimonies of its witnesses, it has proven all the elements of the offense charged based on the quantum of evidence required by law. The accused clearly committed falsification of public documents by making untruthful statements in a narration of facts when, by taking advantage of his official function, he certified in the marriage certificates of spouses Asuncion and spouses Pascual that as the Municipal Mayor, he personally solemnized their marriage when it was Thelmo O. Corpuz, Sr., the Municipal Civil Registrar, who did so on his behalf. Thus, for this false declaration, the [petitioner] should be held criminally liable.[10]

The Ruling of the Sandiganbayan

In the assailed Decision dated 27 February 2014, the SB found petitioner guilty beyond reasonable doubt for the said crimes, the dispositive portion of which is stated hereunder for ready reference, to wit:

WHEREFORE, in light of all the foregoing, the Court finds [petitioner] **Amado R. Corpuz, Jr. GUILTY** beyond reasonable doubt for two (2) counts of Falsification of Public Document, defined and penalized under Article 171, paragraph 4 of the Revised Penal Code and, applying the Indeterminate Sentence Law, is hereby sentenced to suffer imprisonment of four (4) years and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, for each count, and to pay a fine of ₱5,000.00 for each case, with subsidiary imprisonment in case of insolvency.[11]

It ruled that with the prosecution's pieces of evidence taken together, all the elements of the crime of falsification of public documents, by making untruthful statements in a narration of facts, were adequately established. The SB further explained that being a local chief executive and duly authorized officer to solemnize marriage, petitioner was duty-bound to observe his solemn affirmation on the marriage certificates. More so, by taking advantage of his official position, petitioner certified

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[10] *Id.* at 100-102.

[11] *Id.* at 109.

the particulars of an event, the subject marriages, despite full knowledge that he did not personally solemnize the exchange of marital vows of spouses Pascual and spouses Asuncion. In other words, what he certified was absolutely false and for such reason, petitioner's guilt was established beyond reasonable doubt. By way of conclusion, the court stressed that in falsification of public or official documents, it is not necessary that there be present the idea of gain or intent to injure a third person because in the falsification of public document, what is being punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[12]

Petitioner's motion for reconsideration thereof and his supplemental thereto were likewise denied for lack of merit in the 23 May 2014 Resolution.

Aggrieved, petitioner elevated the matter through a petition for review on *certiorari* before this Court asserting the following errors, grounds or arguments:

1. THE SANDIGANBAYAN (RESPONDENT COURT FOR BREVITY) COMMITTED SERIOUS REVERSIBLE ERROR OF LAW AND MATTERS OF SUBSTANCE NOT IN ACCORD WITH JURISPRUDENCE WHEN WITHOUT ANY JUSTIFICATION IT ADMITTED MERE PHOTOCOPIES OF PROSECUTION'S EVIDENCE, I.E., (1) INVITATION CARDS AND (2) PICTURES OVER THE OBJECTION OF THE DEFENSE –

   1.1 WORSENED BY THE ALLOWANCE OF SECONDARY EVIDENCE (AS A NECESSARY CONSEQUENCE IN ITS ADMISSION) WITHOUT COMPLIANCE WITH THE RUDIMENTS ON SECONDARY EVIDENCE; AND

   1.2 SERIOUS MISAPPRECIATION OF FACT UPON ITS FAILURE AND/OR OMISSION TO CONSIDER GLARING DISPARITIES BETWEEN PROSECUTION'S VERY OWN EVIDENCE, I.E., (SAID) INVITATION CARDS AND ITS OWN WITNESSES' STATEMENT AS TO THE PLACE OR VENUE OF SOLEMNIZATION WHICH ON MATTERS OF CREDIBILITY MORE SO, BY THE SURROUNDING

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

CIRCUMSTANCES IN HERE, TOUCHES ON THE VERY ISSUE OF COMPETENCY OF THE WITNESS AND THE STRICT RULE ON ASSESSMENT OF EVIDENCE AGAINST THE STATE AND LIBERAL FOR THE ACCUSED. THIS RULE WAS SADLY IGNORED. WE TAKE THIS TO NOTE AS NO TRIVIAL ASPECT AS THE RESPONDENT COURT PUT IT.

2. THE RESPONDENT COURT COMMITTED SERIOUS ERROR OF LAW AND MATTERS OF SUBSTANCE NOT IN ACCORD WITH CASE LAW WHEN IT CONSIDERED FACTS NOT OFFERED IN EVIDENCE AND TOTALLY OUT OF THE RECORDS – HOLDING DEFENSE TWO (2) WITNESSES, THE SPOUSES HUSBANDS, ALEX PASCUAL, AND MANNY ASUNCION, WERE ALLEGEDLY INDEBTED OF GRATITUDE TO THE ACCUSED FOR BEING ALLEGEDLY EMPLOYED BY THE LATTER; HENCE, DEBUNKING CREDIBILITY OF THEIR TESTIMONIES.

3. THE RESPONDENT COURT COMMITTED SERIOUS REVERSIBLE ERROR OF LAW AND MISAPPRECIATION OF FACTS ON MATTERS AND SUBSTANCE SO MATERIAL POINTING TO THE DEFENSE AS ALLEGEDLY THE ONE WHO SAID THAT THE BEST PERSONS WHO COULD ATTEST WHO THE SOLEMNIZER WAS IN THEIR RESPECTIVE WEDDINGS WERE THE COUPLES THEMSELVES WHICH CORRECT PRONOUNCEMENT AND ACCURATE OBSERVATION, WAS IN FACT, MADE BY ONE OF THE HONORABLE JUSTICES, THE HONORABLE RODOLFO PONFERRADA, IN OPEN COURT – NOT THE ACCUSED – WHICH OBSERVATION WE NOT ONLY SUPPORT BUT TREASURE SO MUCH.

4. THE RESPONDENT COURT COMMITTED SERIOUS REVERSIBLE ERROR OF LAW AND MISAPPRECIATION OF FACTS ON MATTERS OF SUBSTANCE WHEN IT AGAIN MADE ANOTHER PRONOUNCEMENT DECLARING THAT "ACCUSED ONLY RELIED ON DISPUTABLE PRESUMPTION OF REGULARITY WITHOUT PRESENTING ANY OTHER EVIDENCE NOT TO DOUBT HIS PERSONAL APPEARANCE ON THOSE DATES AND THAT HE SIGNED THESE DOCUMENTS AFTER ACTUALLY SOLEMNIZING THE SAID MARRIAGES."

5. THE RESPONDENT COURT COMMITTED REVERSIBLE ERROR OF LAW AND MISAPPRECIATION OF FACTS – WHEN

IT DECLARED THE PRESENCE OF ALL THE ELEMENTS OF FALSIFICATION UNDER ARTICLE 171 [OF THE] REVISED PENAL CODE, AGGRAVATED BY THE MISAPPLICATION OF THE DICTUM IN ITS CITED GALEOS VS. PEOPLE.

6. THE RESPONDENT COURT COMMITTED GRAVE ERROR OF LAW AND MISAPPRECIATION OF FACTS WHICH ARE MATTERS OF SUBSTANCE NOT IN ACCORD WITH CASE LAW ADOPTING TWO (2) STANDARDS OF APPLICATION OF LAW OVER TWO (2) OPPOSSING DOCUMENTS, I.E., (1) THE TWO SETS OF MARRIAGE CERTIFICATES ON ONE HAND, AND (2) THE ADMITTEDLY FALSIFIED THREE (3) AFFIDAVITS OF THE PROSECUTION WITNESSES, HONORATO TOLENTINO, JORGE LAZARO AND THELMO CORPUZ, THEREBY GROSSLY MISAPPLIED ART. 171 [OF THE] REVISED PENAL CODE AS CITED IN GALEOS VS. PEOPLE, WHEN IT TURNED DOWN THE TWO (2) CERTIFICATE OF MARRIAGES IGNORING THE DECIDENDI IN THE CITED CASE – WHILE CASUALLY DOWNPLAYED THE FALSIFIED 3 WITNESSES AFFIDAVITS, ITS LEGAL AND NECESSARY CONSEQUENCES.

7. OVER ALL CONSIDERATIONS, THE RESPONDENT COURT COMMITTED THE MOST SERIOUS REVERSIBLE ERROR OF LAW AND MISAPPRECIATION OF FACTS IN CLINGING TO ITS JUDGMENT OF CONVICTION INSTEAD OF ACQUITTAL ON THE BASIS OF THE OPPOSING EVIDENCE RESPECTIVELY PRESENTED BY THE PROSECUTION ON ONE HAND – AND THE DEFENSE ON THE OTHER HEREAFTER PRESENTED IN GRAPHIC FORM.[13]

It is the contention of petitioner that none of the five (5) witnesses presented by the prosecution was competent to testify on accused's actual solemnization of and presence during the subject marriages. Neither did any of the documentary evidence submitted by the prosecution establish beyond reasonable doubt that petitioner was not the one who solemnized the same. Thus, in his defense, petitioner believes that he is innocent considering that he was able to present the husbands of the subject marriages, who appeared before him during the actual solemnizations, and both testified in his favor, supported by various documentary

[13] *Id*. at 16-20.

evidence, such as the subject marriage certificates, including the joint affidavit of cohabitation and joint affidavit of confirmation issued by the couples, and also the counter-affidavit issued by Thelmo O. Corpuz, Sr., the person alleged to have actually conducted the said solemnization of the subject marriages, who initially denied being the one who acted as a solemnizing officer to any marriage ceremony.

Respondents, through its Office of the Special Prosecutor, filed on 28 April 2015 its Comment[14] to the instant petition, and counters that the SB acted in accord with law and jurisprudence on the basis of the evidence on record when it found petitioner guilty of the felonies charged; that petitioner raised questions of fact contrary to Rule 45 of the Rules of Court; that the equipoise doctrine is inapplicable in the case of petitioner; that petitioner was correctly convicted for the crimes of falsification of public document since all the elements to establish the same were proven beyond reasonable doubt; and that the other issues and arguments raised by petitioner do not constitute reversible error on the part of the SB.

The Issue

Whether or not petitioner is guilty beyond reasonable doubt of the crime of falsification of public documents.

The Ruling of the Court

At the outset, the Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. The prosecution cannot be allowed to draw strength from the weakness of the defense's evidence for it has the *onus probandi* in establishing the guilt of the accused — *ei incumbit probatio qui elicit, non que negat* — he who asserts, not he who denies, must prove.[15]

In other words, the burden of such proof rests with the prosecution, which must rely on the strength of its case rather

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[14] *Id*. at 778-808.

[15] *People v. Masalihit*, 360 Phil. 332, 343 (1998).

than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[16]

Worthy to mention that in every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.[17]

In the instant case, petitioner was charged with violation of Article 171, paragraph 4 of the RPC, which provides:

ART. 171. *Falsification by public officer, employee, or notary or ecclesiastical minister.* – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

4. Making untruthful statements in a narration of facts; x x x

It bears emphasis that what is punished in falsification of a public document is the violation of the public faith and the destruction of the truth as solemnly proclaimed in it.[18] Generally, the elements of Article 171 are: (1) the offender is a public officer, employee, or notary public; (2) he takes advantage of his official position; and (3) that he falsifies a document by committing any of the ways it is done.[19]

Specifically, paragraph 4 of the said Article requires that: (a) the offender makes in a public document untruthful statements

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[16] *People v. Villanueva*, 427 Phil. 102, 128 (2002).

[17] *People v. Santos*, 388 Phil. 993, 1004 (2000).

[18] *Lastrilla v. Granda*, 516 Phil. 667, 699 (2006) citing *Lumancas v. Intas*, 400 Phil. 785, 798 (2000) further citing *People v. Po Giok To*, 96 Phil. 913, 918 (1955).

[19] *Regidor, Jr. v. People*, 598 Phil. 714, 732 (2009).

in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by the offender are absolutely false.[20]

In addition to the aforecited elements, it must also be proven that the public officer or employee had taken advantage of his official position in making the falsification. In falsification of public document, the offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.[21]

In the case at bench, and as correctly found by the SB, it is undisputed that petitioner was a public officer, being the Municipal Mayor of Cuyapo, Nueva Ecija, duly authorized by law to solemnize marriages, at the time such alleged criminal offense was committed. Likewise, in issuing marriage certificates, being a public document issued by the Municipality of Cuyapo, Nueva Ecija, petitioner had the legal duty to prepare said document, and not only to attest to the truth of what he had given account of but more importantly, to warrant the truth of the facts narrated by him thereon.[22] Undoubtedly, these factual circumstances were clearly established since petitioner himself admits the same. Accordingly, we are now left with one final matter to determine, i.e. whether or not the facts narrated by petitioner on the subject marriage certificates were absolutely false. If answered in the affirmative, then petitioner is indeed guilty beyond reasonable doubt of falsification of public documents. Otherwise, he shall be exonerated.

