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FROM

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SUPREME COURT
MANILA
2018

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 9880. November 28, 2016]

WILSON CHUA, *complainant, vs.* **ATTY. DIOSDADO B. JIMENEZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER MAY BE DISBARRED OR SUSPENDED FOR ANY VIOLATION OF HIS OATH, A PATENT DISREGARD OF HIS DUTIES, OR AN ODIOUS DEPORTMENT UNBECOMING AN ATTORNEY.— "A lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an odious deportment unbecoming an attorney. A lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his entrance to the Bar but are likewise essential demands for his continued membership therein." In particular, the Code of Professional Responsibility, Canon 15, states: A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients. Respondent fell short in being fair and loyal to his client, herein complainant. Rules 18.03 further states: A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. Respondent did not even file the cases for which he was engaged and upon which he collected filing fees. Rule 18.04 continues: A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the

client's request for information. Respondent was utterly lacking in this responsibility to his client as he unfairly kept him in the dark, misleading him for seven years.

2. ID.; ID.; ID.; A LAWYER SHOULD BE SCRUPULOUSLY CAREFUL IN HANDLING MONEY ENTRUSTED TO HIM IN HIS PROFESSIONAL CAPACITY; HENCE, WHEN A LAWYER RECEIVES MONEY FROM A CLIENT FOR A PARTICULAR PURPOSE, THE LAWYER IS BOUND TO RENDER AN ACCOUNTING TO HIS CLIENT, SHOWING THAT HE SPENT THE MONEY FOR THE PURPOSE INTENDED.— While the same Code of Professional Responsibility recognizes the right of a lawyer to have a lien over the funds and property of his client as may be necessary to satisfy his lawful fees, Rule 16.03 demands that "[a] lawyer shall deliver the funds and property of his client when due or upon demand." This is a reiteration of Rule 16.01, which states that "[a] lawyer shall account for all money and property collected or received for or from the client." "A lawyer should be scrupulously careful in handling money entrusted to him in his professional capacity. Consequently, when a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to his client, showing that he spent the money for the purpose intended." Respondent miserably disregarded the mandate of accountability expected of him.

3. ID.; ID.; ID.; A LAWYER'S NEGLIGENCE IN THE DISCHARGE OF HIS OBLIGATIONS ARISING FROM THE RELATIONSHIP OF COUNSEL AND CLIENT MAY CAUSE DELAY IN THE ADMINISTRATION OF JUSTICE AND PREJUDICE THE RIGHTS OF A LITIGANT, PARTICULARLY HIS CLIENT; THUS, FROM THE PERSPECTIVE OF THE ETHICS OF THE LEGAL PROFESSION, A LAWYER'S LETHARGY IN CARRYING OUT HIS DUTIES TO HIS CLIENT IS BOTH UNPROFESSIONAL AND UNETHICAL.— The respondent's issue on the supposed non-payment of his fees should have prompted him to seek communication with complainant and resolve such matter. He should not have used the same as a ground for his inaction insofar as the cases referred to him were concerned. "A lawyer's negligence in the discharge of his obligations arising from the relationship of counsel and

client may cause delay in the administration of justice and prejudice the rights of a litigant, particularly his client. Thus, from the perspective of the ethics of the legal profession, a lawyer's lethargy in carrying out his duties to his client is both unprofessional and unethical." "Indeed, under their sacred oath, lawyers pledge not to delay any person for money or malice."

4. **ID.; ID.; ID.; CANON 22, RULE 22.02 THEREOF; FAILURE OF THE LAWYER TO RETURN THE CLIENT'S DOCUMENTS DUE TO NON-PAYMENT OF HIS/HER PROFESSIONAL LEGAL FEES IS VIOLATIVE OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** Neither should the said issue have been the reason for his failure to return the documents of his client. Rule 22.02 mandates him to do so: "A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn all papers and property to which the client is entitled. . . x x x."

5. **ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED AGAINST AN ERRANT LAWYER FOR VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND FAILURE TO RETURN THE DOCUMENTS AND MONEY ENTRUSTED TO HIM BY HIS CLIENT; RETURN OF THE MONEY WITH LEGAL INTEREST TO THE COMPLAINANT, WARRANTED.—** In the recent *en banc* case of *Fabie v. Atty. Real*, the Court suspended the errant lawyer from the practice of law for six (6) months for failing to return the documents and money entrusted to him by his client. At the same time, he was ordered to return the money with legal interest from the time he received the same until full payment thereof. In the present case, records show that respondent received the total amount of ₱165,127.00 as follows; ₱100,000.00 on May 10, 1997; ₱23,000.00 on August 18, 1999; ₱13,563.50 on August 4, 2000; another ₱13,563.50 on August 5, 2000; and ₱15,000.00 on August 31, 2001. Thus, pursuant to our ruling in *Fabie*, respondent must return the aforesaid amounts to complainant with interest at the legal rate of 12% *per annum* from their respective date of receipt until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment.

APPEARANCES OF COUNSEL

Icaonapo Litong and Associates Law Office for complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

This case was filed with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline on October 20, 2003 by complainant Wilson Chua against respondent Atty. Diosdado B. Jimenez for grave misconduct, malpractice, dishonesty, and conduct unbecoming a member of the Bar.[1]

Factual Antecedents

The complainant alleged that he entered into a retainership agreement with the respondent for the latter to handle all his legal problems, with particular emphasis on those that needed filing in the courts: more specifically, against Excellent Quality, Alexander Ty, Benny Lao, Clarita Tan, and Amosup. For these, he gave respondent the amount of ₱235,127.00 for the necessary filing fees. Complainant likewise entrusted to the respondent all the pertinent documents thereto.

The complainant likewise alleged that, for the last seven years prior, he had never attended a single hearing on any case that he had assigned to respondent, save for those involving Clarita Tan and Union Bank and in which case he was a defendant. Respondent allegedly would advise him of upcoming hearings only to cancel them last minute due purportedly to cancellations, postponements, or resettings of the hearings.

Complainant had written respondent several times — on June 11, 2003; June 20, 2003; July 14, 2003; August 18, 2003; September 9, 2003; and September 24, 2003 — for the return of the documents he had entrusted to respondent as well as the amount of ₱235,127.00. On September 24, 2003, he terminated

[1] *Rollo*, pp. 1-4.

respondent's legal services for failure to file the necessary cases, the very object of the retainership agreement, and to return the sum of ₱235,127.00.

In an Order[2] dated October 23, 2003, the IBP directed respondent to file his Answer within 15 days. Instead of filing an Answer, respondent requested for additional 15 days within which to comply.[3] Thereafter, respondent filed a Motion for Bill of Particulars[4] and another Urgent Motion to File Answer.[5]However, for being a prohibited pleading, the IBP denied the motion for bill of particulars.[6] With no action yet on the part of the IBP with regard to his Urgent Motion To File Answer, respondent again filed an Urgent Motion For Last Extension To File Answer.[7] Perhaps exasperated by respondent's delaying tactics, complainant moved that respondent be declared in default and that he be allowed to present evidence ex-parte.[8]

In an Order[9] dated March 17, 2004, the IBP declared respondent in default and set the mandatory conference on April 28, 2004. In the meantime, respondent moved for the lifting of the default order[10] attaching thereto his Answer with Counterclaim.

Respondent denied complainant's charges that he had violated his oath of office as a lawyer and the Code of Professional Responsibility. He further alleged that he had been pressuring the complainant and his mother Tiu Eng Te for the payment of professional services rendered by his law firm amounting to

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[2] *Id*. at 27.

[3] *Id*. at 28-29.

[4] *Id*. at 31-33.

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

[6] *Id*. at 38.

[7] *Id*. at 40-45.

[8] *Id*. at 43-45.

[9] *Id*. at 46.

[10] *Id*. at 49-53.

around ₱1.3 Million. And because of this non-payment or failure to arrive at a mutually acceptable arrangement for the payment of his professional fees, he has withheld the filing of cases on behalf of the complainant and his companies. He also denied receiving the amount of ₱235,127.00 from complainant.[11]

By way of Reply,[12] complainant insisted that respondent had received the amount of ₱235,127.00 intended for payment of filing fees. As proof, he submitted photocopies of checks payable to respondent as well as cash vouchers showing details of said payment.[13]

Mandatory conference was thereafter conducted during which both parties appeared and entered into stipulations. After the termination of the mandatory conference, both parties were directed to submit their verified position papers. Only complainant complied. Respondent failed to submit his position paper.

Report and Recommendation of the IBP:

The Investigating Commissioner[14] found respondent guilty of violating the Code of Professional Responsibility, particularly Canon 18, Rules 18.03 and 18.04 as well as Canon 22, Rule 22.02. He opined that:

> As between the claim of Complainant that he gave Respondent an amount for filing fees of the cases endorsed x x x and the denial of Respondent we are inclined to agree with Complainant that at least the amount of ₱165,127.00 x x x was given to Respondent. Besides, such bare denial would appear inconsistent with Respondent's own admission that he was forced to hold on the filing of new cases because of unsettled professional fees. x x x
>
> x x x There is nothing on record to show that Respondent ever informed Complainant on the status of their case. x x x

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[11] *Id*. at 54-62.

[12] *Id*. at 67-7l.

[13] *Id*. at 72-77.

[14] Commissioner Caesar R. Dulay.

Respondent has raised the matter of his unpaid fees in other cases handled by him as a reason for his not filing the cases. Respondent has not presented enough evidence to convince us of such unpaid fees. Besides, it is clear that the papers and documents were given to him for the specific purpose of filing cases but which Respondent did not file. He already received the amounts for filing fees. x x x Respondent has not even accomplished the purpose for which the monies and documents were given.

x x x x x x x x x

Respondent has not been candid with Complainant in terms of his handling of the aforementioned accounts contrary to the demands of the Code of Professional Responsibility.

Respondent is also negligent in not acting on the cases endorsed to him by Complainant. The fact that there is an outstanding issue with respect to the payment of his retainer fees in not, to our mind, a justification for his inaction. The least Respondent would have done is to keep the Complainant updated on such cases and candidly discuss with him the matter of his outstanding fees.

Respondent has not returned any of the papers or documents demanded by the client after his services were terminated. Nothing on the record shows that he returned the documents and files requested. x x x

x x x x x x x x x

We believe that under the facts presented, Respondent has violated the Code of Professional Responsibility and should therefore be disciplined.[15]

Thus, the Investigating Commissioner recommended respondent's suspension from the practice of law for a period of three (3) months and that he be ordered to return the pertinent files and documents to complainant.[16] The IBP Board of Governors, in Resolution No. XVII-2006-579 dated December 15, 2006, resolved to adopt the findings of the Investigating Commissioner but modified the recommended penalty to

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[15] Report and Recommendation, pp. 7-10; *rollo*, unpaginated.

[16] *Id*. at 10; *id*.

suspension of one (1) year from the practice of law and to return the files and documents of the complainant,and the amounts duly supported by receipts.[17]

Respondent filed a motion for reconsideration. In Resolution No. XX-2012-591 dated December 29, 2012, the IBP Board of Governors granted the same and reinstated the penalty recommended by the Investigating Commissioner of suspension from the practice of law for a period of three (3) months and to return the records and documents to complainant.

The records of the case was thereafter transmitted by the IBP to this Court pursuant to Rule 139-B of the Rules of Court. In a Manifestation and Clarification dated April 2, 2013, complainant sought that respondent be also ordered to return the amount of ₱235,127.00 to complainant.

Issues

Before this Court is the long standing controversy associated with a retainership agreement — does a lawyer have the right to hold on to a client's documents, even after the relationship of lawyer-client has been terminated, due to non-payment of his or her professional legal fees? Or is this a ground for disciplinary action? Did respondent violate the Code of Professional Responsibility when he failed to file the cases indorsed by complainant despite receipt of filing fees?

The Court's Ruling

Relying on the exhaustive fact finding deliberations of the IBP, we find the complainant's allegations to be believable and supported by evidence.

Because he had doubted that respondent ever filed any case as agreed upon with complainant, the latter started demanding from the former the return of all the documents and files he had given to him at the start of their retainership agreement as well as the amounts entrusted to him as filing fees. In a span

[17] *Rollo,* unpaginated.

of roughly two and a half months, complainant wrote respondent no less than six times. On the other hand, there is no record to show that respondent ever executed a written reply to any of the six letters.

We give credence to the allegation that complainant gave respondent some amount specifically for filing fees, relative to the cases both parties had earlier agreed to. However, as correctly noted by the Investigating Commissioner, only the amount of ₱165,127.00 out of the alleged ₱235,127.00 was duly proved by complainant to have been received by respondent specifically to defray the expenses for filing fees. Among the disbursements were ₱100,000.00 for filing and other fees relative to the Excellent Quality case (May 10, 1997); ₱23,000.00 for the Attachment Bond likewise for Excellent Quality (August 18, 1999); ₱13,563.50 representing the filing fee of Alex Ty (August 4, 2000); ₱13,563.50 representing the filing fee of Clarita Tan (August 5, 2000); and ₱15,000.00 as filing fee for Benny Lao (August 31, 2001). This total of ₱165,127.00 is duly supported by checks issued to respondent and company vouchers relating to the particular disbursements and which vouchers were signed by respondent.

Notably, during the mandatory conference held on December 13, 2004, respondent admitted that he received said amounts from complainant. However, he explained that notwithstanding receipt of money from complainant, he withheld filing of cases indorsed to him because complainant had not yet settled his obligation with respondent's law office, *viz*.:

COMM. DULAY:

> So did you withhold action on those cases?

ATTY. JIMENEZ:

> We suspended, Your Honor, not the services but we withhold the filing of the cases until after partial settlement at least of the obligation is settled.[18]

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[18] TSN, December 13, 2002, pp. 44-45.

Similarly, in his motion for reconsideration filed with the IBP, respondent admitted that he applied the monies he received from complainant to his and law office's professional fees instead of defraying the same as intended, *i.e.*, as filing fees, to wit:

> Whatever amount paid by complainant to respondent's law office were applied as partial payments of respondent's law office professional fees, and reimbursement of other miscellaneous expenses spent by the respondent's law office to complainant x x x.[19]

"A lawyer may be disbarred or suspended for any violation of his oath, a patent disregard of his duties, or an odious deportment unbecoming an attorney. A lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his entrance to the Bar but are likewise essential demands for his continued membership therein."[20]

In particular, the Code of Professional Responsibility, Canon 15, states:

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

Respondent fell short in being fair and loyal to his client, herein complainant.

Rules 18.03 further states:

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

Respondent did not even file the cases for which he was engaged and upon which he collected filing fees.

Rule 18.04 continues:

> A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

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[19] Motion for Reconsideration, pp. 7-8.

[20] *Penilla v. Atty. Alcid, Jr.*, 717 Phil. 210, 219 (2013).

Respondent was utterly lacking in this responsibility to his client as he unfairly kept him in the dark, misleading him for seven years,

While the same Code of Professional Responsibility recognizes the right of a lawyer to have a lien over the funds and property of his client as may be necessary to satisfy his lawful fees, Rule 16.03 demands that "[a] lawyer shall deliver the funds and property of his client when due or upon demand." This is a reiteration of Rule 16.01, which states that "[a] lawyer shall account for all money and property collected or received for or from the client."

"A lawyer should be scrupulously careful in handling money entrusted to him in his professional capacity. Consequently, when a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to his client, showing that he spent the money for the purpose intended."[21]

Respondent miserably disregarded the mandate of accountability expected of him.

The respondent's issue on the supposed non-payment of his fees should have prompted him to seek communication with complainant and resolve such matter. He should not have used the same as a ground for his inaction insofar as the cases referred to him were concerned. "A lawyer's negligence in the discharge of his obligations arising from the relationship of counsel and client may cause delay in the administration of justice and prejudice the rights of a litigant particularly his client. Thus, from the perspective of the ethics of the legal profession, a lawyer's lethargy in carrying out his duties to his client is both unprofessional and unethical."[22] "Indeed, under their sacred oath, lawyers pledge not to delay any person for money or malice."[23]

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[21] *Mejares, v. Atty. Romana*, 469 Phil. 619, 627-628 (2004).

[22] *Belleza v. Atty. Macasa*, 611 Phil. 179, 188 (2009).

[23] *Macarilay v. Seriña*, 497 Phil. 348, 356 (2005).

Neither should the said issue have been the reason for his failure to return the documents of his client. Rule 22.02 mandates him to do so: "A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn all papers and property to which the client is entitled...x x x."

In the recent *en banc* case of *Fabie v. Atty. Real*,[24] the Court suspended the errant lawyer from the practice of law for six (6) months for failing to return the documents and money entrusted to him by his client. At the same time, he was ordered to return the money with legal interest from the time he received the same until full payment thereof. In the present case, records show that respondent received the total amount of ₱165,127.00 as follows; ₱100,000.00 on May 10, 1997; ₱23,000.00 on August 18, 1999; ₱13,563.50 on August 4, 2000; another ₱13,563.50 on August 5, 2000; and ₱15,000.00 on August 31, 2001.[25] Thus, pursuant to our ruling in *Fabie*, respondent must return the aforesaid amounts to complainant with interest at the legal rate of 12% *per annum* from their respective date of receipt until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment.

WHEREFORE, respondent Atty. Diosdado B. Jimenez is found **GUILTY** of violation of the Code of Professional Responsibility and the Lawyer's Oath and is hereby **SUSPENDED** from the practice of law for six (6) months and **ORDERED** to return to complainant within ten (10) days from notice all the pertinent records and documents, and the amounts of ₱100,000.00; ₱23,000.00; ₱13,653.50; another ₱13,653.50; and ₱15,000.00, or a total of ₱165,127.00, with interest of 12% *per annum* reckoned from the respective date of receipt until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment. Respondent is **WARNED** that commission of the same or similar infraction in the future will merit a more severe penalty. Respondent is also directed to submit proof of his compliance within 30 days from receipt of this Decision.

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[24] A.C. No. 10574, September 20, 2016.

[25] Records, pp. 72, 74-77.

Let copies of this Decision be furnished the Office of the Bar Confidant to be entered in the personal records of respondent and the Office of the Court Administrator for dissemination to all courts.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177250. November 28, 2016]

ROSITA B. LIM, on her behalf and on behalf of her (then) minor children namely, JENNIFER, LYSANDER and BEVERLIE, *petitioners, vs.* **LUIS TAN, ALFONSO TAN, EUSEBIO TAN, WILLIAM TAN, VICENTE TAN, JOAQUIN TAN, ANG TIAT CHUAN**, *respondents.*

[G.R. No. 177422. November 28, 2016]

LUIS TAN, ALFONSO TAN, EUSEBIO TAN, WILLIAM TAN, VICENTE TAN, JOAQUIN TAN, ANG TIAT CHUAN, *petitioners, vs.* **ROSITA B. LIM, on her behalf and on behalf of her (then) minor children namely, JENNIFER, LYSANDER and BEVERLIE**, *respondents.*

[G.R. No. 177676. November 28, 2016]

ANG TIAT CHUAN, *petitioner, vs.* **ROSITA B. LIM, on her behalf and on behalf of her (then) minor children namely, JENNIFER, LYSANDER and BEVERLIE**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AN EXAMINATION OF FACTUAL CIRCUMSTANCES IS OUTSIDE THE PROVINCE THEREOF; EXCEPTION.— In the case at bar, the challenge essentially posed is the propriety of the awarded damages, attorney's fees and litigation expenses. To resolve said issue, an examination of factual circumstances would be necessary, a task that is clearly outside the province of a petition for review on *certiorari*. Nevertheless, this case has been dragged down for ages and the Court would like to put the whole matter to rest; hence, a review is justified by the need to make a definitive finding on this factual issue in light of the differing amounts of damages and attorney's fees awarded by the courts below.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; DAMAGES THAT MAY BE RECOVERED WHEN DEATH OCCURS DUE TO A CRIME.— After a careful examination of the present case, the Court sustains the awarded damages, attorney's fees and litigation expenses of the appellate court, but modifies the amount of the civil indemnity awarded to the heirs of Florentino. "[I]t is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper case."

3. ID.; ID.; ID.; IN IMPOSING THE PROPER AMOUNT OF DAMAGES, THE PRINCIPAL CONSIDERATION IS THE PENALTY PROVIDED BY LAW OR IMPOSABLE FOR THE OFFENSE BECAUSE OF ITS HEINOUSNESS AND NOT THE PUBLIC PENALTY ACTUALLY IMPOSED ON THE OFFENDER.— In imposing the proper amount of damages, the principal consideration is the penalty provided by law or imposable for the offense because of its heinousness and not the public penalty actually imposed on the offender. Essentially, despite the fact that the death penalty cannot be imposed because of Republic Act (R.A.) No. 9346, the imposable penalty as provided by law for the crime, such as those found

in R.A. No. 7569, must be used as the basis for awarding damages and not the actual penalty imposed.

4. ID.; ID.; ID.; CIVIL INDEMNITY; AWARDED TO THE OFFENDED PARTY AS A KIND OF MONETARY RESTITUTION OR COMPENSATION TO THE VICTIM FOR THE DAMAGE OR INFRACTION THAT WAS DONE TO THE LATTER BY THE ACCUSED, WHICH IN A SENSE ONLY COVERS THE CIVIL ASPECT; AWARD OF CIVIL INDEMNITY INCREASED TO ₱100,000.00.— Here, the Court sustains the award of civil indemnity but increases its amount to ₱100,000.00 in accordance with recent jurisprudence. "In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Thus, in a crime where a person dies, in addition to the penalty of imprisonment imposed to the offender, the accused is also ordered to pay the victim a sum of money as restitution."

5. ID.; ID.; ID.; ACTUAL DAMAGES; FOR ONE TO BE ENTITLED TO ACTUAL DAMAGES, IT IS NECESSARY TO PROVE THE ACTUAL AMOUNT OF LOSS WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF AND THE BEST EVIDENCE OBTAINABLE BY THE INJURED PARTY.— The CA's deletion of the award of actual and compensatory damages which included the loss of earning capacity of the victim is also proper. "For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party." More so, the RTC awarded damages for loss of earning capacity based solely on the deposition of Rosita without even requiring other documentary evidence to prove the same. Although Rosita testified as to the annual income of Florentino, she failed to substantiate the same by documentary evidence.

6. ID.; ID.; ID.; ID.; LOSS OF EARNING CAPACITY; FOR AN AWARD OF LOSS OF INCOME DUE TO DEATH, THERE MUST BE UNBIASED PROOF OF THE DECEASED'S AVERAGE INCOME, AS CREDENCE

CAN BE GIVEN ONLY TO CLAIMS WHICH ARE DULY SUPPORTED BY RECEIPTS.— 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. For loss of income due to death, there must be unbiased proof of the deceased's average income. Credence can be given only to claims which are duly supported by receipts. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. Evidently, Rosita merely gave a self-serving testimony of her husband's income. No proof of the victim's expenses was adduced; thus there can be no reliable estimate of his lost income. Accordingly, the award of loss of earning capacity was aptly deleted for lack of basis.

7. ID.; ID.; ID.; TEMPERATE DAMAGES, WHICH ARE MORE THAN NOMINAL BUT LESS THAN COMPENSATORY 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 PROVED WITH CERTAINTY; TEMPERATE DAMAGES IN THE AMOUNT OF ₱350,000.00 AWARDED IN CONSIDERATION OF THE SOCIAL STATUS AND REPUTATION OF THE VICTIM.— [T]he CA properly awarded temperate damages, in lieu of actual damages, considering that Rosita was unable to prove the actual expenses incurred by the death of his husband. "According to Article 2224 of the Civil Code, temperate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. Here, there is no doubt that pecuniary expenses were incurred in the funeral and burial of Florentino and the award of temperate damages shall answer for the same in the amount of ₱350,000.00, in consideration of the social status and reputation of the victim.

8. ID.; ID.; ID.; MORAL DAMAGES; NOT INTENDED TO ENRICH THE VICTIM'S HEIRS BUT RATHER THEY ARE AWARDED TO ALLOW THEM TO OBTAIN MEANS FOR DIVERSION THAT COULD SERVE TO ALLEVIATE THEIR MORAL AND PSYCHOLOGICAL SUFFERINGS; MORAL DAMAGES IN THE AMOUNT OF ₱150,000.00,

AWARDED.— The Court also agrees with the finding of the CA that the award of moral damages of ₱25,000,000.00 by the RTC is excessive, if not exorbitant. "Moral damages are not intended to enrich the victim's heirs but rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings." As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. In cases of murder, the award of moral damages is mandatory without need of allegation and proof other than the death of the victim. The award of moral damages of ₱150,000.00 in the present case is proper.

9. ID.; ID.; ID.; EXEMPLARY DAMAGES; SERVE AS A DETERRENT TO SERIOUS WRONG DOINGS AND AS A VINDICATION OF UNDUE SUFFERINGS AND WANTON INVASION OF THE RIGHTS OF AN INJURED OR A PUNISHMENT FOR THOSE GUILTY OF OUTRAGEOUS CONDUCT; AWARD OF ₱150,000.00 EXEMPLARY DAMAGES, UPHELD.— [T]he rule in the Court's jurisdiction is that exemplary damages are awarded in addition to moral damages. Under Article 2229 of the Civil Code, exemplary damages are imposed by way of example or correction for the public good. The purpose of exemplary damages is to serve as a deterrent to serious wrong doings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. Here, the Court upholds the amount of ₱150,000.00 as exemplary damages.

10. ID.; ID.; ID.; ATTORNEY'S FEES AND LITIGATION EXPENSES; LEGAL GROUNDS FOR THE AWARD THEREOF; AWARD OF ATTORNEY'S FEES AND LITIGATION EXPENSES OF ₱150,000.00 AND ₱350,00.00, RESPECTIVELY, SUSTAINED.— [A]s a general rule, the parties may stipulate the recovery of attorney's fees. In the absence of such stipulation, Article 2208 of the Civil Code enumerates the legal grounds which justify or warrant the grant of attorney's fees and expenses of litigation, and this case qualifies for the first and eleventh reasons why attorney's fees are awarded, namely: (a) when exemplary damages are awarded; and (b) in any other case where the court deems it just and

equitable that attorney's fees and expenses of litigation should be recovered**.** Considering that the Court has awarded exemplary damages in this case, attorney's fees can likewise be awarded. Since this case has been hauled on for too long, the Court concurs with the ratiocination of the RTC in awarding attorney's fees and litigation expenses of ₱150,000.00 and ₱350,000.00, respectively, bearing in mind the legal extent of the work undertaken as well as the length of time that had elapsed to prosecute this case.

11. ID.; ID.; ID.; INTEREST; LEGAL INTEREST OF SIX PERCENT (6%) PER ANNUM ON ALL THE DAMAGES AWARDED FROM THE DATE OF FINALITY OF THE DECISION UNTIL FULLY PAID, GRANTED.— Considering the reputation and social status of the victim at the time of his death, the Court sustains the awarded damages, attorney's fees and litigation expenses granted by the CA. The amount of civil indemnity is, however, increased to ₱100,000.00 in accordance with recent jurisprudence. Lastly, the heirs of Florentino should likewise be granted an interest at the legal rate of six percent (6%) *per annum* on all the damages awarded from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

H.V. Mina Law Office for Rosita B. Lim, et al.
Florido & Largo Law Office for Ang Tiat Chuan.
Fortun Narvasa & Salazar for Luis Tan, etc. et al.

D E C I S I O N

REYES, *J.*:

Assailed in these consolidated petitions for review on *certiorari*[1] are the Decision[2] dated August 18, 2006 and

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[1] *Rollo* (G.R. No. 177250), pp. 10-38; *rollo* (G.R. No. 177676), pp. 3-16.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Godardo A. Jacinto and Magdangal M. De Leon concurring; *rollo* (G.R. No. 177250), pp. 40-56.

Resolution[3] dated March 29, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 70301, which affirmed with modification the Decision[4] dated June 21, 1999 of the Regional Trial Court (RTC) of Manila, Branch 37, in Civil Case No. 83-15633 for Damages.

The Facts

This case spawned from the death of Florentino Lim (Florentino), a scion of the wealthy Lim Ket Kai family of Cagayan de Oro City, on August 25, 1973. Upon investigation, Luis Tan (Luis), William Tan, Joaquin Tan, Vicente Tan, Alfonso Tan and Eusebio Tan (the Tan brothers), and Ang Tiat Chuan (Chuan), together with eight others, were charged with murder before Military Commission No. 1.[5]

In a Decision dated June 10, 1976, the Military Commission found Luis, Chuan, and four of their co-accused, namely, Mariano Velez, Jr., Antonio Ocasiones, Leopoldo Nicolas, and Marciano Benemerito, guilty of murder. On the other hand, the other brothers of Luis were acquitted of the charges and were released on June 11, 1976.[6]

The said judgment, however, simply concluded the criminal prosecution of those already haled to court but it did not entomb the indignant feelings instigated by the death of Florentino. Thus, on February 11, 1983, Rosita B. Lim (Rosita), wife of the deceased Florentino, together with her then minor children Jennifer, Lysander and Beverlie, all surnamed Lim Ket Kai (collectively, the petitioners), commenced a civil action for damages in the RTC of Manila, against all those charged with the slaying of Florentino.[7]

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[3] *Id.* at 58-59.

[4] Rendered by Judge Vicente A. Hidalgo; *rollo* (G.R. No. 177676), pp. 37-78.

[5] *Rollo* (G.R. No. 177250), pp. 41-42.

[6] *Id.* at 42.

[7] *Id.*

After trial, the court *a quo* rendered judgment in favor of the petitioners. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered ordering the surviving Defendants and the heirs and successors-in-interest of the deceased Defendants, who have been substituted in their place as Defendants, to pay to the [petitioners], jointly and severally, the following amounts:
>
> 1. Fifteen million one hundred thousand pesos (₱15,100,000.00) as actual and compensatory damages;
> 2. Twenty-five million pesos (₱25,000,000.00) as moral damages;
> 3. Ten million pesos (₱10,000,000.00) as exemplary damages;
> 4. One million pesos (₱1,000,000.00) as and by way of attorney's fees;
> 5. Five hundred thousand pesos (₱500,000.00) for litigation expenses; and
> 6. The costs of the suit.
>
> SO ORDERED.[8]

Disagreeing with the RTC decision, the Tan brothers and Chuan filed a motion for reconsideration but it was denied; hence, they filed an appeal before the CA.

On appeal, the CA rendered the herein assailed decision, which modified the trial court's ruling, to wit:

> **WHEREFORE**, premises considered, the Decision dated June 21, 1999 and the Order dated February 10, 2000 are hereby **MODIFIED**, as follows:
>
> 1. Defendants-appellants [Luis], [Chuan], Mariano Velez, Jr.[,] Antonio Ocasiones, Leopoldo Nicolas, Marciano Benemerito, and Oscar Yaun are hereby ordered to pay the [petitioners], jointly and severally, the following amounts:
>
> (a) Fifty Thousand Pesos (₱50,000.00) as civil indemnity for the death of [Florentino];

[8] *Rollo* (G.R. No. 177676), p. 78.

(b) Three Hundred Fifty Thousand Pesos (₱350,000.00) as temperate damages;

(c) One Hundred Fifty Thousand Pesos (₱150,000.00) as moral damages;

(d) One Hundred Fifty Thousand Pesos (₱150,000.00) as exemplary damages;

(e) One Hundred Thousand Pesos (₱100,000.00) as attorney's fees; and

(f) One Hundred Thousand Pesos (₱100,000.00) as litigation expenses;

2. The claims against appellants Alfonso Tan, Eusebio Tan, William Tan, Vicente Tan, Joaquin Tan and Enrique Labita, stated in the Amended Complaint are hereby denied for lack of merit.

SO ORDERED.[9]

Both parties respectively moved for reconsideration, but the CA Resolution[10] dated March 29, 2007 denied their motions. Thereafter, the parties filed their respective petitions for review on *certiorari*: G.R. No. 177250 was initiated by the petitioners, G.R. No. 177422 was filed by Luis, and G.R. No. 177676 was commenced by Chuan. These petitions were ordered consolidated by the Court in its Resolution[11] dated June 20, 2007.

The Court resolved to give due course to the instant petitions and required the parties to submit their respective comments and replies. However, in G.R No. 177422, therein petitioners have failed to file the necessary petition for review to date after the Court granted the substitution by the heirs of Luis in its Resolution[12] dated September 19, 2007.

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[9] *Rollo* (G.R. No. 177250), pp. 54-55.

[10] *Id*. at 58-59.

[11] *Id*. at 65.

[12] *Id*. at 126A-126C.

The Issue

The sole issue to be resolved is whether the CA erred in modifying the damages, attorney's fees and litigation expenses awarded to the heirs of Florentino.

Ruling of the Court

The petition is partly meritorious.

In the case at bar, the challenge essentially posed is the propriety of the awarded damages, attorney's fees and litigation expenses. To resolve said issue, an examination of factual circumstances would be necessary, a task that is clearly outside the province of a petition for review on *certiorari*. Nevertheless, this case has been dragged down for ages and the Court would like to put the whole matter to rest; hence, a review is justified by the need to make a definitive finding on this factual issue in light of the differing amounts of damages and attorney's fees awarded by the courts below.

After a careful examination of the present case, the Court sustains the awarded damages, attorney's fees and litigation expenses of the appellate court, but modifies the amount of the civil indemnity awarded to the heirs of Florentino.

"[I]t is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases."[13]

In imposing the proper amount of damages, the principal consideration is the penalty provided by law or imposable for the offense because of its heinousness and not the public penalty actually imposed on the offender. Essentially, despite the fact that the death penalty cannot be imposed because of Republic

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[13] *People v. Dadao, et al.*, 725 Phil. 298, 315-316 (2014).

Act (R.A.) No. 9346,[14] the imposable penalty as provided by law for the crime, such as those found in R.A. No. 7569,[15] must be used as the basis for awarding damages and not the actual penalty imposed.[16]

Here, the Court sustains the award of civil indemnity but increases its amount to ₱100,000.00 in accordance with recent jurisprudence. "In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Thus, in a crime where a person dies, in addition to the penalty of imprisonment imposed to the offender, the accused is also ordered to pay the victim a sum of money as restitution."[17]

The CA's deletion of the award of actual and compensatory damages which included the loss of earning capacity of the victim is also proper. "For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party."[18] More so, the RTC awarded damages for loss of earning capacity based solely on the deposition of Rosita without even requiring other documentary evidence to prove the same. Although Rosita testified as to the annual income of Florentino, she failed to substantiate the same by documentary evidence.

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[14] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved on June 24, 2006.

[15] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES. Approved on December 13, 1993.

[16] *People of the Philippines v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[17] *Id*.

[18] *People v. Villar*, G.R. No. 202708, April 13, 2015, 755 SCRA 346, 355, citing *OMC Carriers, Inc., et al. v. Spouses Nabua*, 636 Phil. 634, 650 (2010).

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. For loss of income due to death, there must be unbiased proof of the deceased's average income. Credence can be given only to claims which are duly supported by receipts.[19] Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[20]

Evidently, Rosita merely gave a self-serving testimony of her husband's income. No proof of the victim's expenses was adduced; thus, there can be no reliable estimate of his lost income. Accordingly, the award of loss of earning capacity was aptly deleted for lack of basis.

Nevertheless, the CA properly awarded temperate damages, in lieu of actual damages, considering that Rosita was unable to prove the actual expenses incurred by the death of his husband. "According to Article 2224 of the Civil Code, temperate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."[21] Here, there is no doubt that pecuniary expenses were incurred in the funeral and burial of Florentino and the award of temperate damages shall answer for the same in the amount of ₱350,000.00, in consideration to the social status and reputation of the victim.

The Court also agrees with the finding of the CA that the award of moral damages of ₱25,000,000.00 by the RTC is excessive, if not exorbitant. "Moral damages are not intended to enrich the victim's heirs but rather they are awarded to allow

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[19] *People v. Villar, supra*, citing *OMC Carriers, Inc., et al. v. Spouses Nabua, supra*.

[20] *Bacolod v. People*, 714 Phil. 90, 99 (2013), citing *Tan, et al. v. OMC Carriers, Inc., et al.*, 654 Phil. 443, 454 (2011).

[21] *Bacolod v. People, supra*.

them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings."[22] As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. In cases of murder, the award of moral damages is mandatory without need of allegation and proof other than the death of the victim.[23] The award of moral damages of ₱150,000.00 in the present case is proper.

Corollarily, the rule in the Court's jurisdiction is that exemplary damages are awarded in addition to moral damages. Under Article 2229 of the Civil Code, exemplary damages are imposed by way of example or correction for the public good. The purpose of exemplary damages is to serve as a deterrent to serious wrong doings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[24] Here, the Court upholds the amount of ₱150,000.00 as exemplary damages.

Finally, as a general rule, the parties may stipulate the recovery of attorney's fees. In the absence of such stipulation, Article 2208 of the Civil Code enumerates the legal grounds which justify or warrant the grant of attorney's fees and expenses of litigation, and this case qualifies for the first and eleventh reasons why attorney's fees are awarded, namely: (a) when exemplary damages are awarded; and (b) in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

Considering that the Court has awarded exemplary damages in this case, attorney's fees can likewise be awarded. Since this case has been hauled on for too long, the Court concurs with the ratiocination of the RTC in awarding attorney's fees and litigation expenses of ₱150,000.00 and ₱350,000.00,

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[22] *People v. Ocampo*, 616 Phil. 839, 845 (2009).