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[20] *Delos Reyes Vda. Del Prado, et al. v. People,* 685 Phil. 149, 161-162 (2012) citing *Galeos v. People*, 657 Phil. 500, 520 (2011). See also *Santos v. Sandiganbayan*, 400 Phil. 1175, 1216-1217 (2000).

[21] Luis B. Reyes, *The Revised Penal Code, Criminal Law* (Fourteenth Edition, Revised 1998), Book Two, Arts. 114-367, p. 216, citing *People v. Uy* , 101 Phil. 159, 163 (1957) and *United States v. Inosanto*, 20 Phil 376, 378 (1911); *Adaza v. Sandiganbayan*, 502 Phil. 702, 720 (2005).

[22] *Rollo*, pp. 103-105.

Relevant thereto, the initial query to be resolved is whose evidence between the prosecution and defense is credible in order to determine the guilt of the accused in a criminal action.

For ready reference, we find the necessity of reproducing hereunder the actual pertinent portion declared by petitioner in his official capacity as a solemnizing officer, common to the subject marriage certificates, which reads:

> THIS IS TO CERTIFY THAT BEFORE ME, on the date and place above written, personally appeared the above-mentioned parties, with their mutual consent, lawfully joined together in marriage which was solemnized by me in the presence of the witnesses named below, all of legal age.
>
> x x x x x x x x x
>
> (Signed)
> HON. AMADO R. CORPUS, JR.
> MUNICIPAL MAYOR
> CUYAPO, NUEVA ECIJA[23]

From the above-quoted statement, petitioner categorically expresses that, in both marriages, all parties (referring to spouses Pascual and spouses Asuncion), personally appeared before him, as their solemnizing officer, in the presence of other witnesses.

In ruling that petitioner was not the one who solemnized the subject marriages, the SB relied heavily on the testimonial evidence of the prosecution's witnesses, particularly on the common fact that they all witnessed an alleged ceremony conducted on said dates wherein Thelmo O. Corpuz, Sr., the Municipal Registrar, was the one who acted as the solemnizing officer, and not petitioner. It further considered the photos and photocopies of the invitations presented and offered as additional proofs to establish the aforesaid incidents which show spouses Pascual and spouses Asuncion standing in front of Thelmo O. Corpuz, Sr. Moreover, the testimony of Thelmo O. Corpuz, Sr., being a rebuttal evidence to the claims of Alex Y. Pascual and Manny M. Asuncion that it was petitioner who

[23] *Id.* at 261 and 266.

solemnized their respective marriages, was vastly recognized as acceptable and damaging to petitioner's defense since the principle of *res inter alios acta* (the rights of a party cannot be prejudiced by an act, declaration, or omission of another) does not apply in this case.

We are not unaware that settled is the rule that factual findings of the SB are conclusive upon this Court. However, there are exceptions to said rule, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record; and (6) said findings of fact are conclusions without citation of specific evidence on which they are based.[24]

A perusal of the offered and admitted evidence, testimonial and documentary, reveals some misappreciation of facts of which if considered may result in a different conclusion. In other words, there were findings grounded entirely on speculation and/or premised on want of evidence that are needed to be resolved in the case before us. Hence, we rule to reverse the SB's ruling of conviction against petitioner.

First, none of the testimonial and documentary evidence offered by the prosecution was able to dispute the presumption of regularity of an official function and authenticity and due execution of the public instruments issued by petitioner as the Municipal Mayor, which may only be overcome by clear and convincing evidence to the contrary. As can be gleaned from the narration of facts provided by the trial court, there is no showing that an actual appearance by the concerned parties (spouses Pascual and spouses Asuncion) before petitioner as their solemnizing officer did not occur or happen. Looking into the evidence presented, the only patent conclusion that can be derived from the prosecution's evidence, as admitted by the witnesses for the defense, is that both couples appeared

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[24] *Cadiao-Palacios v. People*, 601 Phil. 695, 704 (2009).

before Thelmo O. Corpuz, Sr., for the sole purpose of receiving marriage counseling and/or marriage rehearsals, nothing more.

Second, as mentioned in the assailed Decision, the SB expressed that the testimonies of the defense's witnesses appear biased considering that they "owe their current employment with the accused as these narrations rang no truth and sounded to have been well-coached;" hence, they found the testimonies of the prosecution's witnesses more credible. Unfortunately, we find this declaration quite odd considering that there was no iota of evidence to show that both Alex Y. Pascual and Manny M. Asuncion owe debts of gratitude to petitioner. Indeed even it is taken as true that the defense witnesses who are the husbands in the questioned marriages owe their employment to the accused such fact can rightfully be construed as itself the reason why these witnesses would truly want their respective marriages officiated by the accused. As a matter of fact, it was the prosecution's witnesses who have manifested some tainted credibility in their testimonies when it was declared, among others, that: (a) all the judicial affidavits were prepared by the complainant Arsenio A. Flores and were given to them for their signatures; (b) Thelmo Corpuz III, the son of Thelmo O. Corpuz, Sr., was separated from the government service, and that in the recent local election, he sided with petitioner's political rival; and (c) Thelmo O. Corpuz, Sr. and his son, Thelmo Corpuz, Jr., persuaded Felicisima D. Almonte to vote for the petitioner's opponent during the local election. Clearly therefore, if there were any doubts as to the credibility of the witnesses in this case, it is those of the prosecution who should be considered guilty of potential political motivations.

Third, as to the testimony of Thelmo O. Corpuz, Sr., we do not find the same damaging on the part of petitioner considering that his admission of conducting his own ceremony in the capacity of a solemnizing officer simply confirms his criminal liability in the case of usurpation of authority as his conviction was already pronounced by the MTC. Such testimony does not necessarily result in the falsity of petitioner's declaration that he nonetheless conducted his own solemnization of the subject

marriages. The fact remains that, as testified to by Alex Y. Pascual and Manny M. Asuncion, it was petitioner who solemnized their marriages on said date and at said office.

Fourth, the burden of proof in establishing that petitioner made an untruthful statement in the marriage certificate in order to be convicted of the crime of falsification of public instrument solely lies on the prosecution.

If only to stress the merit of this petition, we repeat the axioms that the Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the prosecution is required to adduce against him nothing less than proof beyond reasonable doubt. If the prosecution fails to discharge its heavy burden, then it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him.[25]

Lastly, considering that the subject public instrument in this case refers to the marriage certificate, we find it apropos to point out that the validity of marriage cannot be collaterally attacked since under existing laws and jurisprudence, the same may be questioned only in a direct action. A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws. In declaring that the one who solemnized the subject marriages had no authority to do so would indirectly result in the declaration that said marriages are void. This is what our jurisdiction intends to prevent.[26]

By way of reiteration, it is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probation, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove,[27] and as a means of respecting the presumption of

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[25] *People v. Wagas*, 717 Phil. 224, 242 (2013).

[26] See *Republic v. Olaybar*, G.R. No. 189538, 10 February 2014, 715 SCRA 605, 616.

[27] *People v. Subingsubing*, G.R. Nos. 104942-43, 25 November 1993, 228 SCRA 168, 174.

innocence in favor of the man or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of a crime, and (2) the actuality of the commission of the offense with the participation of the accused. All these facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. That the defense the accused puts up may be weak is inconsequential if, in the first place, the State has failed to discharge the onus of his identity and culpability. The presumption of innocence dictates that it is for the prosecution to demonstrate the guilt and not for the accused to establish innocence.[28] Indeed, the accused, being presumed innocent, carries no burden of proof on his or her shoulders.

Furthermore, it has been consistently ruled that "[c]ourts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions."[29] It is iniquitous to base petitioner's guilt on the presumptions of the prosecution's witnesses for the Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.[30]

In sum, the circumstantial evidence presented by the prosecution in this case failed to pass the test of moral certainty necessary to warrant petitioner's conviction. Accusation is not synonymous with guilt.[31] Not only that, where the inculpatory

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[28] *People v. Arapok,* 400 Phil. 1277, 1301 (2000).

[29] *People v. Anabe*, 644 Phil. 261, 281 (2010).

[30] *People v. Timtiman,* G.R. No. 101663, 4 November 1992, 215 SCRA 364, 373 citing *People v. Remorosa*, 277 Phil. 400, 411 (1991) also cited in *Franco v. People,* G.R. No. 191185, 1 February 2016.

[31] See *People v. Manambit,* 338 Phil. 57 (1997).

facts and circumstances are capable of two or more explanations or interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not meet or hurdle the test of moral certainty required for conviction.[32] Accordingly, the prosecution failed to establish the elements of falsification of public documents. With the prosecution having failed to discharge its burden of establishing petitioner's guilt beyond reasonable doubt, this Court is constrained, as is its bounden duty when reasonable doubt persists, to acquit him.

WHEREFORE, the petition is **GRANTED**. The Decision of the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0171 and SB-12-CRM-0172 is **REVERSED** and **SET ASIDE**. Petitioner Amado Corpuz, Jr. is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

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

Peralta, J., on wellness leave.

THIRD DIVISION

[G.R. No. 215047. November 23, 2016]

UNIVERSAL CANNING INC., MS. MA. LOURDES A. LOSARIA, Personnel Officer, and ENGR. ROGELIO A. DESOSA, Plant Manager, *petitioners, vs.* **COURT OF APPEALS and DANTE SAROSAL, FRANCISCO DUMAGAL, JR., NELSON E. FRANCISCO, ELMER**

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[32] *Atienza v. People*, G.R. No. 188694, 12 February 2014, 716 SCRA 84, 104-105.

C. SAROMINES AND SAMUEL D. CORONEL, *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROUNDS; SERIOUS MISCONDUCT.—** 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.

2. **ID.; ID.; ID.; ID.; INCLUDES INFRACTION OF COMPANY RULES AND REGULATION.—** [R]espondents were dismissed by petitioners for two reasons: (1) for violation of company rules and regulations under Paragraph IV, Number 4 under Offenses Against Public Morals; and (2) for loss of trust and confidence. x x x Infraction of the company rules and regulations which is akin to serious misconduct is a just cause for termination of employment recognized under Article 282 (a) of the Labor Code

3. **ID.; ID.; MANAGEMENT PREROGATIVES; INCLUDES DISMISSAL OF EMPLOYEE AS LONG AS THE EXERCISE OF MANAGEMENT PREROGATIVE IS DONE REASONABLY, IN GOOD FAITH, AND IN A MANNER NOT INTENDED TO DEFEAT THE RIGHTS OF WORKERS.—** Suffice it to state that an employee may be validly dismissed for violation of a reasonable company rule or regulation adopted for the conduct of the company's business. It is the recognized prerogative of the employer to transfer and reassign employees according to the requirements of its business. For indeed, regulation of manpower by the company clearly

falls within the ambit of management prerogative. A valid exercise of management prerogative is one which, among others, covers: work assignment, working methods, time, supervision of workers, transfer of employees, work supervision, and the discipline, dismissal and recall of workers. Except as provided for, or limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment. As a general proposition, an employer has free reign over every aspect of its business, including the dismissal of his employees as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.

4. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES, RESPECTED.— It is settled that this Court is not a trier of facts, and this applies with greater force in labor cases. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.

APPEARANCES OF COUNSEL

Ernesto Go for petitioners.
Cesar M. Jimenez for respondents.

D E C I S I O N

PEREZ, *J.*:

For resolution by the Court is this instant Petition for Review on *Certiorari*[1] filed by petitioners Universal Canning Inc., Ma. Lourdes Losaria and Engr. Rogelio A. Desosa, seeking to reverse and set aside the Decision[2] dated 13 December 2013 and the

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

[2] Penned by Justice Renato C. Francisco with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring; *id.* at 41-53.

Resolution[3] dated 9 September 2014 of the Court of Appeals in CA-G.R. SP. No. 03808-MIN. The assailed decision and resolution reversed the ruling of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-09-011031-2009 and declared the dismissal of respondents Dante M. Sarosal, Francisco Dumagal. Jr., Nelson E. Francisco, Elmer C. Saromines and Samuel D. Coronel, as illegal.

The Facts

Petitioner Universal Canning Inc. is a domestic corporation duly authorized to engage in business by Philippine laws. Petitioners Ma. Lourdes A. Losaria and Engr. Rogelio Desosa are respectively employed by the company as its Personnel Officer and Plant Manager.[4]

Respondents Dante M. Sarosal, Francisco Dumagal. Jr., Nelson E. Francisco, Elmer C. Saromines and Samuel D. Coronel were employed by petitioner Universal Canning on various capacities with wages ranging from ₱240.00 to ₱280.00 a day.[5]

On 21 January 2009, respondents were caught by petitioner company's Purchasing Officer, Falconieri Almazan, playing cards at the company's premises during working hours. The incident was immediately reported by Almazan to the Personnel Officer, Ma. Lourdes Losaria, who immediately conducted an investigation to determine the names and of those who were involved in the gambling activities. On the same day, respondents were placed under preventive investigation pending further investigation by a panel indicated in a memorandum addressed to and duly received by the individuals concerned. Under the same memorandum, respondents were required by the petitioner to file their written explanation of the incident. Respondents complied with the directive.[6]

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[3] *Id*. at 55-58.

[4] CA Decision; *id*. at 42.

[5] *Id*.

[6] *Id*. at 42-43.

In their letter-explanation dated 23 January 2009, respondents denied that they were involved in gambling activities within the company's premises during work hours. It was argued by the respondents that while indeed they were playing cards inside the company premises, it cannot be considered gambling as there was no money involved and that it took place during noon break.[7]

On 9 February 2009, the investigation was conducted where respondents were questioned regarding their participation in the 21 January 2009 activities inside the company's premises. After the inquiry, the Investigating Officer found that respondents were playing cards during working hours which is considered an infraction of the company's rules and regulations.[8]

On the basis of the Investigation Report, respondents were dismissed from employment through a notice thereof dated 19 February 2016 which enumerated the grounds: (1) taking part in a betting, gambling or any unauthorized game of chance inside the company premises while on duty; and (2) for loss of trust and confidence. The termination of respondents was reported by the petitioner to the Department of Labor of Employment (DOLE) on 24 February 2009.

Aggrieved by the tum of events, respondents initiated an action for illegal dismissal, illegal suspension, payment of separation pay, rest day pay and moral and exemplary damages before the Labor Arbiter. In their Position Paper, respondents argued that their severance from employment is unlawful because of lack of sufficient basis for their termination. They reiterated their position in their letter-explanation that they could not be considered guilty of gambling because there were no stakes involved and the activity took place during authorized noon break.

For lack of merit, the Labor Arbiter dismissed the complaint in a Decision[9] dated 24 August 2009. The Labor Arbiter held

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[7] NLRC Decision; *id*. at 24-25.

[8] CA Decision; *id*. at 43.

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

that respondents were dismissed for just cause and after compliance with due process. The dispositive portion of the Decision reads:

> WHEREFORE, the above-entitled case is hereby dismissed for lack of merit.
>
> SO ORDERED.[10]

On appeal, the NLRC affirmed the dismissal of respondents' complaint. It was declared by the Commission that "playing cards during office hours whether for a stake or fun is considered a dishonest act of stealing company time. The company's working hours could be used for more profitable activities since they are paid by the company." Setting aside the claim of respondents that their length of service should be considered a mitigating circumstance, the NLRC held that "the fact that [respondents] have been employed by the company for a long period of time could not work in their favor. Their attitude towards their work is smocked (sic) with disloyalty, lack of concern and enthusiasm."[11]

On *Certiorari*, the Court of Appeals reversed and set aside the NLRC Decision on the ground that it was rendered with grave abuse of discretion amounting to lack or excess in jurisdiction. According to the appellate court, there exists no just cause to dismiss respondents from employment. As rank and file employees, respondents could not be dismissed for lack of trust and confidence as they were not holding positions imbued with trust and confidence.[12] The Court of Appeals disposed in this wise:

> THE FOREGOING CONSIDERED, the instant PETITION is thus GRANTED. The NLRC's Resolution dated December 29, 2009 and June 29, 2010 are hereby REVERSED AND SET ASIDE, and a new entered mandating UCI to:

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[10] *Id*. at 28.

[11] *Id*. at 30-36.

[12] *Id*. at 41-53.

1. Pay each [respondents] their respective full backwages, inclusive of allowances and other benefits required by law or their monetary equivalent computed from the time they were actually dismissed effective February 20, 2009 until the finality of this decision; and

2. To reinstate [respondents] without loss of seniority rights and other privileges, or if reinstatement is not possible, to pay each of the petitioners their respective separation pay equivalent to one month to every year of service, computed from the date of employment up to the finality of the decision. A fraction of at least six (6) months shall be considered one (1) whole year. Any fraction below six (6) months shall be paid *pro rata*.

SO ORDERED.

In a Resolution[13] dated 9 September 2014, the Court of Appeals refused to reconsider its earlier Decision.

Petitioners are now before this Court *via* this instant Petition for Review on *Certiorari* assailing the Courts of Appeals' Decision and Resolution on the ground that:

The Issue

THE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE NLRC DECISION WHICH IN TURN, AFFIRMED THE LABOR ARBITER'S DECISION DISMISSING RESPONDENTS' COMPLAINT FOR ILLEGAL DISMISSAL FOR LACK OF MERIT.

The Court's Ruling

The core issue here is whether the Court of Appeals erred in holding that there is no just cause for dismissing respondents from employment.

The Court resolves to grant the petition.

It must be stressed at the onset that respondents were dismissed by petitioners for two reasons: (1) for violation of company rules and regulations under Paragraph IV, Number 4 under

[13] *Id*. at 55-56.

Offenses Against Public Morals;[14] and (2) for loss of trust and confidence. While it is true that loss of trust and confidence alone could not stand as a ground for dismissal in this case since respondents are rank and file employees who are not occupying positions of trust and confidence, such is not the only ground, relied by the company in terminating respondents' employment. Petitioner company also cited the infraction of company rules and regulations, in addition to loss and trust of confidence. Infraction of the company rules and regulation which is akin to serious misconduct is a just cause for termination of employment recognized under Article 282 (a) of the Labor Code which states that:

ARTICLE 282. *Termination by employer*.— An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

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.[15]

Here, there is no question that respondents were caught in the act of engaging in gambling activities inside the workplace

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[14] Taking part in a betting, gambling or in an any unauthorized game of chance inside the company premises while on duty;

[15] *Imasen Philippine Manufacturing Company v. Alcon*, G.R. No. 194884, 22 October 2014, 739 SCRA 186, 197.

during work hours, a fact duly established during the investigation conducted by the petitioner company and adopted by the labor tribunals below. As a matter of fact, respondents never controverted their participation in the gambling activities, but instead raised the defense that it took place during noon break and that no stakes were involved; these claims even if were proven true, will however not save the day for the respondents. The use of the company's time and premises for gambling activities is a grave offense which warrants the penalty of dismissal for it amounts to theft of the company's time and it is explicitly prohibited by the company rules on the ground that it is against public morals.

Suffice it to state that an employee may be validly dismissed for violation of a reasonable company rule or regulation adopted for the conduct of the company's business. It is the recognized prerogative of the employer to transfer and reassign employees according to the requirements of its business. For indeed, regulation of manpower by the company clearly falls within the ambit of management prerogative. A valid exercise of management prerogative is one which, among others, covers: work assignment, working methods, time, supervision of workers, transfer of employees, work supervision, and the discipline, dismissal and recall of workers. Except as provided for, or limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment.[16] As a general proposition, an employer has free reign over every aspect of its business, including the dismissal of his employees as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers.[17]

Both the Labor Arbiter and the NLRC uniformly ruled that the complaint for illegal dismissal filed by the respondents utterly lacks merit and, thus, upheld the petitioners' position that there exists a valid ground for dismissing the respondents. The NLRC

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[16] *Autobus Worker's Union v. NLRC*, 353 Phil. 419, 429 (1998).

[17] *Supra* note 15, at 195.

even went further by saying that respondents' length of service should not mitigate the consequence of their acts as they owe the company loyalty and concern. Considering that there is substantial evidence at hand to support the ruling of the labor tribunals, the Court hereby adopts their findings.

It is settled that this Court is not a trier of facts, and this applies with greater force in labor cases.[18] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[19]

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Resolutions of the Court of Appeals are hereby **REVERSED AND SET ASIDE**.

SO ORDERED.

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

Peralta, J., on wellness leave.

THIRD DIVISION

[G.R. No. 217379. November 23, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO MARMOL *y* BAUSO, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS.— Rape can be committed either through

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[18] *Noblado v. Alfonso*, G.R. No. 189229, 23 November 2015, 775 SCRA 178, 187.

[19] *Philippine Transmarie v. Cristino*, G.R. No. 188638, 9 December 2015.

sexual intercourse or sexual assault. Rape under paragraph 1 of [Article 266-A] is rape through sexual intercourse; often denominated as "organ rape" or "penile rape," carnal knowledge is its central element and must be proven beyond reasonable doubt. It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. Rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

2. ID.; ID.; INSTRUMENT OR OBJECT RAPE OR GENDER-FREE RAPE; ELEMENTS.— Rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. Under any of the attendant circumstances mentioned in paragraph 1, the perpetrator commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape."

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ACCUSED MAY BE CONVICTED SOLELY ON THE VICTIM'S TESTIMONY PROVIDED IT IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.— In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.

4. ID.; ID.; ID.; THE TRIAL COURT'S FINDINGS ON THE CREDIBILITY OF WITNESSES AND OF THEIR TESTIMONIES ARE ENTITLED TO THE HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL, IN THE ABSENCE OF ANY CLEAR SHOWING THAT THE COURT OVERLOOKED, MISUNDERSTOOD OR

MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF THE CASE.— It is also well-settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility. The trial court lent full credence to AAA's clear, spontaneous and categorical testimony that appellant had raped her on at least two (2) occasions. It is evident from the extant records that appellant had carnal knowledge of AAA, his twelve (12)-year old daughter, through force, threat or intimidation on 09 February 2004; and sexually assaulted her also through force, threat or intimidation on 22 February 2004.

5. **ID.; ID.; ID.; TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT, FOR WHEN A WOMAN OR A GIRL-CHILD SAYS THAT SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE WAS INDEED COMMITTED. —** The Court finds no reason to disbelieve AAA's testimony which both the trial and appellate courts found credible and straightforward. Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.

6. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENT OF VIOLENCE AND INTIMIDATION; WHEN A FATHER RAPES HIS DAUGHTER, VIOLENCE AND INTIMIDATION SUPPLANT SUCH MORAL ASCENDANCY AND INFLUENCE, AS THE RAPIST FATHER CAN EASILY SUBJUGATE HIS DAUGHTER'S WILL, ALLOWING HIM TO COERCE THE CHILD TO DO HIS EVERY BIDDING. —** [T]o this Court's mind, there can be no greater source of fear or intimidation than your own father — one who, generally, has exercised authority over your person since birth. This Court has recognized the moral ascendancy and influence the father has over his child. When

a father rapes his daughter, violence and intimidation supplant such moral ascendancy and influence. The rapist father can easily subjugate his daughter's will, allowing him to coerce the child to do his every bidding.

7. ID.; ID.; ID.; WHEN THE CONSISTENT AND STRAIGHTFORWARD TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH MEDICAL FINDINGS, THERE IS SUFFICIENT BASIS TO WARRANT A CONCLUSION THAT THE ESSENTIAL REQUISITES OF CARNAL KNOWLEDGE HAVE BEEN ESTABLISHED.— AAA's testimony was corroborated by the findings of Dr. Bernabe showing that AAA had lacerations on her female anatomy. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.

8. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND ALIBI; ASIDE FROM BEING WEAK, DENIAL IS SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW, IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING PROOF, AND HENCE CANNOT PREVAIL OVER THE VICTIM'S CLEAR NARRATION OF FACTS AND POSITIVE IDENTIFICATION OF ACCUSED-APPELLANT; FOR ALIBI TO PROSPER, ACCUSED-APPELLANT MUST PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE PRESENT AT THE CRIME SCENE OR ITS IMMEDIATE VICINITY AT THE TIME OF ITS COMMISSION.— The Court finds unmeritorious appellant's defense of denial. Aside from being weak, it is self-serving evidence undeserving of weight in law, if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove. For alibi to prosper, appellant must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

9. ID.; ID.; CREDIBILITY OF WITNESSES; GREAT WEIGHT IS GIVEN TO AN ACCUSATION A CHILD DIRECTS AGAINST A CLOSE RELATIVE, ESPECIALLY THE FATHER, AS IT TAKES A CERTAIN AMOUNT OF PSYCHOLOGICAL DEPRAVITY FOR A YOUNG WOMAN TO CONCOCT A STORY THAT WOULD PUT HER OWN FATHER TO JAIL FOR THE REST OF HIS REMAINING LIFE AND DRAG THE REST OF THE FAMILY INCLUDING HERSELF TO A LIFETIME OF SHAME.— [I]it is highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, it takes a certain amount of psychological depravity for a young woman to concoct a story that would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. Filipino children have great respect and reverence for their elders. For this reason, great weight is given to an accusation a child directs against a close relative, especially the father. A rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family.