[23] *People v. De Jesus, et al.*, 655 Phil. 657, 676 (2011).

[24] *People v. Combate*, 653 Phil. 487, 507-508 (2010), citing *People v. Dalisay*, 620 Phil. 831, 844-845 (2009).

respectively, bearing in mind the legal extent of the work undertaken as well as the length of time that had elapsed to prosecute this case.

In sum, considering the reputation and social status of the victim at the time of his death, the Court sustains the awarded damages, attorney's fees and litigation expenses granted by the CA. The amount of civil indemnity is, however, increased to ₱100,000.00 in accordance with recent jurisprudence. Lastly, the heirs of Florentino should likewise be granted an interest at the legal rate of six percent (6%) *per annum* on all the damages awarded from the date of finality of this Decision until fully paid.

WHEREFORE, the Decision dated August 18, 2006 and Resolution dated March 29, 2007 of the Court of Appeals in CA-G.R. CV No. 70301 are **AFFIRMED** with the **MODIFICATION** ordering the adjustment of the civil indemnity to One Hundred Thousand Pesos (₱100,000.00). All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185082. November 28, 2016]

MANDAUE REALTY & RESOURCES CORPORATION and MANDAUE CITY REGISTER OF DEEDS, *petitioners, vs.* **THE COURT OF APPEALS and BANGKO SENTRAL NG PILIPINAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; DISTINGUISHED FROM PETITION FOR MANDAMUS.— A petition for *certiorari* will only lie in case of grave abuse of discretion. It may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or 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 or despotic manner by reason of passion or personal hostility. Mandamus, on the other hand, is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.

2. ID.; APPEALS; APPEALS FROM JUDGMENTS AND FINAL ORDERS OF THE REGIONAL TRIAL COURTS; MODES OF APPEAL.— The CA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied MARRECO's Motion to Dismiss Appeal and assumed jurisdiction over BSP's Appeal. Section 2, Rule 41 of the Rules of Court governs appeals from judgments and final orders of the RTC x x x. In *Sevilleno v. Carilo*, citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, we summarized: (1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of

Appeals by mere notice of appeal where the **appellant raises question of fact or mixed questions of fact and law;** (2) In all cases decided by the RTC in the exercise of its original jurisdiction where the **appellant raises only questions of law,** the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45[;] (3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

3. ID.; ID.; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; TEST.— A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation. No examination of the probative value of the evidence would be necessary to resolve a question of law. The opposite is true with respect to questions of fact. The test of whether a question is one of law or fact is not the appellation given to such question by the party raising the same. It is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence and would only limit itself to the inquiry of whether the law was properly applied given the facts and supporting evidence. Such is a question of law. Otherwise, it is a question of fact.

4. ID.; ID.; AN APPEAL FROM THE FINAL ORDER OF THE REGIONAL TRIAL COURT RAISING MIXED QUESTIONS OF LAW AND FACT MUST BE BROUGHT BEFORE THE COURT OF APPEALS ON ORDINARY APPEAL UNDER RULE 41 OF THE RULES OF COURT.— We find that BSP's appeal does not only involve questions of law. It also involves questions of fact. The allegations in BSP's complaint and appellant's brief as to the antecedent facts that led to the cancellation of TCT No. 46781 create an uncertainty

> on the propriety of the trial court's pronouncement that to entertain BSP's complaint would amount to an intrusion into an order of a co-equal court and call for a calibration of the evidence on record. Also telling is BSP's allegation that it is a mortgagee-in-good faith who obtained its title to the property by being the highest bidder during the auction sale in the foreclosure proceedings. As an innocent third party, it is not bound by whatever transpired between Gotesco and MARRECO. These matters constitute a question of fact and not a question of law as MARRECO would like to present it. x x x. Given the mixed questions of law and fact raised, BSP properly elevated the RTC's March 22, 2007 Order to the CA on ordinary appeal under Rule 41, Section 2 of the Rules of Court.

APPEARANCES OF COUNSEL

Bernas Law Offices and *Diosdado P. Peralta* for petitioner.
Fe Becina-Macalino & Associates for respondent BSP.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for *Certiorari* and *Mandamus*[1] assailing the Resolutions dated July 25, 2008[2] and October 21, 2008[3] of the Court of Appeals (CA) in CA-G.R. CEB-CV No. 02009. The assailed Resolutions denied the Motion to Dismiss Appeal[4] filed by Mandaue Realty and Resources Corporation (MARRECO). MARRECO claimed that the appeal filed by the

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[1] *Rollo,* pp. 3-48.

[2] *Id.* at 301-304. Penned by Associate Justice Priscilla Baltazar-Padilla with Associate Justices Franchito N. Diamante and Amy C. Lazaro-Javier as members.

[3] *Id.* at 318-321.

[4] *Id.* at 273-299.

Bangko Sentral ng Pilipinas (BSP) under Rule 41 of the Rules of Court was erroneous as the issues involved pure questions of law which are the proper subjects of a petition for review on *certiorari* under Rule 45.

Facts

On October 18, 2006, BSP filed a Complaint for Annulment of Title/Reconveyance/Reinstatement of Title[5] (Complaint) against MARRECO docketed as Civil Case No. MAN-5524 before the Regional Trial Court (RTC) of Mandaue City, Branch 56.[6]

BSP prayed that Transfer Certificate of Title (TCT) No. 54456[7] covering Lot 1-K-6-D-1 with an area of forty thousand two hundred fifty seven square meters (40,257 sq.m.) in Barangays Poblacion and Subangdaku, Mandaue, Cebu registered in the name of MARRECO be cancelled and that TCT No. 46781[8] covering the same property and registered in the name of BSP be reinstated.[9] In support of its prayer, BSP argued that the Order dated January 19, 2004[10] in Civil Case No. MAN-3902 entitled *Gotesco Properties, Inc. v. Bangko Sentral ng Pilipinas, et al.* rendered by RTC Branch 55, Mandaue City, nullifying BSP's title to the property and restoring the same to MARRECO, was null and void.[11]

The dispositive portion of the Order dated January 19, 2004 in Civil Case No. MAN-3902 reads:

WHEREFORE, judgment is hereby rendered dismissing Gotesco's original complaint and the counterclaim of BSP for being moot and academic; and on the complaint-in-intervention, and annulling:

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[5] *Id.* at 49-61.

[6] *Id.* at 8.

[7] *Id.* at 96.

[8] *Id.* at 94-95.

[9] *Id.* at 58.

[10] *Id.* at 117-138.

[11] *Id.* at 51-54.

1. The Deed of Absolute Sale (Annex "B", Marreco complaint) executed by Marreco in favor of Gotesco;

2. The Deed of Real Estate Mortage executed by Ever Electrical and Manufacturing, Inc. and Gotesco Properties, Inc. in favor of Orient Commercial Banking Corporation dated January 13, 1998 over TCT No. 41450, Register of Deeds, Mandaue City (Annex "B", Gotesco Amended Complaint);

3. The Deed of Assignment executed by Orient Commercial Banking Corporation in favor of Bangko Sentral ng Pilipinas dated January 9, 1998 in TCT No. 41450 (Annex "E", Marreco Complaint);

4. The Certificate of Sale executed by Atty. Joseph Boholst in favor of Bangko Sentral ng Pilipinas dated September 20, 1998 in TCT No. 41450 (Annex "C", Gotesco Complaint);

5. The Affidavit of Consolidation executed by Bangko Sentral ng Pilipinas dated September 26, 2000, annotated in TCT No. 41450, Annex "F" (Marreco Complaint).

The Court further orders:

1. The cancellation of TCT No. 41450 issued in the name of Gotesco Properties, Inc. (Annex "A", Gotesco Complaint);

2. The restoration or reinstatement of TCT No. 40447 in the name of Mandaue Realty and Resources Corporation (Annex "A", Marreco Complaint) and cancelling annotations under Entry Nos. 5184, 5185, 5186, and 5187, all inscribed on August 21, 1997 in the Memorandum of Encumbrances thereof;

3. Gotesco Properties, Inc. to pay to Mandaue Realty and Resources Corporation the sum of ₱1,000,000.00 for and as attorney['s] fees.

SO ORDERED.[12]

Instead of answering BSP's Complaint, MARRECO filed a Motion to Dismiss[13] dated January 29, 2007 alleging, among

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[12] *Id.* at 137-138.

[13] *Id.* at 97-116.

others, that: (1) RTC Branch 56 has no jurisdiction because the allegations in the Complaint seek the annulment of a final judgment rendered by a co-equal court; (2) as the issue of ownership of the property was already settled in Civil Case No. MAN-3902 and subsequently in CA-G.R. CV No. 81888 entitled *Gotesco Properties, Inc. v. Bangko Sentral ng Pilipinas, et al.* through the CA's Resolution dated March 11, 2005,[14] BSP's complaint is already barred by *res judicata*; and (3) BSP is guilty of forum shopping.

In its Opposition to the Motion to Dismiss, BSP claimed, among others, that: (1) the Complaint was one for annulment of title under Article 476 of the Civil Code which falls within the exclusive jurisdiction of the RTC; (2) the CA's Resolution in CA-G.R. CV No. 81888 is not applicable; and (3) that BSP is not guilty of forum shopping.[15]

In its Reply, MARRECO pointed out BSP's failure to deny the finality of the January 19, 2004 Order of RTC Branch 55 and March 11, 2005 Resolution of the CA and that BSP's title was obtained under a notice of *lis pendens*. It also reiterated the grounds relied upon in its Motion to Dismiss.[16]

On March 22, 2007, RTC Branch 56 issued an Order,[17] dismissing BSP's Complaint on the ground of lack of jurisdiction. It ruled that its assumption of jurisdiction over the Complaint would result in trespassing upon or intruding into the exclusive domain and realm of a co-equal court. The dispositive portion of the Order reads:

> WHEREFORE, foregoing premises considered, and without necessarily going into the merits of this case[,] the Court, in the interest of justice and judicial stability, has decided to, as it hereby decides, to GRANT the Defendant's *Motion to Dismiss*.

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[14] *Id.* at 139-150.

[15] *Id.* at 10.

[16] *Id.*

[17] *Id.* at 232-239.

Accordingly, this case is hereby ordered DISMISSED.

SO ORDERED.[18]

BSP timely appealed the aforesaid Order by filing a Notice of Appeal and its Appellant's Brief.[19]

On November 11, 2008, MARRECO, instead of filing an Appellee's Brief, filed a Motion to Dismiss Appeal alleging that 1) the issues raised in the appellant's brief are pure questions of law; hence, the CA has no jurisdiction to entertain the appeal; and 2) the appeal is frivolous and dilatory.[20] Despite notice from the CA, BSP did not file its Comment.[21]

In the first assailed Resolution dated July 25, 2008, the CA denied the Motion to Dismiss Appeal on the ground that the issues raised in the appellant's brief involved mixed questions of fact and law.[22]

MARRECO then filed a Motion for Reconsideration.[23] In its Opposition to the Motion for Reconsideration, BSP argued that the Motion for Reconsideration was a mere rehash of the Motion to Dismiss Appeal, hence, *pro-forma*.[24] MARRECO then filed its Reply stating that: a) BSP was unable to defend the CA's Resolution in failing utterly to point out what factual issues were raised; b) the issues raised were all legal questions; c) as no trial was held and no evidence adduced, there was nothing to look into or evaluate; and d) the quoted paragraph in the RTC Judgment was at best a legal conclusion or *obiter dictum*.[25]

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[18] *Id.* at 239.

[19] *Id.* at 11; 171-209.

[20] *Id.* at 273; 299.

[21] *Id.* at 301.

[22] *Id.* at 304.

[23] *Id.* at 305-316.

[24] *Id.* at 12.

[25] *Id.* at 12-13.

In the second assailed Resolution dated October 21, 2008, the CA denied MARRECO's Motion for Reconsideration.[26]

Hence, this Petition for *Certiorari* and *Mandamus*.

MARRECO argues that the issues raised in BSP's Appeal are pure questions of law which are proper subjects of a Rule 45 petition for review on *certiorari* filed before the Court and not of a notice of appeal under Rule 41 filed before the appellate court. It adds that the CA has no jurisdiction to decide appeals where only questions of law are involved because such jurisdiction belongs to the Court.[27] MARRECO prays that a writ of mandamus be issued directing the CA to dismiss BSP's appeal and a writ of *certiorari* be issued annulling the July 25, 2008 and October 21, 2008 Resolutions of the CA.[28]

Issue

Whether the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied MARRECO's Motion to Dismiss Appeal and assumed jurisdiction over BSP's appeal.

Ruling

We dismiss the petition.

A petition for *certiorari* will only lie in case of grave abuse of discretion.[29] It may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or 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 or despotic manner by reason of passion or personal hostility.[30]

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[26] *Id.* at 321.

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

[28] *Id.* at 44.

[29] *Asian Trading Corporation v. CA*, G.R. No. 76276, February 15, 1999, 303 SCRA 152, 161.

[30] *Lalican v. Vergara*, G.R. No. 108619, July 31, 1997, 276 SCRA 518, 528.

Mandamus, on the other hand, is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[31]

The CA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied MARRECO's Motion to Dismiss Appeal and assumed jurisdiction over BSP's Appeal.

Section 2, Rule 41 of the Rules of Court[32] governs appeals from judgments and final orders of the RTC:

(a) If the issues raised involve **questions of fact or mixed questions of fact and law**, the proper recourse is an **ordinary appeal to the CA in accordance with Rule 41** in relation to Rule 44 of the Rules of Court; and

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[31] *Abaga v. Panes*, G.R. No. 147044, August 24, 2007, 531 SCRA 56, 61-62.

[32] Sec. 2. *Modes of appeal*. –

(a) *Ordinary appeal*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

(b) If the issues raised involve **only questions of law**, **the appeal shall be to the Court by petition for review on *certiorari* in accordance with Rule 45 of the Rules of Court.**[33] (Emphasis supplied.)

In *Sevilleno v. Carilo*,[34] citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*,[35] we summarized:

(1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the **appellant raises questions of fact or mixed questions of fact and law**;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the **appellant raises only questions of law**, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45[;]

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.[36] (Emphasis supplied)

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation.[37] No examination

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[33] *Bases Conversion Development Authority v. Reyes*. G.R. No. 194247, June 19, 2013, 699 SCRA 217, 224-225.

[34] G.R. No. 146454, September 14, 2007, 533 SCRA 385.

[35] G.R. No. 115104, October 12, 1998, 297 SCRA 602.

[36] *Supra* note 34 at 388.

[37] *China Road and Bridge Corporation v. Court of Appeals*, G.R. No. 137898, December 15, 2000, 348 SCRA 401, 408.

of the probative value of the evidence would be necessary to resolve a question of law. The opposite is true with respect to questions of fact.[38]

The test of whether a question is one of law or fact is not the appellation given to such question by the party raising the same. It is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence and would only limit itself to the inquiry of whether the law was properly applied given the facts and supporting evidence.[39] Such is a question of law. Otherwise, it is a question of fact.

The nature of the issues to be raised on appeal can be gleaned from the appellant's notice of appeal filed in the trial court and in his or her brief as appellant in the appellate court.[40] Here, BSP raised the following issues in its Appellant's Brief:

1) In rendering the assailed order, the trial court erred in concluding that to assume jurisdiction over the instant case will operate to trespass upon or intrude into the exclusive domain and realm of a co-equal court.

2) Similarly, the trial court committed an erroneous appreciation of the true import of the Order dated [January 19,] 2004 issued by Judge Ulric R. Cañete.

3) The order dismissing the case of quieting of title has practically disregarded and rendered meaningless the provisions of the Philippine Civil Code, Chapter 3 entitled Quieting of Title.

4) Under the peculiar facts and law of the case below, the Honorable Court should remand the case to the trial court for further proceedings as mandated by the Rules of Court involving claims by the citizens of the country instead of dismissing the case on technicality when the same does not

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[38] *Macababbad, Jr. v. Masirag*, G.R. No. 161237, January 14, 2009, 576 SCRA 70, 81.

[39] *China Road and Bridge Corporation v. Court of Appeals*, *supra* at 411-412.

[40] *Macababbad, Jr. v. Masirag, supra* at 82.

> apply at all considering the abrogation or denial of the right of BSP to seek redress of its claims[.][41]

Meanwhile, in its Appellant's Brief, BSP explained that while the January 19, 2004 Order of the trial court in Civil Case No. MAN-3902 did not direct the cancellation of TCT No. 46781, the Register of Deeds of Mandaue City, without notice to BSP, proceeded to cancel TCT No. 46781. As a result, BSP was compelled to file an action for annulment of title and reconveyance or annulment of title, the action subject of the present petition.[42] BSP argued that the trial court, in granting MARRECO's Motion to Dismiss, erred in concluding that to rule otherwise would amount to an intrusion into an order of a co-equal court. According to BSP, contrary to the pronouncement of the trial court in its March 22, 2007 Order, there can be no intrusion into an order of a co-equal court since Civil Case No. MAN-3902 did not order the cancellation of TCT No. 46781 while BSP's complaint for annulment of title and reconveyance or annulment of title assails the Register of Deeds' cancellation of TCT No. 46781.[43]

We find that BSP's appeal does not only involve questions of law. It also involves questions of fact. The allegations in BSP's complaint and appellant's brief as to the antecedent facts that led to the cancellation of TCT No. 46781 create an uncertainty on the propriety of the trial court's pronouncement that to entertain BSP's complaint would amount to an intrusion into an order of a co-equal court and call for a calibration of the evidence on record. Also telling is BSP's allegation that it is a mortgagee-in-good faith who obtained its title to the property by being the highest bidder during the auction sale in the foreclosure proceedings. As an innocent third party, it is not bound by whatever transpired between Gotesco and MARRECO. These matters constitute a question of fact and not a question of law as MARRECO would like to present it. As the CA correctly held:

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[41] *Rollo*, pp. 188-189.

[42] *Id.* at 181-184.

[43] *Id.* at 190-205.

It is indubitable that what impelled BSP to file the instant complaint for annulment of title and reconveyance or quieting of title before RTC Branch 56, docketed as Civil Case No. Man-5524 is not the Decision of January 19, 2004 rendered by RTC, Branch 55 in Civil Case No. Man-3902 but the subsequent cancellation of BSP's title without any court order to that effect. From this premise, the issue on whether or not the assumption of jurisdiction over the instant case is equivalent to annulment of judgment of a co-equal tribunal is considered a question of fact. The surrounding facts which brought about the cancellation of BSP's title need to be examined to determine whether the complaint subject of the present appeal is indeed one that amounts to the annulment of judgment of a co-equal court.

At first glance, this issue appears to involve a question of law since it does not concern itself with the truth or falsity of certain facts. Still, in order that this Court can make a ruling on the nature of the action instituted before RTC, Branch 56, it has to evaluate the existence and the relevance of the circumstances that led to the cancellation of BSP's title. The determination of these facts is crucial as it will resolve whether the assumption of jurisdiction over the instant case would indeed tantamount to violation of the doctrine on non-interference, whether the cancellation of BSP's title by virtue of the Order of January 19, 2004 rendered by RTC, Branch 55 is proper though the order is silent on the matter, whether such cancellation is tantamount to a collateral attack on BSP's title. In short, in order to address fully the issues raised by BSP in its Brief, this Court necessarily has to make factual findings.

Notably, plaintiff-appellant brought the present appeal raising mixed questions of fact and law. BSP impugns the decision of the RTC dismissing its complaint on the ground that it violates the principle on non-interference to a co-equal court. The resolution of the propriety of dismissal entails a review of the factual circumstances that led the trial court to decide in such manner. Further, BSP also questions the lower court's appreciation of the true import of the Order dated January 19, 2004 and its disregard of the provisions under the Civil Code on quieting of title. Hence, the filing of the present appeal before US is proper.[44]

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

Given the mixed questions of law and fact raised, BSP properly elevated the RTC's March 22, 2007 Order to the CA on ordinary appeal under Rule 41, Section 2 of the Rules of Court.

WHEREFORE, the Petition for *Certiorari* and *Mandamus* is hereby **DISMISSED**. The Resolutions of the Court of Appeals dated July 25, 2008 and October 21, 2008 are **AFFIRMED.** Let records of the case be **REMANDED** to the Court of Appeals which is **DIRECTED** to proceed with the appeal with dispatch.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta (Acting Chairperson), Perez,* and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 188047. November 28, 2016]

LIGHT RAIL TRANSIT AUTHORITY, *petitioner, vs.* **BIENVENIDO R. ALVAREZ, CARLOS S. VELASCO, ASCENCION A. GARGALICANO, MARLON E. AGUINALDO, PETRONILO T. LEGASPI, BONIFACIO A. ESTOPIA, ANDRE A. DELA MERCED, JOSE NOVIER D. BAYOT, ROLANDO AMAZONA and MARLINO HERRERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; *STARE DECISIS*; THE RULE OF STARE DECISIS IS A BAR TO ANY ATTEMPT TO RE-LITIGATE THE SAME ISSUE

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[*] Designated as additional member in lieu of Hon. Presbitero J. Velasco, Jr. per Raffle dated Agust 23, 2013.

WHERE THE SAME QUESTIONS RELATING TO THE SAME EVENT HAVE BEEN PUT FORWARD BY PARTIES SIMILARLY SITUATED AS IN A PREVIOUS CASE LITIGATED AND DECIDED BY A COMPETENT COURT; RULING IN MENDOZA CASE (G.R. NO. 202322, AUGUST 19, 2015) WHICH FOUND PETITIONER'S SOLIDARY LIABILITY FOR RESPONDENTS' MONETARY CLAIMS APPLIES TO THE CASE AT BAR.— The same factual setting, (save for the identity of private respondents) and issues raised in this case also obtained in *Light Rail Transit Authority v. Mendoza* (Mendoza). In that case, this Court ruled that LRTA is solidarily liable for the remaining fifty percent (50%) of the respondents' separation pay. The doctrine of *stare decisis*, therefore, warrants the dismissal of this petition. The rule of *stare decisis* is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court. Thus, the Court's ruling in *Mendoza r*egarding LRTA's solidary liability for respondents' monetary claims arising from the very same AMO-LRTS which private respondents sought to enforce in the proceedings *a quo* applies to the present case. Consequently, LRTA's appeal must be dismissed.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; MONEY CLAIMS; JURISDICTION OF THE LABOR TRIBUNAL OVER PRIVATE RESPONDENTS' MONEY CLAIMS AGAINST PETITIONER, UPHELD; A GOVERNMENT-OWNED AND CONTROLLED CORPORATION MUST SUBMIT ITSELF TO THE PROVISIONS GOVERNING PRIVATE CORPORATIONS, INCLUDING THE LABOR CODE, WHERE THE SAME CONDUCTED BUSINESS THROUGH A PRIVATE CORPORATION.— The only issue, x x x as in *Mendoza*, is whether LRTA can be made liable by the labor tribunals for private respondents' money claim despite the absence of an employer-employee relationship, and though LRTA is a government-owned and controlled corporation. We rule in the affirmative. In *Mendoza*, this Court upheld the jurisdiction of the labor tribunals over LRTA, citing *Philippine National Bank v. Pabalan*: x x x By engaging in a particular business thru the instrumentality of a corporation, the government divests itself

pro hac vice of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations. This Court further ruled that LRTA must submit itself to the provisions governing private corporations, including the Labor Code, for having conducted business through a private corporation, in this case, METRO. In this case, the NLRC accordingly declared, "[LRTA's] contractual commitments with [METRO] and its employees arose out of its business relations with [METRO] which is private in nature. Such private relation was not changed notwithstanding the subsequent acquisition by [LRTA] of full ownership of [METRO] and take-over of its business operations at LRT." In view of the foregoing, we rule that the CA did not err when it upheld the jurisdiction of the labor tribunals over private respondents' money claims against LRTA.

3. ID.; ID.; ID.; THE OWNER OF THE PROJECT IS NOT THE DIRECT EMPLOYER BUT MERELY AN INDIRECT EMPLOYER, BY OPERATION OF LAW, OF HIS CONTRACTOR'S EMPLOYEES; THE ABSENCE OF ACTUAL AND DIRECT EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONER AND PRIVATE RESPONDENTS DOES NOT ABSOLVE THE FORMER FROM LIABILITY FOR THE LATTER'S MONETARY CLAIMS, AS IT IS SOLIDARILY LIABLE WITH THE CONTRACTOR, AS AN INDIRECT EMPLOYER OF PRIVATE RESPONDENTS.— LRTA is liable for the balance of private respondents' separation pay. First, LRTA is contractually obligated to pay the retirement or severance/resignation pay of METRO employees. x x x. Second, assuming *arguendo* that LRTA is not contractually liable to pay the separation benefits, it is solidarily liable as an indirect employer of private respondents. x x x. Based on [Articles 107 and 109 of the Labor Code] LRTA qualifies as an indirect employer by contracting METRO to manage and operate the Metro Manila light rail transit. Being an indirect employer, LRTA is solidarily liable with METRO in accordance with Article 109 of the Labor Code. The fact that there is no actual and direct employer-employee relationship between LRTA and private respondents does not absolve the former from liability for the latter's monetary claims. The owner of the project is not the direct employer but merely an indirect employer, by operation of law, of his contractor's employees.

APPEARANCES OF COUNSEL

Cynthia F. Jacinto-Bongolan and *Gladys N. Nalda* for petitioner.

Rogelio De Guzman for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 103278 dated February 20, 2009 and May 22, 2009, respectively. The Decision and Resolution dismissed the Petition for *Certiorari*[4] filed by the Light Rail Transit Authority (LRTA), which sought to annul and reverse the Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC CA Case No. 046112-05 dated November 5, 2007.

The Facts

LRTA is a government-owned and controlled corporation created by virtue of Executive Order No. 603,[6] for the purpose of the construction, operation, maintenance, and/or lease of light rail transit system in the Philippines.[7] Private respondents Bienvenido R. Alvarez, Carlos S. Velasco, Ascencion A. Gargalicano, Marlon E. Aguinaldo, Petronilo T. Legaspi, Bonifacio A. Estopia, Andre A. Dela Merced, Jose Novier D.

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[1] *Rollo,* pp. 34-57-A.

[2] *Id.* at 12-28. *Ponencia* by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, concurring.

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

[4] CA *rollo*, pp. 3-29.

[5] *Id.* at 31-44.

[6] Creating a Light Rail Transit Authority, Vesting the Same with Authority to Construct and Operate the Light Rail Transit (LRT) Project and Providing Funds Therefor, July 12, 1980.

[7] *Rollo*, p. 36.

Bayot, Rolando C. Amazona and Marlino G. Herrera (private respondents) are former employees of Meralco Transit Organization, Inc. (METRO).[8]

On June 8, 1984, METRO and LRTA entered into an agreement called "Agreement for the Management and Operation of the Light Rail Transit System" (AMO-LRTS) for the operation and management of the light rail transit system.[9] LRTA shouldered and provided for all the operating expenses of METRO.[10] Also, METRO signed a Collective Bargaining Agreement (CBA) with its employees wherein provisions on wage increases and benefits were approved by LRTA's Board of Directors.[11]

However, on April 7, 1989, the Commission on Audit (COA) nullified and voided the AMO-LRTS.[12] To resolve the issue, LRTA decided to acquire METRO by purchasing all of its shares of stocks on June 8, 1989. METRO, thus, became a wholly-owned subsidiary of LRTA. Since then, METRO has been renamed to Metro Transit Organization, Inc.[13] Also, by virtue of the acquisition, LRTA appointed the new set of officers, from chairman to members of the board, and top management of METRO.[14] LRTA and METRO declared and continued the implementation of the AMO-LRTS and the non-interruption of employment relations of the employees of METRO. They likewise continued the establishment and funding of the Metro, Inc. Employees Retirement Plan which covers the past services of all METRO regular employees from the date of their employment. They confirmed that all CBAs remained in force and effect. LRTA then sanctioned the CBA's of the union of

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[8] *Id.* at 13.

[9] CA *rollo*, p. 107.

[10] *Id.*

[11] CA *rollo*, pp. 107-108.

[12] *Id.* at 108.

[13] *Id.*

[14] *Id.*

rank and file employees and the union of supervisory employees.[15]

On November 17, 1997, the METRO general manager (who was appointed by LRTA) announced in a memorandum that its board of directors approved the severance/resignation benefit of METRO employees at one and a half (1 ½) months salaries for every year of service.[16]

On July 25, 2000, the union of rank and file employees of METRO declared a strike over a retirement fund dispute.[17] By virtue of its ownership of METRO, LRTA assumed the obligation to update the Metro, Inc. Employees Retirement Fund with the Bureau of Treasury.[18]

A few months later, or on September 30, 2000, LRTA stopped the operation of METRO.[19] On April 5, 2001, METRO's Board of Directors approved the release and payment of the first fifty percent (50%) of the severance pay to the displaced METRO employees, including private respondents, who were issued certifications of eligibility for severance pay along with the memoranda to receive the same.[20]

Upon the request of the COA corporate auditor assigned at LRTA, COA issued an Advisory Opinion through its Legal Department, and an Advise (*sic*) from Chairman Guillermo N. Carague, that LRTA is liable, as owner of its wholly-owned subsidiary METRO, to pay the severance pay of the latter's employees.[21]

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[15] *Id.*

[16] CA *rollo*, pp. 108-109.

[17] *Rollo*, p. 15.

[18] *Id.*

[19] CA *rollo*, p. 109.

[20] *Id.*

[21] *Id.*

LRTA earmarked an amount of ₱271,000,000.00 for the severance pay of METRO employees in its approved corporate budget for the year 2002.[22] However, METRO only paid the first fifty percent (50%) of the severance pay of private respondents, thus, the following balance:

NAME	MAN NO.	50% (Php)
1. Marlon E. Aguinaldo	0303	243,482.55
2. Bie[n]venido R. Alvarez	0304	193,952.82
3. Bonifacio A. Estopia	0313	242,456.29
4. Petronilo J. Legaspi	0323	245,566.24
5. Andre A. [Dela] Merced	0328	322,187.70
6.Marlino G. Herrera	0400	239,055.57
7. Rolando C. Amazona	0485	231,432.00
8. Jose Novier D. Bayot	1201	231,494.17
9. Ascencion A. Gargalicano	1212	175,733.82
10. Carlos S. Velasco	1863	103,330.08
		2,228,691.24[23]

Private respondents repeatedly and formally asked LRTA, being the principal owner of METRO, to pay the balance of their severance pay, but to no avail.[24] Thus, they filed a complaint before the Arbitration Branch of the NLRC, docketed as NLRC NCR Case No. 00-08-09472-04, praying for the payment of 13th month pay, separation pay, and refund of salary deductions, against LRTA and METRO.[25]

In a Decision[26] dated July 22, 2005, Labor Arbiter (LA) Elias H. Salinas ruled in favor of private respondents. In arriving at his Decision, the LA adopted the ruling in *Light Rail Transit Authority v. National Labor Relations Commission, Ricardo*

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[22] CA *rollo*, p. 110.

[23] *Id.*

[24] CA *rollo*, pp. 110-111.

[25] *Id.* at 106.

[26] *Id.* at 106-116.

B. Malanao, et al.[27] (Malanao), which at that time was affirmed by the CA (Twelfth Division). The LA adopted the ruling in *Malanao* because it involved the same claims, facts, and issues as in this case.[28] *Malanao* ordered respondents LRTA and METRO to jointly and severally pay the balance of the severance pay of the complainants therein. Thus, the dispositive portion[29] of the LA Decision reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering respondents Light Rail Transit Authority and Metro Transit Organization, Inc. to pay complainants the balance of their severance pay as follows:
>
> | NAME | 50% Balance of Severance Pay |
> |---|---|
> | 1. Marlon E. Aguinaldo | ₱ 243,482.55 |
> | 2. Bie[n]venido R. Alvarez | ₱ 193,952.82 |
> | 3. Bonifacio A. Estopia | ₱ 242,456.29 |
> | 4. Petronilo J. Legaspi | ₱ 245,566.24 |
> | 5. Andre A. [Dela] Merced | ₱ 322,187.70 |
> | 6. Marlino G. Herrera | ₱ 239,055.57 |
> | 7. Rolando C. Amazona | ₱ 231,432.00 |
> | 8. Jose Novier D. Bayot | ₱ 231,494.17 |
> | 9. Ascencion A. Gargalicano | ₱ 175,733.82 |
> | 10. Carlos S. Velasco | ₱ 103,330.08 |
> | | ₱ 2,228,691.24 |
>
> Respondents are further ordered to pay the sum equivalent to ten per cent of the foregoing amount as and by way of attorney's fees.
>
> All other claims are ordered dismissed for lack of merit.
>
> SO ORDERED.[30]

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[27] CA-G.R. SP No. 83984, April 27, 2005; Entry of Judgment, G.R. No. 169164, February 21, 2006. See *rollo*, pp. 109-139. See also Compromise Agreement dated December 21, 2006 between LRTA, represented by its Administrator, Melquiades A. Robles, and Ricardo Malanao, *et al.* CA *rollo*, pp. 146-150.

[28] *Id.* at 112.

[29] *Id.* at 115.

[30] *Id.* at 115-116.

On September 29, 2005, LRTA and METRO separately appealed the LA's Decision before the NLRC, docketed as NLRC CA Case No. 046112-05.[31]

In its Resolution dated November 5, 2007, the NLRC dismissed METRO's appeal for failure to file the required appeal bond. Therefore, the NLRC ruled that the appealed Decision of the LA (as regards METRO) is declared final and executory.[32] In the same Resolution, the NLRC sustained the Decision of the LA *in toto*, and therefore dismissed LRTA's appeal for lack of merit. The dispositive portion reads:

> WHEREFORE, premises considered, the Metro, Inc[.]'s Appeal is DISMISSED for failure to get perfected. LRTA's Appeal is likewise DISMISSED for lack of merit. Accordingly, the Decision appealed from is SUSTAINED *in toto*.[33]

LRTA's motion for reconsideration of the Resolution was denied.[34] Thus, LRTA filed a Petition for *Certiorari*[35] with the CA.

CA Decision

The CA denied LRTA's petition. First, the CA ruled that since LRTA failed to comply with the mandatory appeal bond, it lost its right to appeal.[36] Consequently, the LA's ruling already became final and executory.[37]

On the merits of the case, the CA noted that the monetary claims emanated from the CBA; hence, the controversy must be settled in light of the CBA. As the CBA controls, it is clear that LRTA has to pay the remaining fifty percent (50%) of the

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

[32] *Id.* at 33.

[33] *Id.* at 44.

[34] *Id.* at 46.

[35] *Supra* note 4.

[36] *Rollo*, p. 20.

[37] *Id.* at 24.

retirement benefits due to the private respondents. The CA held that whether the NLRC has jurisdiction to hear the case, the result would be the same: that LRTA has financial obligations to private respondents.[38]

Finally, on the issue of jurisdiction, the CA found that METRO, even if it is a subsidiary of LRTA, remains a private corporation. This being the case, the money claim brought against it falls under the original and exclusive jurisdiction of the LA. Also, the CA agreed with the NLRC that the principle of *stare decisis* applies to this case. The NLRC applied the CA's Decision in *Malanao*, ruling that LRTA is liable for the fifty percent (50%) balance of the separation pay of the private respondents therein.[39]

LRTA filed a Motion for Reconsideration[40] arguing that contrary to what the CA declared, it filed the mandatory appeal bond.[41] It also claimed that the NLRC had no jurisdiction over LRTA, and that the NLRC erred in applying *stare decisis*.[42] The CA, however, denied LRTA's motion for lack of merit.[43]

Hence, this petition.

Pending resolution of the case by this Court, private respondents filed with the NLRC a Motion for Issuance of a Writ of Execution[44] dated September 4, 2009.

On August 5, 2010, private respondents filed an Urgent Manifestation[45] with this Court, informing us that a Writ of Execution[46] has been issued on July 9, 2010 by the LA, since

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

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

[40] CA *rollo*, pp. 215-225.

[41] *Id.* at 217.

[42] *Id.* at 217-221.

[43] *Rollo*, p. 31.

[44] *Id.* at 74-80.

[45] *Id.* at 141-143.

[46] *Id.* at 144-147.

no Temporary Restraining Order was issued by the CA or this Court. There being no response from LRTA after service of the writ, and upon motion of private respondents, the LA ordered[47] the release of the cash bond deposited by LRTA, and which was subsequently released to the private respondents. Thus, they prayed that the case be dismissed for having been moot and academic.[48] In a Reply (To Respondents' Urgent Manifestation),[49] LRTA argued that the case has not become moot and academic.

The Petition

LRTA now appeals the CA Decision and argues[50] that the CA erred in:

1) Ruling that the LA and NLRC have jurisdiction over LRTA;

2) Holding LRTA jointly and severally liable for private respondents' money claims; and

3) Wrongly applying the doctrine of *stare decisis*.

The Court's Ruling

We deny the petition.

The same factual setting, (save for the identity of private respondents) and issues raised in this case also obtained in *Light Rail Transit Authority v. Mendoza*[51] (Mendoza). In that case, this Court ruled that LRTA is solidarily liable for the remaining

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[47] *Id.* at 148-149.

[48] *Id.* at 142. See also *Light Rail Transit Authority v. Mendoza*, G.R. No. 202322, August 19, 2015, 767 SCRA 624. In *Mendoza*, the Labor Arbiter likewise issued a Writ of Execution for his decision and ordered the release of LRTA's cash bond. The respondents also filed an Urgent Manifestation stating that they considered the case to have become academic. Nevertheless, the Court proceeded to rule on the merits of the case.

[49] *Rollo*, pp. 155-161.

[50] *Id.* at 41.

[51] *Supra*.

fifty percent (50%) of the respondents' separation pay. The doctrine of *stare decisis,* therefore, warrants the dismissal of this petition. The rule of *stare decisis* is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court.[52] Thus, the Court's ruling in *Mendoza* regarding LRTA's solidary liability for respondents' monetary claims arising from the very same AMO-LRTS which private respondents sought to enforce in the proceedings *a quo* applies to the present case. Consequently, LRTA's appeal must be dismissed.

The LA and the NLRC have jurisdiction over private respondents' money claims.

LRTA argues that the LA and NLRC do not have jurisdiction over the case. LRTA cites *Light Rail Transit Authority v. Venus, Jr.*[53] (Venus) to support its claim.

We disagree. LRTA's reliance on *Venus* is misplaced. *Venus* involves the illegal dismissal of the complainants. The proceedings *a quo* is not for an illegal dismissal case, but for the monetary claims of respondents against METRO and LRTA. Thus, unlike in *Venus,* this case does not involve the issue of respondents' employment with METRO or LRTA. In fact, in *Mendoza,* this Court held, "[a]s we see it, the jurisdictional issue should not have been brought up in the first place because the respondents' claim does not involve their employment with LRTA. There is no dispute on this aspect of the case. The respondents were hired by METRO and, were, therefore its employees."[54]

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[52] *Tala Realty Services Corp., Inc. v. Banco Filipino Savings and Mortgage Bank,* G.R. No. 181369, June 22, 2016, citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,* G.R. No. 159422, March 28, 2008, 550 SCRA 180, 197-198; *Pepsi Cola Products (Phils.), Inc. v. Espiritu,* G.R. No. 150394, June 26, 2007, 525 SCRA 527, 534.

[53] G.R. No. 163782, March 24, 2006, 485 SCRA 361.

[54] *Light Rail Transit Authority v. Mendoza, supra* note 48 at 635.

The only issue, therefore, as in *Mendoza*, is whether LRTA can be made liable by the labor tribunals for private respondents' money claim despite the absence of an employer-employee relationship, and though LRTA is a government-owned and controlled corporation.

We rule in the affirmative. In *Mendoza*, this Court upheld the jurisdiction of the labor tribunals over LRTA, citing *Philippine National Bank v. Pabalan*:[55]

> x x x By engaging in a particular business thru the instrumentality of a corporation, the government divests itself pro hac vice of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations.[56]

This Court further ruled that LRTA must submit itself to the provisions governing private corporations, including the Labor Code, for having conducted business through a private corporation, in this case, METRO.[57]

In this case, the NLRC accordingly declared, "[LRTA's] contractual commitments with [METRO] and its employees arose out of its business relations with [METRO] which is private in nature. Such private relation was not changed notwithstanding the subsequent acquisition by [LRTA] of full ownership of [METRO] and take-over of its business operations at LRT."[58]

In view of the foregoing, we rule that the CA did not err when it upheld the jurisdiction of the labor tribunals over private respondents' money claims against LRTA.[59]

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[55] G.R. No. L-33112, June 15, 1978, 83 SCRA 595, 600.

[56] *Supra* note 48 at 635.

[57] *Supra* note 48 at 635.

[58] CA *rollo*, p. 42.

[59] See *Light Rail Transit Authority v. National Labor Relations Commission, Ricardo B. Malanao, et al., supra* note 27.

LRTA is solidarily liable with METRO for the payment of private respondents' separation pay.

LRTA claims that it is not the real or actual or indirect employer of private respondents.[60] It argues that there being no employer-employee relationship, it is legally inconceivable how LRTA can be held solidarily liable with METRO for the payment of private respondents' separation differentials.[61]

Again, we disagree. LRTA is liable for the balance of private respondents' separation pay.

First, LRTA is contractually obligated to pay the retirement or severance/resignation pay of METRO employees. Citing evidence on record, the LA found that:

> x x x On November 17, 1997, the Metro, Inc. general manager appointed by LRTA announced in a memorandum that its Board of Directors approved the severance/resignation benefit of Metro, Inc. employees at one and a half (1.5) months salaries for every year of service. x x x By virtue of its ownership of Metro, Inc. LRTA officially and formally assumed by authority of its board the obligation to update the Metro, Inc. Employees Retirement Fund with the Bureau of Treasury, to ensure that the fund fully covers all retirement benefits payable to Metro, Inc[.] employees x x x. [T]he LRTA's appointed Board of Directors for Metro, Inc. approved the release and payment of the first fifty (50%) per cent of the severance pay to the displaced Metro, Inc. employees x x x and complainants were issued the certifications of eligibility for severance pay/benefit and the memoranda to receive the same x x x.[62]

On this same issue, we again quote this Court's ruling in *Mendoza*:

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[60] *Rollo*, p. 44.

[61] *Id.* at 51.

[62] CA *rollo*, pp. 108-109. Emphasis supplied.

First. LRTA obligated itself to fund METRO's retirement fund to answer for the retirement or severance/resignation of METRO employees as part of METRO's "operating expenses." Under Article 4.05.1 of the O & M agreement between LRTA and Metro, "The Authority shall reimburse METRO for x x x "OPERATING EXPENSES x x x." In the letter to LRTA dated July 12, 2001, the Acting Chairman of the METRO Board of Directors at the time, Wilfredo Trinidad, reminded LRTA that funding provisions for the retirement fund have always been considered operating expenses of Metro. The coverage of operating expenses to include provisions for the retirement fund has never been denied by LRTA.

In the same letter, Trinidad stressed that as a consequence of the nonrenewal of the O & M agreement by LRTA, METRO was compelled to close its business operations effective September 30, 2000. This created, Trinidad added, a legal obligation to pay the qualified employees separation benefits under existing company policy and collective bargaining agreements. The METRO Board of Directors approved the payment of 50% of the employees' separation pay because that was only what the Employees' Retirement Fund could accommodate.

The evidence supports Trinidad's position. We refer principally to Resolution No. 00-44 issued by the LRTA Board of Directors on July 28, 2000, in anticipation of and in preparation for the expiration of the O & M agreement with METRO on July 31, 2000.

Specifically, the LRTA anticipated and prepared for the (1) non-renewal (at its own behest) of the agreement, (2) the eventual cessation of METRO operations, and (3) the involuntary loss of jobs of the METRO employees; thus, (1) the extension of a two-month bridging fund for METRO from August 1, 2000, to coincide with the agreement's expiration on July 31, 2000; (2) METRO's cessation of operations — it closed on September 30, 2000, the last day of the bridging fund — and most significantly to the employees adversely affected; (3) the updating of the "Metro, Inc., Employee Retirement Fund with the Bureau of Treasury to ensure that the fund fully covers all retirement benefits payable to the employees of Metro, Inc."

The clear language of Resolution No. 00-44, to our mind, established the LRTA's obligation for the 50% unpaid balance of the respondents' separation pay. Without doubt, it bound itself to provide the necessary funding to METRO's Employee Retirement Fund to fully compensate the employees who had been involuntary retired by the cessation of

operations of METRO. This is not at all surprising considering that METRO was a wholly owned subsidiary of the LRTA.[63]

Second, assuming *arguendo* that LRTA is not contractually liable to pay the separation benefits, it is solidarily liable as an indirect employer of private respondents.

Articles 107 and 109 of the Labor Code provide:

Art. 107. *Indirect employer*. - The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

x x x x x x x x x

Art. 109. *Solidary liability*. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

Based on the foregoing provisions, LRTA qualifies as an indirect employer by contracting METRO to manage and operate the Metro Manila light rail transit. Being an indirect employer,

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[63] *Supra* note 48 at 636-637. Emphasis and citations omitted. See also CA Decision in *Light Rail Transit Authority v. National Labor Relations Commission, Ricardo B. Malanao, et al.*, CA-G.R. SP No. 83984, April 27, 2005, *rollo*, pp. 133-134, to wit:

x x x As exhaustively discussed in the decisions of the Labor Arbiter and NLRC, petitioner contractually bound itself to fund the Metro Employees' Retirement Fund as well as wages, salaries and benefits as part of Operating Expenses, and which set-up was continued after Metro became its wholly-owned subsidiary particularly as petitioner had already complied with such contractual liability for the severance pay of private respondents by paying 50% thereof. Thus, even if the liabilities of Metro remained its own as still a separate corporate entity from petitioner which had acquired full ownership thereof, evidence clearly showed that petitioner had agreed to assume such obligations of Metro to its employees, and also since petitioner merely continued Metro's operation and management of the LRT which apparently had been Metro's sole client and business concern.

LRTA is solidarily liable with METRO in accordance with Article 109 of the Labor Code. The fact that there is no actual and direct employer-employee relationship between LRTA and private respondents does not absolve the former from liability for the latter's monetary claims.[64] The owner of the project is not the direct employer but merely an indirect employer, by operation of law, of his contractor's employees.[65]

More, this Court has already ruled on this issue in *Mendoza*:

> Second. Even on the assumption that the LRTA did not obligate itself to fully cover the separation benefits of the respondents and others similarly situated, it still cannot avoid liability for the respondents' claim. It is solidari[l]y liable as an indirect employer under the law for the respondents' separation pay. This liability arises from the O & M agreement it had with METRO, which created a principal-job contractor relationship between them, an arrangement it admitted when it argued before the CA that METRO was an independent job contractor who, it insinuated, should be solely responsible for the respondents' claim.
>
> Under Article 107 of the Labor Code, an indirect employer is "any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project."
>
> On the other hand, Article 109 on solidary liability, mandates that x x x "every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provisions of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers."
>
> Department Order No. 18-02, S. 2002, the rules implementing Articles 106 to 109 of the Labor Code, provides in its Section 19 that "the principal shall also be solidarily liable in case the contract between the principal is preterminated for reasons not attributable to the contractor or subcontractor."

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[64] *Government Service Insurance System v. National Labor Relations Commission,* G.R. No. 180045, November 17, 2010, 635 SCRA 251, 259.

[65] *Baguio v. National Labor Relations Commission,* G.R. Nos. 79004-08, October 4, 1991, 202 SCRA 465, 472-473.

Although the cessation of METRO's operations was due to a nonrenewal of the O & M agreement and not a pretermination of the contract, the cause of the nonrenewal and the effect on the employees are the same as in the contract pretermination contemplated in the rules. The agreement was not renewed through no fault of METRO, as it was solely at the behest of LRTA. The fact is, under the circumstances, METRO really had no choice on the matter, considering that it was a mere subsidiary of LRTA.

Nevertheless, whether it is a pretermination or a nonrenewal of the contract, the same adverse effect befalls the workers affected, like the respondents in this case — the involuntary loss of their employment, one of the contingencies addressed and sought to be rectified by the rules.[66]

In view of the foregoing, we affirm the CA in sustaining the decisions of the LA and the NLRC ordering LRTA to pay the balance of private respondents' separation pay.

WHEREFORE, the Petition is **DENIED**. The Decision dated February 20, 2009 of the Court of Appeals in CA-G.R. SP No. 103278 is **AFFIRMED.**

SO ORDERED.

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

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[66] *Supra* note 48 at 637-638. Emphasis omitted.

SECOND DIVISION

[G.R. No. 193618. November 28, 2016]

HEIRS OF LEOPOLDO DELFIN and SOLEDAD DELFIN, namely EMELITA D. FABRIGAR AND LEONILO C. DELFIN, *petitioners, vs.* **NATIONAL HOUSING AUTHORITY,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD NO. 1529); FOR ACQUISITIVE PRESCRIPTION TO SET IN PURSUANT TO SECTION 14(2) OF PD. NO. 1529, IT IS REQUIRED THAT THE PROPERTY IS ESTABLISHED TO BE PRIVATE IN CHARACTER AND THE APPLICABLE PRESCRIPTIVE PERIOD UNDER EXISTING LAWS HAD PASSED.— Petitioners are erroneously claiming title based on acquisitive prescription under Section 14(2) of Presidential Decree No. 1529. x x x. For acquisitive prescription to set in pursuant to Section 14(2) of Presidential Decree No. 1529, two (2) requirements must be satisfied; first, the property is established to be private in character; and second the applicable prescriptive period under existing laws had passed.

2. ID.; ID.; ID.; CLASSIFICATION OF PROPERTY; FOR PRESCRIPTION TO BE VIABLE, THE PUBLICLY-OWNED LAND MUST BE PATRIMONIAL OR PRIVATE IN CHARACTER AT THE ONSET, FOR POSSESSION FOR THIRTY (30) YEARS DOES NOT CONVERT IT INTO PATRIMONIAL PROPERTY.— Property – such as land – is either of public dominion or private ownership. "Land is considered of public dominion if it either: (a) is intended for public use; or (b) belongs to the State, without being for public use, and is intended for some public service or for the development of the national wealth." Land that belongs to the state but which is not or is no longer intended for public use, for some public service or for the development of the national wealth, is patrimonial property; it is property owned by the State in its *private* capacity. Provinces, cities, and municipalities

may also hold patrimonial lands. Private property "consists of all property belonging to private persons, either individually or collectively," as well as "the patrimonial property of the State, provinces, cities, and municipalities." Accordingly, only publicly owned lands which are patrimonial in character are susceptible to prescription under Section 14(2) of Presidential Decree No. 1529. Consistent with this, Article 1113 of Civil Code demarcates properties of the state, which are not patrimonial in character, as being not susceptible to prescription x x x. Contrary to petitioners' theory then, for prescription to be viable, the publicly-owned land must be patrimonial or private in character at the onset. Possession for thirty (30) years does not convert it into patrimonial property.

3. ID.; ID.; ID.; FOR LAND OF PUBLIC DOMAIN TO BE CONVERTED INTO PATRIMONIAL PROPERTY, THERE MUST BE AN EXPRESS DECLARATION – IN THE FORM OF A LAW DULY ENACTED BY CONGRESS OR A PRESIDENTIAL PROCLAMATION IN CASES WHERE THE PRESIDENT IS DULY AUTHORIZED BY LAW – THAT THE PUBLIC DOMINION PROPERTY IS NO LONGER INTENDED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF THE NATIONAL WEALTH OR THAT THE PROPERTY HAS BEEN CONVERTED INTO PATRIMONIAL PROPERTY.— For land of the public domain to be converted into patrimonial property, there must be an express declaration – "in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law" – that "the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial." x x x. [I]n this Court's 2013 Resolution in *Heirs of Malabanan v. Republic*: [W]hen public land is no longer intended for public service or for the development of the national wealth, thereby effectively removing the land from the ambit of public dominion, a declaration of such conversion must be made in the form of a law duly enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect.

4. ID.; ID.; ID.; ID.; A MERE INDORSEMENT OF THE EXECUTIVE SECRETARY IS NOT THE LAW OR PRESIDENTIAL PROCLAMATION REQUIRED FOR

CONVERTING LAND OF THE PUBLIC DOMAIN INTO PATRIMONIAL PROPERTY AND RENDERING IT SUSCEPTIBLE TO PRESCRIPTION.— Attached to the present Petition was a copy of a May 18, 1988 supplemental letter to the Director of the Land Management Bureau. This referred to an executive order, which stated that petitioners' property was no longer needed for any public or quasi-public purposes x x x. However, a mere indorsement of the executive secretary is not the law or presidential proclamation required for converting land of the public domain into patrimonial property and rendering it susceptible to prescription. There then was no viable declaration rendering the Iligan property to have been patrimonial property at the onset. Accordingly, regardless of the length of petitioners' possession, no title could vest on them *by way of prescription*.

5. ID.; ID.; THE PUBLIC LAND ACT (COMMONWEALTH ACT NO. 141); BEFORE CLAIMS OF TITLES TO PUBLIC DOMAIN LANDS MAY BE CONFIRMED, THE APPLICANTS MUST PROVE THAT THE LAND SUBJECT OF THE CLAIM IS AGRICULTURAL LAND, AND THAT THEY HAVE BEEN IN OPEN, CONTINUOUS, AND EXCLUSIVE POSSESSION OF THE LAND SINCE JUNE 12, 1945.— While petitioners may not claim title by prescription, they may, nevertheless, claim title pursuant to Section 48 (b) of Commonwealth Act No. 141 (the Public Land Act). Section 48 enabled the confirmation of claims and issuance of titles in favor of citizens occupying or claiming to own lands of the public domain or an interest therein. Section 48 (b) specifically pertained to those who "have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945" x x x. Section 48(b) of the Public Land Act therefore requires that two (2) requisites be satisfied before claims of titles to public domain lands may be confirmed: first, that the land subject of the claim is agricultural land; and second, open, continuous, notorious , and exclusive possession of the land since June 12, 1945.

6. ID.; ID.; ID.; PETITIONERS ARE ENTITLED TO JUST COMPENSATION FOR THE TAKING OF THEIR PROPERTY, HAVING ESTABLISHED THAT THEY

ACQUIRED TITLE OVER THE SAME PURSUANT TO SECTION 48(B) OF THE PUBLIC LAND ACT.— [P]etitioners acquired title over the Iligan Property pursuant to Section 48(b) of the Public Land Act. First, there is no issue that the Iligan Property had already been declared to be alienable and disposable land. Respondent has admitted this and Deputy Public Land Inspector Pio Lucero, Jr.'s letters to the Director of Lands attest to this. Second, although the Delfin Spouses' testimonial evidence and tax declarations showed that their possession went only as far back as 1952, Deputy Public Land Inspector Pio Lucero, Jr.'s letters to the Director of Land nevertheless attest to a previous finding that the property had already been occupied as early as June 1945. Having shown that the requisites of Section 48(b) of the Public Land Act have been satisfied and having established their rights to the Iligan Property, it follows that petitioners must be compensated for its taking.

APPEARANCES OF COUNSEL

Eltanal Maglinao Ugat & Partners for petitioners.
Mary Joy De Guzman-Baybay for respondent.

D E C I S I O N

LEONEN, *J.*:

Under Commonwealth Act No. 141, a claimant may acquire alienable and disposable public land upon evidence of exclusive and notorious possession of the land since June 12, 1945. The period to acquire public land by acquisitive prescription under Presidential Decree No. 1529 begins to run only after the promulgation of a law or a proclamation by the President stating that the land is no longer intended for public use or the development of national wealth.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the

[1] *Rollo*, pp. 50-67.

assailed February 26, 2010 Decision[2] and July 2, 2010 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 80017 be reversed, and that the May 20, 2002 Decision[4] of the Regional Trial Court in Civil Case No. II-1801 be reinstated.

The Regional Trial Court's May 20, 2002 Decision awarded compensation to Leopoldo and Soledad Delfin (Delfin Spouses) for an Iligan City property subsequently occupied by respondent National Housing Authority.

The assailed Court of Appeals Decision reversed the Regional Trial Court's May 20, 2002 Decision and dismissed the Delfin Spouses' complaint seeking compensation. The assailed Court of Appeals Resolution denied their Motion for Reconsideration.

In a Complaint for "Payment of Parcel(s) of Land and Improvements and Damages"[5] the Delfin Spouses claimed that they were the owners of a 28,800 square meter parcel of land in Townsite, Suarez, Iligan City (the "Iligan Property").[6] They allegedly bought the property in 1951 from Felix Natingo and Carlos Carbonay, who, allegedly, had been in actual possession of the property since time immemorial.[7] The Delfin Spouses had been declaring the Iligan Property in their names for tax purposes since 1952,[8] and had been planting it with mangoes, coconuts, corn, seasonal crops, and vegetables.[9]

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[2] *Id*. at 69-85. The Decision was penned by Associate Justice Romulo V. Borja, and concurred in by Associate Justices Edgardo T. Lloren and Angelita A. Gacutan of the Twenty-First Division, Court of Appeals, Cagayan de Oro.

[3] *Id*. at 99-105. The Resolution was penned by Associate Justice Romulo V. Borja, and concurred in by Associate Justices Edgardo T. Lloren and Angelita A. Gacutan of the Former Twenty-First Division, Court of Appeals, Cagayan de Oro.

[4] *Id*. at 149-159. The Decision was penned by Presiding Judge Maximo B. Ratunil of the Regional Trial Court of Lanao Del Norte.

[5] *Id*. at 112-115.

[6] *Id*. at 11.

[7] *Id*. at 11 and 144.

[8] *Id*. at 11.

[9] *Id*. at 120-121.

They further alleged that, sometime in 1982, respondent National Housing Authority forcibly took possession of a 10,798 square meter portion of the property.[10] Despite their repeated demands for compensation, the National Housing Authority failed to pay the value of the property.[11] The Delfin Spouses thus, filed their Complaint.[12]

They asserted that the property's reasonable market value was not less than ₱40 per square meter[13] and that its improvements consisting of fruit-bearing trees should be valued at ₱13,360.00 at the time of taking.[14] They similarly claimed that because the National Housing Authority occupied the property, they were deprived of an average net yearly income of ₱10,000.00.[15]

In its Answer,[16] the National Housing Authority alleged that the Delfin Spouses' property was part of a military reservation area.[17] It cited Proclamation No. 2151 (actually, Proclamation No. 2143, the National Housing Authority made an erroneous citation) as having supposedly reserved the area in which property is situated for Iligan City's slum improvement and resettlement program, and the relocation of families who were dislocated by the National Steel Corporation's five-year expansion program.[18]

According to the National Housing Authority, Proclamation No. 2151 also mandated it to determine the improvements' valuation.[19] Based on the study of the committee it created, the

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[10] *Id*. at 11 and 144.

[11] *Id*. at 11.

[12] *Id*. at 10.

[13] *Id*. at 11.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 116-119.

[17] *Id*. at 144.

[18] *Id*.

[19] *Id*. at 145.

value of the property was supposedly only ₱4.00 per square meter, regardless of the nature of the improvements on it.[20]

It emphasized that among all claimants, only the Delfin Spouses and two others remained unpaid because of their disagreement on the property's valuation.[21]

The National Housing Authority failed to appear during the pre-trial conference.[22] Upon the Delfin Spouses' motion, the Regional Trial Court declared the National Housing Authority in default.[23] The case was set for the ex-parte reception of the Delfin Spouses' evidence.[24]

On May 20, 2002, the Regional Trial Court rendered a Decision in favor of the Delfin Spouses.[25] The dispositive portion of the Decision read:

> WHEREFORE, premises considered, and by virtue of the existence of preponderance of evidence, the Court hereby enters a judgment in favor of spouses-plaintiffs Leopoldo Delfin and Soledad Delfin against defendant National Housing Authority, its agents or representative/s ordering to pay the former the following, to wit:
>
> 1) ₱400,000.00 representing the reasonable market value of a portion of the land taken by the defendant containing an area of 10,000 square meters at the rate of ₱40.00 per square meters plus legal interest per annum from the filing in Court of the complaint until fully paid;
>
> 2) ₱13,360.00 representing the value of the permanent improvements that were damaged and destroyed plus legal interest per annum from the time of the filing of this case until fully paid;

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[20] *Id*.

[21] *Id*.

[22] *Id*. at 12.

[23] *Id*.

[24] *Id*. at 12-13.

[25] *Id*. at 159.

3) ₱10,000.00, representing attorney's fees;

4) The costs of this suit.[26]

The Regional Trial Court stated that it had no reason to doubt the evidence presented by the Delfin Spouses:

> On this regards (sic), the Court finds no reason to doubt the veracity of the plaintiff['s evidence], there being none to controvert the same. If said evidence did not ring true, the defendant should have and could have easily destroyed their probatory value. Such indifference can only mean that defendant had not (sic) equitable rights to protect or assert over the disputed property together with all the improvements existing thereon. This, the defendant did not do so and the Court finds no cogent reasons to disbelieve or reject the plaintiffs categorical declarations on the witness stand under a solemn oath, for the same are entitled to full faith and credence. Indeed, if the defendant National Housing Authority have been blinded with the consequence of their neglect and apathy, then defendant have no right to pass on to the spouses-plaintiffs of their negligence and expect the Court to come to their rescue. For it is now much too late in the day to assail the decision which has become final and executory.[27]

The National Housing Authority filed a Motion for Reconsideration, but this was denied in the Regional trial Court's September 10, 2002 Resolution.[28]

On the National Housing Authority's appeal, the Court of Appeals rendered the assailed February 26, 2010 Decision reversing the Regional Trial Court:[29]

> WHEREFORE, the appeal is GRANTED. The assailed Decision is REVERSED and SET ASIDE. Consequently, appellees' complaint for compensation is DISMISSED for lack of merit. The property taken by appellant NHA and for which compensation is sought by appellees is hereby DECLARED land of the public domain.[30]

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[26] *Id*. at 159.

[27] *Id*. at 157.

[28] *Id*. at 14-15.

[29] *Id*. at 69-85.

[30] *Id*. at 26.

The Court of Appeals ruled that the characterization of the property is no longer an issue because the National Housing Authority already conceded that the property is disposable public land by citing Proclamation No. 2151, which characterized the property as "a certain disposable parcel of public land."[31] However, the Delfin Spouses supposedly failed to establish their possession of the property since June 12, 1945, as required in Section 48(b) of the Public Land Act.[32]

During the pendency of their petition before the Court of Appeals. Both Leopoldo and Soledad Delfin both passed away. Lepoldo passed away on February 3, 2005 and Soledad on June 22, 2004. Their surviving heirs, Emelita D. Fabrigar and Leonilo C. Delfin filed a Motion for Substitution before the Court of Appeals, which was not acted upon.[33]

In its assailed July 2, 2010 Resolution,[34] the Court of Appeals denied the Motion for Reconsideration filed by the heirs of the Delfin Spouses.

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[31] *Id.* at 20.

[32] *Id.* at 24.

Com. Act No. 141, Sec. 48(b) provides:

Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor under the Land Registration Act, to wit:

. . . .

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

[33] *Id.* at 52.

[34] *Rollo*, pp. 99-105.

Hence, this petition which was filed by the surviving heirs of the Delfin Spouses, Emelita D. Fabrigar and Leonilo C. Delfin (petitioners).[35]

For resolution is the issue of whether petitioners are entitled to just compensation for the Iligan City property occupied by respondent National Housing Authority.

I

The right to be justly compensated whenever private property is taken for public use cannot be disputed. Article III, Section 9 of the 1987 Constitution states that

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

The case now hinges on whether the petitioners and their predecessors-in-interests have been in possession of the Iligan Property for such duration and under such circumstances as will enable them to claim ownership.

Petitioners argue that they and their predecessors-in-interests' open, continuous, exclusive, and notorious possession of the Iligan Property for more than 30 years *converted* the property from public to private.[36] They then posit that they acquired ownership of the property through acquisitive prescription under Section 14(2) of Presidential Decree No. 1529.[37]

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[35] *Id.* at 52.

[36] *Id.* at 60.

[37] *Id.*

> Pres. Decree No. 1529, Sec. 14 states:
>
> Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> . . . . . .
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> . . . . . .

Petitioners also assert that the Court of Appeals disregarded certifications and letters from government agencies, which support their claims, particularly, their and their predecessors-in-interest's possession since June 12, 1945.[38]

Respondent counters, citing the Court of Appeals Decision, that petitioners cannot rely on Section 14(2) of Presidential Decree No. 1529 because the property was not yet declared private land when they filed their Complaint.[39]

II

Petitioners are erroneously claiming title based on acquisitive prescription under Section 14(2) of Presidential Decree No. 1529.

Section 14 reads in full:

Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under pacto de retro, the vendor a retro may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee a retro, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

[38] *Rollo*, p. 63.

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

(2) *Those who have acquired ownership of private lands by prescription under the provision of existing laws.*

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under pacto de retro, the vendor a retro may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee a retro, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust. [Emphasis supplied]

For acquisitive prescription to set in pursuant to Section 14(2) of Presidential Decree No. 1529, two (2) requirements must be satisfied: first, the property is established to be private in character; and second the applicable prescriptive period under existing laws had passed.

Property — such as land — is either of public dominion or private ownership.[40]

"Land is considered of public dominion if it either: (a) is intended for public use; or (b) belongs to the State, without being for public use, and is intended for some public service or for the development of the national wealth."[41] Land that belongs to the state but which is not or is no longer intended

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[40] CIVIL CODE, Art. 419 provides:

Article 419. Property is either of public dominion or of private ownership.

[41] *Heirs of Malabanan v. Republic*, 111 Phil. 141, 160 (2013). [Per *J.* Bersamin, *En Banc*], *citing* CIVIL CODE, Art. 420.

for public use, for some public service or for the development of the national wealth, is patrimonial property;[42] it is property owned by the State in its *private* capacity. Provinces, cities, and municipalities may also hold patrimonial lands.[43]

Private property "consists of all property belonging to private persons, either individually or collectively,"[44] as well as "the patrimonial property of the State, provinces, cities, and municipalities."[45]

Accordingly, only publicly owned lands which are patrimonial in character are susceptible to prescription under Section 14(2) of Presidential Decree No. 1529. Consistent with this, Article 1113 of Civil Code demarcates properties of the state, which are not patrimonial in character, as being not susceptible to prescription:

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[42] CIVIL CODE, Arts. 421 and 422 provide:

Article 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

Article 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

[43] CIVIL CODE, Arts. 423 and 424 state:

> Article 423. The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.
>
> Article 424. Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.
>
> All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

[44] CIVIL CODE, Art. 425 states:

> Article 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

[45] CIVIL CODE, Art 425.

Art. 1113. All things which are within the commerce of men are susceptible of prescription, unless provided. Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.

Contrary to petitioners' theory then, for prescription to be viable, the publicly-owned land must be patrimonial or private in character at the onset. Possession for thirty (30) years does not convert it into patrimonial property.

For land of the public domain to be converted into patrimonial property, there must be an express declaration — "in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law"[46] that "the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial."[47]

This Court's 2009 Decision in *Heirs of Malabanan v. Republic*[48] explains:

> Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial properly susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when * it is "intended for some public service or for the development of the national wealth."

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public

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[46] *Heirs of Malabanan v. Republic*, 605 Phil. 244, 279 (2009) [Per *J.* Tinga, *En Banc*].

[47] *Id*.

[48] 605 Phil. 244 (2009) [Per *J.* Tinga, *En Banc*].

service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420 (2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[49]

This was reiterated in this Court's 2013 Resolution in *Heirs of Malabanan v. Republic*:[50]

[W]hen public land is no longer intended for public service or for the development of the national wealth, thereby effectively removing the land from the ambit of public dominion, a declaration of such conversion must be made in the form of a law duly enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect.[51]

Attached to the present Petition was a copy of a May 18, 1988 supplemental letter to the Director of the Land Management Bureau.[52] This referred to an executive order, which stated that petitioners' property was no longer needed for any public or quasi-public purposes:

That it is very clear in the 4th Indorsement of the Executive Secretary dated April 24, 1954 the portion thereof that will not be needed for any public or quasi-public purposes, be disposed in favor of the actual occupants under the administration of the Bureau of Lands (copy of the Executive Order is herewith attached for ready reference)[53]

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[49] *Id*. at 278-279.

[50] 717 Phil. 141 (2013) [Per J. Bersamin, *En Banc*].

[51] *Id*. at 162.

[52] *Rollo*, p. 139.

[53] *Id*.

However, a mere indorsement of the executive secretary is not the law or presidential proclamation required for converting land of the public domain into patrimonial property and rendering it susceptible to prescription. There then was no viable declaration rendering the Iligan property to have been patrimonial property at the onset. Accordingly, regardless of the length of petitioners' possession, no title could vest on them *by way of prescription*.

III

While petitioners may not claim title by prescription, they may, nevertheless, claim title pursuant to Section 48 (b) of Commonwealth Act No. 141 (the Public Land Act).

Section 48 enabled the confirmation of claims and issuance of titles in favor of citizens occupying or claiming to own lands of the public domain or an interest therein. Section 48 (b) specifically pertained to those who "have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945":

> Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor under the Land Registration Act, to wit:
>
> . . . . . .
>
> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter. (As amended by PD 1073.)

Section 48(b) of the Public Land Act therefore requires that two (2) requisites be satisfied before claims of title to public domain lands may be confirmed: first, that the land subject of the claim is agricultural land; and second, open, continuous, notorious, and exclusive possession of the land since June 12, 1945.

The need for the land subject of the claim to have been classified as agricultural is in conformity with the constitutional precept that "[a]lienable lands of the public domain shall be limited to agricultural lands."[54] As explained in this Court's 2013 Resolution in *Heirs of Malabanan v. Republic*:

> Whether or not land of the public domain is alienable and disposable primarily rests on the classification of public lands made under the Constitution. Under the 1935 Constitution, lands of the public domain were classified into three, namely, agricultural, timber and mineral. Section 10, Article XIV of the 1973 Constitution classified lands of the public domain into seven, specifically, agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing land, with the reservation that the law might provide other classifications. The 1987 Constitution adopted the classification under the 1935 Constitution into agricultural, forest or timber, and mineral, but added national parks. Agricultural lands may be further classified by law according to the uses to which they may be devoted. The identification of lands according to their legal classification is done exclusively by and through a positive act of the Executive Department.
>
> Based on the foregoing, the Constitution places a limit on the type of public land that may be alienated. Under Section 2, Article XII of the 1987 Constitution, only agricultural lands of the public domain may be alienated; all other natural resources may not be.
>
> Alienable and disposable lands of the State fall into two categories, to wit: (a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands

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[54] CONST., Art. XII, Sec. 3. Also, CONST., Art. XII, Sec. 2 states that, "[w]ith the exception of agricultural lands, all other natural resources shall not be alienated."

must only be agricultural. Consequently, lands classified as forest or timber, mineral, or national parks are not susceptible of alienation or disposition unless they are reclassified as agricultural. A positive act of the Government is necessary to enable such reclassification, and the exclusive prerogative to classify public lands under existing laws is vested in the Executive Department, not in the courts.[55]

As the Court of Appeals emphasized, respondent has conceded that the Iligan property was alienable and disposable land:

> As to the first requirement: There was no need for appellees to establish that the property involved was alienable and disposable public land. This characterization of the property is conceded by [respondent] who cites Proclamation No. 2151 as declaring that the disputed property was a certain disposable parcel of public land.[56]

That the Iligan property was alienable and disposable, agricultural land, has been admitted. What is claimed instead is that petitioners' possession is debunked by how the Iligan Property was supposedly part of a military reservation area[57] which was subsequently reserved for Iligan City's slum improvement and resettlement program, and the relocation of families who were dislocated by the National Steel Corporation's five-year expansion program.[58]

Indeed, by virtue of Proclamation No. 2143 (erroneously referred to by respondent as Proclamation No. 2151) certain parcels of land in Barrio Suarez, Iligan City were reserved for

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[55] *Heirs of Malabanan v. Republic*, 717 Phil 141, 161-162 (2013) [Per *J.* Bersamin, *En Banc*], *citing* CONST. (1935), Art. XIII Sec. 1; *Krivenko v. Register of Deeds of Manila*, 79 Phil. 461, 468 (1947) [Per *C.J.* Moran, Second Division]; CONST., Art. XII, Sec. 3; BERNAS, *THE 1987 CONSTITUTION*, 1188-1189 (2009); CIVIL CODE, Art. 425; *Director of Forestry v. Villareal*, 252 Phil. 622 (1989) [Per *J.* Cruz, *En Banc*]; *Heirs of Jose Amunategui v. Director of Forestry*, 211 Phil. 260 (1983) [Per *J.* Gutierrez, Jr., First Division]; and *Director of Lands v. Court of Appeals*, 214 Phil. 606 (1984) [Per *J.* Melencio-Herrera, First Division].

[56] *Rollo*, p. 79.

[57] *Id*. at 144.

[58] *Id*.

slum-improvement and resettlement program purposes.[59] The proclamation characterized the covered area as "disposable parcel of public land":

> WHEREAS, a certain disposable parcel of public land situated at Barrio Suarez, Iligan City consisting of one million one hundred seventy-four thousand eight hundred fifty-three (1,174,853) square meters, more or less, has been chosen by National Steel Corporation and the City Government of Iligan with the conformity of the National Housing/Authority, as the most suitable site for the relocation of the families to be affected/dislocated as a result of National Steel Corporation's program and for the establishment of a slum improvement and resettlement project in the City of Iligan;[60]

However, even if the Iligan Property was subsumed by Proclamation No. 2143, the same proclamation recognized private rights, which may have already attached, and the rights of qualified free patent applicants:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby reserve for relocation of the families to be affected/dislocated by the 5-year expansion program of the National Steel Corporation and for the slum improvement and resettlement project of the City of Iligan under the administration and disposition of the National Housing Authority, subject to private rights, if any there be, Lot 5258 (portion) of the Iligan Cadastre, which parcel of land is of the public domain, situated in Barrio Suarez, City of Iligan and more particularly described as follows:
>
> . . . .
>
> *This Proclamation is subject to the condition that the qualified free patent applicants occupying portions of the aforedescribed parcel of land, if any, may be compensated for the value of their respective portions and existing improvements thereon*, as may be determined by the National Housing Authority.[61]

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[59] *Id*.