10. ID.; ID.; ID.; IT WOULD TAKE A CERTAIN DEGREE OF PERVERSITY ON THE PART OF A PARENT, ESPECIALLY A MOTHER, TO CONCOCT A FALSE CHARGE OF RAPE AND THEN USE HER DAUGHTER AS AN INSTRUMENT TO SETTLE HER GRUDGE.— The Court is also not convinced by appellant's proposition that ill motives of BBB prompted the filing of the charges against him. Ill-motives become inconsequential where there are affirmative or categorical declarations establishing appellant's accountability for the felony. Not a few persons convicted of rape have attributed the charges against them to family feuds, resentment or revenge, however, these have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor, AAA in the case at bar, who remained steadfast and unyielding that she had been sexually abused. It would take a certain degree of perversity on the part of a parent, especially a mother, to concoct a false charge of rape and then use her daughter as an instrument to settle her grudge.

11. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; IMPREGNATION IS NOT AN ELEMENT OF RAPE; OF PRIME IMPORTANCE IS THAT APPELLANT HAD CARNAL KNOWLEDGE OF THE VICTIM AGAINST THE LATTER'S WILL OR WITHOUT HER CONSENT AND SUCH FACT WAS TESTIFIED TO IN A TRUTHFUL MANNER.— The Court gives scant consideration to appellant's assertion that the incongruency of AAA's gestation period with the alleged date of the commission of the rape by sexual intercourse casts doubts on the truth of AAA's allegations. It bears underscoring that impregnation is not an element of rape. AAA's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Whether the child AAA bore had been sired by appellant or by some other individual is of no moment. Of prime importance is that appellant had carnal knowledge of AAA against the latter's will or without her consent and such fact was testified to in a truthful manner.

12. ID.; ID.; RAPE BY SEXUAL ASSAULT; PROPER PENALTY.— [A]ppellant's guilt of the crimes charged was established beyond reasonable doubt. In Criminal Case No. C-70217, under Article 266-B, the penalty for rape by sexual assault is *prision mayor*. The penalty is increased to *reclusion temporal* if the rape is committed by any of the ten (10) aggravating/qualifying circumstances mentioned in the article. The courts properly appreciated the circumstances of minority and relationship. AAA was twelve (12) years old at the time of the rape incident and appellant is her father. Thus, the imposable penalty is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the Court affirms the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, imposed by the appellate court upon appellant. The Court of Appeals also correctly awarded the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages in line with prevailing jurisprudence.

13. ID.; ID.; QUALIFIED RAPE; PROPER PENALTY.— In Criminal Case No. C-70859, the courts also fittingly considered

the minority of AAA and her relationship with appellant, circumstances that increase the severity of the penalty from *reclusion perpetua* to death. The passage of Republic Act No. 9346, however debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, the penalty was aptly reduced from death penalty to *reclusion perpetua*. In view of Republic Act No. 9346, appellant is not eligible for parole.

14. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The award of damages on the other hand should be modified and increased as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence. Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

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.*:

Before us for review is the Decision[1] of the Court of Appeals, Eleventh Division, in CA-G.R. CR-H.C. No. 05657 dated 21 May 2014, which dismissed the appeal of appellant and affirmed with modification the Consolidated Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 124, in Criminal Case Nos. C-70217 and C-70859, which found appellant Eduardo

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[1] *Rollo*, pp. 2-20; Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina Antonio-Valenzuela concurring.

[2] Records, pp. 419-430; Presided by Presiding Judge Andres Bartolome Soriano.

Marmol y Bauso, Jr. guilty beyond reasonable doubt of Rape through Sexual Assault and Qualified Rape.

In line with the ruling of this Court in *People v. Cabalquinto*,[3] the real name and identity of the rape victim, as well as the members of her immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother as BBB.

Appellant was charged with two (2) counts of rape as follows:

CRIMINAL CASE No. C-70217

That on or about the 22nd day of February, 2004 in Caloocan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of one [AAA], a minor, 12 years of age, did then and there wilfully, unlawfully and feloniously succeed in sexually abusing said [AAA], by then and there inserting his finger into the genital organ of the latter, against her will and without her consent, which act and condition is prejudicial to the development of the said child.[4]

CRIMINAL CASE No. C-70859

That on or about the 9th of February, 2004 in Caloocan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the legitimate father of one [AAA], a minor, 12 years of age, with lewd design and by means of force and intimidation employed upon the latter, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with said [AAA], against the latter's will and without her consent, which act and condition is prejudicial to the development of the said minor victim.[5]

Upon arraignment, appellant pleaded not guilty all the charges. Joint trial on the merits ensued.

The prosecution presented AAA, her mother, BBB, SPO1 Isabel Barasi-Gracilla, Dr. Mamerto Bernabe. Jr. (Dr. Bernabe) and Dr. Deborah Saguin (Dr. Saguin) as witnesses.

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[3] 533 Phil. 703, 705 (2006).

[4] Records, p. 2.

[5] *Id*. at 12.

The prosecution established that AAA is the daughter of BBB and appellant, born on 21 February 1992; and was twelve years (12) years old at the time of the commission of the crimes, all evidenced by her Birth Certificate.[6] On 9 February 2004, AAA had been alone in their house from school when her father arrived. After taking a bath, appellant dragged AAA to the room, laid her on the bed, removed her undergarments, placed himself on top of her and had carnal knowledge of her. AAA could not scream in protest, cowered into silence by appellant's threat to kill AAA's mother if her ordeal comes to fore.[7]

Then again on 22 February 2004, AAA had been sleeping with her mother and siblings in the living room when woken by the sensation of appellant lying down next to her and inserting his finger into her female part. When BBB herself awoked, appellant immediately withdrew his finger and tried to pull AAA's brother toward her to hide what he had done. BBB removed the blanket covering and saw that appellant's pants had been unzipped and AAA's panties had been lowered exposing her female organ. Thus it was unravelled that appellant had been doing unspeakable acts to AAA for some time. This appellant vehemently denied and with knife on hand, appellant prevented AAA and BBB from leaving the house.[8]

Once AAA and BBB have reported the incidents to the police, AAA was subjected to a physical examination by Dr. Bernabe. Said examination revealed that AAA was in a non-virgin state physically and that there were no external signs of application of any form of trauma on the genital area. The *labia majora* or the outer lips of the female genital area or the reproductive external structures were slightly open and were erythematous or reddish due to a possible recent trauma to the area. The *labia minora* was slightly thickened. Attenuated hymen with shallow healed laceration at 6 o'clock position meant there was injury at the lower portion of the hymen. The laceration or injury of

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[6] *Id*. at 17.

[7] TSN, 21 June 2005, pp. 6-7.

[8] TSN, 2 August 2005; TSN, 16 August 2005, pp. 5-6.

the hymen could have been caused by the introduction or penetration of a blunt instrument in the vaginal canal. These findings were embodied in a Medico Legal Report dated 23 February 2004 which Dr. Bernabe identified in court. Dr. Bernabe further testified that the physical and genital examination corroborated the verbal interview of the victim.[9]

AAA claimed she had been impregnated as a result of her father's incestuous act. On 13 October 2004, AAA was safely delivered of a son by Dr. Saguin at the Jose Reyes Memorial Medical Center.

Appellant, for his part, denied the rape charges. He asserted that he had been out of the house on 9 February 2004; and on 22 February 2004, he had just arrived home from visiting his friend. He countered that AAA had been mauled by BBB to coerce her to testify against him. [10]

On 15 May 2012, appellant was found guilty beyond reasonable doubt of two (2) counts of rape. The dispositive portion of the RTC Consolidated Decision reads:

WHEREFORE, premises considered, the Court finds the accused (a) in Crim. Case No. c-70217 GUILTY beyond reasonable doubt of the crime of Rape (thru insertion of the finger under paragraph 2, Article 266-A, of the Revised Penal Code) of a minor below 18 years of age and hereby sentences him to suffer the indeterminate penalty of **EIGHT (8) YEARS of *Prision Mayor,*** as minimum, to **EIGHTEEN (18) YEARS of *Reclusion Temporal,*** as maximum. Accused is likewise directed to indemnify the private complainant in the amount of **ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00);** (b) in Crim. Case No. C-70859, GUILTY of the crime of Rape (committed through carnal knowledge under Article 266-A paragraph 1 [d]) of a minor daughter below 12 years of age, and hereby sentences him to suffer the penalty of ***Reclusion Perpetua.*** Accused is likewise directed to indemnify the private complainant in the amount of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00)[11]

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[9] TSN, 25 October 2005, pp. 21-22; Records, p. 25.

[10] TSN, 30 May 2007, TSN, 1 October 2007.

[11] Records, p. 430.

On intermediate review, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, to wit:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit**.** The assailed May 15, 2012 Consolidated Decision is **MODIFIED** as follows:

1) in Crim. Case No. C-70217, for the crime of rape by sexual assault:

a) the maximum term of the indeterminate penalty is reduced to seventeen (17) years and four (4) months;

b) accused-appellant is **ORDERED** to pay AAA:

i. ₱30.000.00 as civil indemnity;
ii. ₱30,000.00 as moral damages; and
iii. ₱30,000.00 as exemplary damages.

2) in Crim Case No. C-70859, for the crime of rape through carnal knowledge, accused-appellant is **ORDERED** to pay AAA:

a) ₱75,000.00 as civil indemnity;
b) ₱75,000.00 as moral damages; and
c) ₱30,000.00 as exemplary damages.[12]

Appellant filed the instant appeal. In a Resolution[13] dated 22 June 2015, appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties no longer filed supplemental briefs.

The appeal lacks merit.

Rape is committed as follows:

Article 266-A. *Rape; When and How committed*. – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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[12] *Rollo*, pp, 20-21.

[13] *Id.* at 27.

a. Through force, threat or intimidation;
b. When the offended party is deprived of reason or otherwise unconscious;
c. By means of fraudulent machination or grave abuse of authority; and
d. When the woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Article 266-B. *Penalties*— Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x x x x x x

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

x x x x x x x x x

Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

Rape can be committed either through sexual intercourse or sexual assault. Rape under paragraph 1 of the above-cited article is rape through sexual intercourse; often denominated as "organ rape" or penile rape," carnal knowledge is its central element and must be proven beyond reasonable doubt. It must be attended by any of the circumstances enumerated in subparagraphs (a)

to (d) of paragraph 1.[14] Rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[15] The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[16]

Rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. Under any of the attendant circumstances mentioned in paragraph 1, the perpetrator commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape."[17]

In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[18]

It is also well-settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[19]

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[14] *People v. Soria,* 698 Phil. 676, 687 (2012).

[15] *People v. Buclao*, 736 Phil. 325, 336 (2014).

[16] *Id.* citing *People v. Candellada*, 713 Phil. 623, 635 (2013).

[17] *People v. Soria*, *supra* note 14 citing *People v. Abulon*, 557 Phil. 428, 453-454 (2007).

[18] *People v. Pascua*, 462 Phil. 245, 252 (2003).

[19] *People v. Paculba*, 628 Phil. 662, 673 (2010).

The trial court lent full credence to AAA's clear, spontaneous and categorical testimony that appellant had raped her on at least two (2) occasions. It is evident from the extant records that appellant had carnal knowledge of AAA, his twelve (12)-year old daughter, through force, threat or intimidation on 09 February 2004; and sexually assaulted her also through force, threat or intimidation on 22 February 2004.

The Court finds no reason to disbelieve AAA's testimony which both the trial and appellate courts found credible and straightforward. Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.[20]

Moreover, to this Court's mind, there can be no greater source of fear or intimidation than your own father — one who, generally, has exercised authority over your person since birth. This Court has recognized the moral ascendancy and influence the father has over his child. When a father rapes his daughter, violence and intimidation supplant such moral ascendancy and influence. The rapist father can easily subjugate his daughter's will, allowing him to coerce the child to do his every bidding.[21]

AAA's testimony was corroborated by the findings of Dr. Bernabe showing that AAA had lacerations on her female anatomy. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[22]

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[20] *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[21] *People v. Pioquinto*, 549 Phil. 479, 486-487 (2007).

[22] *People v. Perez*, 595 Phil. 1232, 1258 (2008).

The Court finds unmeritorious appellant's defense of denial. Aside from being weak, it is self-serving evidence undeserving of weight in law, if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove. For alibi to prosper, appellant must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[23]

More importantly, it is highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, it takes a certain amount of psychological depravity for a young woman to concoct a story that would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame.[24] Filipino children have great respect and reverence for their elders. For this reason, great weight is given to an accusation a child directs against a close relative, especially the father. A rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family.[25]

The Court is also not convinced by appellant's proposition that ill motives of BBB prompted the filing of the charges against him. Ill-motives become inconsequential where there are affirmative or categorical declarations establishing appellant's accountability for the felony. Not a few persons convicted of rape have attributed the charges against them to family feuds, resentment or revenge, however, these have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor, AAA in the case at bar, who remained

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[23] *People v. Aguila*, 539 Phil. 698, 719 (2006).

[24] *People v. Felan*, 656 Phil. 464 Phil. 470 (2011).