[60] Proclamation No. 2143 (1981).

[61] Proclamation No. 2143 (1981).

Whatever rights petitioners (and their predecessors-in-interest) may have had over the Iligan property was, thus, not obliterated by Proclamation No. 2143. On the contrary, the Proclamation itself facilitated compensation.

More importantly, there is documentary evidence to the effect that the Iligan Property was not even within the area claimed by respondent. In a letter[62] to the Director of Lands, dated December 22, 1987, Deputy Public Land Inspector Pio Lucero, Jr. noted that:

> That this land known as Lot No. 5258, Cad. 292, Iligan Cadastre which portion was claimed also by the Human Settlement and/or National Housing Authority; but the area applied for by Leopoldo Delfin is outside the claim of the said agency as per certification issued dated June 10, 1988; copy of which is herewith attached for ready reference;[63]

The same letter likewise indicated that the Iligan Property was already occupied by June 1945 and that it had even been released for agricultural purposes in favor of its occupants.[64] Accordingly, the Deputy Public Land Inspector recommended the issuance of a patent in favor of petitioner Leopoldo Delfin:[65]

> Upon investigation conducted by the undersigned in the premises of the land, it was found and ascertained that the land applied for by Leopoldo Delfin was first entered, occupied, possessed and cultivated by him since the year June, 1945 up to the present; he have already well improved the land and introduced some considerable improvements such as coconut trees and different kinds of fruit trees which are presently all fruit bearing trees; declared the same for taxation purposes and taxes have been paid every year; and that there is no other person or persons who bothered him in his peaceful occupation and cultivation thereof;

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[62] *Rollo*, p. 140

[63] *Id*.

[64] *Id*.

[65] *Id*.

Records of this Office show that said land was surveyed and claimed by the Military Reservation, but the portion of which has been released in favor of the actual occupants and the area of Leopoldo Delfin is one of the portions released for agricultural purposes;

. . . . . .

That the applicant caused the survey of the land under Sgs-12-000099, approved by the Regional Land Director, Region XII, Bureau of Lands, Cotabato City on April 3, 1979 (see approved plan attached hereof);

In view hereof, it is therefore respectfully recommended that the entry of the application be now confirmed and that patent be yes issued in favor of Leopoldo Delfin.[66]

A May 18, 1988 supplemental letter to the Director of the Land Management Bureau further stated:

That the land applied for by Leopoldo Delfin is a portion of Lot No. 5258, Cad. 292, Iligan Cadastre which was entered, occupied and possessed by the said applicant since the year June 1945 up to the present; well improved the same and introduced some considerable improvements such as different kinds of fruit trees, coconut trees and other permanent improvements thereon;

. . . . . .

That is very clear in the 4th Indorsement of the Executive Secretary dated April 24, 1954 the portion thereof that will not be needed for any public or quasi-public purposes, be disposed in favor of the actual occupants under the administration of the Bureau of Lands[.][67]

Clearly then, petitioners acquired title over the Iligan Property pursuant to Section 48(b) of the Public Land Act.

First, there is no issue that the Iligan Property had already been declared to be alienable and disposable land. Respondent has admitted this and Deputy Public Land Inspector Pio Lucero, Jr.'s letters to the Director of Land attest to this.

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[66] *Id*.

[67] *Id*. at 139.

Second, although the Delfin Spouses' testimonial evidence and tax declarations showed that their possession went only as far back as 1952, Deputy Public Land Inspector Pio Lucero, Jr.'s letters to the Director of Land nevertheless attest to a previous finding that the property had already been occupied as early as June 1945.

Having shown that the requisites of Section 48(b) of the Public Land Act have been satisfied and having established their rights to the Iligan Property, it follows that petitioners must be compensated for its taking.

WHEREFORE, the Petition is **GRANTED**. The assailed Court of Appeals Decision dated February 26, 2010 and Resolution dated July 2, 2010 in CA-G.R. CV No. 80017 are **REVERSED and SET ASIDE**. The Regional Trial Court's Decision dated May 20, 2002 in Civil Case No. II-1801 is **REINSTATED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197634. November 28, 2016]

JULIUS B. CAMPOL, *petitioner, vs.* **MAYOR RONALD S. BALAO-AS and VICE-MAYOR DOMINADOR I. SIANEN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE OFFICERS AND EMPLOYEES; AN EMPLOYEE OF THE CIVIL SERVICE HAS THE RIGHT TO BE PROTECTED IN THE POSSESSION AND EXERCISE OF HIS/HER OFFICE, AND HE/SHE CANNOT BE REMOVED FROM HIS/HER EMPLOYMENT SAVE FOR CAUSES ALLOWED BY LAW.— Section 2, paragraph 3 of Article IX-B of the Constitution states — No officer or employee of the civil service shall be removed or suspended except for cause provided by law. This constitutional provision captures the essence of security of tenure. An employee of the civil service has the right to be protected in the possession and exercise of his or her office. He or she cannot be removed from his or her employment save for causes allowed by law. A necessary consequence of the importance given to security of tenure is the rule that an employee invalidly dismissed from service is entitled to reinstatement.

2. ID.; ID.; ID.; TERMINATION OF EMPLOYMENT; REINSTATEMENT OF AN ILLEGALLY DISMISSED CIVIL SERVICE EMPLOYEE IS PROPER EVEN IF HE/SHE HAD ALREADY OBTAINED OTHER EMPLOYMENT WHILE WAITING FOR THE COURT TO RULE ON THE PROPRIETY OF HIS/HER DISMISSAL, AS THE SAME SHOULD NOT BE CONSTRUED AS AN ABANDONMENT OF HIS/HER POSITION, OR EVEN WHEN ANOTHER PERSON IS ALREADY OCCUPYING THE POSITION.— In refusing to order Campol's reinstatement, the CA reasoned that he had already found another employment. x x x. We have reviewed our relevant pronouncements on this matter and we found that as early as 1960, in *Tan v. Gimenez, etc. and Aguilar, etc.*, we have pursued the doctrine that an employee of the civil service illegally dismissed from office has the right to reinstatement. Any other employment he or she obtains while waiting for the court to rule on the propriety of his or her dismissal should not be construed as an abandonment of his or her position. This was echoed in *Gonzales v. Hernandez*, a 1961 case. x x x. This was also our pronouncement in *Tañala v. Legaspi*. In the latter case, we even held that the reinstatement of an illegally dismissed employee is proper even when another person is

already occupying the position. This is not a legal impediment to reinstatement. x x x. In the 2001 case *Canonizado v. Aguirre*, we repeated our ruling in *Tan* and *Gonzales*. x x x. The doctrine in *Tan, Tañala, Gonzales, Salvador* and *Canonizado* is the proper rule. It is more in keeping with the constitutional value placed on security of tenure. To follow the ruling in *Ginson* and *Regis* is to rule in favor of penalizing an illegally dismissed employee. It will render pointless the right of employees of the civil service to security of tenure. It is a doctrine that values technicalities more than justice. It forces an illegally dismissed employee to choose between pursuing his or her case and to fight for his or her rights or to simply accept his or her dismissal and find employment elsewhere. This is not the kind of doctrine that rightfully embodies our aspiration to uphold the Constitution and to render justice. Thus, in accordance with the doctrine in the aforementioned cases, Campol should be reinstated to his position as SB Secretary. In the event that another person has already been appointed to his post, our ruling in *Tañala* should apply. In the eyes of the law, the position never became vacant since Campol was illegally dropped from the rolls. Hence, the incumbency of the person who assumed the position is only temporary and must give way to Campol whose right to the office has been recognized by the proper authorities.

3. ID.; ID.; ID.; ID.; REINSTATEMENT AND FULL BACKWAGES; AN EMPLOYEE OF THE CIVIL SERVICE WHO IS ORDERED REINSTATED IS ALSO ENTITLED TO THE FULL PAYMENT OF HIS/HER BACKWAGES DURING THE ENTIRE PERIOD OF TIME THAT HE/SHE WAS WRONGFULLY PREVENTED FROM PERFORMING THE DUTIES OF HIS/HER POSITION AND FROM ENJOYING ITS BENEFITS.— Campol is entitled to the payment of backwages from the time of his illegal dismissal until he is reinstated to his position. The CA erred in ruling that the backwages should only cover the period of his illegal dismissal until his new employment with the PAO. x x x. Thus, in *Civil Service Commission v. Gentallan*, we categorically declared — An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of her illegal dismissal up to her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is

considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement. x x x. Thus, the Decision, in refusing to award backwages from Campol's dismissal until his actual reinstatement, must be reversed. There is no legal nor jurisprudential basis for this ruling. An employee of the civil service who is ordered reinstated is also entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits. This is necessarily so because, in the eyes of the law, the employee never truly left the office. Fixing the backwages to five years or to the period of time until the employee found a new employment is not a full recompense for the damage done by the illegal dismissal of an employee. Worse, it effectively punishes an employee for being dismissed without his or her fault. In cases like this, the twin award of reinstatement and payment of full backwages are dictated by the constitutional mandate to protect civil service employees' right to security of tenure. Anything less than this falls short of the justice due to government employees unfairly removed from office. This is the prevailing doctrine and should be applied in Campol's case.

4. ID.; ID.; ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO RECEIVE THE SALARY WHICH HE/SHE SHOULD HAVE RECEIVED HAD THE ILLEGAL ACT NOT BE DONE, AND ANY INCOME HE/SHE MAY HAVE OBTAINED DURING THE LITIGATION OF THE CASE SHALL NOT BE DEDUCTED FROM THE AWARD.— This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this—that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. Any income he may have obtained during the litigation of the case shall not be deducted from this amount. This is consistent with our ruling that an employee illegally dismissed has the right to live and to find employment elsewhere during the pendency of the case. At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her what he or she should have received had the illegal act not be done. It is an employer's price or penalty for illegally dismissing an employee.

APPEARANCES OF COUNSEL

Ecca Law Offices for petitioner.
HP Bigornia Law Office for respondents.

D E C I S I O N

JARDELEZA, *J.*:

The Constitution mandates that no employee of the civil service shall be removed from office except for cause provided by law. Corollary to this, any employee illegally dismissed from office is entitled to reinstatement. Any other employment he or she obtains while the case challenging his or her dismissal is pending does not bar his or her right to be reinstated. Similarly, he or she is entitled to the payment of his or her backwages from the time of his or her dismissal until his or her actual reinstatement. The Constitutional requirement of valid cause before an employee of the civil service may be dismissed and the twin remedies of reinstatement and payment of full backwages encapsulate the essence of security of tenure.

Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court (Petition).[1] The Petition seeks the partial reversal of the ruling of the Court of Appeals (CA) dated December 15, 2010 (Decision)[2] and its resolution dated June 27, 2011 (Assailed Resolution)[3] which denied Petitioner Julius B. Campol's (Campol) motion for reconsideration of the Decision. The Decision reversed the Civil Service Commission (CSC) which found that Campol was validly dismissed from the service. While the CA found that Campol was illegally

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[1] *Rollo*, pp. 3-19.

[2] *Id.* at 21-36. Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Elihu A. Ybañez, concurring.

[3] *Id.* at 51-52.

dismissed, it nevertheless refused to order his reinstatement. Campol challenges this ruling before us.

Facts

Campol served the Municipality of Boliney, Abra since 1999 as Secretary to the *Sangguniang Bayan* (SB).[4] He held the position in a permanent capacity with salary grade 24.[5]

During the 2004 elections, Ronald S. Balao-as (Balao-as) and Dominador J. Sianen (Sianen), respondents in this case, won as mayor and vice-mayor, respectively (collectively, Respondents). They assumed office in July 2004. Shortly after this, the SB passed a resolution terminating Campol as SB Secretary on the ground that he was absent without approved leave from August 1, 2004 to September 30, 2004.[6] However, when the resolution was transmitted to the *Sangguniang Panlalawigan* (SP), it referred the matter to CSC-Abra.[7] CSC-Abra then wrote Sianen informing him that Campol cannot be removed from his position because he is protected by the Administrative Code. The SP followed this advice.[8] The Department of Interior and Local Government (DILG)-Abra also took the same position.[9] Despite the unanimous position of these three agencies, Sianen issued Memorandum Order No. 001, Series of 2004, which dropped Campol from the rolls.[10]

Campol challenged this memorandum before the CSC-CAR, which ruled in his favor.[11] Sianen, in turn, elevated the matter before the CSC. The CSC granted his appeal and ruled that Campol was properly dropped from the rolls.[12]

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[4] *Id.* at 22.

[5] *Id.* at 4.

[6] *Id.* at 4-5, 22.

[7] *Id.* at 5.

[8] *Id.*

[9] *Rollo*, p. 6.

[10] *Id.* at 23.

[11] *Id.*

[12] *Rollo*, p. 24.

Campol filed a petition for review under Rule 43 of the Rules of Court before the CA.[13] Campol contested the allegation that he committed absences without any approved leave. To substantiate his claim, Campol stated that he in fact received his salary for September 2004. He also sought to prove, through the logbook of meetings that he kept as Secretary of the SB, that he was present on August 2, 9, 16, 23, 30 and September 6, 13 and 20, 2004. He also claimed that Sianen denied his application for sick leave from September 16 to 24, 2004 so as to make it appear that he was absent for more than 30 days. Further, even assuming that his absences without leave were true, Campol challenged the propriety of his summary dismissal arguing that he was deprived of his right to due process.[14]

The CA, in its Decision, reversed the CSC. The CA ruled that no ground exists to justify Campol's dismissal.[15] However, while the CA ruled that Campol was illegally dropped from the rolls, it refused to order his reinstatement. The CA reasoned that since Campol was already gainfully employed with the Public Attorney's Office (PAO) since October 2005, reinstatement was no longer possible. It also held that Campol is entitled to backwages only from the time of his dismissal until October 2005, prior to his employment with another government agency.[16] According to the CA –

> In the case at bar, Campol's dropping from the rolls is found to be invalid. His reinstatement as SB Secretary though is no longer viable considering that since October, 2005, he was gainfully employed at PAO. Thus, payment of his backwages and benefits covering the period effective from the time he was dropped from the rolls up to October, 2005 is in order.[17]

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[13] *Id.*

[14] *Rollo*, p. 26.

[15] *Id.* at 33.

[16] *Id.* at 35.

[17] *Id.*

Campol filed this Petition for Review on *Certiorari*[18] challenging the CA's refusal to order his reinstatement. He also asserts that the CA erred in ordering the payment of his backwages only up to October 2005.

Campol admits that indeed, he has been employed as administrative aide IV by the PAO since October 2005. He adds, however, that he was forced to find another job in order to provide for his two young daughters. He relates that during the pendency of this case, his wife, a PAO lawyer, was gunned down on September 5, 2005. Thus, in the face of the loss of his wife and his continuing unemployment, Campol had no choice but to accept a job from the agency that formerly employed his wife. He highlights that his position as SB Secretary falls under salary grade 24 while his employment with PAO as administrative aide IV is only salary grade 4. He was, nevertheless, compelled to take the job for the sake of his two daughters.[19]

Campol argues that the Decision, in refusing his reinstatement and limiting the grant of backwages to October 2005, contradicted prevailing jurisprudence.

The Respondents did not file any comment despite the order of this Court.

Issue

The only issue before us is whether Campol is entitled to reinstatement and to the payment of his backwages from the time of his dismissal until he is reinstated.

Ruling

We note that Campol's unlawful dismissal happened in 2004. The Decision which ruled that he was illegally dropped from the rolls was promulgated in 2010. Had it not been for the improper appreciation of the applicable laws and jurisprudence, Campol should have been reinstated to his rightful position as SB Secretary five years ago. We commiserate with Campol for

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[18] *Supra* note 1.

[19] *Rollo*, p. 14.

the years he spent waiting for justice to finally and rightfully be given to him. We grant the prayers in his petition.

We rule that Campol should be reinstated. He must also be paid his backwages from the time he was illegally dismissed until his reinstatement.

The Law on Reinstatement

Section 2, paragraph 3 of Article IX-B of the Constitution states —

> No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

This constitutional provision captures the essence of security of tenure. An employee of the civil service has the right to be protected in the possession and exercise of his or her office. He or she cannot be removed from his or her employment save for causes allowed by law. A necessary consequence of the importance given to security of tenure is the rule that an employee invalidly dismissed from service is entitled to reinstatement.

The CA, however, in its Decision, posits that there is an exception to this general rule. In refusing to order Campol's reinstatement, the CA reasoned that he had already found another employment. Thus, following the CA's logic, once an employee illegally dismissed has found a new employment, reinstatement is no longer the rule.

The CA did not cite any law, rule or jurisprudence to support its ruling. A proper adjudication of the issue presented before this Court requires an examination of the relevant legal principles as applied in jurisprudence. Thus, we shall revisit applicable jurisprudence in order to ascertain the correct doctrine in this case and to guide the bench and the bar in future cases involving the same question.

We note that the ruling of the CA was also the tenor of our decision in the 1988 case *Ginson v. Municipality of Murcia*.[20]

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[20] G.R. No. L-46585, February 8, 1988, 158 SCRA 1.

In this case, we held that while Ginson was illegally dismissed from her position in the Municipality of Murcia and thus, entitled to reinstatement, this is subject to the condition that she has not obtained any other employment. The ruling in *Ginson* was repeated in the 1991 case *Regis, Jr. v. Osmeña, Jr.*[21] None of these cases, however, fully explains the rationale for making reinstatement subject to a condition. We have reviewed our relevant pronouncements on this matter and we found that as early as 1960, in *Tan v. Gimenez, etc. and Aguilar, etc.*,[22] we have pursued the doctrine that an employee of the civil service illegally dismissed from office has the right to reinstatement. Any other employment he or she obtains while waiting for the court to rule on the propriety of his or her dismissal should not be construed as an abandonment of his or her position. This was echoed in *Gonzales v. Hernandez*,[23] a 1961 case. In this case, Gonzales was initially dismissed from service in the Department of Finance. During the pendency of his appeal, he accepted employment in the Government Service Insurance System (GSIS). His dismissal was eventually reversed and the penalty lowered to suspension. We held in this case that his employment in the GSIS is no hindrance to his reinstatement. We categorically stated that Gonzales had the right to live during his appeal which necessarily means that he can accept any form of employment.

This was also our pronouncement in *Tañala v. Legaspi*.[24] In the latter case, we even held that the reinstatement of an illegally dismissed employee is proper even when another person is already occupying the position. This is not a legal impediment to reinstatement. Citing *Batungbakal v. National Development Company*,[25] we explained in *Tañala* that —

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[21] G.R. No. L-26785, May 23, 1991, 197 SCRA 308.

[22] *Tan v. Gimenez*, 107 Phil. 17 (1960).

[23] G.R. No. L-15482, May 30, 1961, 2 SCRA 228.

[24] G.R. No. L-22537, March 31, 1965, 13 SCRA 566.

[25] 93 Phil. 182 (1953).

x x x [W]hen a regular government employee was illegally suspended or dismissed, legally speaking, his position never become vacant, hence there was no vacancy to which a new incumbent could be permanently appointed it being considered that the incumbency of the person appointed to the position is temporary and he has to give way to the employee whose right to the office has been recognized by the competent authorities. x x x[26]

We also highlight that more recent cases have moved away from the ruling in *Ginson* and *Regis* in favor of the earlier cases of *Tan* and *Tañala.* In the 2000 case *Salvador v. Court of Appeals (Special Sixth Division)*,[27] we stated –

The anxiety and fear of losing one's job after more than twenty-seven continuous years of service with the DENR, experienced by petitioner during the time of the reorganization of DENR, must have compelled him to accept a position which was not only lower but of a coterminous status. Any man in such an uncertain and economically threatening condition would be expected to take whatever measures are available to ensure a means of sustenance for himself and his family. This would include finding employment as soon as possible in order to meet the daily financial demands of his family. **Petitioner's application for and acceptance of a lower position in the DENR, under the circumstances, was the practical and responsible thing to do, and cannot be construed against him such as to foreclose his right to question the legality of his termination and to claim the position he held previous to the reorganization. Succinctly put, applying for new employment was not a choice for petitioner but a necessity.**[28]

In the 2001 case *Canonizado v. Aguirre*,[29] we repeated our ruling in *Tan* and *Gonzales.* Canonizado was removed from his office as commissioner of the National Police Commission by virtue of a law which this Court eventually declared as unconstitutional. During the pendency of the case before us,

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[26] *Supra* note 24 at 575.

[27] G.R. No. 127501, May 5, 2000, 331 SCRA 438.

[28] *Id.* at 444-445. Emphasis supplied.

[29] G.R. No. 133132, February 15, 2001, 351 SCRA 659.

Canonizado accepted another government appointment as Inspector General of the Internal Affairs Service of the Philippine National Police. We ruled that Canonizado is entitled to reinstatement to his prior position, although he must first resign from his second employment. We explained –

> **A contrary ruling would deprive petitioner of his right to live, which contemplates not only a right to earn a living, as held in previous cases, but also a right to lead a useful and productive life**. Furthermore, prohibiting Canonizado from accepting a second position during the pendency of his petition would be to unjustly compel him to bear the consequences of an unconstitutional act which under no circumstance can be attributed to him. However, before Canonizado can re-assume his post as Commissioner, he should first resign as Inspector General of the IAS-PNP.[30]

The doctrine in *Tan, Tañala, Gonzales, Salvador* and *Canonizado* is the proper rule. It is more in keeping with the constitutional value placed on security of tenure. To follow the ruling in *Ginson* and *Regis* is to rule in favor of penalizing an illegally dismissed employee. It will render pointless the right of employees of the civil service to security of tenure. It is a doctrine that values technicalities more than justice. It forces an illegally dismissed employee to choose between pursuing his or her case and to fight for his or her rights or to simply accept his or her dismissal and find employment elsewhere. This is not the kind of doctrine that rightfully embodies our aspiration to uphold the Constitution and to render justice.

Thus, in accordance with the doctrine in the aforementioned cases, Campol should be reinstated to his position as SB Secretary. In the event that another person has already been appointed to his post, our ruling in *Tañala* should apply. In the eyes of the law, the position never became vacant since Campol was illegally dropped from the rolls. Hence, the incumbency of the person who assumed the position is only temporary and must give way to Campol whose right to the office has been recognized by the proper authorities.

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[30] *Id.* at 672. Emphasis supplied.

The Law on Backwages

Campol is entitled to the payment of backwages from the time of his illegal dismissal until he is reinstated to his position. The CA erred in ruling that the backwages should only cover the period of his illegal dismissal until his new employment with the PAO.

An employee of the civil service who is invalidly dismissed is entitled to the payment of backwages. While this right is not disputed, there have been variations in our jurisprudence as to the proper fixing of the amount of backwages that should be awarded in these cases. We take this opportunity to clarify the doctrine on this matter.

Ginson and *Regis* also involved the question of the proper fixing of backwages. Both cases awarded backwages but limited it to a period of five years. *Ginson* does not provide for an exhaustive explanation for this five-year cap. *Regis*, on the other hand, cites *Cristobal v. Melchor*,[31] *Balquidra v. CFI of Capiz, Branch II*,[32] *Laganapan v. Asedillo*,[33] *Antiporda v. Ticao*,[34] and *San Luis v. Court of Appeals*,[35] in support of its ruling. We note that these cases also do not clearly explain why there must be a cap for the award of backwages, with the exception of *Cristobal*. In *Cristobal*, a 1977 case, we held that the award of backwages should be for a fixed period of five years, applying by analogy the then prevailing doctrine in labor law involving employees who suffered unfair labor practice.[36] We highlight that this rule has been rendered obsolete by virtue of Republic Act No. 6175[37] which amended the Labor Code. Under the Labor

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[31] G.R. No. L-43203, July 29, 1977, 78 SCRA 175.

[32] G.R. No. L-40490, October 28, 1977, 80 SCRA 123.

[33] G.R. No. L-28353, September 30, 1987, 154 SCRA 377.

[34] G.R. No. L-30796, April 15, 1988, 160 SCRA 40.

[35] G.R. No. 80160, June 26, 1989, 174 SCRA 258.

[36] *Supra* note 31 at 187.

[37] An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful

Code, employees illegally dismissed are entitled to the payment of backwages from the time his or her compensation was withheld up to the time of his or her actual reinstatement.[38]

In 2005, our jurisprudence on backwages for illegally dismissed employees of the civil service veered away from the ruling in *Cristobal*.

Thus, in *Civil Service Commission v. Gentallan*,[39] we categorically declared –

> An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of her illegal dismissal up to her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement.[40]

We repeated this ruling in the 2005 case *Batangas State University v. Bonifacio*,[41] in the 2007 case *Romagos v. Metro Cebu Water District*,[42] and in the 2010 case *Civil Service Commission v. Magnaye, Jr.*[43]

Thus, the Decision, in refusing to award backwages from Campol's dismissal until his actual reinstatement, must be reversed. There is no legal nor jurisprudential basis for this

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Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for These Purposes Certain Provisions of Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, Appropriating Funds Therefore and for Other Purposes (1989).

[38] LABOR CODE, Art. 294.

[39] G.R. No. 152833, May 9, 2005, 458 SCRA 278.

[40] *Id.* at 286.

[41] G.R. No. 167762, December 15, 2005, 478 SCRA 142.

[42] G.R. No. 156100, September 12, 2007, 533 SCRA 50.

[43] G.R. No. 183337, April 23, 2010, 619 SCRA 347.

ruling. An employee of the civil service who is ordered reinstated is also entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits. This is necessarily so because, in the eyes of the law, the employee never truly left the office. Fixing the backwages to five years or to the period of time until the employee found a new employment is not a full recompense for the damage done by the illegal dismissal of an employee. Worse, it effectively punishes an employee for being dismissed without his or her fault. In cases like this, the twin award of reinstatement and payment of full backwages are dictated by the constitutional mandate to protect civil service employees' right to security of tenure. Anything less than this falls short of the justice due to government employees unfairly removed from office. This is the prevailing doctrine and should be applied in Campol's case.

This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this—that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. Any income he may have obtained during the litigation of the case shall not be deducted from this amount. This is consistent with our ruling that an employee illegally dismissed has the right to live and to find employment elsewhere during the pendency of the case. At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her what he or she should have received had the illegal act not be done. It is an employer's price or penalty for illegally dismissing an employee.[44]

We note that even in labor law, this is now the prevailing rule. In *Bustamante v. National Labor Relations Commission*,[45]

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[44] *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 399, citing *Bustamante v. National Labor Relations Commission*, G.R. No. 111651, November 28, 1996, 265 SCRA 61, 70-71.

[45] *Supra.*

we reversed the prior doctrine that an employee illegally dismissed is entitled to backwages less the salary he or she received from his or her employment during the pendency of the case. In cases prior to *Bustamante*, we limited the right of an illegally dismissed employee to backwages less earnings from employment elsewhere on the premise that this doctrine will avoid unjust enrichment on the part of the employee at the expense of the employer. We reversed this, however, in *Bustamante* and grounded our ruling first, on an employee's right to earn a living and second, on the duty of an employer to pay backwages as a penalty for the illegal dismissal. In the later case *Equitable Banking Corporation v. Sadac*,[46] we added that in arriving at the doctrine in *Bustamante*, this Court ceased to consider equity as the determining factor in ascertaining the amount of backwages that should be awarded in cases where the illegally dismissed employee obtains employment during the pendency of his or her case. What is determinative is the employer's obligation to pay full backwages. We said, "[i]t is an obligation of the employer because it is 'the price or penalty the employer has to pay for illegally dismissing his employee.'"[47]

We rule that employees in the civil service should be accorded this same right. It is only by imposing this rule that we will be able to uphold the constitutional right to security of tenure with full force and effect. Through this, those who possess the power to dismiss employees in the civil service will be reminded to be more circumspect in exercising their authority as a breach of an employee's right to security of tenure will lead to the full application of law and jurisprudence to ensure that the employee is reinstated and paid complete backwages.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' Decision dated December 15, 2010 is **REVERSED** insofar as it did not order Campol's reinstatement and limited the award of backwages to cover only the period from his dismissal until his new employment. This Court **ORDERS**

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[46] *Supra*.

[47] *Id.* at 402.

Campol's reinstatement to the position of *Sangguniang Bayan* Secretary of the Municipality of Boliney, Abra, provided that he first resigns from his current employment. This Court also **AWARDS** Campol backwages to be computed from the time that he was illegally dropped from the rolls until he is reinstated to his position.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *del Castillo,*[*] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 204736. November 28, 2016]

MANULIFE PHILIPPINES, INC.,[1] *petitioner, vs.* **HERMENEGILDA YBAÑEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN APPEAL BY *CERTIORARI* TO THE COURT UNDER RULE 45 OF THE REVISED RULES OF COURT, THE FINDINGS OF FACT BY THE COURT OF APPEALS, ESPECIALLY WHERE SUCH FINDINGS OF FACT ARE AFFIRMATORY OR CONFIRMATORY OF THE FINDINGS OF FACT OF THE REGIONAL TRIAL COURT, ARE CONCLUSIVE UPON THIS COURT;

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[*] Designated as Additional Member in lieu of Hon. Diosdado M. Peralta, per Raffle dated August 8, 2011.

[1] Also referred to as "Manufacturers Life Insurance Company (Philippines)" or "The Manufacturers Life Insurance Co. (Phils.), Inc." in some parts of the records.

EXCEPTIONS; NOT PRESENT.— It is horn-book law that in appeal by *certiorari* to this Court under Rule 45 of the Revised Rules of Court, the findings of fact by the CA, especially where such findings of fact are affirmatory or confirmatory of the findings of fact of the RTC, as in this case, are conclusive upon this Court. The reason is simple: this Court not being a trial court, it does not embark upon the task of dissecting, analyzing, evaluating, calibrating or weighing all over again the evidence, testimonial or documentary, that the parties adduced during trial. Of course, there are exceptions to this rule, such as (1) when the conclusion is grounded upon speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when 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 there is no citation of specific evidence on which the factual findings are based; (7) when the findings of absence of facts is contradicted by the presence of evidence on record; (8) when the findings of the CA are contrary to the findings of the RTC; (9) when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the CA are beyond the issues of the case; and, (11) when the CA's findings are contrary to the admission of both parties. We are satisfied that none of these exceptions obtains in the Petition at bench. Thus, this Court must defer to the findings of fact of the RTC — as affirmed or confirmed by the CA — that Manulife's Complaint for rescission of the insurance policies in question was totally bereft of factual and legal bases because it had utterly failed to prove that the insured had committed the alleged misrepresentation/s or concealment/s of material facts imputed against him.

2. **COMMERCIAL LAW; INSURANCE LAW; MISREPRESENTATION AS A DEFENSE OF THE INSURER TO AVOID LIABILITY IS AN AFFIRMATIVE DEFENSE AND THE DUTY TO ESTABLISH SUCH DEFENSE BY SATISFACTORY AND CONVINCING EVIDENCE RESTS UPON THE INSURER.—** Manulife had utterly failed to prove by convincing evidence that it had been beguiled, inveigled, or cajoled into selling the insurance to the insured who purportedly with malice and deceit passed himself off as thoroughly sound and healthy, and thus a fit and proper

applicant for life insurance. Manulife's sole witness gave no evidence at all relative to the particulars of the purported concealment or misrepresentation allegedly perpetrated by the insured. x x x. "The fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract. Misrepresentation as a defense of the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the insurer." For failure of Manulife to prove intent to defraud on the part of the insured, it cannot validly sue for rescission of insurance contracts.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Edgardo J. Mayol for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[2] are the April 26, 2012 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 95561 and its December 10, 2012 Resolution[4] which affirmed the April 22, 2008 Decision[5] and the June 15, 2009 Order[6] of the Regional Trial Court (RTC), Branch 57, Makati City in Civil Case No. 04-1119.

Factual Antecedents

Before the RTC of Makati City, Manulife Philippines, Inc. (Manulife) instituted a Complaint[7] for Rescission of Insurance

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[2] *Rollo*, pp. 14-56.

[3] CA *rollo*, pp. 144-160; penned by Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Mario V. Lopez and Angelita A. Gacutan.

[4] CA *rollo*, p. 253.

[5] Records, pp. 457-463; penned by Pairing Judge Reynaldo M. Laigo.

[6] *Id*. at 547.

[7] *Id*. at 7.

Contracts against Hermenegilda Ybañez (Hermenegilda) and the BPI Family Savings Bank (BPI Family). This was docketed as Civil Case No. 04-1119.

It is alleged in the Complaint that Insurance Policy Nos. 6066517-1[8] and 6300532-6[9] (subject insurance policies) which Manulife issued on October 25, 2002 and on July 25, 2003, respectively, both in favor of Dr. Gumersindo Solidum Ybañez (insured), were void due to concealment or misrepresentation of material facts in the latter's applications for life insurance, particularly the forms entitled Non-Medical Evidence dated August 28, 2002 (NME),[10] Medical Evidence Exam dated September 10, 2002 (MEE),[11] and the Declaration of Insurability in the Application for Life Insurance (DOI) dated July 9, 2003;[12] that Hermenegilda, wife of the said insured, was revocably designated as beneficiary in the subject insurance policies; that on November 17, 2003, when one of the subject insurance policies had been in force for only one year and three months, while the other for only four months, the insured died; that on December 10, 2003, Hermenegilda, now widow to the said insured, filed a Claimant's Statement-Death Claim[13] with respect to the subject insurance policies; that the Death Certificate dated November 17, 2003[14] stated that the insured had "Hepatocellular CA., Crd Stage 4, secondary to Uric Acid Nephropathy; SAM Nephropathy recurrent malignant pleural effusion; NASCVC"; that Manulife conducted an investigation into the circumstances leading to the said insured's death, in view of the aforementioned entries in the said insured's Death Certificate; that Manulife thereafter concluded that the insured misrepresented or concealed material

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[8] *Id*. at 273-275.

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

[10] *Id*. at 283 and 284 (front and dorsal side).

[11] *Id*. at 285; front and dorsal side.

[12] *Id*. at 286 (front and dorsal side) and 287.

[13] *Id*. at 290.

[14] *Id*. at 291.

facts at the time the subject insurance policies were applied for; and that for this reason Manulife accordingly denied Hermenegilda's death claims and refunded the premiums that the insured paid on the subject insurance policies.[15]

Manulife also set forth in said Complaint the details of the insured's supposed misrepresentation/s or concealment/s, to wit:

> 2.6. On the basis of the authority granted by [Hermenegilda] in her Claimant's Statement (Annex "H"), [Manulife] conducted an investigation [into] the Insured's medical records and history, and discovered that the Insured concealed material facts which the law, good faith, and fair dealing required him to reveal when he answered the [NME] (Annex "C"), [the MEE] (Annex "D"), and [the DOI] (Annex "E"), as follows:
>
> (1) Insured's confinement at the Cebu Doctors' Hospital [CDH] from 27 December 2000 to 31 December 2000, wherein he underwent total parotidectomy on 28 December 2000 due to the swelling of his right parotid gland and the presence of a tumor, and was found to have had a history of being hypertensive, and his kidneys have become atretic or shrunken. A copy of each of the Admission and Discharge Record and PGIS' Interns' Progress Notes and Operative Record of the [CDH] is attached hereto and made an integral part hereof as Annex "K", "K-1", and "K-2", respectively.
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> (2) Insured's confinement at the CDH from 9 May 2002 to 14 May 2002, wherein he was diagnosed to have acute pancreatitis, in addition to being hypertensive. A copy [of] each of the Insured's Admission and Discharge Record and Doctor's History/Progress Notes is attached hereto and made an integral part hereof as Annex "L" and "L-1", respectively.
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> (3) Insured's diagnosis for leptospirosis in 2000. A copy [of] each of the Insured's Admission and Discharge Record and History Sheet is attached hereto and made an integral part hereof as Annex "M" and "M-1", respectively.
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> x x x x x x x x x

[15] *Id*. at 303-310.

2.8. Due to the Insured's concealment of material facts at the time the subject insurance policies were applied for and issued, [Manulife] exercised its right to rescind the subject insurance contracts and denied the claims on those policies.

x x x x x x x x x[16]

Manulife thus prayed that judgment be rendered finding its act of rescinding the subject insurance policies proper; declaring these subject insurance policies null and void; and discharging. it from any obligation whatsoever under these policies.[17]

In her Answer, Hermenegilda countered that:

6. [Manulife's own insurance agent, Ms. Elvira Monteclaros herself] assured [the insured,] that there would be no problem regarding the application for the insurance policy. In tact, it was Monteclaros who filled up everything in the questionnaire (Annex "C" of the [C]omplaint), so that [all that the insured needed to do was sign it,] and it's done. [It was also Ms. Monteclaros who herself] checked in advance all the boxes in Annex "C," [that the insured himself was required to answer or check].

x x x x x x x x x

10. The four grounds for denial as enumerated in Annex "N" of the complaint are refuted as follows:

> 1) [The insured's] hospital confinement on 27 December 2000 at [the CDH was] due to right parotid swelling secondary to tumor [for which he] underwent Parotidectomy on 28 December 2000. (There is an obvious scar and disfigurement in the right side of [the insured's] face, in front, and below his ear. This [ought to] have been easily noticed by [Manulife's company] physician, Dr. [Winifredo] Lumapas.
>
> 2) [The insured's] history of Hypertension [has been] noted 03 years prior to [the insured's] admission on 27 December 2000. (This is not something serious or fatal)
>
> 3) [The insured's] history of Leptospirosis in 2000. (This is not confirmed)

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

[17] *Id*. at 6.