[25] *People v. Pioquinto, supra* note 21.

steadfast and unyielding that she had been sexually abused. It would take a certain degree of perversity on the part of a parent, especially a mother, to concoct a false charge of rape and then use her daughter as an instrument to settle her grudge.[26]

The Court gives scant consideration to appellant's assertion that the incongruency of AAA's gestation period with the alleged date of the commission of the rape by sexual intercourse casts doubts on the truth of AAA's allegations. It bears underscoring that impregnation is not an element of rape.[27] AAA's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Whether the child AAA bore had been sired by appellant or by some other individual is of no moment. Of prime importance is that appellant had carnal knowledge of AAA against the latter's will or without her consent and such fact was testified to in a truthful manner.[28]

All told, appellant's guilt of the crimes charged was established beyond reasonable doubt.

In Criminal Case No. C-70217, under Article 266-B, the penalty for rape by sexual assault is *prision mayor*. The penalty is increased to *reclusion temporal* if the rape is committed by any of the ten (10) aggravating/qualifying circumstances mentioned in the article. The courts properly appreciated the circumstances of minority and relationship. AAA was twelve (12) years old at the time of the rape incident and appellant is her father. Thus, the imposable penalty is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the Court affirms the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months

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[26] See *People v. Santos*, 532 Phil. 752, 767 (2006).

[27] *People v. Maglente*, 578 Phil. 980, 997 (2008).

[28] *People v. Gahi*, 727 Phil. 642, 660 (2014) citing *People v. Bejic*, 552 Phil. 555, 573 (2007).

of *reclusion temporal*, as maximum, imposed by the appellate court upon appellant.[29] The Court of Appeals also correctly awarded the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages in line with prevailing jurisprudence.[30]

In Criminal Case No. C-70859, the courts also fittingly considered the minority of AAA and her relationship with appellant, circumstances that increase the severity of the penalty from *reclusion perpetua* to death. The passage of Republic Act No. 9346 however debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, the penalty was aptly reduced from death penalty to *reclusion perpetua.* In view of Republic Act No. 9346, appellant is not eligible for parole. [31]

The award of damages on the other hand should be modified and increased as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[32]

Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[33]

WHEREFORE, premises considered, the Decision dated 21 May 2014 of the Court of Appeals, Eleventh Division, in CA-G.R. CR-H.C. No. 05657, finding appellant Eduardo Marmol y Bauso, Jr. guilty beyond reasonable doubt of the crimes of

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[29] *People v. Crisostomo*, 725 Phil. 542, 554 (2014).

[30] *Id*. at 555.

[31] Pursuant to Section 3 of R.A. 9346 (An Act prohibiting the Imposition of Death Penalty in the Philippines) which states that:

> SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[32] *People v. Gambao*, 718 Phil. 507 (2013).

[33] *People v. Vitero*, 708 Phil. 49, 65 (2013).

Rape through Sexual Assault and Qualified Rape in Criminal Case Nos. C-70217 and C-70859 is hereby **AFFIRMED** with **MODIFICATION.** In Criminal Case No. C-70859, appellant is not eligible for parole. Appellant is also **ORDERED** to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-de Castro,[*] and *Reyes, JJ.,* concur.

Peralta, J., on wellness leave.

SECOND DIVISION

[G.R. No. 220629. November 23, 2016]

GENARO G. CALIMLIM, *petitioner, vs.* **WALLEM MARITIME SERVICES, INC., WALLEM GMBH & CO. KG and MR. REGINALDO OBEN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; SEAFARER; DISABILITY COMPENSATION AND BENEFITS; A SEAFARER'S INABILITY TO RESUME

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[*] Additional Member per Raffle dated 29 February 2016.

HIS WORK AFTER THE LAPSE OF MORE THAN 120 DAYS FROM THE TIME HE SUFFERED AN INJURY AND/OR ILLNESS IS NOT A MAGIC WAND THAT AUTOMATICALLY WARRANTS THE GRANT OF TOTAL AND PERMANENT DISABILITY BENEFITS IN HIS FAVOUR, AS ITS APPLICATION MUST DEPEND ON THE CIRCUMSTANCES OF THE CASE, INCLUDING COMPLIANCE WITH THE PARTIES' CONTRACTUAL DUTIES AND OBLIGATIONS AS LAID DOWN IN THE POEA-SEC AND/OR THEIR COLLECTIVE BARGAINING AGREEMENT.— Calimlim's reliance on the alleged lapse of 120 days is misplaced. A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor. It cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA.

2. ID.; ID.; ID.; ID.; FOR WORK-RELATED ILLNESSES ACQUIRED BY SEAFARERS FROM THE TIME THE 2010 AMENDMENT TO THE POEA-SEC TOOK EFFECT, THE DECLARATION OF DISABILITY SHOULD NO LONGER BE BASED ON THE NUMBER OF DAYS THE SEAFARER WAS TREATED OR PAID HIS SICKNESS ALLOWANCE, BUT RATHER ON THE DISABILITY GRADING HE RECEIVED, WHETHER FROM THE COMPANY-DESIGNATED PHYSICIAN OR FROM THE THIRD INDEPENDENT PHYSICIAN, IF THE MEDICAL FINDINGS OF THE PHYSICIAN CHOSEN BY THE SEAFARER CONFLICTS WITH THAT OF THE COMPANY-DESIGNATED DOCTOR.— In the recent case of *Magsaysay, Maritime Corporation v. Simbajon*, the Court mentioned that an amendment to Section 20-A(6) of the POEA--SEC, contained in POEA Memorandum Circular No. 10, series of 2010, now "finally clarifies" that "[f]or work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading

he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor."

3. ID.; ID.; ID.; ID.; THE "FIT TO WORK" ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN WHICH RESULTED AFTER A THOROUGH MEDICAL EXAMINATION OF THE SEAFARER IS GIVEN DUE CREDENCE, THAN THE "UNFITNESS TO WORK" FINDINGS OF THE PRIVATE PHYSICIAN WHICH RESULTED FROM JUST A SINGLE CONSULTATION.— In several cases, the Court held that the doctor who have had a personal knowledge of the actual medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability. x x x. [I]n *Andrada v. Agemar Manning Agency, Inc.* , the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report x x x outlining the alleged findings and medical history x x x obtained after x x x [one examination]." Thus, the CA correctly gave due credence to the "fit to work" assessment of the company-designated physician having been issued after a thorough medical examination of Calimlim from the time he was repatriated until he was declared fit to work. It could not be faulted in disregarding the medical findings of Dr. Jacinto because he could not have been declared permanently and totally unfit for work after just a single consultation with his private doctor without any supporting progress report to show his unfitness to work. As found by the NLRC, there was nothing on record that would validate Dr. Jacinto's findings. No document substantiated his findings that he was suffering from essential hypertension that would qualify him for a total permanent disability benefit. The award of permanent disability benefits by the LA was, therefore, improper.

4. ID.; ID.; ID.; ID.; THE USE OF THE EXTENDIBLE PERIOD OF 240 DAYS FOR THE COMPANY-DESIGNATED PHYSICIAN TO MAKE A DECLARATION DOES NOT

APPLY WHERE THE SEAFARER IS ALREADY DECLARED FIT TO WORK WITHIN THE 120 DAY PERIOD REQUIRED BY LAW.— It is well to note that Calimlim was declared fit to work within the 120 day period. It is undisputed that he complained of his condition and received treatment at Xingang Hospital on December 25, 2011. He continued to receive treatment after his repatriation in January 2011 until he was subsequently declared fit to work on February 17, 2011, well within the 120 day period required by law. Thus, his condition cannot be considered a permanent total disability that would entitle him to permanent disability benefit. His invocation of the 240-day rulings is misplaced. As correctly opined by the CA, the use of the extendible period of 240 days for the company-designated physician to make a declaration finds no application in his situation as his treatment took only 55 days or before the lapse of the 120-day period.

5. **ID.; ID.; ID.; ID.; WHEN A SEAFARER SUSTAINS A WORK-RELATED ILLNESS OR INJURY WHILE ON BOARD THE VESSEL, HIS FITNESS FOR WORK SHALL BE DETERMINED BY THE COMPANY-DESIGNATED PHYSICIAN. IF THE PHYSICIAN APPOINTED BY THE SEAFARER DISAGREES WITH THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, THE OPINION OF A THIRD DOCTOR MAY BE AGREED JOINTLY BETWEEN THE EMPLOYER AND THE SEAFARER, WHOSE DECISION SHALL BE FINAL AND BINDING ON THEM. IF NOT AVAILED OF OR FOLLOWED STRICTLY BY THE SEAFARER, THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN STANDS.—** The rule is that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them. This procedure must be strictly followed, otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.

APPEARANCES OF COUNSEL

Carrera and Associates Law Offices for petitioner.
Del Rosario and Del Rosario Law Offices for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 7, 2015 Decision[1] and the September 18, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA G.R. SP No. 135205, affirming the November 27, 2013 Resolution of the National Labor Relations Commission (*NLRC*), which reversed the April 30, 2013 Decision of the Labor Arbiter (*LA*).

The Antecedents:

Respondent Wallem Maritime Services, Inc., for and in behalf of its foreign principal, Wallem GMBH & Co. KG, represented by its President, Mr. Reginaldo Oben (*respondents*), hired petitioner Genaro G. Calimlim (*Calimlim*) to work as Bosun on board the vessel, Johannes Wulff, for a period of nine (9) months, with a monthly basic salary of US$698.00, as provided under the Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*) commencing on June 21, 2010. Prior to deployment, Calimlim underwent the required Pre-employment Medical Examination (*PEME*) on June 18, 2010 and was declared fit for sea duty.[3]

On December 25, 2010, while doing his duties on board, Calimlim felt a severe pain in his stomach causing him to feel weak and go to the comfort room. While emptying his bowels,

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[1] *Rollo*, pp. 39-53. Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Melchor Quirino C. Sadang, concurring.

[2] *Id*. at 55-57.

[3] *Id*. at 40.

he noticed that there was fresh blood in his stool. As his stomach pain and bleeding persisted, he reported his condition to the Ship Captain who advised him to seek medical attention upon reaching the nearest port.[4]

When the vessel reached the port of Xingang, China, Calimlim was brought to the Xingang Hospital where he underwent several laboratory tests. The tests revealed that he was suffering from *Hemorrhage of the Upper Digestive Tract and Hypertension*. The doctor recommended that he should not be given any duty on board due to his sensitive health condition and should be confined in a hospital.[5] After seven days or on January 17, 2011, when the vessel reached the port of Indonesia, he was medically repatriated.

Upon arrival in Manila, Calimlim immediately reported to respondents. He was referred to the Manila Doctor's Hospital (*MDH*) for examination and treatment. He was confined at MDH for four (4) days and was treated as an out-patient after his discharge.

On July 5, 2012, Calimlim filed a complaint for permanent disability compensation and benefits, having been declared unfit for sea duty due to his illness.

On July 9, 2012, Calimlim consulted Dr. Manuel C. Jacinto, Jr. (*Dr. Jacinto*), a private physician, who diagnosed him to be suffering from "*Essential Hypertension with Hypertensive Cardiomyopathy, Upper Digestive Tract Enteritis; Neurodermatitis*,"[6] with the following remarks:

x x x x x x x x x

Disability: Total Permanent

Cause of Illness/Injury: Work-related/Work-aggravated[7]

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[4] *Id*.

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

[6] *Id.* at. 41.

[7] *Id.* at 16.

Ruling of the Labor Arbiter

In its April 30, 2013 Decision,[8] the LA ordered the respondents to pay Calimlim his total permanent disability benefits in the amount of US$100,569.32 as well as the balance of his sickness wages and attorney's fees. The LA gave more probative weight to the medical findings of Dr. Jacinto which was more thorough as it confirmed the diagnosis of the doctor in Xingang Hospital over the findings made by the company-designated physicians. The LA noted that the findings of the company-designated physicians were incomplete, covering only the medical issues pertaining to his abdominal pain, making no reference to the findings of Hypertension and Neurodermatitis. The LA concluded that based on the findings of Dr. Jacinto, the disability sustained by him was work-related and had prevented him from gaining subsequent employment, thus, entitling him for compensation from the respondents.[9]

Aggrieved, respondents appealed before the NLRC.

Ruling of the NLRC

The NLRC initially dismissed the petition for failure of respondents to comply with Section 6, Rule VI of the 2011 NLRC Rules of Procedure requiring an Indemnity Agreement to be signed by both respondents and the Bonding Company as only the respondents signed the same.

Respondents filed a motion for reconsideration.

In its November 27, 2013 Decision,[10] the NLRC granted the motion and *reversed* the LA's decision. The NLRC ruled that Calimlim failed to prove that he was suffering from essential hypertension which would qualify him for a total permanent disability benefit. The NLRC noted that he consulted his private physician only in July 2012 or seventeen (17) months from the time he was declared fit to work by the company-designated

[8] Copy was not attached to the petition.

[9] *Rollo*, pp. 41-42.

[10] Copy was not attached to the petition.

physician, and noted that the gap was so extensive that there might have been supervening events that could have caused or aggravated his condition. The fact that he filed his complaint on July 5, 2012 while his medical certification by Dr. Jacinto was issued on July 9, 2012 was not unnoticed by the NLRC. Accordingly, it concluded that at the time he filed his complaint he had no cause of action as he was not yet in possession of the contrary opinion of his private doctor.[11]

His motion for reconsideration having been denied, Calimlim filed a petition for *certiorari* before the CA.

Ruling of the Court of Appeals

In its assailed May 7, 2015 decision, the CA denied the petition and affirmed the ruling of the NLRC. It held that Calimlim was not entitled to permanent disability benefit as he was declared by the company-designated physician to be fit to work 55 days from the date of repatriation, well within the 120 day period required by law. In questioning his diagnosis, the CA emphasized that although it was his prerogative to seek a second opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. His non-compliance with the said procedure, according to the CA, rendered the findings of the company-designated physician final and binding.

Calimlim moved for reconsideration but his motion was denied by the CA in its September 18, 2015 resolution.

Hence, this petition for review anchored on the following

GROUNDS:

1] THE CA ERRED WHEN IT DISMISSED THE PETITION AND DID NOT REINSTATE AND AFFIRM THE DECISION OF THE LABOR ARBITER;

2] THE PETITIONER WAS IN FACT RENDERED TOTALLY UNFIT FOR WORK AS HIS VARIOUS ILLNESSES WHICH ARE CONSIDERED WORK-RELATED AND WORK

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[11] *Rollo*, pp. 44-45.

AGGRAVATED WERE NOT RESOLVED ANYMORE BY THE DOCTORS DESPITE BEING TREATED AND EXAMINED BY RESPONDENTS' COMPANY-DESIGNATED PHYSICIAN THAT LASTED ALREADY BEYOND THE MAXIMUM CURE PERIOD OF 120 DAYS AND THAT HIS BEING UNFIT FOR WORK IS CONTINUING UP TO 240 DAYS; AND

3] THE CA ERRED WHEN IT DID NOT REINSTATE THE DECISION OF THE LABOR ARBITER ALTHOUGH THE NLRC INITIALLY AFFIRMED THE SAME.[12]

The core issue for the Court's resolution is whether Calimlim is entitled to permanent disability benefits on account of his medical condition.

Calimlim insists that he is entitled to permanent disability benefits as he remained unfit to resume his seafaring duties. This unfitness to work, he adds, is confirmed and supported by the medical findings of Dr. Jacinto. He argues that Dr. Jacinto's independent and fair medical assessment is more credible being reflective of his actual physical and medical condition as against the inaccurate biased declaration by the company-designated physician. He, thus, stresses that the LA acted correctly and judiciously in granting him full permanent disability compensation. He faults the CA in not rectifying the grave abuse of discretion committed by the NLRC in reversing the decision of the LA.

In their March 18, 2016 Comment,[13] respondents countered that Calimlim was declared "fit to work" by the company-designated physician. Hence, he is not entitled to the disability benefits under the POEA Contract. Respondents were of the view that the CA correctly gave more probative weight to the medical findings of the company-designated doctor considering that the latter accorded more extensive medical attention on him, as compared to the medical findings of his private doctor who did not possess personal knowledge of his true physical condition and who only provided an isolated medical examination

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[12] *Id*. at 17-18.

[13] *Id*. at 59-79.

to him. Respondents argued that the fit to work assessment of the company-designated physician should prevail as the option to refer him to a' third doctor was not explored in this case.

The Court's Ruling

The petition is without merit.

Records disclose that Calimlim's employment is governed by the POEA approved employment contract commencing on June 21, 2010. This employment contract,[14] which is binding upon both parties, provides:

> Section 20. Compensation and Benefits.
>
> A. Compensation and Benefits for Injury or Illness
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> The liabilities of the employer when the seaman suffers work-related injury or illness during the term of his contract are as follows:
>
> 1. x x x
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation. the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
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> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of his disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall also be made on a regular basis, but not less than once a month.

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[14] POEA Memorandum Circular No. 10, Series of 2010 (or the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships), October 26, 2010.

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> 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
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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.
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> x x x x x x x x x
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> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
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> The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid. [Underscoring supplied]

Calimlim was Fit to Work

In this case, after receiving treatment in Xingang, China, at respondents' expense, Calimlim underwent blood transfusion and radioscopy. The said treatment proved effective as there was no recurrence of the dark-colored stools and his abdominal pain had already subsided as of his February 16, 2011 consultation with the company-designated physician. Such positive results led to a declaration that he was fit to work and

even to travel on February 17, 2011. As correctly opined by the CA, such declaration by the company-designated physician alone sufficed to rule that he was not entitled to any disability benefits. The LA, therefore, erred in ordering the payment of permanent disability benefits to him.

Calimlim's reliance on the alleged lapse of 120 days is misplaced.

A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.[15] It cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA.[16]

In the recent case of *Magsaysay Maritime Corporation v. Simbajon*,[17] the Court mentioned that an amendment to Section 20-A(6) of the POEA- SEC, contained in POEA Memorandum Circular No. 10, series of 2010, now "finally clarifies" that "[f]or work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor."[18]

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[15] *Millan v. Wallem Maritime Services, Inc.*, 698 Phil. 437, 442 (2012).

[16] *Splash Philippines, Inc. v. Ruizo*, 730 Phil. 162, 175 (2014).

[17] 738 Phil. 824, 849 (2014).

[18] *Scanmar Maritime Services Incorporated v. Conag*, G.R. No. 212382, April 6, 2016.

In several cases, the Court held that the doctor who have had a personal knowledge of the actual ,medical condition, having closely, meticulously and regularly monitored and actually treated the seafarer's illness, is more qualified to assess the seafarer's disability. In *Coastal Safeway Marine Services, Inc. v. Esguerra*,[19] the Court significantly brushed aside the probative weight of the medical certifications of the private physicians, which were based merely on vague diagnosis and general impressions. Similarly in *Andrada v. Agemar Manning Agency, Inc.*,[20] the Court accorded greater weight to the assessments of the company-designated physician and the consulting medical specialist which resulted from an extensive examination, monitoring and treatment of the seafarer's condition, in contrast with the recommendation of the private physician which was "based only on a single medical report x x x outlining the alleged findings and medical history x x x obtained after x x x [one examination]."[21]

Thus, the CA correctly gave due credence to the "fit to work" assessment of the company-designated physician having been issued after a thorough medical examination of Calimlim from the time he was repatriated until he was declared fit to work. It could not be faulted in disregarding the medical findings of Dr. Jacinto because he could not have been declared permanently and totally unfit for work after just a single consultation with his private doctor without any supporting progress report to show his unfitness to work. As found by the NLRC, there was nothing on record that would validate Dr. Jacinto's findings. No document substantiated his findings that he was suffering from essential hypertension that would qualify him for a total permanent disability benefit.[22] The award of permanent disability benefits by the LA was, therefore, improper.

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[19] 671 Phil. 56 (2011).

[20] 698 Phil. 170 (2012).

[21] *Philman Marine Agency v. Cabanban, Inc.*, 715 Phil. 454, 476-477 (2013).

[22] *Rollo*, p. 44.

It is well to note that Calimlim was declared fit to work within the 120 day period. It is undisputed that he complained of his condition and received treatment at Xingang Hospital on December 25, 2011. He continued to receive treatment after his repatriation in January 2011 until he was subsequently declared fit to work on February 17, 2011, well within the 120 day period required by law. Thus, his condition cannot be considered a permanent total disability that would entitle him to permanent disability benefit. His invocation of the 240-day rulings is misplaced. As correctly opined by the CA, the use of the extendible period of 240 days for the company-designated physician to make a declaration finds no application in his situation as his treatment took only 55 days or before the lapse of the 120-day period.

Accordingly, Calimlim's claim for full permanent disability on account of lost opportunity to obtain further sea employment cannot be given merit. There was no evidence that he re-applied for work as a seafarer and was found unfit as a result of his illness. His claim that he was unfit to return to work for more than 120 or 240 days was merely speculative. There is no evidence on record showing that he sought reemployment with the respondents either as a bosun or in whatever capacity.

Referral to a Third Doctor

At any rate, there was no referral to a third doctor. The rule is that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose decision shall be final and binding on them. This procedure must be strictly followed, otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.[23]

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[23] *Montierro v. Rickmers Marine Agency Phil., Inc.*, G.R. No. 210634, January 14, 2015, 746 SCRA 287, citing *Vergara v. Hammonia Services, Inc.*, 588 Phil. 895, 914 (2008).

Here, upon his repatriation back to the Philippines, Calimlim was referred to the company-designated physician on January 19, 2011. After receiving treatment, he was declared fit to work and to travel on February 17, 2011. Acting within his rights, he disagreed with the findings of the company-designated physician and sought the opinion of Dr. Jacinto who arrived at a contrary assessment.

The Court notes, however, that Calimlim sought consultation of Dr. Jacinto only on July 9, 2012, more than sixteen (16) months after he was declared fit to work and interestingly four (4) days *after* he had filed the complaint on July 5, 2012. Thus, as aptly ruled by the NLRC, at the time he filed his complaint, he had no cause of action for a disability claim as he did not have any sufficient basis to support the same. The Court also agrees with the CA that seeking a second opinion was a mere afterthought on his part in order to receive a higher compensation.[24]

Granting that Calimlim's aftertt10ught consultation with Dr. Jacinto could be given due consideration, the disagreement between the findings of the company-designated physician and Dr. Jacinto was never referred to a third doctor chosen by both him and the respondents as specified under Section 20(A)(3) of the Amended POEA Contract.

Indeed, for failure of Calimlim to observe the procedure provided in the said POEA Contract, the determination of the company-designated physician that he was fit to work and travel should and must be upheld.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

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[24] *Rollo,* p. 51.

SECOND DIVISION

[G.R. No. 222407. November 23, 2016]

WHITE MARKETING & DEVELOPMENT CORPORATION, *petitioner, vs.* **GRANDWOOD FURNITURE & WOODWORK, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; ASSIGNMENT OF CREDITS; EFFECTS.— [I]t is undisputed that Metrobank assigned its rights in the mortgage to ARC, which later assigned the same to CGAM3. After Grandwood defaulted in its loan obligation, CGAM3 foreclosed the mortgaged property. [W]hite Marketing emerged as the winning bidder in the foreclosure sale. Thus, White Marketing, stepped into the shoes of Metrobank. In *Fort Bonifacio v. Fong*, the Court explained the effects of assignment of credit, to wit: x x x. Case law states that when a person assigns his credit to another person, the latter is deemed subrogated to the rights as well as to the obligations of the former. **By virtue of the Deed of Assignment, the assignee is deemed subrogated to the rights and obligations of the assignor and is bound by exactly the same conditions as those which bound the assignor. Accordingly, an assignee cannot acquire greater rights than those pertaining to the assignor**. The general rule is that an assignee of a non-negotiable chose in action acquires no greater right than what was possessed by his assignor and simply stands into the shoes of the latter. In an assignment of credit, the assignee is subrogated to the rights of the original creditor, such that he acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor. Through the assignment of credit, the new creditor is **entitled to the rights and remedies available to the previous creditor**, and **includes accessory rights such as mortgage or pledge**. Consequently, ARC acquired all the rights, benefits and obligations of Metrobank under its mortgage contract with Grandwood. The same could be said for subsequent assignees or successors-in-interest after ARC like White Marketing.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; REDEMPTION PERIOD UNDER THE GENERAL BANKING LAW OF 2000 (R.A. NO. 8791); WHEN A PROPERTY OF A JURIDICAL PERSON IS SOLD PURSUANT TO AN EXTRAJUDICIAL FORECLOSURE, IT HAS THREE (3) MONTHS FROM FORECLOSURE OR BEFORE THE CERTIFICATE OF FORECLOSURE SALE IS REGISTERED WITH THE REGISTER OF DEEDS, WHICHEVER COMES FIRST, TO REDEEM THE FORECLOSED PROPERTY.— The mortgage between Grandwood and Metrobank, as the original mortgagee, was subject to the provisions of Section 47 of R.A. No. 8791. Section 47 provides that when a property of a juridical person is sold pursuant to an extrajudicial foreclosure, it "shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the Certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier." Applied in the present case, Grandwood had three months from the foreclosure or before the certificate of foreclosure sale was registered to redeem the foreclosed property. This holds true even when Metrobank ceased to be the mortgagee in view of its assignment to ARC of its credit, because the latter acquired all the rights of the former under the mortgage contract—including the shorter redemption period. The shorter redemption period should also redound to the benefit of White Marketing as the highest bidder in the foreclosure sale as it stepped into the shoes of the assignee-mortgagee. Measured by the foregoing parameters, the Court finds that Grandwood's redemption was made out of time as it was done after the certificate of sale was registered on September 30, 2013. Pursuant to Section 47 of R.A. No. 8791, it only had three (3) months from foreclosure or before the registration of the certificate of foreclosure sale, whichever came first, to redeem the property sole in the extrajudicial sale.