> 4) [The insured's] hospital confinement [at the CDH] on 09 May 2002 with findings of Acute Pancreatitis (This is related to the gallstones of [the insured]. When the gallbladder is diseased, distention is impossible and its pressure regulating function is lost — a fact that may explain high incidence of pancreatitis in patient with cholecystic disease. [The insured] had cholecystitis, so his acute pancreatitis is related to the cholecystitis and chol[e]lithiasis (gallstones).
>
> x x x x x x x x x

11. [Manulife] accepted [the insured's] application, and now that a claim for the benefits [is] made, [Manulife now] says that [the insured] misrepresented and concealed his past illnesses[!] In the form filled up by [Dr. Winifredo F. Lumapas,] Manulife's [company] physician, dated 9/10/02, [the insured] checked the column which says "yes" (to] the following questions:

> • Have you had electrocardiograms, when, why, result? ([Manulife's company physician] wrote the answer which stated that result was normal.)
>
> • Have you seen a doctor, or had treatment operation on hospital case during the last five years?

12. x x x It is rather strange that [the insured's] parotidectomy was not included in the report <u>when the scar of that operation can not be concealed because it caused a disfigurement in the right side of his face in front and below his ear</u>. This is just too obvious to be overlooked by [Manulife's company physician] who examined and interviewed [the insured] before accepting the policy. x x x

13. x x x [Undoubtedly, Manulife] had the option to inquire further [into the insured's physical condition, because the insured had given it authority to do so] based on the authority given by [the insured. And how come that Manulife] was able to gather all [these] information now and not before [the insured] was ensured? x x x

x x x x x x x x x

16. Moreover, in the comments of [the said] Dr. Lumapas, (Annex "D" of the Complaint), he said the physical condition of [the] then prospective insurance policy holder, [the insured, was] "<u>below average</u>". x x x [Estoppel now bars Manulife from claiming the contrary.]

17. [Especially] worth noting are the [following] comments of [the said Dr. Lumapas, on the insured's answer to the questionnaires] — (Annex "D" of the Complaint), [to wit:]

> "4. d. Have you had any electrocardiograms, when, why, result. "**Yes**"
> - on June 2002 at CDH, Cebu City
> = Cardiac clearance for surgery
>
> = **Result normal**
>
> 16. Have you seen a doctor, or had treatment, operation or hospital care during the last 5 years? "**Yes**" admitted at [CDH,] Cebu City by Dr. Lamberto Garcia and Dr. Jorge Ang for Chronic Calculous Chol[e]cystitis
> = Cholecystectomy done [J]une 7[,] 2002 by Dr. Ang
> = Biopsy: Gallbladder Chronic Calculous Cholecystitis
> = CBC, Hepatitis Panel done - **all negative results** except hepatitis antigen (+)
>
> 18. Do you. consume alcohol beverages? If so, how much? **Yes**, consumes 1-2 shots of whisky during socials.
>
> 25. The abdomen - Abnormality of any viscus, genitalia or evidence of hernia or operation - post cholecystectomy scar.
>
> 26. The head and neck - vision, optic, fundi, hearing, speech, thyroid etc. **Yes** wears eyeglasses for reading. (This is where [Manulife's company physician] should have written the scar of [the insured's] parotidectomy as shown in the picture).
>
> 32. From your knowledge of this person would you consider his/ her health to be Average [ ] **Below average** [/] Poor [ ]

(Underscoring ours)

18. It is interesting to note that the answers in the insurance agent's form for [the insured] (Annex "C" of the Complaint) did **not** jibe with the answers [made by] Dr. Lumapas in Annex "D" of the Complaint. This only boosts Hermenegilda's claim that x x x indeed, it was the Manulife's agent herself, (Ms. Montesclaros) who checked all the items in the said form to speed up the insurance application and its approval, [so she could] get her commission as soon as possible.

19. In fine, at the time when both insurance policies in question were submitted for approval to [Manulife, the latter had had all the

forewarnings that should have put it on guard or on notice that things were not what it wanted them to be, reason enough to bestir it into exercising greater prudence and caution to further inquire into) the health or medical history of [the insured]. In particular, Manulife ought to have noted the fact that the insured was at that time already 65 years old, x x x that he had a previous operation, and x x x that his health was "below average. x x x[18]

On November 25, 2005, BPI Family filed a Manifestation[19] praying that either it be dropped from the case or that the case be dismissed with respect to it (BPI Family), because it no longer had any interest in the subject insurance policies as asssignee because the insured's obligation with it (BPI Family) had already been settled or paid. Since no objection was interposed to this prayer by either Manulife or Hermenegilda, the RTC granted this prayer in its Order of November 25, 2005.[20]

Then in the Second Order dated November 25, 2005,[21] the RTC considered the pre-trial as terminated. Trial then ensued.

Manulife presented its sole witness in the person of Ms. Jessiebelle Victoriano (Victoriano), the Senior Manager of its Claims and Settlements Department.[22] The oral testimony of this witness chiefly involved identifying herself as the Senior Manager of Manulife's Claims and Settlements Department and also identifying the following pieces of evidence:[23] the subject insurance policies; NME, MEE, DOI; the Assignment of Policy No. 6066517-1 to BPI Family as collateral, dated July 9, 2003; its Letter dated July 10, 2003 *re*: assignment of said Policy; death claim filed by Hermenegilda on December 10, 2003; the insured's Death Certificate; the Marriage Contract between the insured and Hermenegilda; copies of CDH's Admission and

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

[19] *Id*. at 241-243.

[20] *Id*. at 246.

[21] *Id*. at 247-248.

[22] TSN, April 6, 2006 and June 22, 2006.

[23] Records, pp. 266-311.

Discharge Records of the insured for December 2000 *re*: parotidectomy; copies of CDH's PGIS' Interns' Notes and CDH Operative Record dated December 28, 2000 *re*: hypertension; copies of CDH's Admission and Discharge Record of the insured for May 2002, and the Doctor's History/Progress Notes *re*: acute pancreatitis and hypertension; copies of CDH's Admission and Discharge Record of the insured for October 2003 *re*: leptospirosis; letters dated March 24, 2004 to Hermenegilda and BPI Family; and BPI Checks deposited on April 10, 2004 and May 14, 2004 to the bank accounts of BPI Family and Hermenegilda, respectively, representing the premium refund.

In its Order of October 2, 2006,[24] the RTC admitted all these exhibits.

Like Manulife, Hermenegilda, in amplication of her case, also called only one witness to the witness stand: her counsel of record, Atty. Edgardo Mayol (Atty. Mayol), whose testimony focused on his professional engagement with Hermenegilda and the monetary expenses he incurred in attending to the hearings in this case.[25] Hermenegilda thereafter filed her Formal Offer of Evidence[26] wherein she proffered the following: NME, MEE, DOI, the insured's driver's license, her letter dated May 8, 2004 protesting the denial by Manulife of her insurance claim, the contract of services between her and Atty. Mayol, the official receipts for plane tickets, terminal fees, and boarding passes, attesting to Atty. Mayol's plane travels to and from Cebu City to attend to this case. These were all admitted by the RTC.[27]

Ruling of the Regional Trial Court

After due proceedings, the RTC dismissed Manulife's Complaint, thus:

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[24] *Id*. at 314.

[25] TSN, March 13, 2007 and June 7, 2007.

[26] Records, pp. 348-368.

[27] *Id*. at 404.

WHEREFORE, premises duly considered, judgment is hereby rendered DISMISSING the instant case for insufficiency of evidence.

[Manulife] is hereby ordered to pay [Hermenegilda] actual expenses in the sum of ₱40,050.00 and attorney's fees in the sum of ₱100,000.

[Hermenegilda's] claim for moral and exemplary damages is denied for lack of evidence.

SO ORDERED.[28]

The RTC found no merit at all in Manulife's Complaint for rescission of the subject insurance policies because it utterly failed to prove that the insured had committed the alleged misrepresentation/s or concealment/s. In fact, Victoriano, the one and only witness that Manulife called to the witness stand, gave no first-hand, direct evidence at all relative to the particulars of the alleged misrepresentation/s or concealment/s that the insured allegedly practiced or committed against it. This witness did not testify at all in respect to the circumstances under which these documentary exhibits were executed, nor yet about what these documentary exhibits purported to embody. The RTC stressed that the CDH medical records that might or could have established the insured's misrepresentation/s or concealment/s were inadmissible for being hearsay, because Manulife did not present the physician or doctor, or any responsible official of the CDH, who could confirm the due execution and authenticity of its medical records; that if anything, Manulife itself admitted in its Reply[29] that its very own company physician, Dr. Winifredo Lumapas, had duly noted the insured's scar, even as the same company physician also categorized in the MEE the insured's health as "below average"; and that in short, it is evident that Manulife thus had had ample opportunity to verify and to inquire further into the insured's medical history commencing from the date of the MEE but opted not to do so; and that if things did not come up to its standards or expectations, it was totally at liberty to reject the insured's applications altogether, or it could have demanded a higher premium for the insurance coverage.

[28] *Id*. at 463.

[29] *Id*. at 157.

The RTC further ruled that Hermenegilda was entitled to attorney's fees in the sum of ₱100,000.00 and actual expenses in the amount of ₱40,050.00, because she was compelled to litigate to defend her interest against Manulife's patently unjustified act in rejecting her clearly valid and lawful claim. The RTC also found merit in Hermenegilda's claims relative to the expenses she paid her Cebu-based counsel.

In its Order of June 15, 2009,[30] the RTC denied for lack of merit Manulife's motion for reconsideration[31] and Hermenegilda's motion for partial reconsideration.[32]

From the RTC's Decision, Manulife filed a Notice of Appeal[33] which was given due course by the RTC in its Order of June 11, 2010.[34]

Ruling of the Court of Appeals

In its appellate review, the CA virtually adopted *en toto* the findings of facts made by, and the conclusions of law arrived at, by the RTC. Thus, the CA decreed:

> WHEREFORE, the instant appeal is DENIED. The assailed Decision dated April 22, 2008 and Order dated June 15, 2009 of the Regional Trial Court of Makati, Branch 57, are hereby AFFIRMED.
>
> SO ORDERED.[35]

The CA, like the RTC, found Manulife's Complaint bereft of legal and factual bases. The CA ruled that it is settled that misrepresentation or concealment in insurance is an affirmative defense, which the insurer must establish by convincing evidence if it is to avoid liability; and that in this case the one and only

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[30] *Id*. at 547.

[31] *Id*. at 477-490.

[32] *Id*. at 493-494.

[33] *Id*. at 548-550.

[34] *Id*. at 553.

[35] CA *rollo*, p. 160.

witness presented by Manulife utterly failed to prove the basic elements of the alleged misrepresentation/s or concealment/s of material facts imputed by Manulife against the now deceased insured. The CA held that there is no basis for Manulife's claim that it is exempted from the duty of proving the insured's supposed misrepresentation/s or concealment/s, as these had allegedly been admitted already in Hermenegilda's Answer; that in the absence of authentication by a competent witness, the purported CDH medical records of the insured are deemed hearsay hence, inadmissible, and devoid of probative value; and that the medical certificate, even if admitted in evidence as an exception to the hearsay rule, was still without probative value because the physician or doctor or the hospital's official who issued it, was not called to the witness stand to validate it or to attest to it.

Manulife moved for reconsideration[36] of the CA's Decision, but this was denied by the CA in its Resolution of December 10, 2012;[37] hence, the present recourse.

Issue

Whether the CA committed any reversible error in affirming the RTC Decision dismissing Manulife's Complaint for rescission of insurance contracts for failure to prove concealment on the part of the insured.

Our Ruling

The present recourse essentially challenges anew the findings of fact by both the RTC and the CA that the Complaint for rescission of the insurance policies in question will not prosper because Manulife failed to prove concealment on the part of the insured. This is not allowed. It is horn-book law that in appeal by *certiorari* to this Court under Rule 45 of the Revised Rules of Court, the findings of fact by the CA especially where such findings of fact are affirmatory or confirmatory of the

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[36] *Id*. at 165-199.

[37] *Id*. at 254.

findings of fact of the RTC, as in this case, are conclusive upon this Court. The reason is simple: this Court not being a trial court, it does not embark upon the task of dissecting, analyzing, evaluating, calibrating or weighing all over again the evidence, testimonial or documentary, that the parties adduced during trial. Of course, there are exceptions to this rule, such as (1) when the conclusion is grounded upon speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when 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 there is no citation of specific evidence on which the factual findings are based; (7) when the findings of absence of facts is contradicted by the presence of evidence on record; (8) when the findings of the CA are contrary to the findings of the RTC; (9) when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the CA are beyond the issues of the case; and, (11) when the CA's findings are contrary to the admission of both parties.[38] We are satisfied that none of these exceptions obtains in the Petition at bench. Thus, this Court must defer to the findings of fact of the RTC — as affirmed or confirmed by the CA — that Manulife's Complaint for rescission of the insurance policies in question was totally bereft of factual and legal bases because it had utterly failed to prove that the insured had committed the alleged misrepresentation/s or concealment/s of material facts imputed against him. The RTC correctly held that the CDH's medical records that might have established the insured's purported misrepresentation/s or concealment/s was inadmissible for being hearsay, given the fact that Manulife failed to present the physician or any responsible official of the CDH who could confirm or attest to the due execution and authenticity of the alleged medical records. Manulife had utterly failed to prove by convincing evidence that it had been beguiled, inveigled, or cajoled into selling the insurance to the insured who

[38] *Samala v. Court of Appeals,* 467 Phil. 563, 568 (2004).

purportedly with malice and deceit passed himself off as thoroughly sound and healthy, and thus a fit and proper applicant for life insurance. Manulife's sole witness gave no evidence at all relative to the particulars of the purported concealment or misrepresentation allegedly perpetrated by the insured. In fact, Victoriano merely perfunctorily identified the documentary exhibits adduced by Manulife; she never testified in regard to the circumstances attending the execution of these documentary exhibits much less in regard to its contents. Of course, the mere mechanical act of identifying these documentary exhibits, without the testimonies of the actual participating parties thereto, adds up to nothing. These documentary exhibits did not automatically validate or explain themselves. "The fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract. Misrepresentation as a defense of the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the insurer."[39] For failure of Manulife to prove intent to defraud on the part of the insured, it cannot validly sue for rescission of insurance contracts.

WHEREFORE, the Petition is **DENIED**. The assailed Decision of the Court of Appeals dated April 26, 2012 in CA-G.R. CV No. 95561 and its December 10, 2012 Resolution, are **AFFIRMED**.

SO ORDERED.

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

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[39] *Great Pacific Life Assurance Corporation v. Court of Appeals,* 375 Phil. 142, 152 (1999).

THIRD DIVISION

[G.R. No. 210316. November 28, 2016]

THE SECURITIES AND EXCHANGE COMMISSION (SEC) CHAIRPERSON TERESITA J. HERBOSA, COMMISSIONER MA. JUANITA E. CUETO, COMMISSIONER RAUL J. PALABRICA, COMMISSIONER MANUEL HUBERTO B. GAITE, COMMISSIONER ELADIO M. JALA, AND THE SEC ENFORCEMENT AND PROSECUTION DEPARTMENT, *petitioners, vs.* **CJH DEVELOPMENT CORPORATION AND CJH SUITES CORPORATION, HEREIN REPRESENTED BY ITS EXECUTIVE VICE-PRESIDENT AND CHIEF OPERATING OFFICER, ALFREDO R. YÑIGUEZ III,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; INTERLOCUTORY ORDER; MERELY RESOLVES INCIDENTAL MATTERS AND LEAVES SOMETHING MORE TO BE DONE TO RESOLVE THE MERITS OF THE CASE.— [T]he Court agrees with petitioners that the challenged CDO is an interlocutory order. The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case. Stated differently, an interlocutory order is one which leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically provisional in its application.

2. ID.; ID.; ID.; ID.; NOT APPEALABLE UNTIL AFTER THE RENDITION OF THE JUDGMENT ON THE MERITS FOR A CONTRARY RULE WOULD DELAY THE ADMINISTRATION OF JUSTICE AND UNDULY BURDEN

THE COURTS; THE CEASE AND DESIST ORDER ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION IS NOT APPEALABLE AS IT IS AN INTERLOCUTORY ORDER.— It is a settled rule in this jurisdiction that an appeal may only be taken from a judgment or final order that completely disposes of the case and that an interlocutory order is not appealable until after the rendition of the judgment on the merits for a contrary rule would delay the administration of justice and unduly burden the courts. In the present case, it is clear from the dispositive portion of the CDO that its issuance is based on the findings of the SEC that there exists *prima facie* evidence that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. *Prima facie* means a fact presumed to be true unless disproved by some evidence to the contrary. Applied to the instant case, it means that the findings of the SEC, as contained in the assailed CDO, can still be refuted and disproved by contrary evidence. This only means that the CDO is not final, is just provisional, and that the prohibition thereunder is merely temporary, subject to the determination of the parties' respective evidence in a subsequent hearing. It is, therefore, clear that the subject CDO, being interlocutory, may not be the subject of an appeal.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; PREMATURE INVOCATION OF THE INTERVENTION OF THE COURT IS FATAL TO ONE'S CAUSE OF ACTION; EXCEPTIONS TO THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.—** [T]he second reason for the denial of the instant petition is respondents' failure to exhaust all administrative remedies available to them. Settled is the rule that: Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the

intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. It is true that there are exceptions to the above doctrine, to wit: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary who acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.

4. ID.; ID.; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; COURTS WILL NOT DETERMINE A CONTROVERSY WHERE THE ISSUES FOR RESOLUTION DEMAND THE EXERCISE OF SOUND ADMINISTRATIVE DISCRETION REQUIRING THE SPECIAL KNOWLEDGE, EXPERIENCE, AND SERVICES OF THE ADMINISTRATIVE TRIBUNAL TO DETERMINE TECHNICAL AND INTRICATE MATTERS OF FACT, WHICH UNDER A REGULATORY SCHEME HAVE BEEN PLACED WITHIN THE SPECIAL COMPETENCE OF SUCH TRIBUNAL OR AGENCY; THE ISSUE AS TO WHETHER THE SCHEME OF SELLING THE SUBJECT

CONDOTEL UNITS IS TANTAMOUNT TO AN INVESTMENT CONTRACT AND/OR SALE OF SECURITIES INVOLVES A QUESTION OF FACT THAT FALLS UNDER THE PRIMARY JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION (SEC).— [T]he main issue, as to whether or not the sale of "The Manor" or "The Suites" units to the general public under the "leaseback" or "money-back"scheme is a form of investment contract or sale of securities, is not a pure question of law. On the contrary, it involves a question of fact that falls under the primary jurisdiction of the SEC. Under the doctrine of primary administrative jurisdiction, courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, which under a regulatory scheme have been placed within the special competence of such tribunal or agency. In other words, if a case is such that its determination requires the expertise, specialized training, and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the court is had even if the matter may well be within the latter's proper jurisdiction. The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. In the instant case, the resolution of the issue as to whether respondents' scheme of selling the subject condotel units is tantamount to an investment contract and/or sale of securities, as defined under the SRC, requires the expertise and technical knowledge of the SEC being the government agency which is tasked to enforce and implement the provisions of the said Code as well as its implementing rules and regulations. In fact, after the issuance of the CDO, the SEC is yet to hear from respondents and receive evidence from them regarding this issue. Nonetheless, respondents prematurely filed an appeal with the CA, which erroneously gave due course to it in disregard of the doctrines of exhaustion of administrative remedies and primary jurisdiction.

5. COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); A CEASE AND DESIST ORDER MAY BE ISSUED BY THE SEC *MOTU PROPRIO,* IT BEING UNNECESSARY THAT IT RESULTS FROM A VERIFIED COMPLAINT FROM AN AGGRIEVED PARTY, WITHOUT THE NECESSITY OF A PRIOR HEARING IF IN ITS JUDGMENT THE ACT OR PRACTICE, UNLESS RESTRAINED, WILL OPERATE AS A FRAUD ON INVESTORS OR IS OTHERWISE LIKELY TO CAUSE GRAVE OR IRREPARABLE INJURY OR PREJUDICE TO THE INVESTING PUBLIC.— [S]ections 64.1 and 64.2 of the SRC provide as follows: 64.1. The Commission, after proper investigation or verification, *motu proprio,* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public. 64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall immediately be furnished to each person subject to the order. x x x. Explaining the import of these provisions, this Court, in the case of *Primanila Plans, Inc. v. Securities and Exchange Commission,* held, thus: **The law is clear on the point that a cease and desist order may be issued by the SEC *motu proprio,* it being unnecessary that it results from a verified complaint from an aggrieved party. A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors.** x x x. A cease and desist order may only be issued by the Commission after proper investigation or verification, and upon showing that the acts sought to be restrained could result in injury or fraud to the investing public. x x x. **The SEC was not mandated to allow Primanila to participate in the investigation conducted by the Commission prior to the cease and desist order's issuance.**

6. ID; SECURITIES REGULATION CODE (R.A. NO. 8799); THE ACT OF SELLING UNREGISTERED SECURITIES OPERATES AS A FRAUD ON INVESTORS.— [T]he Court neither agrees with the ruling of the CA that there is nothing in the assailed CDO which shows that the acts sought to be restrained therein operate as a fraud on investors. The SEC arrived at a preliminary finding that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. Based on this initial finding, respondents' act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. As correctly cited by the SEC, Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer. The Court agrees with the SEC that the purpose of this provision is to afford the public protection from investing in worthless securities.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Suarez & Narvasa Law Firm for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated June 7, 2013 and November 28,

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon, concurring; Annex "A" to Petition, *rollo* pp. 70-77.

[2] *Id.* at 78-79.

2013, respectively, in CA-G.R. SP No. 125482. The assailed CA Decision annulled and set aside the Cease and Desist Order (*CDO*) issued by the Securities and Exchange Commission (*SEC*) *En Banc* on June 7, 2012, and dismissed SEC-CDO Case No. 05-12-006, while the CA Resolution denied petitioners' Motion for Reconsideration.

The facts of the case are as follows:

Herein respondent CJH Development Corporation (*CJHDC*) is a duly-organized domestic corporation which is engaged in the acquisition, development, sale, lease and management of real estate and any improvements thereon or any interest and right therein.[3] Respondent CJH Suites Corporation (*CJHSC*), on the other hand, is a wholly-owned subsidiary of CJHDC which was formed primarily for the purpose of acquiring, maintaining, operating and managing hotels, inns, lodging houses, restaurants and other allied businesses.[4]

On October 19, 1996, CJHDC entered into a Lease Agreement (*Agreement*) with the Bases Conversion and Development Authority (*BCDA*) for the development into a public tourism complex, multiple-use forest watershed and human resource development center, of a 247-hectare property within the John Hay Special Economic Zone in Baguio City. The fixed annual rental for the property for the first five years was pegged at ₱425,001,378.00 or five percent of Gross Revenues, whichever is higher. Thereafter, for the duration of the lease period, the fixed annual rental shall not be more than ₱150,000,000.00 or five percent of Gross Revenues, whichever is higher. Among other provisions, the Agreement authorized CJHDC to sub-lease, develop and manage the abovementioned property for a period of fifty (50) years, or until 2046. It was also provided that, upon expiration of the Agreement, the leased property shall

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[3] See Amended Articles of Incorporation of CJHDC, Annex "C" to Petition, *id.* at 80-87.

[4] See Articles of Incorporation of CJHSC, Annex "D" to Petition, *id.* at 88-93.

revert back to the BCDA and all the improvements thereon shall become its property.

Subsequently, CJHDC came up with a development plan and put it into effect. Part of such development plan was the construction of two (2) condominium-hotels (*condotels*) which it named as "The Manor" and "The Suites." Subject to CJHDC's leasehold rights under the Agreement, the residential units in these condotels were then offered for sale to the general public by means of two schemes. The first is a straight purchase and sale contract where the buyer pays the purchase price for the unit bought, either in lump sum or on installment basis and, thereafter, enjoys the benefits of full ownership, subject to payment of maintenance dues and utility fees. The second scheme involved the sale of the unit with an added option to avail of a "leaseback" or a "money-back" arrangement. Under this added option, the buyer pays for the unit bought and, subsequently, surrenders its possession to the management of CJHDC or CJHSC. These corporations would then create a pool of these units and, in turn, will offer them for billeting under the management of the hotel operated by the Camp John Hay Leisure, Inc. (*CJHLI*). This arrangement lasts for a period of fifteen (15) years with a renewal option for the same period until 2046. The buyers who opt for the "leaseback" arrangement will receive either a proportionate share in seventy percent (70%) of the annual income derived from the hotel operation of the pooled rooms or a guaranteed eight percent (8%) return on their investment. On the other hand, those who choose to avail of the "money-back" arrangement are entitled to a return of the purchase price they paid for the units by expiration of the Lease Agreement in 2046. The buyers are given the right to use their units for thirty (30) days within a year and they are exempted from paying the monthly dues and utility fees.

Sometime in May 2010, the BCDA and the CJHDC entered into an agreement for the restructuring of the latter's rental payments and other financial obligations to the former. Thus, pursuant to this agreement, CJHDC transferred ownership of, among others, sixteen (16) units from "The Manor" and ten

(10) units from "The Suites" to the BCDA via *dacion en pago*. These units were covered by Limited Warranty Deeds and were subject to a "leaseback" arrangement.

Subsequently, the BCDA acquired information regarding CJHDC and CJHSC's scheme of selling "The Manor" and "The Suites" units through "leaseback" or "money-back" terms. Hence, in a letter dated November 18, 2011, the BCDA requested the SEC to conduct an investigation into the operations of CJHDC and CJHSC on the belief that the "leaseback" or "money-back" arrangements they are offering to the public is, in essence, investment contracts which are considered as securities under Republic Act No. 8799, otherwise known as the Securities Regulation Code (*SRC*).

Acting on such a request, the Enforcement and Prosecution Department (*EPD*) of the SEC conducted its own investigation of the operations of CJHDC and CJHSC with respect to the sale of the subject condotel units and, thereafter, submitted a Field Investigation Report,[5] dated February 1, 2012, to the Chairperson of the SEC, providing details of their findings during such investigation. The EPD was also able to confer with several buyers of the condotel units who gave information with respect to the terms of the contracts they entered into with respondents.

Subsequently, on April 23, 2012, the SEC's Corporation Finance Department (*CFD*) issued a Memorandum[6] indicating its opinion that the "leaseback" arrangements offered by respondents to the public are investment contracts.

On May 16, 2012, the EPD filed a Motion for Issuance of Cease and Desist Order[7] with the SEC *En Banc* praying that CJHDC and CJHSC, their respective officers, directors, representatives, salesmen, agents, and any and all persons claiming and acting for and in their behalf be directed to immediately cease and desist "from further engaging in activities

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[5] *Rollo*, pp. 179-184.

[6] *Id*. at 227-231.

[7] Records, Vol. I, pp. 186-202.

of selling and/or offering for sale investment contracts covering the condotel units on "leaseback" and/or "money-back" arrangements until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell securities is issued."[8] The case was docketed as SEC-CDO Case No. 05-12-006.

On June 7, 2012, the SEC *En Banc* issued an Order,[9] disposing as follows:

> WHEREFORE, premises considered, there being a *prima facie* evidence that respondents CJH DEVELOPMENT CORPORATION and its wholly-owned subsidiary CJH SUITES CORPORATION, are engaged in the business of selling securities without the proper registration issued by this Commission in violation [of] Section 8 of the SRC, the respondents, their respective officers, directors, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf, are hereby ordered to immediately CEASE and DESIST from further engaging in the business of selling securities until they have complied with the requirements of law and its implementing rules and regulations.
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> x x x x x x x x x
>
> SO ORDERED.[10]

CJHDC and CJHSC then filed a Petition for Review[11] with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction before the CA questioning the above CDO and praying that the same be reversed and set aside.

On September 25, 2012, the CA issued a temporary restraining order which enjoins the SEC from enforcing its questioned CDO for a period of sixty (60) days.[12] Thereafter, on November 8, 2012, the CA issued a writ of preliminary injunction which

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[8] *Id.* at 203-209.

[9] *Id.* at 203.

[10] *Rollo*, p. 238

[11] *Id.* at 239-263.

[12] CA *rollo*, pp. 459-461.

was made effective pending the decision of the petition on the merits.[13]

In its presently assailed Decision, the CA ruled in favor of CJHDC and CJHSC and disposed as follows:

> WHEREFORE, the instant petition is GRANTED. The Cease and Desist Order dated June 7, 2012 issued by the SEC En Banc is [ANNULLED] and SET ASIDE, and SEC-CDO Case No. 05-12-006 is DISMISSED. The writ of preliminary injunction per Resolution dated November 8, 2012, enjoining respondents from enforcing the June 7, 2012 Cease and Desist Order, is MADE PERMANENT.
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> SO ORDERED.[14]

CJHDC and CJHSC filed a Motion for Reconsideration, but the CA denied it in its Resolution[15] dated November 28, 2013.

Hence, the instant petition for review on *certiorari* based on the following grounds:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT OUTRIGHTLY DISMISSING THE APPEAL FILED BY RESPONDENTS AGAINST AN INTERLOCUTORY OR PROVISIONAL ORDER OF THE SEC.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO DISMISS THE PETITION FOR REVIEW CONSIDERING THAT THE SEC HAS THE PRIMARY JURISDICTION OVER THE CASE AND RESPONDENTS FAILED TO EXHAUST ALL THE ADMINISTRATIVE REMEDIES UNDER THE LAW TO CHALLENGE THE PROVISIONAL ORDER.

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION

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[13] *Id.* at 742-745.

[14] *Rollo*, p. 76.

[15] 629 Phil. 450, 459 (2010).

AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NULLIFYING THE CDO AND DISMISSING SEC-CDO CASE NO. 05-12-006.[16]

The petition is meritorious.

First, the Court agrees with petitioners that the challenged CDO is an interlocutory order. The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.[17] An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case.[18] Stated differently, an interlocutory order is one which leaves substantial proceedings yet to be had in connection with the controversy.[19] It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other.[20] In this sense, it is basically provisional in its application.[21]

It is a settled rule in this jurisdiction that an appeal may only be taken from a judgment or final order that completely disposes of the case and that an interlocutory order is not appealable until after the rendition of the judgment on the merits for a contrary rule would delay the administration of justice and unduly burden the courts.[22]

In the present case, it is clear from the dispositive portion of the CDO that its issuance is based on the findings of the SEC that there exists *prima facie* evidence that respondents are

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[16] *Id.* at 39.

[17] *Calderon v. Roxas, et al.,* 701 Phil. 301, 310 (2013).

[18] *Id*.

[19] *Spouses Bergonia v. Court of Appeals, et al.,* 680 Phil. 334, 340 (2012).

[20] *Id.*

[21] *Id.*

[22] *Aboitiz Equity Ventures, Inc. v. Chiongbian, et al.,* G.R. No. 197530, July 9, 2014, 729 SCRA 580, 594-595.

engaged in the business of selling securities without the proper registration issued by the Commission. *Prima facie* means a fact presumed to be true unless disproved by some evidence to the contrary.[23] Applied to the instant case, it means that the findings of the SEC, as contained in the assailed CDO, can still be refuted and disproved by contrary evidence. This only means that the CDO is not final, is just provisional, and that the prohibition thereunder is merely temporary, subject to the determination of the parties' respective evidence in a subsequent hearing. It is, therefore, clear that the subject CDO, being interlocutory, may not be the subject of an appeal.

In fact, the non-appealability of a CDO issued by the SEC is provided for under the 2006 Rules of Procedure of the Commission. Thus, Section 10-8 of the Rules provides:

> SEC. 10-8. *Prohibitions.* – No pleading, motion or submission in any form that may prevent the resolution of an application for a CDO by the Commission shall be entertained except under Rule XII herein. **A CDO when issued, shall not be the subject of an appeal and no appeal from it will be entertained**; *Provided*, however, that an order by the Director of the Operating Department denying the motion to lift a CDO may be appealed to the Commission En Banc through the O[ffice of the] G[eneral] C[ounsel]. (Emphasis supplied)

In addition, the temporary character, thus interlocutory nature, of a CDO is recognized under Section 10-5 of the same Rules, as it provides for the procedure on how a CDO can be made permanent, to wit:

> SEC. 10-5. *Failure to File Motion to Lift*. – (a) If the respondent fails to file a motion to lift CDO within the prescribed period, the Director of the C[ompliance and] E[nforcement] D[epartment] may file with the Commission a motion to make the CDO permanent. The Order shall contain the following:
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> i. a brief and procedural history of the case;
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> ii. a statement declaring the CDO as permanent;

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[23] *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN), et al. v. Executive Secretary, et al.*, 685 Phil. 295, 308 (2012).

iii. a statement ordering the respondent to appear before the Commission within fifteen (15) days to file its Comment and to show cause why the stated penalty should not be imposed.

(b) The Commission may conduct hearing within fifteen (15) business days from the filing of the motion to make the CDO permanent. After the termination of the hearing, the Commission shall resolve the motion within ten (10) business days.

Thus, pursuant to the above provision, the EPD of the SEC filed a Motion for Issuance of Permanent Cease and Desist Order on July 9, 2012[24] which, however, was subsequently overtaken by the CA's issuance of a temporary restraining order and preliminary injunction enjoining the SEC from enforcing its assailed CDO.

Nonetheless, contrary to respondents' contention in their petition filed with the CA, they are not left without recourse in the administrative level. Section 64.3 of the SRC provides, thus:

64.3 Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

In the same manner Section 10-3 of the 2006 Rules of Procedure of the SEC states:

SEC. 10-3. *Lifting of CDO*. – A party against whom a CDO was issued may, within a non-extendible period of five (5) business days from receipt of the order, file a formal request or motion for the lifting thereof with the OGC. Said motion or request shall be set for hearing by the OGC not later than fifteen (15) days from its filing and the resolution thereof not later than ten (10) days from the termination of the hearing.

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[24] Records, p. 246.

Hence, as cited above, instead of filing an appeal with the CA, respondents should have filed a motion to lift the assailed CDO. Since the law and the SEC Rules require that this motion be heard by the SEC, it is during this hearing that respondents could have presented evidence in support of their contentions. However, they chose not to file the said motion.

Thus, the second reason for the denial of the instant petition is respondents' failure to exhaust all administrative remedies available to them. Settled is the rule that:

> Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[25]

It is true that there are exceptions to the above doctrine, to wit:

> (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary who acts as an alter ego of the President bears the implied

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[25] *Maglalang v. Philippine Amusement and Gaming Corporation*, 723 Phil. 546, 556-557 (2013).

and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.[26]

However, the Court does not agree with the CA in its ruling that the present case falls under the first and second exceptions for reasons to be discussed hereunder.

Corollary to the principle of exhaustion of administrative remedies is the third reason for denying the instant petition. The main issue, as to whether or not the sale of "The Manor" or "The Suites" units to the general public under the "leaseback" or "money-back" scheme is a form of investment contract or sale of securities, is not a pure question of law. On the contrary, it involves a question of fact that falls under the primary jurisdiction of the SEC. Under the doctrine of primary administrative jurisdiction, courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, which under a regulatory scheme have been placed within the special competence of such tribunal or agency.[27]

In other words, if a case is such that its determination requires the expertise, specialized training, and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the court is had even

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[26] *Id*. at 557.

[27] *Nestle Philippines, Inc., et al. v. Uniwide Sales, Inc., et al.*, 648 Phil. 451, 459 (2010); *Euro-Med Laboratories Phil., Inc. v. The Province of Batangas*, 527 Phil. 623, 626-627 (2006).

if the matter may well be within the latter's proper jurisdiction.[28] The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[29]

In the instant case, the resolution of the issue as to whether respondents' scheme of selling the subject condotel units is tantamount to an investment contract and/or sale of securities, as defined under the SRC, requires the expertise and technical knowledge of the SEC being the government agency which is tasked to enforce and implement the provisions of the said Code as well as its implementing rules and regulations. In fact, after the issuance of the CDO, the SEC is yet to hear from respondents and receive evidence from them regarding this issue. Nonetheless, respondents prematurely filed an appeal with the CA, which erroneously gave due course to it in disregard of the doctrines of exhaustion of administrative remedies and primary jurisdiction.

Furthermore, the present case does not fall under the exceptions to the doctrine of exhaustion of administrative remedies as there is no violation of respondents' right to due process. The Court does not agree with the CA in sustaining petitioners' contention that the investigation conducted by the EPD necessitated the participation of petitioners and that they should have been given opportunity to explain their side prior to the issuance of the questioned CDO. In this regard, Sections 64.1 and 64.2 of the SRC provide as follows:

> 64.1. The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

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[28] *Id.; Id.* at 626.

[29] *Id.; Id.*

64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall immediately be furnished to each person subject to the order.

64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

Explaining the import of these provisions, this Court, in the case of *Primanila Plans, Inc. v. Securities and Exchange Commission*,[30] held, thus:

The law is clear on the point that a cease and desist order may be issued by the SEC *motu proprio*, it being unnecessary that it results from a verified complaint from an aggrieved party. A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. There is good reason for this provision, as any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect.

To equally protect individuals and corporations from baseless and improvident issuances, the authority of the SEC under this rule is nonetheless with defined limits. A cease and desist order may only be issued by the Commission after proper investigation or verification, and upon showing that the acts sought to be restrained could result in injury or fraud to the investing public. Without doubt, these requisites were duly satisfied by the SEC prior to its issuance of the subject cease and desist order.

Records indicate the prior conduct of a proper investigation on Primanila's activities by the Commission's CED. Investigators of

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[30] G.R. No. 193791, August 6, 2014, 732 SCRA 264.

the CED personally conducted an ocular inspection of Primanila's declared office, only to confirm reports that it had closed even without the prior approval of the SEC. Members of CED also visited the company website of Primanila, and discovered the company's offer for sale thereon of the pension plan product called Primasa Plan, with instructions on how interested applicants and planholders could pay their premium payments for the plan. One of the payment options was through bank deposit to Primanila's given Metrobank account which, following an actual deposit made by the CED was confirmed to be active.

As part of their investigation, the SEC also looked into records relevant to Primanila's business. Records with the SEC's Non-Traditional Securities and Instruments Department (NTD) disclosed Primanila's failure to renew its dealer's license for 2008, or to apply for a secondary license as dealer or general agent for pre-need pension plans for the same year. SEC records also confirmed Primanila's failure to file a registration statement for Primasa Plan, to fully remit premium collections from plan holders, and to declare truthfully its premium collections from January to September 2007.

The SEC was not mandated to allow Primanila to participate in the investigation conducted by the Commission prior to the cease and desist order's issuance. Given the circumstances, it was sufficient for the satisfaction of the demands of due process that the company was amply apprised of the results of the SEC investigation, and then given the reasonable opportunity to present its defense. Primanila was able to do this via its motion to reconsider and lift the cease and desist order. After the CED filed its comment on the motion, Primanila was further given the chance to explain its side to the SEC through the filing of its reply. "Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position." x x x[31]

In the present case, as mentioned above, the SEC through its EPD, conducted an investigation upon request of the BCDA. The EPD dispatched a team of SEC employees, who posed as representatives of interested buyers, to the John Hay Special Economic Zone in Baguio City. There, the team members were

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[31] *Primanila Plans, Inc. v. Securities and Exchange Commission, supra,* at 274-275. (Emphases supplied)

able to talk to CJHDC's Director of Sales, who, not only explained to them the straight and leaseback agreements, but also gave the team copies of marketing material, as well as sample contracts, indicating that respondents are indeed selling the subject units either on a straight purchase or leaseback agreement.

Subsequently, on three different occasions, the EPD invited several buyers of the subject condotels and met with them in separate conferences wherein these buyers shed light on the transactions they entered into with respondents and informed the EPD that they bought condotel units on a leaseback arrangement. These buyers provided the EPD copies of documents relating to their purchase of condotel units on such terms.

Upon issuance of the CDO, nothing prevented respondents from filing a motion to lift the said Order wherein they could have amply explained their position. However, they chose not to avail of this remedy and, instead, went directly, albeit erroneously, to the CA via a petition for review.

Lastly, the Court neither agrees with the ruling of the CA that there is nothing in the assailed CDO which shows that the acts sought to be restrained therein operate as a fraud on investors. The SEC arrived at a preliminary finding that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. Based on this initial finding, respondents' act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. As correctly cited by the SEC, Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer. The Court agrees with the SEC that the purpose of this provision is to afford the public protection from investing in worthless securities.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals, dated June 7, 2013, and its Resolution dated November 28, 2013, in CA-G.R. SP No. 125482 are **REVERSED** and **SET ASIDE**. The Writ of Preliminary Injunction, per CA Resolution dated November 8, 2012, which was made permanent by its June 7, 2013 Decision, is hereby **LIFTED**. SEC-CDO Case No. 05-12-006 and the June 7, 2012 Cease and Desist Order of the Securities and Exchange Commission are **REINSTATED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Leonen,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 215341. November 28, 2016]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARLON MANSON *y* RESULTAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS; ESTABLISHED; FORCE, INTIMIDATION AND PHYSICAL EVIDENCE OF INJURY ARE NOT RELEVANT CONSIDERATIONS IN THE CRIME OF STATUTORY RAPE, AS THE ONLY PERTINENT CONCERN IS THE AGE OF THE WOMAN AND WHETHER CARNAL KNOWLEDGE INDEED TOOK PLACE.— From the testimony of the very young complainant,

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

the prosecution was able to firmly establish the elements of the crime of statutory rape. Statutory rape is committed when (1) the offended party is under twelve (12) years of age and (2) the accused had carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. It is termed statutory rape as it departs from the usual modes of committing rape. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only pertinent concern is the age of the woman and whether carnal knowledge indeed took place.

2. ID.; ID.; ID.; ID.; WHEN THE VICTIM'S TESTIMONY IS CORROBORATED BY THE PHYSICIAN'S FINDING OF PENETRATION, THERE IS SUFFICIENT FOUNDATION TO CONCLUDE THE EXISTENCE OF THE ESSENTIAL REQUISITE OF CARNAL KNOWLEDGE, AND THAT LACERATION, WHETHER HEALED OR FRESH, IS THE BEST PHYSICAL EVIDENCE OF FORCIBLE DEFLORATION.— AAA's birth certificate would show that she was merely eight (8) years old when she was violated. While the second element, that Manson had carnal knowledge of AAA, was evidenced by the testimony of the victim herself. The medical report likewise clearly shows that AAA suffered a fourth (4^{th})-degree laceration in her *ano-genital* area which could have been caused by a blunt object, usually the male sexual organ. It has been held that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge, and that laceration, whether healed or fresh, is the best physical evidence of forcible defloration.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; ACCUSED MAY STILL BE PROVEN AS THE CULPRIT DESPITE THE ABSENCE OF EYEWITNESSES, AS DIRECT EVIDENCE IS NOT A CONDITION *SINE QUA NON* TO PROVE THE GUILT OF AN ACCUSED BEYOND REASONABLE DOUBT; IN THE ABSENCE OF

DIRECT EVIDENCE, THE PROSECUTION MAY RESORT TO ADDUCING CIRCUMSTANTIAL EVIDENCE TO DISCHARGE ITS BURDEN.— True, she did not actually see Manson in the act of abusing her as she was, at that time, unconscious. When asked, she did not even know the real meaning of the word rape. In fact, she had innocently referred to the rape incident as the pain and wound in her genitals. The Court, however, agrees with the courts below that AAA was able to positively identify Manson as the man who assaulted her. It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. However, the accused may still be proven as the culprit despite the absence of eyewitnesses. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden.

4. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction, *viz.*: SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

5. ID.; ID.; ID.; PROOF BEYOND REASONABLE DOUBT; THE REQUIREMENT OF PROOF BEYOND REASONABLE DOUBT IN CRIMINAL LAW DOES NOT MEAN SUCH A DEGREE OF PROOF AS TO EXCLUDE THE POSSIBILITY OF ERROR AND PRODUCE ABSOLUTE CERTAINTY, AS ONLY MORAL CERTAINTY IS REQUIRED.— [T]he Court is satisfied that the prosecution has successfully proved Manson's guilt beyond reasonable doubt. The evidence adduced against Manson constitutes an unbroken chain leading to the one fair and reasonable conclusion that he was indeed the perpetrator of the crime. The requirement of

proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. This was satisfactorily established in the case at bar.

6. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENT ANY EVIDENCE THAT IT WAS TAINTED WITH ARBITRARINESS OR OVERSIGHT OF A FACT, THE LOWER COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES IS ENTITLED TO GREAT WEIGHT, IF NOT CONCLUSIVE OR BINDING ON THE COURT.— While Manson claims that it was not only him who was called *Pangga*, AAA, in addition to referring to him as *Pangga*, likewise pointed at him as the culprit when she was in the hospital just a day after the incident. There is therefore no cogent reason to reverse the trial court's assessment of AAA's credibility, as affirmed by the CA. When it comes to credibility of witnesses, the findings of the trial court on such matter will not be disturbed unless the lower court had clearly misinterpreted certain facts. The credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination. Verily, absent any evidence that it was tainted with arbitrariness or oversight of a fact, the lower court's assessment is entitled to great weight, if not conclusive or binding on the Court. Lastly, where there is no evidence that the witnesses of the prosecution were influenced by ill motive, as in this case, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.

7. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to the amount of damages, however, the exemplary damages should be increased from ₱30,000.00 to ₱75,000.00 based on recent jurisprudence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This case seeks to reverse and set aside the Decision[1] dated October 13, 2014 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 05340. The CA upheld the Decision[2] of the Regional Trial Court (*RTC*) of Baguio City, Branch IV, dated September 29, 2010 in Criminal Case No. 26824-R, which found accused-appellant Marlon Manson y Resultay guilty beyond reasonable doubt of the crime of statutory rape.

An Information was filed charging Manson of raping AAA,[3] which reads:

> That on or about the 10th day of December 2006, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of offended party AAA, a minor 8 years of age, and taking advantage of the minority of said complainant who because of her tender age is unable to fully take care and protect herself from such sexual abuse of said accused, against her will and consent.
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> CONTRARY TO LAW.[4]

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[1] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Apolinario D. Bruselas, Jr. and Amy C. Lazaro-Javier; concurring; *rollo*, pp. 2-17.

[2] Penned by Judge Mia Joy C. Oallares-Cawed; CA *rollo*, pp. 37-53.

[3] In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703, 709 (2006), citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real names of the rape victims will not be disclosed. The Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

[4] Records, p. 1.

Upon arraignment, Manson pleaded not guilty to the crime charged. Hence, trial on the merits proceeded.

The factual and procedural antecedents of the case are as follows:

Marlon Manson was accused of raping AAA, a girl aged eight (8). AAA testified that she was born on April 24, 1998. On the afternoon of December 10, 2006, AAA's mother sent her on an errand in order to buy Milo at a store. On her way back home, she met Manson near a vacant lot. He asked AAA to help him look for eggs in the grassy place. Once there, Manson suddenly strangled her from the back, rendering her unconscious. When she woke up, she found herself near the spring at the lower portion of the grassy place. She felt pain in her genitals and in her neck. Later, she discovered that her genitals were bleeding. Due to the pain, AAA crawled her way home, leaving bruises on her palms and knees. When she reached her house at around 6:00 p.m., her mother, BBB, saw that AAA's face and neck were bluish. When asked what happened to her, AAA answered, "Pangga (Manson's nickname) strangled me." BBB likewise noticed that AAA's pants were drenched. When she checked and pulled her pants down, she was shocked to see that her daughter's genitals were bleeding profusely. BBB then changed AAA's clothes and they proceeded to the Benguet General Hospital.

At the hospital, the medical staff had to stitch AAA's genitalia as she suffered a one (1)-inch laceration. AAA likewise suffered hematoma in her neck and was bleeding in the eye area.

For his defense, Manson denied that he raped AAA. He alleged that on the afternoon of December 10, 2006, he had a drinking session with his 2 uncles in their house in Lower Fairview, Baguio City. When they finished at around 5:00 p.m., he accompanied one of his uncles to wait for a ride. While waiting, they consumed a bottle of Red Horse beer. Then he hailed a taxi for his uncle and proceeded to walk back home where he went straight to bed. On December 11, 2006, at about 1:00

p.m., he was in La Trinidad, Benguet selling fish when two (2) police officers approached and invited him to go with them. They then brought him to a room of a child at the Benguet General Hospital. The police officers then told the child to point at him. He also learned that he was being accused of raping said child and the officers were forcing him to admit to the accusation. Further, he pointed out that *Pangga* did not only pertain to him but to all of them in their household since they were all Pangasinenses.

On September 29, 2010, the RTC found Manson guilty in Criminal Case No. 26824-R and sentenced him to suffer the penalty of *reclusion perpetua*, and to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱14,439.25 as actual damages, thus:

> **WHEREFORE**, in view of all the foregoing, the Accused MARLON MANSON y RESULTAY is found **GUILTY** beyond reasonable doubt of the offense of Rape as defined under Article 266-A, par. 1 (d) of the Revised Penal Code as amended by Republic Act 8353 and is sentenced to suffer the penalty of ***reclusion perpetua*** and all its accessory penalties.
>
> Considering that the Accused has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law.
>
> In line with prevailing jurisprudence, he is to pay AAA ₱75,000.00 as civil indemnity *ex-delicto* and ₱75,000.00 as moral damages.
>
> The Accused is likewise ordered to pay the amount of ₱14,439.25 as actual damages to compensate the expenses incurred for her medication which were duly proven by the Prosecution.
>
> **SO ORDERED**.[5]

Thus, Manson appealed before the CA. On October 13, 2014, the CA affirmed the RTC Decision with modification as to the amount of damages, thus:

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[5] CA *rollo*, pp. 52-53. (Emphasis and underscoring in the original)

WHEREFORE, premises considered, the assailed Decision is hereby **AFFIRMED with MODIFICATION. The amount of ₱30,000.00 is hereby awarded to AAA as exemplary damages in addition to the actual, moral and civil damages already awarded by the Family Court.**

SO ORDERED.[6]

Manson then comes before the Court, maintaining that the prosecution failed to prove his guilt beyond reasonable doubt.

The Court dismisses the appeal for lack of merit.

From the testimony of the very young complainant, the prosecution was able to firmly establish the elements of the crime of statutory rape. Statutory rape is committed when (1) the offended party is under twelve (12) years of age and (2) the accused had carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. It is termed statutory rape as it departs from the usual modes of committing rape. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only pertinent concern is the age of the woman and whether carnal knowledge indeed took place.[7]

At bar, AAA's birth certificate would show that she was merely eight (8) years old when she was violated. While the second element, that Manson had carnal knowledge of AAA, was evidenced by the testimony of the victim herself. The medical report likewise clearly shows that AAA suffered a fourth (4th)-degree laceration in her *ano-genital* area which could have been caused by a blunt object, usually the male sexual organ. It has been held that when the victim's testimony is corroborated

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[6] *Rollo*, pp. 16-17. (Emphasis in the original)

[7] *People v. Gutierrez*, G.R. No. 208007, April 2, 2014, 720 SCRA 607, 613.

by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge, and that laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[8] Here, the examining physician found that the laceration was about 1-½ inches deep, which even reached AAA's anal area. Because of the unbearable pain it caused the child, the doctors had to rush her to the operating room and sedate her in order to examine the extent of the laceration.

True, she did not actually see Manson in the act of abusing her as she was, at that time, unconscious. When asked, she did not even know the real meaning of the word rape. In fact, she had innocently referred to the rape incident as the pain and wound in her genitals. The Court, however, agrees with the courts below that AAA was able to positively identify Manson as the man who assaulted her.

It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. However, the accused may still be proven as the culprit despite the absence of eyewitnesses. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[9] Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction, *viz.*:

SEC. 4. *Circumstantial evidence, when sufficient*. – Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

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[8] *People v. Rondina*, G.R. No. 207763, June 30, 2014, 727 SCRA 591, 615.

[9] *People v. Broniola*, G.R. No. 211027, June 29, 2015, 760 SCRA 597, 606.

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Here, the prosecution has proved the following circumstances: that AAA's mother sent her on an errand on the afternoon of December 10, 2006; that on her way back home, AAA met Manson near a vacant lot and the latter approached her to allegedly help him look for eggs in the grassy place; that AAA was alone with Manson when they went to the grassy area of the lot; that once there, Manson suddenly strangled her, leaving her unconscious; that when she woke up, she felt pain in her genitals and in her neck, and saw that her genitals were already bleeding; that the physician who examined AAA found multiple injuries on her neck, face, and eyes which are consistent with the claim of strangulation; and that the medical report clearly shows that AAA suffered a fourth (4th)-degree laceration in her *ano-genital* area which could have been caused by a blunt object, usually the male sexual organ.

Considering all the circumstances mentioned and in light of previous rulings, the Court is satisfied that the prosecution has successfully proved Manson's guilt beyond reasonable doubt. The evidence adduced against Manson constitutes an unbroken chain leading to the one fair and reasonable conclusion that he was indeed the perpetrator of the crime. The requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[10] This was satisfactorily established in the case at bar.

While Manson claims that it was not only him who was called *Pangga*, AAA, in addition to referring to him as *Pangga*, likewise pointed at him as the culprit when she was in the hospital just

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[10] *Id.* at 607.

a day after the incident. There is therefore no cogent reason to reverse the trial court's assessment of AAA's credibility, as affirmed by the CA. When it comes to credibility of witnesses, the findings of the trial court on such matter will not be disturbed unless the lower court had clearly misinterpreted certain facts. The credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination. Verily, absent any evidence that it was tainted with arbitrariness or oversight of a fact, the lower court's assessment is entitled to great weight, if not conclusive or binding on the Court. Lastly, where there is no evidence that the witnesses of the prosecution were influenced by ill motive, as in this case, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.[11] As to the amount of damages, however, the exemplary damages should be increased from ₱30,000.00 to ₱75,000.00 based on recent jurisprudence.[12]

The Court strongly abhors and condemns such an odious act, especially one that is committed against a defenseless child. This kind of barbarousness, although it may drop the victim still alive and breathing, instantly zaps all that is good in a child's life and corrupts its innocent perception of the world. It likewise leaves a child particularly susceptible to a horde of physical, emotional, and psychological suffering later in life, practically stripping it of its full potential. Every child's best interests are and should be the paramount consideration of every member of the society. Children may constitute only a small part of the population, but the future of this nation hugely, if not entirely, depends on them. And the Court will not in any way waver in its sworn duty to ensure that anyone who endangers and poses a threat to that future cannot do so with untouchable impunity, but will certainly be held accountable under the law.

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[11] *People v. Dadao, et al.*, 725 Phil. 298, 310-311 (2014).

[12] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

WHEREFORE, PREMISES CONSIDERED, the Court **DISMISSES** the appeal and **AFFIRMS with MODIFICATION** the Decision dated October 13, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05340 finding accused-appellant Marlon Manson y Resultay guilty beyond reasonable doubt of the crime of Statutory Rape under Article 266-A, paragraph 1 (d) of the Revised Penal Code, as amended by Republic Act 8353. The Court sentences Manson to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of ₱14,439.25 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and another ₱75,000.00 as exemplary damages, all with interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Mendoza,[*] and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 215640. Novemeber 28, 2016]

NESTOR CABRERA, *petitioner, vs.* **ARNEL CLARIN and WIFE; MILAGROS BARRIOS and HUSBAND; AURORA SERAFIN and HUSBAND; and BONIFACIO MORENO and WIFE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; THE JUDICIARY REORGANIZATION ACT OF 1980 (R.A. NO.

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza per Raffle dated December 8, 2014.

7691); JURISDICTION OVER REAL ACTIONS; ABSENT ANY ALLEGATION IN THE COMPLAINT OF THE ASSESSED VALUE OF THE PROPERTY, IT CANNOT READILY BE DETERMINED WHICH COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER THE CASE, AS THE COURTS CANNOT TAKE JUDICIAL NOTICE OF THE ASSESSED OR MARKET VALUE OF THE LAND. — Before the amendments, the plenary action of *accion publiciana* was to be brought before the RTC regardless of the value of the property. With the modifications introduced by R.A. No. 7691 in 1994, the jurisdiction of the first level courts has been expanded to include jurisdiction over other real actions where the assessed value does not exceed ₱20,000.00, ₱50,000.00 where the action is filed in Metro Manila. Accordingly, the **jurisdictional element is the assessed value of the property**. A perusal of the complaint readily shows that Cabrera failed to state the assessed value of the disputed land x x x. Indeed, nowhere in the complaint was the assessed value of the subject property ever mentioned. On its face, there is no showing that the RTC has jurisdiction exclusive of the MTC. Absent any allegation in the complaint of the assessed value of the property, it cannot readily be determined which court had original and exclusive jurisdiction over the case at bar. The courts cannot take judicial notice of the assessed or market value of the land.

2. ID.; ID.; APPEALS; A COURT'S JURISDICTION MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL FOR THE SAME IS CONFERRED BY LAW, AND LACK OF IT AFFECTS THE VERY AUTHORITY OF THE COURT TO TAKE COGNIZANCE OF AND TO RENDER JUDGMENT ON THE ACTION, EXCEPT WHERE A PARTY IS BARRED BY LACHES.— It is axiomatic that the nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced. A court's jurisdiction may be raised at any stage of the proceedings, even on appeal for the same is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. It applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment. The exception to the basic rule mentioned operates on the principle of estoppel by laches

— whereby a party may be barred by laches from invoking the lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea.

3. **ID.; ID.; ID; ID.; JURISDICTION BY ESTOPPEL; WHEN APPLICABLE.—** In the case of *La Naval Drug Corporation v. Court of Appeals*, We illustrated the rule as to when jurisdiction by estoppel applies and when it does not, as follows: x x x. In *People vs. Casiano* , this Court, on the issue or estoppel, held: The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. **If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel.'** However, **if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court had jurisdiction. Here, the principle of estoppel applies**. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon. x x x. Guided by the abovementioned jurisprudence, this Court rules that respondents are **not estopped** from assailing the jurisdiction of the RTC over the subject civil case. Records reveal that even before filing their Answer, respondents assailed the jurisdiction of the RTC through a motion to dismiss as there was no mention of the assessed value of the property in the complaint.

4. **ID.; ID.; EVIDENCE; OFFER AND OBJECTION; OFFER OF EVIDENCE; THE COURT SHALL CONSIDER NO EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED, AS A FORMAL OFFER IS NECESSARY BECAUSE JUDGES ARE MANDATED TO REST THEIR FINDINGS OF FACTS AND THEIR JUDGMENT ONLY AND STRICTLY UPON THE EVIDENCE OFFERED BY THE PARTIES AT THE TRIAL, EXCEPT WHEN THE EVIDENCE HAVE BEEN DULY IDENTIFIED BY TESTIMONY DULY RECORDED AND, THE SAME HAVE**

BEEN INCORPORATED IN THE RECORDS OF THE CASE.— The Rules of Court provides that the court shall consider no evidence which has not been formally offered. A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. Conversely, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, **it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court**. We relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz.*: *first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.

5. ID.; ID.; COURTS; JURISDICTION OVER REAL ACTION; THE BELATED PRESENTATION OF DOCUMENT PROVING THE ASSESSED VALUE OF THE PROPERTY BEFORE THE APPELLATE COURT WILL NOT CURE THE DEFECT IN THE COMPLAINT, AS THE ASSESSED VALUE IS A JURISDICTIONAL REQUIREMENT.— Based on the petitioner's admission, he presented the Tax Declaration 2006-07016-00394 dated November 13, 2006 purporting to prove the assessed value of the property for the first time on appeal before the CA in his Brief. There was no proof or allegation that he presented the same during the trial or that the court examined such document. Since the tax declaration was never duly identified by testimony during the trial albeit incorporated in the Appellee's Brief, the CA will not be required to review such document that was not previously scrutinized by the RTC. As the assessed value is a jurisdictional requirement, the belated presentation of document proving such value before the appellate court will not cure the glaring defect in the complaint. Thus, jurisdiction was not acquired.

6. ID.; ID.; ID.; ID.; THE LACK OF A COURT'S JURISDICTION IS A NON-WAIVABLE DEFENSE THAT A PARTY CAN RAISE AT ANY STAGE OF THE PROCEEDINGS IN A CASE, EVEN ON APPEAL, AND THE DOCTRINE OF

ESTOPPEL, BEING THE EXCEPTION TO SUCH NON-WAIVABLE DEFENSE, MUST BE APPLIED WITH GREAT CARE AND THE EQUITY MUST BE STRONG IN ITS FAVOR.— We find Cabrera's application of Section 5, Rule 10 of the Rules of Court to support his claim that failure of the respondents to object to his presentation of the tax declaration before the CA constitutes an implied consent which then treated the issue of assessed value as if it had been raised in the pleadings specious. Such rule contemplates an amendment to conform to or authorize presentation of evidence before the trial court during the trial on the merits of the case. x x x. It bears emphasis that the ruling in *Tijam* establishes an exception which is to be applied only under extraordinary circumstances or to those cases similar to its factual situation. The general rule is that the lack of a court's jurisdiction is a non-waivable defense that a party can raise at any stage of the proceedings in a case, even on appeal; the doctrine of estoppel, being the exception to such non-waivable defense, must be applied with great care and the equity must be strong in its favor.

7. ID.; ID.; JUDGMENTS; A VOID JUDGMENT FOR WANT OF JURISDICTION IS NO JUDGMENT AT ALL, AND CANNOT BE THE SOURCE OF ANY RIGHT NOR THE CREATOR OF ANY OBLIGATION, AND ALL ACTS PERFORMED PURSUANT TO IT AND ALL CLAIMS EMANATING FROM IT HAVE NO LEGAL EFFECT.— We find no error on the part of the CA in dismissing the Complaint for lack of jurisdiction and for not reviewing the document belatedly filed. Consequently, all proceedings in the RTC are null and void. Indeed, a void judgment for want of jurisdiction is no judgment at all, and cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect.

APPEARANCES OF COUNSEL

Pangilinan Pangilinan Macalino Tubig & Associates Law Office for petitioner.

Public Attorney's Office for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Nestor Cabrera (*Cabrera*) assailing the Decision[1] dated July 25, 2014 and Resolution[2] dated November 21, 2014 of the Court of Appeals (*CA*) in CA-G.R. CV No. 100950, which reversed and set aside the Decision[3] of the Regional Trial Court (*RTC*) of Malolos, Bulacan, Branch 10, in Civil Case No. 752-M-2006.

The facts are as follows:

The instant petition originated from a Complaint[4] for *accion publiciana* with damages filed before the RTC by Cabrera[5] against respondents Arnel Clarin (*Clarin*) and wife, Milagros Barrios (*Barrios*) and husband, Aurora Serafin (*Serafin*) and husband, and Bonifacio Moreno (*Moreno*) and wife.[6] Cabrera alleged that he is the lawful and registered owner of a parcel of agricultural land located at Barangay Maysulao, Calumpit, Bulacan, with a total area of 60,000 square meters (sq. m.) covered by Transfer Certificate of Title (*TCT*) No. T-4439. He was in actual and physical possession of the land until he discovered the encroachment of respondents sometime in December 2005. By means of fraud, strategy and stealth, respondents usurped and occupied portions of the said property, *viz.*: Clarin with 63 sq. m. thereof, Barrios with 41 sq. m. thereof, Serafin with 30 sq. m. thereof, and Moreno with 11 sq. m. thereof.

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Remedios A. Salazar- Fernando and Danton Q. Bueser, concurring; *rollo*, pp. 32-41.

[2] *Id.* at 43-44.

[3] Penned by Judge Basilio R. Gabo, Jr.; *id.* at 87-88.

[4] *Id.* at 45-48.

[5] Cabrera was joined by his wife in the complaint filed before the RTC.

[6] *Rollo*, p. 33.

He made numerous oral and written demands to vacate the premises but the respondents refused to heed. They also failed to settle amicably when the case was brought before the barangay for conciliation.

In their Motion to Dismiss,[7] respondents claimed that the complaint failed to state the assessed value of the property which is needed in determining the correct amount of docket fees to be paid. Also, Cabrera did not fulfill an essential condition prior to the filing of the complaint which was submission of a government approved technical survey plan to prove the alleged encroachment. Cabrera anchors his claim of ownership in the certificate of title registered in his and his father Ciriaco Cabrera's name. Cabrera did not aver that it was his portion of property that respondents have intruded as there was no proof of partition of the property since his father who was an American citizen died in the United States of America.[8]

In an Order dated June 19, 2007, the RTC denied respondents' motion, and directed them to file their Answer.[9] The RTC cited the case of *Aguilon v. Bohol*[10] in ruling that based on the allegations in the complaint, the case is the plenary action of *accion publiciana* which clearly falls within its jurisdiction. The trial court, in an Order[11] dated October 19, 2007, declared respondents in default upon failing to file their Answer, and allowed Cabrera to present his evidence *ex parte*. On February 5, 2009, respondents filed an Omnibus Motion[12] to set aside the order of default, to admit Answer, and to set the hearing for the presentation of their evidence.

In a Decision dated May 30, 2012, the RTC ruled in favor of Cabrera. The dispositive portion reads:

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[7] *Id.* at 55-57.

[8] *Id.* at 56.

[9] Penned by Presiding Judge Victoria Villalon-Pornillos; *id.* at 34.

[10] 169 Phil. 473, 476 (1977).

[11] *Rollo,* p. 67.

[12] *Id.* at 73-77.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the [petitioner]:

1. ORDERING the [respondents] and all other persons claiming rights under them to vacate the subject portions of [the] land and surrender possession thereof to the plaintiff;

2. ORDERING the [respondents] to pay attorney's fees in the amount of Fifty Thousand Pesos ([₱]50,000.00) and Ten Thousand Pesos ([₱]10,000.00) litigation expenses.

SO ORDERED.[13]

Aggrieved, respondents elevated the case before the CA which then reversed and set aside the decision of the RTC in a Decision dated July 25, 2014. The *fallo* of the decision reads:

WHEREFORE, the appeal is hereby GRANTED. The Decision dated May 30, 2012 of the Regional Trial Court, Branch 10, Malolos, Bulacan is REVERSED and SET ASIDE. In lieu thereof, the complaint for *accion publiciana with damages* filed by [petitioner] Nestor Cabrera is DISMISSED without prejudice for lack of jurisdiction.

SO ORDERED.[14]

Finding no cogent reason to deviate from its previous ruling, the CA denied the Motion for Reconsideration filed by Cabrera.

Hence, the instant petition raising the following issues:

A. The Honorable Court of Appeals committed a reversible error when it held that "since [petitioner] failed to allege the assessed value of the subject property, the court *a quo* has not acquired jurisdiction over the action and all proceedings thereat are null and void," as such conclusion is contradictory to the doctrine of estoppel.

B. The Honorable Court of Appeals committed a reversible error when it failed to take into consideration the tax declaration annexed to the Appellee's Brief which provided the assessed value of the property subject matter of the case.

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[13] *Id.* at 88. (Emphasis omitted).

[14] *Id.* at 40. (Emphasis omitted).

The instant petition lacks merit.

In essence, the issue presented before this Court is whether or not estoppel bars respondents from raising the issue of lack of jurisdiction.

Batas Pambansa Bilang 129, (the Judiciary Reorganization Act of 1980), as amended by Republic Act (*R.A.*) No. 7691 provides:

x x x x x x x x x

Section 19. *Jurisdiction in civil cases*. "Regional Trial Courts shall exercise exclusive original jurisdiction.

(2) In **all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000,00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00)** except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

x x x x x x x x x

Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in Civil Cases*. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

(3) **Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the *assessed* value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00)** or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

x x x x x x x x x[15]

[15] Emphasis and underscoring supplied.

Before the amendments, the plenary action of *accion publiciana* was to be brought before the RTC regardless of the value of the property. With the modifications introduced by R.A. No. 7691 in 1994, the jurisdiction of the first level courts has been expanded to include jurisdiction over other real actions where the assessed value does not exceed ₱20,000.00, ₱50,000.00 where the action is filed in Metro Manila. Accordingly, the **jurisdictional element is the assessed value of the property**.[16]

A perusal of the complaint readily shows that Cabrera failed to state the assessed value of the disputed land, thus:

x x x x x x x x x

[T]he plaintiffs are the lawful and the registered owner of a parcel of agricultural land and more particularly described under Transfer Certificate of Title No. T-4439, a copy of which is hereto attached and marked as Annex "A" and made an integral part hereof;

[T]he defendants had illegally encroached the property of the plaintiff by means of fraud and stealth and with force and intimidation. Defendant Arnel Clarin had encroached an approximate area of SIXTY THREE (63) SQUARE METERS, while defendant Milagros Barrios had encroached an approximate area of FORTY-ONE (41) SQUARE METERS, defendant Aurora Serafin had encroached an approximate area of THIRTY (30) SQUARE METERS while defendant Bonifacio Moreno had encroached an approximate area of ELEVEN (11) SQUARE METERS, copy of the relocation plan is hereto attached and marked as Annex "B" and made an integral part of this complaint;

The plaintiffs had already informed the defendants of the illegal encroachment but the defendants refused to heed the call of the plaintiffs to vacate the land in question and threaten plaintiff with bodily harm;

That prior to the discovery of the encroachment on or about December 2005, plaintiff was in actual and physical possession of the premises.

That this matter was referred to the attention of the Office of the Barangay Chairman of Barangay Maysulao, Calumpit, Bulacan and

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[16] *Vda. de Barrera v. Heirs of Legaspi*, 586 Phil. 750, 756 (2008). (Emphasis supplied).

a Lupong Tagapamayapa was constituted but no conciliation was reached and the Lupon issued a Certificate to File Action, copy of the Certificate to File Action is hereto attached and marked as Annex "C" and made an integral part hereof;

That notwithstanding numerous and persistent demands, both oral and written, extended upon the defendants to vacate the subject parcel of land, they failed and refused and still fail and refuse to vacate and surrender possession of the subject parcel of land to the lawful owner who is plaintiff in this case. Copy of the last formal demand dated January 18, 2006 is hereto attached and marked as "Annex" and the registry receipt as well as the registry return card as "D" Annexes "D-1," and "D-2," respectively;

That because of this unjustifiable refusal of the defendants to vacate the premises in question which they now unlawfully occupy, plaintiffs [were] constrained to engage the services of counsel in an agreed amount of FIFTY THOUSAND PESOS ([₱]50,000.00) Philippine Currency, as acceptance fee and THREE THOUSAND PESOS ([₱]3,000.00) Philippine Currency, per day of Court appearance, which amount the defendants should jointly and solidarily pay the plaintiffs, copy of the retaining contract is hereto attached and marked as Annex "E" and made an integral part of this complaint;

That in order to protect the rights and interest of the plaintiffs, litigation expenses will be incurred in an amount no less than TEN THOUSAND PESOS ([₱]10,000.00), which amount the defendants should jointly and solidarily pay the plaintiffs;

That the amount of THREE THOUSAND PESOS ([₱]3,000.00) per month should be adjudicated in favor of the plaintiff as against the defendants by way of beneficial use, to be counted from the day the last formal demand until they fully vacate and surrender possession of the premises in question to the plaintiffs. x x x.[17]

In dismissing the case, the CA noted such fact, to wit:

In the case at bench, the complaint for *accion publiciana* filed by [Cabrera] failed to allege the assessed value of the real property subject of the complaint or the interest therein. Not even a tax declaration was presented before the court *a quo* that would show the valuation of the subject property. As such, there is no way to determine which

[17] *Rollo,* pp. 45-46.

court has jurisdiction over the action or whether the court *a quo* has exclusive jurisdiction over the same. Verily, the court *a quo* erred in denying the motion to dismiss filed by [respondents] and in taking cognizance of the instant case.[18]

Indeed, nowhere in the complaint was the assessed value of the subject property ever mentioned. On its face, there is no showing that the RTC has jurisdiction exclusive of the MTC. Absent any allegation in the complaint of the assessed value of the property, it cannot readily be determined which court had original and exclusive jurisdiction over the case at bar. The courts cannot take judicial notice of the assessed or market value of the land.[19]

We note that Cabrera, in his Comment/Opposition to the Motion to Dismiss,[20] maintained that the *accion publiciana* is an action incapable of pecuniary interest under the exclusive jurisdiction of the RTC.[21] Thereafter, he admitted in his Brief before the CA that the assessed value of the subject property now determines which court has jurisdiction over *accion publiciana* cases. In asserting the trial court's jurisdiction, petitioner averred that his failure to allege the assessed value of the property in his Complaint was merely innocuous and did not affect the jurisdiction of the RTC to decide the case.

Cabrera alleges that the CA erred in concluding that the RTC has not acquired jurisdiction over the action in the instant case being contrary to the doctrine of estoppel as elucidated in *Honorio Bernardo v. Heirs of Villegas*.[22] Estoppel sets in when respondents participated in all stages of the case and voluntarily submitting to its jurisdiction seeking affirmative reliefs in addition to their motion to dismiss due to lack of jurisdiction.

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[18] *Id.* at 37.

[19] *Quinagoran v. Court of Appeals,* 557 Phil. 650, 660-661 (2007).

[20] *Rollo,* pp. 59-60.

[21] *Id.* at 59.

[22] 629 Phil. 450, 459 (2010).

We are not persuaded. It is axiomatic that the nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law at the time the action was commenced.[23] A court's jurisdiction may be raised at any stage of the proceedings, even on appeal for the same is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[24] It applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment.

The exception to the basic rule mentioned operates on the principle of estoppel by laches — whereby a party may be barred by laches from invoking the lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea. In the oft-cited case of *Tijam v. Sibonghanoy*,[25] the party-surety invoked the jurisdictions of both the trial and appellate courts in order to obtain affirmative relief, and even submitted the case for final adjudication on the merits. It was only after the CA had rendered an adverse decision that the party-surety raised the question of jurisdiction for the first time in a motion to dismiss almost fifteen (15) years later. Hence, the Court adjudicated a party estopped from assailing the court's jurisdiction, to wit:

x x x x x x x x x

> [a] party cannot **invoke the jurisdiction of a court to secure affirmative relief** against his opponent and, **after obtaining or failing to obtain such relief**, **repudiate or question that same jurisdiction**. . . ., it was further said that the question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid

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[23] *Malana v. Tappa*, 616 Phil. 177, 190 (2009), citing *Laresma v. Abellana*, 484 Phil. 766, 778-779 (2004).

[24] *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508, 522.

[25] 131 Phil. 556, 565 (1968).

and conclusive as an adjudication, but for the reason that such practice cannot be tolerated — obviously for reasons of public policy.

x x x x x x x x x[26]

However, it was explicated in *Calimlim v. Ramirez*[27] that *Tijam* is an exceptional case because of the presence of laches. Thus:

The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of *Sibonghanoy*. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstance involved in *Sibonghanoy* which justified the departure from the accepted concept of non-waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in Sibonghanoy not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.

In *Sibonghanoy,* the defense of lack of jurisdiction of the court that rendered the questioned ruling was held to be **barred by estoppel by laches.** It was ruled that the **lack of jurisdiction having been raised for the first time in a motion to dismiss filed almost fifteen (15) years after the questioned ruling had been rendered**, such a plea may no longer be raised for being **barred by laches**. As defined in said case, **laches is "failure or neglect, for an unreasonable and unexplained 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 has abandoned it or declined to assert it**.[28]

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[26] *Tijam v. Sibonghanoy, supra,* at 564. (Emphasis ours)

[27] *Calimlim v. Ramirez,* 204 Phil. 25, 35 (1982).

[28] *Id.* (Emphasis supplied)

In the case of *La Naval Drug Corporation v. Court of Appeals*,[29] We illustrated the rule as to when jurisdiction by estoppel applies and when it does not, as follows:

x x x x x x x x x

Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). **This defense may be interposed at any time, during appeal** (*Roxas vs. Rafferty*, 37 Phil. 957) **or even after final judgment** (*Cruzcosa vs. Judge Concepcion, et al.*, 101 Phil. 146). Such is understandable, as this **kind of jurisdiction is conferred by law** and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In *People vs. Casiano* (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:

> The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. **If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel'** (5 C.J.S., 861-863).
>
> However, **if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court had jurisdiction**. **Here, the principle of estoppel applies**. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon. x x x.[30]

Guided by the abovementioned jurisprudence, this Court rules that respondents are **not estopped** from assailing the jurisdiction

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[29] G.R. No. 103200, August 31, 1994, 236 SCRA 78.

[30] *La Naval Drug Corporation v. Court of Appeals*, *supra*, at 90. (Emphases supplied)

of the RTC over the subject civil case. Records reveal that even before filing their Answer, respondents assailed the jurisdiction of the RTC through a motion to dismiss as there was no mention of the assessed value of the property in the complaint. We note that the RTC anchored its denial of respondents' motion to dismiss on the doctrine enunciated in a 1977 case — that all cases of recovery of possession or *accion publiciana* lie with the RTC regardless of the value — which no longer holds true. Thereafter, the respondents filed their Answer through an omnibus motion to set aside order of default and to admit Answer.

The circumstances of the present case are different from the *Heirs of Villegas*[31] case. *First*, petitioner Bernardo in the *Heirs of Villegas* case actively participated during the trial by adducing evidence and filing numerous pleadings, none of which mentioned any defect in the jurisdiction of the RTC, while in this case, respondents already raised the issue of lack of jurisdiction in their Motion to Dismiss filed before their Answer. *Second*, it was only on appeal before the CA, after he obtained an adverse judgment in the trial court, that Bernardo, for the first time, came up with the argument that the decision is void because there was no allegation in the complaint about the value of the property; on the other hand, herein respondents raised the issue before there was judgment on the merits in the trial court. Respondents never assumed inconsistent position in their appeal before the CA.

Furthermore, the unfairness and inequity that the application of estoppel seeks to avoid espoused in the *Tijam* case, which the *Heirs of Villegas* adheres to, are not present. The instant case does not involve a situation where a party who, **after obtaining affirmative relief from the court, later on turned around to assail the jurisdiction of the same court that granted such relief by reason of an unfavorable judgment**. Respondents did not obtain affirmative relief from the trial court whose jurisdiction they are assailing, as their motion to dismiss was denied and they eventually lost their case in the proceedings below.

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[31] *Supra* note 22.

Anent the issue of the CA's failure to consider the tax declaration annexed in the Appellee's Brief, Cabrera insists that its attachment in his Brief without objection from the other party sealed the issue of the RTC's jurisdiction, and cured the defect of failure to allege the assessed value of the property in the complaint as provided in Section 5,[32] Rule 10 of the Rules of Court.

Such averments lack merit. The Rules of Court provides that the court shall consider no evidence which has not been formally offered.[33] A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. Conversely, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, **it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.**[34] We relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided

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[32] **Section 5.** *Amendment to conform to or authorize presentation of evidence*. — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[33] Rule 132, Section 34, *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[34] *Heirs of Saves v. Heirs of Saves*, 646 Phil 536, 544 (2010). (Emphasis supplied).

the following requirements are present, *viz.*: *first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.[35]

Based on the petitioner's admission, he presented the Tax Declaration 2006-07016-00394[36] dated November 13, 2006 purporting to prove the assessed value of the property for the first time on appeal before the CA in his Brief.[37] There was no proof or allegation that he presented the same during the trial or that the court examined such document.[38] Since the tax declaration was never duly identified by testimony during the trial albeit incorporated in the Appellee's Brief, the CA will not be required to review such document that was not previously scrutinized by the RTC. As the assessed value is a jurisdictional requirement, the belated presentation of document proving such value before the appellate court will not cure the glaring defect in the complaint. Thus, jurisdiction was not acquired.

We find Cabrera's application of Section 5, Rule 10 of the Rules of Court to support his claim that failure of the respondents to object to his presentation of the tax declaration before the CA constitutes an implied consent which then treated the issue of assessed value as if it had been raised in the pleadings specious. Such rule contemplates an amendment to conform to or authorize presentation of evidence before the trial court during the trial on the merits of the case. As held in *Bernardo, Sr. v. Court of Appeals*,[39] this Court expounded:

> It is settled that even if the **complaint be defective, but the parties go to trial** thereon, and the **plaintiff, without objection, introduces sufficient evidence to constitute the particular cause of action**

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[35] *Id*., citing *People v. Napat-a,* 258-A Phil. 994, 998 (1989), citing *People v. Mate*. 191 Phil. 72, 82 (1981).

[36] *Rollo,* p. 148.

[37] *Id.* at 141.

[38] Formal Offer of Evidence of Petitioner before the RTC; *id.* at 68-69.

[39] 331 Phil. 962 (1996).

which it **intended to allege in the original complaint**, and the defendant voluntarily produces witnesses to meet the cause of action thus established, **an issue is joined as fully and as effectively as if it had been previously joined by the most perfect pleadings.** Likewise, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.[40] (Emphases supplied)

It bears emphasis that the ruling in *Tijam* establishes an exception which is to be applied only under extraordinary circumstances or to those cases similar to its factual situation.[41] The general rule is that the lack of a court's jurisdiction is a non-waivable defense that a party can raise at any stage of the proceedings in a case, even on appeal; the doctrine of estoppel, being the exception to such non-waivable defense, must be applied with great care and the equity must be strong in its favor.[42]

All told, We find no error on the part of the CA in dismissing the Complaint for lack of jurisdiction and for not reviewing the document belatedly filed. Consequently, all proceedings in the RTC are null and void. Indeed, a void judgment for want of jurisdiction is no judgment at all, and cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect.[43]

WHEREFORE, petition for review on *certiorari* filed by petitioner Nestor Cabrera is hereby **DENIED**. The assailed Decision dated July 25, 2014 and Resolution dated November 21, 2014 of the Court of Appeals in CA-G.R. CV No. 100950 are hereby **AFFIRMED.**

SO ORDERED.

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

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[40] *Bernardo, Sr. v. Court of Appeals*, *supra*, at 978. (Emphases supplied.)

[41] *Regalado v. Go*, 543 Phil. 578, 598 (2007).

[42] *C & S Fishfarm Corp. v. CA*, 442 Phil. 279, 290-291 (2002).

[43] *Zacarias v. Anacay, supra* note 24.

THIRD DIVISION

[G.R. No. 215759. November 28, 2016]

HEIRS OF ANDRES NAYA: TERESITA B. NAYA, NORMA N. ORBISO, CARMENCITA N. FERNAN, and NARCISO P. NAYA, *petitioners, vs.* **ORLANDO P. NAYA and SPOUSES HONESIMO C. RUIZ and GLORIA S. RUIZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; QUIETING OF TITLE; ACTION TO QUIET TITLE; REQUISITES; PRESENT.— The complaint filed by petitioners is one for quieting of title, reconveyance of ownership, damages, and attorney's fees. To make out an action to quiet title, the initiatory pleading has only to set forth allegations showing that (1) the plaintiff has title to real property or any interest therein and (2) the defendant claims an interest therein adverse to the plaintiffs arising from an instrument, record, claim, encumbrance, or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable. Thus, the averments in petitioners' complaint that: (1) they are the legitimate, compulsory heirs of Spouses Naya, the former registered owners of the property; (2) the property is subject of intestate proceedings before the RTC, Branch 19 of Cebu City; (3) they consented to the occupation of their co-petitioner, Teresita, of the property since the time of death of Spouses Naya; (4) Orlando was able to fraudulently transfer the property in his name; and (5) Spouses Ruiz subsequently purchased the property at an allegedly void sale were sufficient to make out an action to quiet title under Article 476 of the Civil Code.

2. ID.; LAND REGISTRATION; ACTION FOR RECONVEYANCE; TO CONSTITUTE AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED TRUST, IT MUST BE ALLEGED IN THE COMPLAINT THAT THE PLAINTIFF WAS THE OWNER OF THE LAND OR POSSESSED THE LAND IN THE CONCEPT OF OWNER, AND THAT THE DEFENDANT HAD ILLEGALLY DISPOSSESSED HIM

OF THE LAND.— In *Mendizabel v. Apao*, where the case was one for annulment of titles, reconveyance and damages, we were also confronted with an argument that the complaint must be dismissed because the circumstances constituting the allegations of fraud or mistake were not stated with particularity. We ruled against this argument, holding that in an action for reconveyance, all that must be alleged in the complaint are two facts which, admitting them to be true, would entitle the plaintiff to recover title to the disputed land, namely, (1) that the plaintiff was the owner of the land or possessed the land in the concept of owner, and (2) that the defendant had illegally dispossessed him of the land. [T]he allegations in petitioners' complaint certainly measure up to the requisite statement of facts to constitute an action for reconveyance based on an implied trust. Under Article 1456 of the Civil Code, if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property. On its face, therefore, the complaint states a cause of action and raises issues of fact that can be properly settled only after a full-blown trial.

3. ID.; LACHES; THE ELEMENTS OF LACHES MUST BE PROVEN POSITIVELY, AS LACHES IS EVIDENTIARY IN NATURE, A FACT THAT CANNOT BE ESTABLISHED BY MERE ALLEGATIONS IN THE PLEADINGS AND CANNOT BE RESOLVED IN A MOTION TO DISMISS.— [T]he ruling of the RTC and the CA that the action is barred by laches is premature. In *Heirs of Tomas Dolleton v. Fil-Estate Management Inc.,* we noted that the RTC did not conduct a hearing to receive evidence proving that petitioners were guilty of laches. We reiterated the well-settled rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. We, thus, concluded that at such stage, the dismissal of petitioners' complaint on the ground of laches was premature because the issue must be resolved at the trial of the case on the merits where both parties will be given ample opportunity to prove their respective claims and defenses.

4. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; FORUM SHOPPING; CONSEQUENCES OF FORUM SHOPPING; IF THE FORUM SHOPPING IS NOT

CONSIDERED WILLFUL AND DELIBERATE, THE SUBSEQUENT CASE SHALL BE DISMISSED WITHOUT PREJUDICE, ON THE GROUND OF EITHER *LITIS PENDENTIA* OR *RES JUDICATA*; IF THE FORUM SHOPPING IS WILLFUL AND DELIBERATE, BOTH OR ALL, IF THERE ARE MORE THAN TWO, ACTIONS SHALL BE DISMISSED WITH PREJUDICE.— Forum shopping, may or may not be deliberate, intentional, or willful. The consequences in relation to the dismissal of the cases simultaneously or successively filed vary as to whether forum shopping is deliberate, intentional, or willful. If the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed without prejudice, on the ground of either *litis pendentia* or *res judicata*. If the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice. However, the question as to whether there was deliberate or willful intent to forum shop is a question of fact, which the trial court is in the best position to determine.

APPEARANCES OF COUNSEL

Edgar L. Seguerra and *Jose A. Jumangit, Jr.* for petitioners.

Villanueva Tabucanon & Associates Law Offices for respondent Gloria Ruiz.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated July 3, 2014 and Resolution[3] dated October 28, 2014 of the Court of Appeals (CA) in CA-G.R. CEB CV

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[1] *Rollo*, pp. 4-37.

[2] *Id.* at 39-49. *Ponencia* by Associate Justice Ramon Paul L. Hernando, with Associate Justices Ma. Luisa C. Quijano-Padilla and Renato C. Francisco concurring.

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

No. 03679. The Decision denied petitioners' appeal and affirmed the Orders of the Regional Trial Court (RTC), Branch 7 of Cebu City dismissing Civil Case No. CEB-35305 for failure to state a cause of action, while the Resolution denied petitioners' motion for reconsideration.

The Facts

Petitioners filed a complaint for quieting of title, reconveyance of ownership, damages, and attorney's fees[4] before the RTC, Branch 7 of Cebu City against respondents involving a parcel of land at V. Rama Ave., Cebu City. The property is denominated as Lot No. 6100-C-1 and has an area of 576 square meters, more or less.[5]

Petitioners alleged that they, together with respondent Orlando P. Naya (Orlando), are the legitimate and compulsory heirs of the late Spouses Andres and Gregoria Naya (Spouses Naya collectively). The property was included in the estate of Andres. In 1968, his heirs executed an extra judicial adjudication and settlement of estate where his surviving spouse, Gregoria, held all his properties in trust in favor of the other heirs and on the condition that she will assume all debts and pay all the obligations of the estate. Gregoria, however, failed to fulfill this condition. Despite knowing all these, Orlando allegedly sold the property in 1965, under the name of his parents, to one Alfonso Uy (Alfonso) by means of fraud and deceit. In 1971, after the title of the property was transferred in the name of Alfonso, he then sold it to Orlando, who thereafter managed to have the title of the property transferred in his name. Sometime in the early 1970s, the heirs of Spouses Naya initiated intestate proceedings and/or judicial settlement of their estate.[6]

In September 1974, Orlando sold the property to respondent Honesimo C. Ruiz (Honesimo). The title, however, was transferred to Honesimo's name only in 2007. Petitioners alleged

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[4] *Id.* at 95-102.

[5] *Id.* at 48.

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

that they only learned of Orlando's anomalous transactions in September 1974, prompting them to cause the annotation of an adverse claim to Orlando's title under Entry No. 4843-V-15-D.B.[7]

Petitioners alleged that with their consent, their co-petitioner, Teresita B. Naya (Teresita), occupied the property from the time of death of Spouses Naya until the time of the filing of the case. They stressed that Honesimo is not a buyer in good faith because he acquired the property after the notice of adverse claim had already been annotated on Orlando's title. Petitioners also argued that it took Honesimo 33 years before causing the transfer of title in his name.[8]

The RTC initially dismissed the complaint based on the motion to dismiss filed by Spouses Honesimo C. Ruiz and Gloria S. Ruiz (Spouses Ruiz) on the ground that the RTC did not acquire jurisdiction over their persons since the summons for them was served on their son. Petitioners moved for reconsideration and filed a motion for leave to effect summons by publication, which the RTC granted.[9]

In their Answer with Cross-Claim and Counter-Claims *Ad Cautelam*, Spouses Ruiz countered that the property was already sold by the late Spouses Naya to Alfonso in 1965 and as such, had already been excluded from the decedents' estate since. They also rebutted petitioners' allegations of fraud and deceit against Orlando in selling the property to Alfonso and subsequently, to Honesimo. Spouses Ruiz argued that these general allegations of fraud and deceit were mere conclusions of law which cannot defeat the presumption of genuineness and due execution of the deeds of sale between the Spouses Naya and Alfonso, and between Alfonso and Orlando.[10]

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[7] *Id.* at 98.

[8] *Id.* at 99.

[9] *Id.* at 46-47.

[10] *Id.* at 46.

In its Order dated August 9, 2010, the RTC dismissed the complaint for failure to state a cause of action and laches. The RTC ruled that the assailed transactions were conducted through the deceit and fraudulent scheme of Orlando, yet, petitioners did not give details of the same, in violation of Section 5,[11] Rule 8 of the Rules of Court. The RTC further ruled that time had turned petitioners' claim into a stale demand for instituting the complaint only in 2009, or 45 years after the sale of the property to Alfonso in 1965.[12]

The CA denied the appeal and affirmed the findings of the RTC that the complaint does not state a cause of action. The CA agreed that petitioners failed to allege with particularity the fraud purportedly committed by Orlando, such that Spouses Naya were deceived into executing the sale in favor of Alfonso. The CA noted that the allegations of fraud and deceit were sweeping statements that did not give a clear picture as to how they were committed. These allegations did not even state how the fraud was perpetuated or that the deeds of sale or the signatures were forgeries.[13]

The Petition

Hence, this petition, where petitioners maintain that the case sufficiently avers grounds and facts that constitute a cause of action for quieting of title. They insist that an allegation of fraud is not a mandatory requirement in such action. Being in physical possession of the land from the time of the death of Spouses Naya, petitioners likewise argue that their action for quieting of title is imprescriptible.[14]

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[11] Sec. 5. *Fraud, mistake, condition of the mind.* – In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally.

[12] *Rollo,* p. 44.

[13] *Id.* at 40.

[14] *Id.* at 16-29.

Petitioners also argue that respondents violated the omnibus motion rule when the defenses of lack of cause of action and laches were only raised in their answer and not in the motion to dismiss filed earlier.[15]

In their Comment,[16] Spouses Ruiz argue that the petition should be dismissed because petitioners are guilty of forum shopping. Spouses Ruiz cite a Complaint for Quieting of title, Declaration of Absolute Nullity of Deed of Sale, Transfer Certificate of Title No. 107-2010001175, Tax Declaration, and Damages[17] filed by petitioners against respondents and Spouses Romeo O. Jatico before the RTC, Branch 23 of Cebu City. Spouses Ruiz allege that this complaint has the same facts and issues as the case at bar.[18]

Spouses Ruiz further argue that the CA correctly dismissed the complaint because the omnibus motion rule did not apply to them prior to the service of summons by publication upon them. Spouses Ruiz stress that the motion to dismiss they earlier filed was for the sole purpose of assailing the jurisdiction of the RTC over their person. In other words, the RTC did not have jurisdiction over their person when they filed the motion and so Section 8, Rule 15 of the Rules of Court on the omnibus motion rule did not apply to them. It was only after the petitioners had effected a valid extraterritorial service of summons that the RTC had acquired jurisdiction over Spouses Ruiz. The first pleading they filed after the RTC acquired jurisdiction over them was their Answer with Cross-Claim and Counterclaims *Ad Cautelam*, where they alleged affirmative allegations.[19]

Finally, Spouses Ruiz maintain that the complaint miserably failed to state a cause of action because petitioners simply made sweeping allegations of deceit and fraud. Spouses Ruiz also

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[15] *Id.* at 13-16.

[16] *Id.* at 114-129.

[17] *Id.* at 151-163.

[18] *Id.* at 117.

[19] *Id.* at 119-122.

argue that laches bars petitioners from questioning their title over the property.[20]

The Court's Ruling

We grant the petition.

The complaint filed by petitioners is one for quieting of title, reconveyance of ownership, damages, and attorney's fees. To make out an action to quiet title, the initiatory pleading has only to set forth allegations showing that (1) the plaintiff has title to real property or any interest therein and (2) the defendant claims an interest therein adverse to the plaintiff's arising from an instrument, record, claim, encumbrance, or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable.[21] Thus, the averments in petitioners' complaint that: (1) they are the legitimate, compulsory heirs of Spouses Naya, the former registered owners of the property; (2) the property is subject of intestate proceedings before the RTC, Branch 19 of Cebu City; (3) they consented to the occupation of their co-petitioner, Teresita, of the property since the time of death of Spouses Naya; (4) Orlando was able to fraudulently transfer the property in his name; and (5) Spouses Ruiz subsequently purchased the property at an allegedly void sale were sufficient to make out an action to quiet title under Article 476[22] of the Civil Code.[23]

The action of petitioners is, at the same time, one for reconveyance. Petitioners seek to compel Spouses Ruiz, as the

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[20] *Id.* at 123-126.

[21] *Ragasa v. Roa,* G.R. No. 141964, June 30, 2006, 494 SCRA 95, 99.

[22] Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[23] *Ragasa v. Roa*, *supra* at 98-99.

registered owners, to transfer or reconvey the land to them on the ground that petitioners are its rightful owners by succession and that the land was wrongfully registered in the names of Spouses Ruiz.[24] The case would, in effect, challenge the efficacy of Spouses Ruiz' certificate of title under the theory that there had been no valid transfer or sale from the petitioners' predecessors in interest to the respondents of the rights or interests in the land, the reason being that the transactions transferring such rights and interests were purportedly carried out by means of fraud and deceit.[25]

In *Mendizabel v. Apao*,[26] where the case was one for annulment of titles, reconveyance and damages, we were also confronted with an argument that the complaint must be dismissed because the circumstances constituting the allegations of fraud or mistake were not stated with particularity. We ruled against this argument, holding that in an action for reconveyance, all that must be alleged in the complaint are two facts which, admitting them to be true, would entitle the plaintiff to recover title to the disputed land, namely, (1) that the plaintiff was the owner of the land or possessed the land in the concept of owner, and (2) that the defendant had illegally dispossessed him of the land. As already enumerated above, the allegations in petitioners' complaint certainly measure up to the requisite statement of facts to constitute an action for reconveyance based on an implied trust. Under Article 1456[27] of the Civil Code, if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.[28] On its face,

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[24] See *Hortizuela v. Tagufa*, G.R. No. 205867, February 23, 2015.

[25] See *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 596.

[26] G.R. No. 143185, February 20, 2006, 482 SCRA 587.

[27] If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[28] *Supra* note 26 at 604-605.

therefore, the complaint states a cause of action and raises issues of fact that can be properly settled only after a full-blown trial.[29]

We also note that petitioners allege that Teresita, a co-petitioner, is in possession of the property from the time of death of Spouses Naya until the filing of the case. This is a question of fact that must be also threshed out in a full-blown trial. If established, petitioners' action will be imprescriptible and hence, the defense of laches will not lie.

In the same vein, the ruling of the RTC and the CA that the action is barred by laches is premature. In *Heirs of Tomas Dolleton v. Fil-Estate Management Inc.*,[30] we noted that the RTC did not conduct a hearing to receive evidence proving that petitioners were guilty of laches. We reiterated the well-settled rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. We, thus, concluded that at such stage, the dismissal of petitioners' complaint on the ground of laches was premature because the issue must be resolved at the trial of the case on the merits where both parties will be given ample opportunity to prove their respective claims and defenses.[31]

Finally, we find it would be prudent as well that the question as to whether petitioners are guilty of forum shopping be threshed out in a trial. Respondents argue that petitioners are guilty of forum shopping because they also filed another case for quieting of title, declaration of absolute nullity of deed of sale, transfer certificate of title, tax declaration, and damages before the RTC, Branch 23 of Cebu City, docketed as Civil Case No. CEB-38883.[32] Respondents thusly pray that the case be dismissed on this ground. Forum shopping, however, may or may not be

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[29] See *Associated Bank v. Montano, Sr.*, G.R. No. 166383, October 16, 2009, 604 SCRA 134, 144.

[30] G.R. No. 170750, April 7, 2009, 584 SCRA 409.

[31] *Id.* at 430.

[32] *Rollo*, pp. 116-117; *supra* note 17.

deliberate, intentional, or willful. The consequences in relation to the dismissal of the cases simultaneously or successively filed vary as to whether forum shopping is deliberate, intentional, or willful. If the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed without prejudice, on the ground of either *litis pendentia* or *res judicata*. If the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.[33] However, the question as to whether there was deliberate or willful intent to forum shop is a question of fact, which the trial court is in the best position to determine.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals dated July 3, 2014 and its Resolution dated October 28, 2014 are **SET ASIDE**. This case is **REMANDED** to the Regional Trial Court of Cebu City, Seventh Judicial Region, Branch 7 which is directed to try and decide the case with deliberate speed.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 218980. November 28, 2016]

PHILIPPINE AUTO COMPONENTS, INC., *petitioner, vs.* **RONNIE B. JUMADLA, ROY A. ARIZ and ROY T. CONEJOS,** *respondents.*

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[33] *Chua v. Metropolitan Bank & Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 541.

[G.R. No. 219124. November 28, 2016]

RONNIE B. JUMADLA, ROY A. ARIZ AND ROY T. CONEJOS, *petitioners, vs.* **PHILIPPINE AUTO COMPONENTS, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; IN LABOR CASES, AS IN OTHER ADMINISTRATIVE AND QUASI-JUDICIAL PROCEEDINGS, THE QUANTUM OF PROOF NECESSARY IS SUBSTANTIAL EVIDENCE.— It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. After a judicious perusal of the records, the Court finds that there was sufficient cause to justify respondents' dismissal from employment.

2. ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; BREACH OF TRUST AND CONFIDENCE, AS A JUST CAUSE FOR TERMINATION OF EMPLOYMENT, IS PREMISED ON THE FACT THAT THE EMPLOYEE CONCERNED HOLDS A POSITION OF TRUST AND CONFIDENCE, WHERE GREATER TRUST IS PLACED BY MANAGEMENT AND FROM WHOM, GREATER FIDELITY TO DUTY IS CORRESPONDINGLY EXPECTED.— The Labor Code provides that an employer may terminate an employment based on fraud or; willful breach of the trust reposed on the employee. Breach of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom , greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized. The Court discussion in *Mabeza v. NLRC* is instructive: Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees.

Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property.

3. ID.; ID.; ID.; ID.; ID.; REQUISITES TO BE A VALID GROUND FOR DISMISSAL; PRESENT.— In *Wesleyan University Philippines v. Reyes,* the Court discussed the requisites for a valid dismissal on the ground of loss of trust and confidence: The first requisite is that the employee concerned must be one holding a position of trust and confidence, thus, one who is either: (1) a managerial employee; or (2) a fiduciary rank-and-file employee, who, in the normal exercise of his or her functions, regularly handles significant amounts of money or property of the employer. x x x. The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence. To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts. With regard to the first requisite, respondents belong to the first class as they were officers of the managerial staff in charge of particular departments. x x x. Their positions were necessarily imbued with trust and confidence as they were charged with the delicate task of ensuring the safety, proper handling and distribution of PACI's products. Hence, a high degree of honesty and responsibility was required and expected of them. As to the second requisite, the police report showed that Loyola was caught in possession of PACI's products, which he transported to an unauthorized location. xxx. The loss of a considerable amount of automotive products under their custody remained unrefuted. Their failure to account for this loss of company property betrays the trust reposed and expected of them. x x x. Thus, respondents had violated PACI's trust and for which their dismissal is justified on the ground of breach of confidence.

4. ID.; ID.; ID.; THE MERE FILING OF A FORMAL CHARGE DOES NOT AUTOMATICALLY MAKE THE DISMISSAL VALID, AS EVIDENCE SUBMITTED TO SUPPORT THE

CHARGE SHOULD BE EVALUATED TO SEE IF THE DEGREE OF PROOF IS MET TO JUSTIFY THE EMPLOYEES' TERMINATION.— The affidavits executed by Loyola and Salimpade averred that respondents were the masterminds behind the pilferage. It must be borne in mind that implicating a person in the wrongdoing of another is not done with relative ease. Nevertheless, PACI failed to provide evidence as to the missing link—that respondents sanctioned the delivery of the products at Salimpade's residence: *First,* respondents were not the only ones who had access to PACI's products. *Second,* that Jumadla personally knew Salimpade did not prove pilferage. Friendship or association is not proof of culpability. *Third,* Ariz's resignation on October 15, 2012 may have just been an unfortunate coincidence. Finally, it has been consistently held that the mere filing of a formal charge does not automatically make the dismissal valid. Evidence submitted to support the charge should be evaluated to see if the degree of proof is met to justify the respondents' termination.

5. ID.; ID.; ID.; ADMINISTRATIVE DUE PROCESS REQUIREMENT; TWIN-NOTICE RULE; COMPLIED WITH.— To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two (2) written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side; and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee. In this case, respondents were issued individual show cause notices requiring them to explain in writing, within five (5) days from their receipt thereof, why no disciplinary action, including possible dismissal from employment, should be meted; against them for the alleged pilferage of PACI's products. Moreover, PACI conducted administrative hearings on November 7 and 8, 2012. Thereafter, it found respondents liable for the charges hurled against them and issued individual notices of the decision to inform them of their dismissal from employment. Thus, PACI fully complied with the twin-notice rule.

6. ID.; ID.; ID.; AS LONG AS THE COMPANY'S EXERCISE OF JUDGMENT IS IN GOOD FAITH TO ADVANCE ITS INTEREST AND NOT FOR THE PURPOSE OF

DEFEATING OR CIRCUMVENTING THE RIGHTS OF EMPLOYEES UNDER THE LAWS OR VALID AGREEMENTS, SUCH EXERCISE WILL BE UPHELD.— Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs, including the right to dismiss erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for Philippine Auto Components, Inc.

Banzuela & Associates for Jumadla, *et al.*

D E C I S I O N

MENDOZA, *J.*:

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the February 12, 2015 Decision[1] and June 18, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 137752, which dismissed the petition for*certiorari* assailing the April 15, 2014 Decision[3] and August 18, 2014 Resolution[4] of the National Labor

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justice Nina G. Antonio-Valenzuela and Associate Justice Melchor Q.C. Sadang concurring; *rollo* (G.R. No. 218980), pp. 56-79.

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

[3] Penned by Presiding Commissioner Joseph Gerard E. Mabilog with Commissioner Isabel G. Panganiban-Ortiguerra concurring and Commissioner Nieves E. Vivar-De Castro dissenting; *id.* at 173-183.

[4] *Id.* at 185-190.

Relations Commission (*NLRC*) in NLRC LAC No. 05-001625-13/NLRC RAB IV Case No. 12-01812-12, a case for illegal dismissal.

The Facts

On October 12, 2012, Aleli Veronica Garcia (*Garcia*), the Human Resources and Administrative Department Manager of Philippine Auto Components, Inc. (*PACI*), received information from an anonymous source that some of its employees were planning to use the truck assigned to Ronilo D. Loyola (*Loyola*), the driver for domestic deliveries of its Finished Goods Stock In and Delivery Group, in order to steal automotive parts the next day, October 13, 2012.

Garcia then requested Lorenzo Arcilla (*Arcilla*), PACI's Administrative Supervisor, to coordinate with the Philippine National Police-Criminal Investigation and Detection Group (*PNP-CIDG*) for an entrapment operation.

On October 13, 2012, members of the PNP-CIDG caught Loyola in the act of unloading four (4) boxes of Radiator Fan Assembly units in front of the residence of Melvin D. Salimpade (*Salimpade*) located at Newton Heights Subdivision, Barangay Canlalay, Biñan, Laguna. The boxes each contained six (6) sets of Radiator Fan Assembly. Loyola and Salimpade, upon demand from the PNP-CIDG, failed to produce documents authorizing the release of the automotive parts from PACI's warehouse and its delivery to Salimpade. Thus, Loyola and Salimpade were brought to the nearest police station.

In his Sworn Statement,[5] Loyola claimed that he was instructed by Ronnie B. Jumadla (*Jumadla*) and Roy A. Ariz (*Ariz*) to deliver the boxes to Salimpade. He also divulged three (3) prior instances when Jumadla and Ariz ordered him to drop off stolen parts at various locations. Loyola likewise declared that on October 11, 2012, he was approached by Roy T. Conejos (*Conejos*),[6]

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[5] *Id.* at 285.

[6] "Cornejos" in some parts of the records.

who convinced him to participate in the stealing of PACI's products for sale to third persons.

In his Sworn Statement,[7] Salimpade explained that the boxes were only left with him for safekeeping, as instructed by Jumadla and Ariz.

On October 15, 2012, Ariz tendered his resignation because he needed to care for his sick father. He alleged that he left his resignation letter, dated October 10, 2012, with his wife and instructed her to give it to Jumadla. In turn, Jumadla submitted said resignation letter to PACI on October 15, 2012.

On October 15, 2012, PACI sent Show Cause Notices[8] to Jumadla, Ariz and Conejos (*respondents*) directing them to explain in writing within five (5) days from receipt thereof, why no disciplinary action, including possible dismissal from employment, should be imposed against them for violation of the Company Rules and Regulations. On the same date, they were also placed under a thirty-day preventive suspension pending the result of the administrative case.

In compliance thereto, respondents submitted their written explanation[9] denying their involvement in the pilferage of PACI's products.

On November 7 and 8, 2012, PACI conducted administrative hearings. During these hearings Jumadla confirmed that he personally knew Salimpade.

Subsequently, respondents were found liable for serious misconduct, willful disobedience, willful breach of trust, and commission of a crime under Article 282 of the Labor: Code. Thus, on November 27, 2012, PACI dismissed respondents from employment.

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[7] *Id.* at 286.

[8] *Id.* at 287, 289, 295.

[9] *Id.* at 296, 297, 298-299.

On December 4, 2012, respondents filed a complaint for illegal dismissal, illegal suspension and unfair labor practice against PACI.

On December 11, 2012, PACI instituted a complaint[10] for Qualified Theft against Jumadla, Ariz, Loyola, and Salimpade before the Office of the City Prosecutor of Biñan City, Laguna.

The LA Ruling

In its April 23, 2013 Decision,[11] the Labor Arbiter (*LA*) found that respondents were illegally dismissed because the allegation that they took part in the pilferage of PACI's products was not supported by evidence. Thus, it ordered respondents' reinstatement. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainants as having been illegally dismissed. Accordingly, respondent Philippine Auto Components, Inc. is hereby ordered to reinstate complainants to their former or substantially equivalent positions without loss of seniority rights and to pay them their full backwages as follows:
>
> 1. Jumadla – ₱75,758.08
>
> 2. Cornejos – ₱53,176.50
>
> 3. Ariz – ₱75,758.08
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[12]

Unconvinced, PACI elevated an appeal before the NLRC.

The NLRC Ruling

In its April 15, 2014 decision, the NLRC affirmed the LA decision. It held that Ariz's assistance in the loading of the products and Jumadla's act of managing the delivery were not

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[10] *Id*. at 310-326.

[11] Penned by Labor Arbiter Enrico Angelo C. Portillo; *id*. at 533-544.

[12] *Id*. at 544.

sufficient to engender any suspicion that both of them were performing acts in furtherance of their common design to steal PACI's products. The NLRC observed that in those instances, Jumadla and Ariz were with other employees, who were not implicated in the theft of PACI's products.

With regard to Conejos, the NLRC was of the view that the evidence against him was wanting for the reason that Loyola did not provide any details as to Conejos' act of coercing him to steal from PACI.

Hence, the NLRC concluded that PACI failed to establish respondents' participation in the pilferage of its products and that, consequently, its act of dismissing them from employment was not justified. The *fallo* reads:

> WHEREFORE, premises considered, the Decision dated April 23, 2013 is hereby AFFIRMED.
>
> SO ORDERED.[13]

Undeterred, PACI filed a motion for reconsideration thereto. In its August 18, 2014 resolution, the NLRC denied the same.

Aggrieved, PACI filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed February, 12, 2015 decision, the CA sustained the NLRC decision. It declared that the transactions which Loyola purportedly had with respondents were not substantiated by evidence; and that the sworn statements of Loyola and Salimpade were self-serving, uncorroborated and insufficient to show respondents' complicity in the theft of PACI's products.

The CA reasoned that there was no evidence to prove that the boxes containing stolen products were actually loaded, by or through the instructions of respondents into the truck assigned to Loyola; Jumadla's confirmation that he knew Salimpade was inadequate to establish the former's participation in the pilferage;

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[13] *Id.* at 181.

it was not shown that respondents were the only ones who had access to the stolen products; the delivery receipts[14] only established that Salimpade's residence was not included for that day's scheduled deliveries; the photocopy of the police blotter[15] and the certification[16] issued by Police Investigator Joselito Lanot, Jr. (*Lanot*) merely evinced that the boxes were confiscated from Loyola and Salimpade; and the filing of a criminal complaint did not automatically make the dismissal valid.

The CA, however, took into consideration the pendency of the criminal action for qualified theft against respondents and the issuance of the warrants of arrest against them. Thus, it ordered the payment of separation pay instead of reinstatement because of the strained relations between PACI and respondents. The dispositive portion reads:

> WHEREFORE, premises considered, the Petition is DENIED. The Decision dated 15April 2014 and Resolution dated 18 August 2014 of the National Labor Relations Commission (Sixth Division) in NLRC LAC No. 05-001625-13; NLRC RAB IV No. 12-01812-12 are AFFIRMED with MODIFICATION in that in lieu of reinstatement, petitioner Philippine Auto Components, Inc. is ORDERED to pay separation pay equivalent to one (1) month salary for every year of service to private respondents Ronnie B. Jumadla, Roy A. Ariz, and Roy T. Conejos. No pronouncement as to costs.
>
> SO ORDERED.[17]

PACI moved for reconsideration, but the same was denied by the CA in its assailed June 18, 2015 resolution.

Hence, this petition.

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[14] *Id*. at 262-269.

[15] *Id*. at 270.

[16] *Id*. at 271.

[17] *Id*. at 76.

ISSUE

WHETHER RESPONDENTS WERE TERMINATED FROM EMPLOYMENT FOR A JUST AND VALID CAUSE.

PACI argues that respondents conspired in stealing its properties; that Loyola and Salimpade positively identified them to be involved in the *modus operandi* of stealing and transporting out of its warehouse various automotive parts for sale to third persons; that the testimonies of Loyola and Salimpade corroborated each other and were not self-serving because their admission that they had participated in the pilferage of PACI's properties gained them no benefit; that in the absence of any proof that Loyola and Salimpade acted in bad faith or had any ill motive, their good faith in having executed their Sworn Affidavits must be presumed; that respondents only offered bare denials which could not prevail against the positive and uncontroverted statements of Loyola and Salimpade; that the delivery receipts confirmed that Loyola was not authorized to bring the boxes of radiator fans to Salimpade's residence; and that the police blotter record and the certification, dated October 15, 2012, as well as the photographs of the stolen radiator fan units showed that the boxes containing stolen properties were in the possession of Loyola and Salimpade.

PACI also asserts that circumstantial evidence was sufficient to sustain respondents' dismissal; that the Resolution[18] of the Office of the City Prosecutor of Biñan, Laguna, showed that there was substantial evidence to uphold their dismissal from employment; that respondents committed qualified theft and acts tantamount to serious misconduct, willful disobedience of company rules and willful breach of trust, all of which were just causes for dismissal; that it dutifully complied with the requirements of procedural due process; and that respondents were not entitled to separation pay and backwages.

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[18] *Id*. at 584-587.

In their Comment[19] dated September 24, 2015, respondents averred that the petition did not raise questions of law; that the findings of the NLRC and the CA were supported by substantial evidence and must be respected; and that the CA should have ordered their reinstatement instead of payment of separation pay.

In its Reply,[20] dated March 23, 2016, PACI contended, that circumstantial evidence showed that respondents were involved in the theft of its properties; that they had access to the stolen products and could have caused them to be taken out of its warehouse; that Jumadla personally knew Salimpade; that Ariz assisted his group during the advance loading on October 12, 2012; that respondents merely denied the charges against them; that Ariz suddenly tendered his resignation on October 15, 2012; and that Loyola was able to cite other instances when Jumadla and Ariz instructed him to take possession of boxes suspected to contain stolen products so that they could be picked up or dropped off at various locations.

The Court's Ruling

The petition of PACI is meritorious.

Respondents were dismissed on the grounds of (i) serious misconduct, particularly theft of PACI's products, (ii) willful disobedience of company rules, and (iii) willful breach of the trust. PACI claimed that based on the sworn statements of Loyola and Salimpade, the delivery receipts, the police blotter, the police certification, the photographs of the stolen radiator fan assembly units, the resolution of the City Prosecutor finding a *prima facie* case of qualified theft, and the Information for qualified theft, there was reasonable ground to believe that respondents were responsible for the pilferage of automotive parts, which justified their dismissal from employment.

It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of

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[19] *Id*. at 601-616.

[20] *Id*. at 710-735.

proof necessary is substantial evidence.[21] Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable might conceivably opine otherwise.[22]

After a judicious perusal of the records, the Court finds that there was sufficient cause to justify respondents' dismissal from employment. The findings of the Court shall be discussed *in seriatim*.

Loss of trust and confidence as just cause for respondents' dismissal

The Labor Code provides that an employer may terminate an employment based on fraud or willful breach of the trust reposed on the employee.[23]

Breach of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.[24] The Court discussion in *Mabeza v. NLRC*[25] is instructive:

> Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vogue, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, loss of confidence should ideally apply only to cases involving employees occupying

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[21] *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 480.

[22] *Miro v. Mendoza*, 721 Phil. 772, 788 (2013).

[23] Art. 297 (c), Labor Code.

[24] *Jumuad v. Hi-Flyer Food, Inc.*, 672 Phil. 730, 743 (2011).

[25] 338 Phil. 386 (1997).

positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or, property.[26]

In *Wesleyan University Philippines v. Reyes*[27] the Court discussed the requisites for a valid dismissal on the ground of loss of trust and confidence:

The first requisite is that the employee concerned must be one holding a position of trust and confidence, thus, one who is either: (1) a managerial employee; or (2) a fiduciary rank-and-file employee, who, in the normal exercise of his or her functions, regularly handles significant amounts of money or property of the employer.

Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, etc., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence. To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.[28]

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[26] *Id*. at 395.

[27] G.R. No. 208321, July 30, 2014, 731 SCRA 516.

[28] *Id*. at 531-532.

With regard to the first requisite, respondents belong to the first class as they were officers of the managerial staff in charge of particular departments. It is undisputed that at the time of their dismissal, Jumadla and Ariz were Inventory Control Leaders of PACI's Parts and Materials Handling and Control Group and Finished Goods and Stock In Delivery Group, respectively. They were responsible for ensuring the veracity of the daily and monthly reports as well as variance checking of all product models one (1) month before stock taking. Conejos, on the other hand, was the Senior Inventory Control Associate for Air Conditioner and Radiators. His primary duty was to verify that the shipping documents contained no discrepancies.

Their positions were necessarily imbued with trust and confidence as they were charged with the delicate task of ensuring the safety, proper handling and distribution of PACI's products. Hence, a high degree of honesty and responsibility was required and expected of them.

As to the second requisite, the police report showed that Loyola was caught in possession of PACI's products, which he transported to an unauthorized location. On the principle of *respondent superior* or command responsibility alone, respondents are liable for negligence in the performance of their duties.[29] The loss of a considerable amount of automotive products under their custody remained unrefuted. Their failure to account for this loss of company property betrays the trust reposed and expected of them. Further, respondents offered no explanation why PACI's products were in the custody of unauthorized persons. PACI's loss of trust and confidence was directly rooted in the manner of how they, as persons in charge of the inventory, had negligently handled the products.[30] They may not have been directly involved in the pilferage of PACI's products, but their negligence facilitated the unauthorized transporting of products out of PACI's warehouse and their sale to third persons. Thus, respondents had violated PACI's

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[29] *Jumuad v. Hi-Flyer Food, Inc.*, 672 Phil. 730, 745 (2011).

[30] *Concepcion v. Minex Import Corporation*, 679 Phil. 491, 503 (2012).

trust and for which their dismissal is justified on the ground of breach of confidence.

No substantial evidence to prove serious misconduct

The affidavits executed by Loyola and Salimpade averred that respondents were the masterminds behind the pilferage. It must be borne in mind that implicating a person in the wrongdoing of another is not done with relative ease.

Nevertheless, PACI failed to provide evidence as to the missing link—that respondents sanctioned the delivery of the products at Salimpade's residence: *First*, respondents were not the only ones who had access to PACI's products. *Second*, that Jumadla personally knew Salimpade did not prove pilferage. Friendship or association is not proof of culpability. *Third*, Ariz's resignation on October 15, 2012 may have just been an unfortunate coincidence.

Finally, it has been consistently held that the mere filing of a formal charge does not automatically make the dismissal valid. Evidence submitted to support the charge should be evaluated to see if the degree of proof is met to justify the respondents' termination.[31]

Nevertheless, despite the absence of serious misconduct, respondents, as previously discussed, were validly dismissed due to breach of trust and confidence.

PACI complied with the requirements of procedural due process

To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two (2) written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side; and (2) another written notice indicating that, upon due consideration of all circumstances,

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[31] *Grand Asian Shipping Lines, Inc. v. Galvez*, 725 Phil. 452, 499 (2014).

grounds have been established to justify the employer's decision to dismiss the employee.[32]

In this case, respondents were issued individual show cause notices requiring them to explain in writing, within five (5) days from their receipt thereof, why no disciplinary action, including possible dismissal from employment, should be meted; against them for the alleged pilferage of PACI's products. Moreover, PACI conducted administrative hearings on November 7 and 8, 2012. Thereafter, it found respondents liable for the charges hurled against them and issued individual notices of the decision to inform them of their dismissal from employment. Thus, PACI fully complied with the twin-notice rule.

Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs, including the right to dismiss erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[33]

WHEREFORE, the petition in G.R. No. 218980 is **GRANTED**. The February 12, 2015 Decision and June 18, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 137752 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

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[32] *Perez v. Philippine Telegraph and Telephone Company*, 602 Phil. 522, 535 (2009).

[33] *Moya v. First Solid Rubber Industries, Inc.*, 718 Phil. 77, 86-87 (2013).

THIRD DIVISION

[G.R. No. 223506. November 28, 2016]

GARRY V. INACAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT TO COUNSEL; IN CRIMINAL CASES, THE RIGHT OF THE ACCUSED TO BE ASSISTED BY COUNSEL IS IMMUTABLE; OTHERWISE, THERE WILL BE A GRAVE DENIAL OF DUE PROCESS; THUS, EVEN IF THE JUDGMENT HAD BECOME FINAL AND EXECUTORY, IT MAY STILL BE RECALLED, AND THE ACCUSED AFFORDED THE OPPORTUNITY TO BE HEARD BY HIMSELF AND COUNSEL. —** Section 1, Article III of the Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Section 14(2), Article III of the Constitution further mandates that in all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel. In criminal cases, the right of the accused to be assisted by counsel is immutable. Otherwise, there will be a grave denial of due process. The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. "Thus, even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel."

2. **ID.; ID.; ID.; ID.; THE RIGHT TO COUNSEL IS ABSOLUTE AND MAY BE INVOKED AT ALL TIMES.—** "The right to counsel is absolute and may be invoked at all times. More so, in the case of an on-going litigation, it is a right that must be exercised at every step of the way, with the lawyer faithfully keeping his client company." Unless the accused is represented by a lawyer, there is great danger that any defense presented in his behalf will be inadequate considering the legal perquisites and skills needed in the court proceedings. This would certainly be a denial of due process.

3. ID.; ID.; ID.; ID.; THE JUDGMENT OF CONVICTION SHALL BE SET ASIDE WHERE THE ACCUSED WAS NOT ASSISTED BY COUNSEL IN THE PROCEEDINGS BEFORE THE LOWER COURTS, AND, HENCE, WAS DENIED OF DUE PROCESS.— [I]nacay, during the proceedings before the trial court and the appellate court, was represented by Manila who, based on the Certification issued by the OBC, is not a lawyer. At that time, Inacay had no inkling that he was being represented by a sham lawyer. It was only when his conviction of the offense charged was upheld by the appellate court did Inacay learn that Manila is not a lawyer. Clearly, Inacay was not assisted by counsel in the proceedings before the lower courts and, hence, was denied of due process. In *People v. Santocildes, Jr.*, the Court held that: The presence and participation of counsel in criminal proceedings should never be taken lightly. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. The right of an accused to counsel is guaranteed to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State. Such a right proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily. Considering that there was a denial of due process, there is a need to set aside the judgment of conviction against Inacay and remand the case to the trial court for new trial.

4. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; UNAUTHORIZED PRACTICE OF LAW CONSTITUTES INDIRECT CONTEMPT OF COURT.— [M]anila, for representing herself as a lawyer, should be held liable for indirect contempt of court.

APPEARANCES OF COUNSEL

Leoville T. Ecarma for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated March 15, 2016 issued by the Court of Appeals (CA) in CA-G.R. CR No. 35652.

Facts

Garry V. Inacay (Inacay) was a former sales agent of Mega Star Commercial (MSC), a business enterprise engaged in the wholesale of electrical and construction materials. As part of his duties, Inacay was tasked to find clients in Pangasinan, solicit orders, collect payments, and issue receipts. Inacay was able to collect a check payment from Gamboa Lumber and Hardware (GLH), one of MSC's clients, in the amount of ₱53,170.00.[3]

Fernando Tan (Tan), the proprietor of MSC, claimed that he demanded Inacay to remit the said amount paid by GLH, but he failed to do so.[4] Tan then filed a criminal complaint for estafa with the Office of the Prosecutor in Quezon City against Inacay. Consequently, an Information for the crime of estafa was filed with the Regional Trial Court (RTC) of Quezon City against Inacay.[5]

In the proceedings before the RTC, Inacay was represented by a certain Eulogia B. Manila (Manila), who represented herself as a lawyer. During arraignment, Inacay pleaded not guilty to the crime charged.[6]

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[1] *Rollo*, pp. 25-37.

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring; *id*. at 39-47.

[3] *Id*. at 27.

[4] *Id*. at 41.

[5] *Id*. at 27.

[6] *Id*. at 28.

Inacay admitted that he received the payment made by GLH, but claimed that he remitted the same to Melinda Castro, the accounting officer of MSC. However, on cross-examination, Inacay claimed that he previously executed an Affidavit dated November 3, 2006, stating that he was held up by robbers and among the things taken from him were several checks issued by the customers of MSC.[7]

On February 21, 2013, the RTC of Quezon City, Branch 80 rendered a Decision[8] finding Inacay guilty beyond reasonable doubt of the crime of Estafa punishable under Article 315(1)(b) of the Revised Penal Code and sentencing him to suffer the indeterminate penalty of one (1) year, eight (8) months and twenty-one (21) days of *prision correccional*, as minimum, to nine (9) years, eight (8) months and twenty-one (21) days of *prision mayor*, as maximum. The RTC likewise directed Inacay to pay MSC the amount of ₱53,170.00.[9]

Unperturbed, Inacay appealed the RTC decision to the CA; he was still represented by Manila in the proceedings before the appellate court.[10]

On March 15, 2016, the CA rendered a Decision,[11] affirming the RTC's disposition *in toto*. When Inacay learned of the CA's decision, he requested Manila to file the appropriate petition with this Court, but the latter refused and told him to find another lawyer.[12]

Subsequently, Inacay found out, after talking to a lawyer, that Manila is not a member of the Bar. Thus, Inacay obtained a Certification[13] from the Office of the Bar Confidant (OBC)

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[7] *Id*. at 41.

[8] Rendered by Presiding Judge Charito B. Gonzales; *id*. at 48-53.

[9] *Id*. at 53.

[10] *Id*. at 28.

[11] *Id*. at 39-47.

[12] *Id*. at 30.

[13] *Id*. at 55.

showing that Manila is indeed not a member of the Philippine Bar.[14]

In this petition, Inacay claims that he was denied due process since he was not represented by a lawyer. He, likewise, avers that the lower courts erred in convicting him of the offense charged since there was no evidence presented showing that he actually encashed the check paid by GLH and misappropriated the proceeds thereof.

Issue

Essentially, the issue for the Court's resolution is whether Inacay's guilt of the crime charged had been proven beyond reasonable doubt.

Ruling of the Court

The petition is granted.

Section 1, Article III of the Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Section 14(2), Article III of the Constitution further mandates that in all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel.

In criminal cases, the right of the accused to be assisted by counsel is immutable. Otherwise, there will be a grave denial of due process. The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned.[15] "Thus, even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel."[16]

"The right to counsel is absolute and may be invoked at all times. More so, in the case of an on-going litigation, it is a

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[14] *Id*. at 30.

[15] *Callangan v. People*, 526 Phil. 239, 245-246 (2006).

[16] *Spouses Telan v. Court of Appeals*, 279 Phil. 587, 594-595 (1991).

right that must be exercised at every step of the way, with the lawyer faithfully keeping his client company."[17] Unless the accused is represented by a lawyer, there is great danger that any defense presented in his behalf will be inadequate considering the legal perquisites and skills needed in the court proceedings. This would certainly be a denial of due process.[18]

In this case, Inacay, during the proceedings before the trial court and the appellate court, was represented by Manila who, based on the Certification issued by the OBC, is not a lawyer. At that time, Inacay had no inkling that he was being represented by a sham lawyer. It was only when his conviction of the offense charged was upheld by the appellate court did Inacay learn that Manila is not a lawyer. Clearly, Inacay was not assisted by counsel in the proceedings before the lower courts and, hence, was denied of due process.

In *People v. Santocildes, Jr.*,[19] the Court held that:

> The presence and participation of counsel in criminal proceedings should never be taken lightly. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. The right of an accused to counsel is guaranteed to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State. Such a right proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.[20] (Citations omitted)

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[17] *Id*. at 595.

[18] See *People v. Santocildes, Jr.*, 378 Phil. 943, 948 (1999), citing *Delgado v. CA*, 229 Phil. 362, 366 (1986).

[19] 378 Phil. 943 (1999).

[20] *Id*. at 949.

Considering that there was a denial of due process, there is a need to set aside the judgment of conviction against Inacay and remand the case to the trial court for new, trial. Further, Manila, for representing herself as a lawyer, should be held liable for indirect contempt of court.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated March 15, 2016 issued by the Court of Appeals in CA-G.R. CR No. 35652 is hereby **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Quezon City, Branch 80, for new trial.

With respect to the unauthorized practice of law by the person named Eulogia B. Manila in connection with this case, the local chapter of the Integrated Bar of the Philippines of Quezon City is **DIRECTED** to conduct a prompt and thorough investigation regarding this matter and to report its recommendations to the Court within ninety (90) days from notice of this Resolution. Let all concerned parties, including the Office of the Bar Confidant, be each furnished a copy of this Resolution for their appropriate action.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez*, and *Caguioa*,[*] *JJ*., concur.

Peralta, J., on official leave.

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[*] Additional Member per Raffle dated November 18, 2016 *vice* Associate Justice Francis H. Jardeleza.

EN BANC

[I.P.I. No. 15-227-CA-J. November 29, 2016]

RE: VERIFIED COMPLAINT DATED 17 NOVEMBER 2014 OF DOLORA CADIZ KHANNA AGAINST HON. EDGARDO L. DELOS SANTOS, HON. MARILYN B. LAGURA-YAP AND HON. JHOSEP Y. LOPEZ, ASSOCIATE JUSTICES, COURT OF APPEALS, JUDGE RONALD H. EXMUNDO, REGIONAL TRIAL COURT, BRANCH 4, KALIBO, AKLAN, JUDGE FRICIA C. GOMEZ-GUILLEN, BRANCH 15, METROPOLITAN TRIAL COURT, MANILA AND JUAN S. APOLINAR,[1] SHERIFF III, BRANCH 17, METROPOLITAN TRIAL COURT, MANILA.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE BURDEN OF PROOF THAT RESPONDENT COMMITTED THE ACTS COMPLAINED OF RESTS ON THE COMPLAINANT.—** This Court has consistently ruled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. After a careful perusal of the records, we find no substantial evidence to support the allegations against the respondent associate justices of the CA. The record is absent of any affidavits of persons who have personal knowledge regarding the supposed extortion and corruption allegedly committed by the CA justices or even documents to corroborate the accusations against them. Clearly, the allegations against them were based solely on hearsay evidence.

2. **JUDICIAL ETHICS; JUSTICES AND JUDGES; A JUDGE MAY NOT BE ADMINISTRATIVELY SANCTIONED FROM MERE ERRORS OF JUDGMENT IN THE ABSENCE OF SHOWING OF ANY BAD FAITH, FRAUD, MALICE, GROSS IGNORANCE, CORRUPT PURPOSE, OR A DELIBERATE INTENT TO DO AN INJUSTICE ON**

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[1] Apolinar S. Juan as stated in his Verified dated 16 February 2015, *rollo*, pp. 116-120.

HIS OR HER PART, AS JUDICIAL OFFICERS CANNOT BE SUBJECTED TO ADMINISTRATIVE DISCIPLINARY ACTIONS FOR THEIR PERFORMANCE OF DUTY IN GOOD FAITH.— The assailed resolution was issued by respondent CA justices in the proper exercise of their judicial functions. As such, this is not subject to administrative disciplinary action. The resolution issued was indeed based on existing law and jurisprudence. We have settled the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part. Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.

3. **ID.; ID.; AS A MATTER OF PUBLIC POLICY, A JUDGE CANNOT BE SUBJECTED TO LIABILITY FOR ANY OF HIS OFFICIAL ACTS, NO MATTER HOW ERRONEOUS, AS LONG AS HE ACTS IN GOOD FAITH, FOR TO HOLD OTHERWISE WOULD BE TO RENDER JUDICIAL OFFICE UNTENABLE, FOR NO ONE CALLED UPON TO TRY THE FACTS OR INTERPRET THE LAW IN THE PROCESS OF ADMINISTERING JUSTICE CAN BE INFALLIBLE IN HIS JUDGMENT.—** [I]n the absence of proof to the contrary, the presumption is that the respondent CA justices issued the resolutions in good faith. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONEL; OFFICIALS AND PERSONNEL OF THE COURT WHO ALLOWED THEMSELVES TO BE PART OF THE SCHEME TO THWART THE ADMINISTRATION OF JUSTICE TARNISHED THE IMAGE OF THE JUDICIARY.—** In the case of Judge Exmundo, Judge Gomez-Guillen and Sheriff Juan, the evidence presented by Khanna which were based on her personal knowledge, if established, would be sufficient to hold them administratively liable. It appears that complainant is primarily to be blamed for the extortions because even at the outset she kept on looking for people who could assist

her in getting favorable rulings from the courts where her cases are pending. It is regrettable, however, that Judge Exmundo, Judge Gomez-Guillen and Sheriff Juan allowed themselves to be part of that scheme to thwart the administration of justice. These officials and personnel of the court preyed on a willing victim. Their actions although they may have been done outside the confines of their courts clearly tarnished the image of the judiciary.

R E S O L U T I O N

PEREZ, *J.*:

This resolves the complaint[2] filed by Dolora Cadiz Khanna (Khanna) charging Hon. Edgardo L. Delos Santos (Justice Delos Santos), Hon. Marilyn B. Lagura-Yap (Justice Lagura-Yap) and Hon. Jhosep Y. Lopez (Justice Lopez), Associate Justices, Court of Appeals (CA), Judge Ronald H. Exmundo (Judge Exmundo), Regional Trial Court (RTC), Branch 4, Kalibo, Aklan, Judge Fricia C. Gomez-Guillen (Judge Gomez-Guillen), Branch 15, Metropolitan Trial Court (MeTC), Manila and Apolinar S. Juan, Sheriff III (Sheriff Juan), Branch 17, MeTC, Manila with corruption and extortion.

Khanna alleged that sometime in 2007, she and her husband named Summit bought parcels of land located at Bolabog, Balabag, Malay, Aklan from Atty. Lucas Licerio (Atty. Licerio). She alleged that they paid over ₱30,000,000.00 for all the lots, not knowing that the properties are part of the inalienable reserved forest land of the government by virtue of Proclamation 1064.

Sometime in May or June 2007, the spouses took possession of the lots and started building their dream house thereon. They developed the property which was then a forest, coco and grassy land. Seeing the potential of the property, they later on developed it into a luxury resort community which they called "The Cliff Resorts."

Khanna claimed that in the latter part of 2009, Atty. Licerio and his cohorts started harassing them by filing numerous cases of Estafa thru Falsification of Public Documents.

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[2] *Rollo*, pp. 3-14.

Khanna narrated that she filed, through her counsel Atty. Lorna Kapunan (Atty. Kapunan), a Petition for Injunction with Prayer for the Issuance of Temporary Restraining Order (TRO) against Atty. Licerio and twenty John Does before the RTC, Kalibo, Aklan. The case was docketed as Civil Case No. 8988 entitled "Dolora Khanna vs. Lucas Licerio and Twenty John Does" and raffled to RTC, Branch 4, presided over by Judge Exmundo.

After filing the case, Khanna requested one of her employees, a province mate of Judge Exmundo from Iloilo, to seek the assistance of the latter. Khanna alleged that during their conversation, she ventilated to Judge Exmundo the injustices committed against them by Atty. Licerio.

Judge Exmundo allegedly instructed Khanna to secure the services of Atty. Mateo C. Hachuela (Atty. Hachuela) to be her counsel in lieu of Atty. Kapunan. She was also told to give ₱300,000.00 in order for Judge Exmundo to grant her prayer for the issuance of a TRO.

In compliance with the directive, Khanna contended that she hired Atty. Hachuela; paid the latter his acceptance fee; and gave the ₱300,000.00 for the TRO. As agreed upon, on 3 November 2010, Judge Exmundo issued the TRO. By virtue thereof, she and her husband regained possession of the premises which were unlawfully and forcibly taken from them by Atty. Licerio and his armed goons.

During the pendency of the case, Atty. Hachuela allegedly informed Khanna that Judge Exmundo was demanding ₱2,000,000.00 for a favorable decision of the Petition for Injunction that they filed. Believing on the merits of her case, she did not concede to the demand.

She noted that on 7 December 2012, Atty. Licerio again forcibly took over the property even without any court order. Khanna alleged that she received information from a reliable source that Atty. Licerio had already paid Judge Exmundo to rule in his favor. The same source likewise told her that Atty. Hachuela and Judge Exmundo travelled to Hongkong after receiving the payment from Atty. Licerio. Khanna stated that

during the take-over of the property, she called and informed Atty. Hachuela about what happened. She claimed that during their conversation she heard slot machines and Judge Exmundo's voice in the background.

Khanna contended that for her failure to cough up ₱2,000,000.00 and after Atty. Licerio met with Judge Exmundo, a decision was rendered on 21 December 2012 denying the Petition for Injunction. The Motion for Reconsideration she subsequently filed was likewise denied by Judge Exmundo.

Thereafter, Atty. Licerio filed a Motion for Execution Pending Appeal before RTC, Branch 4, Kalibo, Aklan. Atty. Hachuela, the alleged bagman of Judge Exmundo, again asked the spouses to give ₱1,000,000.00 for the denial of the aforesaid motion. Considering that their property was at stake, the spouses agreed to the demand and gave Atty. Hachuela the amount of ₱1,000,000.00 consisting of two checks of ₱500,000.00 each, dated 20 and 25 March 2013, respectively. As agreed upon, Judge Exmundo denied the motion filed by Atty. Licerio. Khanna attached in her complaint a photocopy of the two checks cleared by the bank, as well as a copy of the exchanges of text messages between her and Atty. Hachuela.

Atty. Licerio then filed a Motion for Execution Pending Appeal before the CA. The case was docketed as CA-G.R. CV No. 04899 and raffled to the 19th Division of the CA, Cebu City.

On 12 September 2014, the 19th Division of the CA composed of Associate Justices Delos Santos, Lagura-Yap and Lopez granted the motion filed by Atty. Licerio. Khanna claimed that the associate justices of the CA totally disregarded the valid objections she raised and issued the resolution without basis and despite the absence of good reason. Consequently, Khanna filed a Motion for Reconsideration and Addendum (to the Motion for Reconsideration).

Khanna claimed that on 27 September 2014 at around 7:00 p.m., she and her husband, together with their friend Paul from the National Bureau of Investigation (NBI), met Judge Gomez-Guillen of the MeTC, Branch 15, Manila; the latter's husband

Miller Guillen; and Sheriff of MeTC, Branch 17, Manila. During the meeting, the spouses discussed with the group their case which is pending in the CA. The group allegedly told the spouses that they can assist in having the CA rule in their favor. The meeting was allegedly recorded in the CCTV camera of Woodfire Pizza at Rockwell Makati.

The meeting was allegedly followed by several telephone conversations wherein the spouses were informed that the CA justices were asking for Twelve Million Pesos for the lifting of the writ of execution earlier issued and the issuance of an order of permanent injunction.

Khanna further stated that on one occasion, Miller Guillen even called and requested for an amount of ₱10,000.00 to cover the dinner expenses for his alleged meeting with CA Justice Lopez. The amount requested was deposited to the bank account of Miller Guillen. Khanna attached to her complaint a photocopy of the deposit slip as evidence.

On 8 November 2014, Miller Guillen again called the spouses and informed them that the 15-day period given to the other party is about to expire. They were told that after that, the CA justices will release a decision and the justices will expect the payment of half of the amount, which is ₱6,000,000.00.

Feeling threatened, Khanna's husband thereafter talked to Judge Gomez-Guillen and the latter explained that the CA justices are expecting the money as soon as possible. At that time, the spouses informed Judge Gomez-Guillen that they cannot afford to give such large amount of money and that they are already sick and tired of the extortion and corruption. Khanna alleged that since then, they never communicated with the group again.

Khanna, thereafter, filed the instant administrative complaint against herein respondents with the prayer that an order be issued directing Judge Exmundo and the associate justices of the 19th division of the CA to cease and desist from further proceeding in the cases pending before them and to inhibit themselves from the subject cases.

In a Resolution[3] dated 21 January 2015, the Court required the respondents to comment on the verified complaint filed by Khanna.

In compliance with the resolution, Judge Exmundo filed his comment[4] on 6 March 2015. He narrated that the complaint of Khanna arose from Civil Case No. 8988, entitled Dolora Khanna vs. Lucas Licerio and Twenty John Does, for Injunction with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order. The case was filed before RTC, Branch 4, Kalibo, Aklan, where he is the presiding judge. Based on the merits of the case, he denied the petition in his decision dated 21 December 2012.

Judge Exmundo averred that all the allegations hurled against him are mere conjectures, false, baseless and product of an evil and malicious mind. He claimed that Atty. Hachuela was personally hired by complainant as collaborating counsel of Atty. Kapunan without his intervention as it is not his task to do so considering that the case is being heard in his sala. He denied that he demanded, through Atty. Hachuela, the amounts of ₱300,000.00 for a favorable issuance of a temporary restraining order and ₱2,000,000.00 for a favorable decision in Civil Case No. 8998. He alleged that these are but products of complainant's imagination. He maintained that the exchange of text messages between Khanna and Atty. Hachuela is part of attorney-client relationship and the person referred to as "Pope" therein can be anybody but definitely not and cannot be him. He contended that he never transacted nor discussed Civil Case No. 8998 with Atty. Hachuela. He also contended that the allegation that he travelled to Hong Kong and Macau with Atty. Hachuela is untrue and without any basis.

In her comment,[5] Judge Gomez-Guillen admitted that she, her husband Miller and their friend Sheriff Juan met and had

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

[4] *Id*. at 173-178.

[5] *Id*. at 108-112.

dinner with Khanna and the latter's husband Summit at a pizza restaurant in Power Plant Mall, Makati City. They were introduced by their friend Paul from the NBI as his "Tita Dolly." Judge Gomez-Guillen, however, denied that they discussed or that Khanna consulted about the latter's case pending before the CA. She likewise denied that she spoke with complainant's husband to explain that the justices of the 19th Division of the CA want ₱6,000,000.00 for a favorable ruling. She averred that neither she nor her husband personally knows the CA justices mentioned in the complaint and that there is no way for them to approach or even communicate with any of them. She concluded that the complaint seemed to be desperate move from a disgruntled litigant.

Sheriff Juan, for his part, likewise admitted that they had dinner with Khanna and the latter's husband at Woodfire Pizza Restaurant in Rockwell Power Plant, Makati City. Khanna allegedly introduced herself as a businesswoman and owner of a resort in Boracay. She allegedly offered him an opportunity to earn commission by selling her condominium at Rockwell and by looking for investors in her resort business. He declined the offer since he doesn't know of any person wealthy enough to afford the properties she's selling.

Contrary to the allegations in the complaint, Sheriff Juan contended that he and the Guillen spouses never claimed that they knew Justice Lopez of the CA. On the other hand, he alleged that it was Khanna who asked if they knew Justice Lopez and offered to give money if they could assist them in their case pending before the CA. Sheriff Juan further alleged that on one occasion, Khanna called the cellphone of Miller Guillen and insisted on talking to him. Khanna allegedly persisted on seeking assistance from him since he is a sheriff and the former had a mistaken notion that as such, he knew a lot of judges and justices. He claimed that he told Khanna that he doesn't know any justice and even if he knew them, he cannot help because what the complainant was asking is wrong and illegal. It was

allegedly at that time that Khanna threatened to file a case against him and the Guillen spouses.[6]

In their respective comments,[7] the respondent associate justices of the CA denied vehemently denied the allegations against them in the complaint. The respondent justices were categorical in their statements that they do not know complainant Khanna, Miller Guillen, Judge Gomez-Guillen, Sheriff Juan and a certain Paul from the NBI. Justice Lagura-Yap even added that she does not know Khanna's present and previous counsel or the counsel of the latter's opponent.

They denied demanding ₱6,000,000.00, ₱12,000,000.00 or any other amount from Khanna through Miller Guillen, Judge Gomez-Guillen, Sheriff Juan or Paul from NBI. Neither were they promised by appellee Atty. Licerio nor received from him, Khanna's personal homes, gifts or any favor.

The respondent justices presented evidence of their detailed whereabouts on 6 and 7 November 2014 to prove that they did not meet with Miller Guillen and NBI Paul to discuss the case and the terms of payment for a favorable ruling. Justice Delos Santos even challenged Khanna to produce the necessary evidence showing their presence during the alleged SM Convention Center meeting. He claimed that with the advent of modern technology, CCTV footage can be obtained by Khanna if indeed the alleged meeting at SM Convention Center took place. They reported that they were in Manila on those days but not to meet regarding the case of Khanna but to attend the *En Banc* session of the CA in the afternoon of 7 November 2014 and to vote in the selection of the Division Clerk of Court of the Eighteenth division for the Visayas station. They presented itineraries, airplane tickets, credit card billing statements, Uber receipts, Agenda of the CA *En Banc* session and affidavits of persons they were with during the subject dates and time.

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[6] *Id*. at 116-120.

[7] *Id*. at 16-146, 162-168 and 195-205.

They maintained that the assailed resolution they issued on 12 September 2014 in CA-G.R. CV NO. 04899 has factual and legal basis. They averred that the resolution was supported by law and jurisprudence and that they merely applied the law. They concluded that Khanna was prompted to file the instant administrative complaint only because she was not satisfied with the aforesaid resolution, not having received a favorable ruling thereon. They submit that the administrative complaint was clearly intended to pressure and harass them.

Our Ruling

This Court has consistently ruled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.[8] After a careful perusal of the records, we find no substantial evidence to support the allegations against the respondent associate justices of the CA. The record is absent of any affidavits of persons who have personal knowledge regarding the supposed extortion and corruption allegedly committed by the CA justices or even documents to corroborate the accusations against them. Clearly, the allegations against them were based solely on hearsay evidence.

In all the instances stated in the Complaint-Affidavit involving the respondent CA justices, we noted that Khanna relied solely on what Miller Guillen, Judge Gomez-Guillen, Sheriff Juan or Paul from the NBI told her and/or her husband. Although, Khanna attached in her complaint the affidavit of her staff, Agnes Ramos, a reading of the same would only show that it was Miller Guillen, not the respondent CA justices, who asked for the ₱12,000,000.00 bribe.

These are only second hand accounts which have no probative value because these do not establish the acts complained of, that the CA justices demanded money in exchange for a favorable order and that they were a part of the scheming plan to extort money from complainant. Other than complainant's bare allegations and informations coming from her brokers, fixers

[8] *Rivera v. Mendoza*, 529 Phil. 600, 602 (2006) citing *Barcena v. Gingoyon*, 510 Phil. 546, 555 (2005).

or agents, there were no evidence presented to show any wrongdoings or bad faith on the part of respondent CA justices.

The relevant portion of the assailed CA resolution reads:

> Under Section 4, Rule 39 of the Revised Rules of Court, judgments in actions for injunction are not stayed by appeals taken therefrom. Thus:
>
> > Sec. 4. Judgments not stayed by appeal.- - - Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring, or granting the injunction, receivership, accounting, or award of support.
>
> The above rule is well-established and has been cited by the Honorable Supreme Court in a number of cases. In Intramuros Tennis Club, Inc. vs. Philippine Tourism Authority, the Honorable Supreme Court, citing Crisostomo vs. Securities and Exchange Commission and Defensor-Santiago vs. Vasquez, held that judgments in actions for injunction are not stayed by the pendency of an appeal taken therefrom. This rule has been held to extend to judgments decreeing the dissolution of a writ of preliminary injunction, which are immediately executory."[9]

The assailed resolution was issued by respondent CA justices in the proper exercise of their judicial functions. As such, this is not subject to administrative disciplinary action. The resolution issued was indeed based on existing law and jurisprudence. We have settled the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part.[10] Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.[11]

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[9] *Rollo*, pp. 70-71.

[10] *Ceniza-Layese v. Asis*, 590 Phil. 56, 60 (2006).

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

We noted that on 8 January 2015, respondent CA justices issued a resolution granting