3. ID.; ID.; ID.; ID.; ID.; A SHORTER REDEMPTION PERIOD IS PROVIDED FOR JURIDICAL PERSONS TO ENSURE THE SOLVENCY AND LIQUIDITY OF MORTGAGEE-BANKS.— [The] interpretation is in harmony with the avowed purpose of R.A. No. 8791 in providing for a shorter redemption

period for juridical persons. In *Goldenway Merchandising Corporation v. Equitable PCI Bank*, the Court explained that the shortened period under Section 47 of R.A. No. 8791 served as additional security for banks to maintain their solvency and liquidity x x x. To adopt Grandwood's position that Section 47 of R.A. No. 8791 no longer applies would defeat its very purpose to provide additional security to mortgagee-banks. The shorter redemption period is an incentive which mortgagee-banks may use to encourage prospective assignees to accept the assignment of credit for a consideration. If the redemption period under R.A. No. 8791 would be extended upon the assignment by the bank of its rights under a mortgage contract, then it would be tedious for banks to find willing parties to be subrogated in its place. Thus, it would adversely limit the bank's opportunities to quickly dispose of its hard assets, and maintain its solvency and liquidity.

4. ID.; ID.; ID.; ID.; THE LIBERAL CONSTRUCTION OF THE REDEMPTION PERIOD IS NOT A PANACEA READILY INVOKED BY MORTGAGORS WHOSE RIGHT TO REDEEM HAD BEEN JUSTIFIABLY DEFEATED.— Although it is true that, generally, redemption is liberally construed in favor of the mortgagor, the rule cannot be applied in the present case. In *City of Davao v. The Intestate Estate of Amado S. Dalisay*, the Court eruditely explained that the liberal construction of the redemption period is not a panacea readily invoked by mortgagors whose right to redeem had been justifiably defeated, *viz* x x x. **While it is a given that redemption by property owners is looked upon with favor, it is equally true that the right to redeem properties remains to be a statutory privilege**. x x x. In other words, **a valid redemption of property must appropriately be based on the law which is the very source of this substantive right. It is, therefore, necessary that compliance with the rules set forth by law and jurisprudence should be shown in order to render validity to the exercise of this right**. x x x. **The Court cannot close its eyes and automatically rule in favor of the redemptioner at all times.** x x x. **Suffice it to say, the liberal application of redemption laws in favor of the property owner is not an austere solution to a controversy, where there are remarkable factors that lead to a more sound and reasonable interpretation of the law.**

5. ID.; ID.; ID.; ID.; THE SHORTENED REDEMPTION PERIOD IS NOT EXTENDED BY THE MERE FACT THAT THE BANK ASSIGNED ITS INTEREST TO THE MORTGAGE TO A NON-BANKING INSTITUTION, AS THE ASSIGNEE MERELY STEPS INTO THE SHOES OF THE MORTGAGEE BANK AND ACQUIRES ALL ITS RIGHTS, INTERESTS AND BENEFITS UNDER THE MORTGAGE, INCLUDING THE SHORTENED REDEMPTION PERIOD. — [T]he shortened period of redemption provided in Section 47 of R.A. No. 8791 serves as additional security and protection to mortgagee-banks in order for them to maintain a solvent and liquid financial status. The period is not extended by the mere fact that the bank assigned its interest to the mortgage to a non-banking institution because the assignee merely steps into the shoes of the mortgagee bank and acquires all its rights, interests and benefits under the mortgage—including the shortened redemption period. Moreover, to extend the redemption period would prejudice the ability of the banks to quickly dispose of its hard assets to maintain solvency and liquidity.

APPEARANCES OF COUNSEL

Arlan N. Sallan for petitioner.
Jno de Leon & Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* seeks to reverse and set aside the June 22, 2015 Decision[1] and the December 28, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 103488, which reversed and set aside the July 21, 2014

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[1] Penned by Associate Justice Franchito N. Diamante with Associate Justice Japar B. Dimaampao and Associate Justice Carmelita Salandanan Manahan, concurring; *rollo*, pp. 392-404.

[2] *Id*. at 420-422.

Decision[3] of the Regional Trial Court, Branch 166, Pasig City (*RTC*), in a case involving the issue on the applicable redemption period.

On May 26, 1995, respondent Grandwood Furniture & Woodwork, Inc. (*Grandwood*) obtained a loan in the amount of ₱40,000,000.00 from Metropolitan Bank and Trust Company (*Metrobank*). The loan was secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title (*TCT*) No. 63678. Metrobank eventually sold its rights and interests over the loan and mortgage contract to Asia Recovery Corporation (*ARC*). The latter then assigned the same rights and interests to Cameron Granville 3 Asset Management, Inc. (*CGAM3*).[4]

On July 24, 2013, after Grandwood failed to pay the loan which already amounted to P68,941,239.46, CGAM3 initiated extrajudicial foreclosure proceedings of the real estate mortgage. During the September 17, 2013 Auction Sale, petitioner White Marketing & Development Corporation (*White Marketing*) was declared the highest bidder and a certificate of sale was issued in its favor.[5]

On September 30, 2013, the certificate of sale was registered and annotated on TCT No. 63678. On November 21, 2013, White Marketing received a letter from the sheriff informing it that Grandwood intended to redeem the foreclosed property. In response, White Marketing sent a letter informing the sheriff that Grandwood no longer had the right to redeem.[6]

Insisting on its right to redeem the property, Grandwood sent a letter, dated December 3, 2013, to the Office of the Clerk of Court of the RTC (*OCC-RTC*) insisting that it was the latter's ministerial duty to recognize its right of redemption, to accept

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[3] Penned by Presiding Judge Rowena de Juan-Quinagoran; *id*. at 207-215.

[4] *Id*. at 393.

[5] *Id*. at 5.

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

the tender of payment and to issue a certificate of redemption. The OCC-RTC, however, refused to accept the tender of payment on the ground that it was confronted with the conflicting applicable laws on the matter of the redemption period. Thus, Grandwood was prompted to file its Petition for Consignation, Mandamus and Damages before the RTC. It reiterated its right to redeem the property subject of the foreclosure sale under Act No. 3135 in relation to Republic Act (*R.A.*) No. 337 and Sections 27 and 28 of Rule 39 of the Rules of Court.[7]

The RTC Decision

In its July 21, 2014 Decision, the RTC dismissed the petition for mandamus. The trial court ruled that the redemption period applicable in the mortgage between Metrobank and Grandwood was Section 47[8] of R.A. No. 8791 or the "*General Banking Law of 2000*." The RTC wrote that by virtue of the said law,

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

[8] Sec. 47. ***Foreclosure of Real Estate Mortgage.*** — In the event of foreclosure, whether judicially or extra-judicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchases at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three

Grandwood should have redeemed the property before the registration of the certificate of sale on September 30, 2013, which was an earlier date than December 17, 2013, or three months after the foreclosure on September 17, 2013. It further stressed that White Marketing acquired all the rights of Metrobank in the mortgage contract, which was eventually assigned to CGAM3. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the petition for consignation and mandamus is hereby DISMISSED, for lack of merit. Petitioner's claim is DENIED, for lack of legal basis.
>
> Private Respondent's counterclaims are likewise DENIED, for lack of sufficient basis.
>
> No pronouncement as to costs.
>
> SO ORDERED.[9]

Aggrieved, Grandwood moved for reconsideration but its motion was denied by the RTC in the Order,[10] dated September 11, 2014. Hence, it appealed before the CA.

The CA Decision

In its June 22, 2015 Decision, the CA *reversed* the RTC ruling and remanded the case to the latter for the determination of the amount of the redemption price. It ordered the OCC-RTC to accept the consigned amount and to issue the corresponding certificate of redemption in Grandwood's favor. It emphasized that Section 47 of R.A. No. 8791 applied only in cases of foreclosure of real estate by a mortgagee bank in order to provide sufficient legal remedies to banks in case of unpaid debts or loans. As White Marketing was not privy to the contract of

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(3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. [Emphasis supplied]

[9] *Rollo*, p. 215.

[10] *Id*. at 224.

loan and the accessory contract of mortgage, it considered the limitation on the right of redemption on juridical persons as inapplicable. It was of the view that in case of doubt on the issue of the right of redemption, it should be resolved in favor of the mortgagor. Thus, the CA disposed:

> WHEREFORE, premises considered, the instant appeal is GRANTED. Accordingly, the Decision dated July 21, 2014 of the Regional Trial Court of Pasig City, Branch 166, in SCA No. 3915, is hereby REVERSED AND SET ASIDE and a new one is rendered by allowing petitioner-appellant Grandwood Furniture & Woodwork, Inc. to consign to the court *a quo* the amount corresponding to the redemption of its foreclosed property covered by TCT No. 63678 of the Register of Deeds of Pasig. Furthermore, the Court hereby directs the following:
>
> (a) remand this case to the court *a quo* and the latter is ordered to reinstate SCA Case No. 3915 into its docket;
>
> (b) for the court *a quo* to determine the entire amount of redemption price together with interest and other legal fees;
>
> (c) for the Office of the Clerk of Court and Ex-Officio Sheriff of RTC Pasig City to forthwith accept the consigned amounts and issue the corresponding Certificate of Redemption in favor petitioner-appellant.
>
> SO ORDERED.[11]

White Marketing moved for reconsideration but the CA denied its motion in the assailed December 28, 2015 Resolution.

Hence, this petition.

SOLE ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE COURT A QUO WHEN IT DECLARED THAT SEC. 47 of R.A. NO. 8791 OR THE GENERAL BANKING LAW IS NOT APPLICABLE IN THE CASE AT BAR.[12]

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[11] *Id*. at 403.

[12] *Id*. at 8.

Petitioner White Marketing insisted that Grandwood's right of redemption had lapsed because, under the mortgage contract, the parties agreed that the same would be governed by R.A. No. 8791. It argued that because the parties voluntarily stipulated on the governing law, the same was binding on them. White Marketing asserted that when Metrobank assigned its rights, its assignees acquired whatever rights the former had under the Real Estate Mortgage.

It reiterated that Section 47 of R.A. No. 8791 was the applicable law with regard to the period of redemption. For said reason, Grandwood should have redeemed the foreclosed property before the registration of the certificate of sale on September 30, 2013.

In its March 14, 2016 Resolution,[13] the Court resolved to deny the petition. White Marketing moved for reconsideration. In its June 15, 2016 Resolution,[14] the Court granted the motion, reinstated the petition, and required respondent Grandwood to file its comment.

In its Comment,[15] dated July 22, 2016, Grandwood argued that the provisions of the real estate mortgage were *pro forma* as the original mortgagee, Metrobank, was a banking institution; and so, the contract would necessarily contain a provision indicating that the mortgagor would be bound by R.A. No. 8791.

Grandwood, however, explained that White Marketing could not enjoy the provision of R.A. No. 8791 on the redemption period because it was not a banking institution. It asserted that its exercise of redemption rights was not against Metrobank in accordance with the real estate mortgage, but against White Marketing as the highest bidder in the foreclosure sale.

Grandwood further reiterated that pursuant to the spirit and intent of R.A No. 8791, the shorter redemption period applied

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[13] *Id*. at 425.

[14] *Id.* at 440.

[15] *Id*. at 441-454.

in favor of banking institutions only. In its view, R.A. No. 8791 would apply only when the mortgagee bank itself would foreclose the property and not when the same had already assigned or conveyed its mortgage rights for a consideration.

In its Reply,[16] dated August 10,2016, White Marketing countered that Grandwood was bound by the provisions of the real estate mortgage. It added that the fact that Metrobank assigned its rights to CGAM3 neither modified the terms of the mortgage contract nor excluded Grandwood from the provisions thereof. Thus, it insisted that Grandwood was bound by the redemption period under R.A. No. 8791 and should suffer the consequences for its failure to redeem the mortgaged property within the allotted time.

The Court's Ruling

The Court finds merit in the petition.

In the case at bench, it is undisputed that Metrobank assigned its rights in the mortgage to ARC, which later assigned the same to CGAM3. After Grandwood defaulted in its loan obligation, CGAM3 foreclosed the mortgaged property. As earlier stated, White Marketing emerged as the winning bidder in the foreclosure sale. Thus, White Marketing, stepped into the shoes of Metrobank.

In *Fort Bonifacio v. Fong*,[17] the Court explained the effects of assignment of credit, to wit:

> The reason that a contracting party's assignees, although seemingly a third party to the transaction, remain bound by the original party's transaction under the relativity principle further lies in the concept of subrogation, which inheres in assignment.
>
> Case law states that when a person assigns his credit to another person, the latter is deemed subrogated to the rights as well as to the obligations of the former. **By virtue of the Deed of Assignment, the assignee is deemed subrogated to the rights and obligations**

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[16] *Id*. at 455-461.

[17] G.R. No. 209370, March 25, 2015, 754 SCRA 544.

of the assignor and is bound by exactly the same conditions as those which bound the assignor. Accordingly, an assignee cannot acquire greater rights than those pertaining to the assignor. The general rule is that an assignee of a non-negotiable chose in action acquires no greater right than what was possessed by his assignor and simply stands into the shoes of the latter. [Emphasis and underlining supplied]

In an assignment of credit, the assignee is subrogated to the rights of the original creditor, such that he acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor.[18] Through the assignment of credit, the new creditor is **entitled to the rights and remedies available to the previous creditor**, and **includes accessory rights such as mortgage or pledge**.[19] Consequently, ARC acquired all the rights, benefits and obligations of Metrobank under its mortgage contract with Grandwood. The same could be said for subsequent assignees or successors-in-interest after ARC like White Marketing.

The mortgage between Grandwood and Metrobank, as the original mortgagee, was subject to the provisions of Section 47 of R.A. No. 8791. Section 47 provides that when a property of a juridical person is sold pursuant to an extrajudicial foreclosure, it "shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the Certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier."

Applied in the present case, Grandwood had three months from the foreclosure or before the certificate of foreclosure sale was registered to redeem the foreclosed property. This holds true even when Metrobank ceased to be the mortgagee in view of its assignment to ARC of its credit, because the latter acquired all the rights of the former under the mortgage contract-including

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[18] *Ledonio v. Capitol Development Corporation*, 553 Phil. 344 (2007).

[19] *Metropolitan Bank & Trust Company v. G & P Builders Incorporated*, G.R. No. 189509, November 23, 2015.

the shorter redemption period. The shorter redemption period should also redound to the benefit of White Marketing as the highest bidder in the foreclosure sale as it stepped into the shoes of the assignee-mortgagee.

Measured by the foregoing parameters, the Court finds that Grandwood's redemption was made out of time as it was done after the certificate of sale was registered on September 30, 2013. Pursuant to Section 47 of R.A. No. 8791, it only had three (3) months from foreclosure or before the registration of the certificate of foreclosure sale, whichever came first, to redeem the property sole in the extrajudicial sale.

Such interpretation is in harmony with the avowed purpose of R.A. No. 8791 in providing for a shorter redemption period for juridical persons. In *Goldenway Merchandising Corporation v. Equitable PCI Bank*,[20] the Court explained that the shortened period under Section 47 of R.A. No. 8791 served as additional security for banks to maintain their solvency and liquidity, to wit:

> The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed —whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case **a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks**. It cannot therefore be disputed that the said provision amending the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law. [Emphasis supplied]

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[20] 706 Phil. 427 (2013).

To adopt Grandwood's position that Section 47 of R.A. No. 8791 no longer applies would defeat its very purpose to provide additional security to mortgagee-banks. The shorter redemption period is an incentive which mortgagee-banks may use to encourage prospective assignees to accept the assignment of credit for a consideration. If the redemption period under R.A. No. 8791 would be extended upon the assignment by the bank of its rights under a mortgage contract, then it would be tedious for banks to find willing parties to be subrogated in its place. Thus, it would adversely limit the bank's opportunities to quickly dispose of its hard assets, and maintain its solvency and liquidity.

Although it is true that, generally, redemption is liberally construed in favor of the mortgagor, the rule cannot be applied in the present case. In *City of Davao v. The Intestate Estate of Amado S. Dalisay*,[21] the Court eruditely explained that the liberal construction of the redemption period is not a panacea readily invoked by mortgagors whose right to redeem had been justifiably defeated, *viz*:

> The Court need not belabor the existence of this rule in jurisprudence. In a long line of cases, the Court has indeed been copious in its stance to allow the redemption of property where in doing so, the ends of justice are better realized. x x x
>
> Nonetheless, the Court's agreement with the CA decision ends here. The above rulings now beget a more important question for the resolution of this case: Does a simplistic application of the liberal construction of redemption laws provide a just resolution of this case? The Court answers this question in the negative.
>
> **While it is a given that redemption by property owners is looked upon with favor, it is equally true that the right to redeem properties remains to be a statutory privilege.** Redemption is by force of law, and the purchaser at public auction is bound to accept it. Further, the right to redeem property sold as security for the satisfaction of an unpaid obligation does not exist preternaturally. Neither is it predicated on proprietary right, which, after the sale of the property on execution, leaves the judgment debtor and vests in

[21] G.R. No. 207791, July 15, 2015.

the purchaser. Instead, it is a bare statutory privilege to be exercised only by the persons named in the statute.

In other words, **a valid redemption of property must appropriately be based on the law which is the very source of this substantive right. It is, therefore, necessary that compliance with the rules set forth by law and jurisprudence should be shown in order to render validity to the exercise of this right**. Hence, when the Court is beckoned to rule on this validity, a hasty resort to elementary rules on construction proves inadequate. Especially so, when there are deeper underpinnings involved, not only as to the right of the owner to take back his property, but equally important, as to the right of the purchaser to acquire the property after deficient compliance with statutory requirements, including the exercise of the right within the period prescribed by law.

The Court cannot close its eyes and automatically rule in favor of the redemptioner at all times. The right acquired by the purchaser at an execution sale is inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. "But inchoate though it be, it is, like any other right, entitled to protection and must be respected until extinguished by redemption." **Suffice it to say, the liberal application of redemption laws in favor of the property owner is not an austere solution to a controversy, where there are remarkable factors that lead to a more sound and reasonable interpretation of the law.** Here, the proper focus of the CA should have been the just and fair interpretation of the law, instead of an automatic and constricted view on its liberal application. [Emphases supplied]

To reiterate, the shortened period of redemption provided in Section 47 of R.A. No. 8791 serves as additional security and protection to mortgagee-banks in order for them to maintain a solvent and liquid financial status. The period is not extended by the mere fact that the bank assigned its interest to the mortgage to a non-banking institution because the assignee merely steps into the shoes of the mortgagee bank and acquires all its rights, interests and benefits under the mortgage—including the shortened redemption period. Moreover, to extend the redemption period would prejudice the ability of the banks to quickly dispose of its hard assets to maintain solvency and liquidity.

WHEREFORE, the June 22, 2015 Decision of the Court of Appeals and its December 28, 2015 Resolution, in CA-G.R. CV No. 103488 are **REVERSED** and **SET ASIDE**. The July 21, 2014 Decision of the Regional Trial Court, Branch 166, Pasig City is **REINSTATED**.

SO ORDERED.

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

INDEX

INDEX

ALTERNATIVE DISPUTE RESOLUTION ACT IMPLEMENTING RULES AND REGULATIONS

Article 5.42 — Any information "relative to" the subject of mediation or arbitration means any information "connected to." (Federal Express Corp. *vs*. Airfreight 2100, Inc., G.R. No. 216600, Nov. 21, 2016) p. 292

— Article 5.42 of the Implementing Rules and Regulations (*IRR*) of the ADR Act likewise echoes that arbitration proceedings, records, evidence and the arbitral award and other confidential information are privileged and confidential and shall not be published except [i] with the consent of the parties; or [ii] for the limited purpose of disclosing to the court relevant documents where resort to the court is allowed. (*Id*.)

ALTERNATIVE DISPUTE RESOLUTION *(ADR)* LAW

Arbitration — Arbitration is an alternative mode of dispute resolution outside of the regular court system; although adversarial in character, arbitration is technically not litigation; discussed. (Fruehauf Electronics Phils. Corp. *vs.* Technology Electronics Assembly and Mgm't. Pacific Corp., G.R. No. 204197, Nov. 23, 2016) p. 721

ALTERNATIVE DISPUTE RESOLUTION OF 2004 (ADR ACT) (R.A. NO. 9285)

Section 3(h) — It shall include: (1) communication, oral or written, made in a dispute resolution proceedings, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing of reconvening mediation or retaining a mediator; and (3) pleadings, motions manifestations, witness statements, reports filed or submitted in an arbitration or for expert evaluation; the said list is not exclusive and may include other information as long as they satisfy the requirements of express confidentiality or implied confidentiality.

CONTRACTS

Interpretation of — In understanding the language of contracts, the Court recognizes the statutory principles as efficient tools and it also takes cognizance of the intent of the parties in crafting the stipulation of the contract. (UCPB Gen. Ins. Co., Inc. *vs.* Hughes Electronics Corp., G.R. No. 190385, Nov. 16, 2016) p. 67

— The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. (*Id*.)

CORPORATIONS

Artificial persons — Estate of the deceased person is a juridical person separate and distinct from the person of the decedent and any other corporation. (Mayor *vs*. Tiu, G.R. No. 203770, Nov. 23, 2016) p. 700

Doctrine of piercing the corporate veil — A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same; application. (Erson Ang Lee Doing Business as "Super Lamination Services" *vs.* Samahang Manggagawa ng Super Lamination (SMSLS-NAFLU-KMU), G.R. No. 193816, Nov. 21, 2016) p. 228

— Piercing the veil of corporate entity applies to determination of liability, not of jurisdiction; it is basically applied only to determine established liability; application. (Mayor *vs*. Tiu, G.R. No. 203770, Nov. 23, 2016) p. 700

— The court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group; another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the

PARTIES IN CIVIL ACTIONS

Indispensable parties — Definition of capital declared in the *Gamboa* Decision was not modified in the *Gamboa* Resolution. **(**Roy III *vs.* Chairperson Herbosa, G.R. No. 207246, Nov. 22, 2016) p. 459

— Operation of public utility 60% of the capital owned by Filipinos; word "capital" defined in the case of *Gamboa vs. Teves*. (*Id*.)

— Under Sec. 3, Rule 7 of the Rules of Court, an indispensable party is a party-in-interest without whom there can be no final determination of an action; discussed. (*Id*.)

POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

2010 Amendment — For work-related illness acquired by seafarer's from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company designated doctor. (Calimlim *vs.* Wallem Maritime Services, Inc., G.R. No. 220629, Nov. 23, 2016) p. 830

PLEADINGS AND PRACTICE

Complaint — Complaint filed in court must be accompanied by the payment of the requisite docket and filing fees. (Pangcatan *vs*. Manghuyop, G.R. No. 194412, Nov. 16, 2016) p. 83

Verification and certificate of non-forum-shopping — Dismissal of the petition by the Court of Appeals for lack of competent evidence on the affiant's identity on the attached verification and certification against forum shopping is without clear basis, as the 2004 Rules on Notarial Practice does not require the attachment of a photocopy of the

STARE DECISIS ET NON QUIETA MOVERE

Doctrine of — The doctrine of *stare decisis et non quieta movere* requires courts "to adhere to precedents, and not unsettle things which are established;" only final decisions of this Court are deemed precedents that form part of our legal system. (Yukit *vs*. Tritran, Inc., G.R. No. 184841, Nov. 21, 2016) p. 210

TARIFF AND CUSTOMS CODE (TCC)

Probable cause — Presence of probable cause required before any proceeding for seizure and/or forfeiture is instituted. **(**Commissioner of Customs *vs*. Singson, G.R. No. 181007, Nov. 21, 2016) p. 199

TREACHERY

As a qualifying circumstance — The prosecution ably established the presence of the element of treachery as a qualifying circumstance; the shooting of the unsuspecting victim was sudden and unexpected which effectively deprived him of the chance to defend himself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim. (People *vs*. Santuille @ "Bordado" @ Elton Santuille @ "Bordado", G.R. No. 214772, Nov. 21, 2016) p. 284

Penalty — Discussed. (People *vs*. Santuille @ "Bordado" @ Elton Santuille @ "Bordado", G.R. No. 214772, Nov. 21, 2016) p. 284

TRIAL

Ex parte reception of evidence — May be delegated only to Clerks of Court who are members of the Bar. **(**Office of the Court Administrator *vs.* Judge Yu, A.M. No. MTJ-12-1813[Formerly A.M. No. 12-5-42-METC], Nov. 22, 2016) p. 307

— Testimonies of child victims are given full weight land credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity. (*Id*.)

— The accused may be convicted solely on the victim's testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things. (*Id*.)

— The court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case. (*Id*.)

— The trial court's assessment thereof is accorded great respect on appeal due to its unique position to observe the witnesses' deportment on the stand. (Nieva *y* Montero *vs.* People, G.R. No. 188751, Nov. 16, 2016) p. 36

— When a father rapes his daughter, violence and intimidation supplant such moral ascendancy and influence, as the rapist father can easily subjugate his daughter's will, allowing him to coerce the child to do his every bidding. (People *vs*. Marmol *y* Bauso, Jr., G.R. No. 217379, Nov. 23, 2016) p. 813

— When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established. (*Id*.)

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

Page

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS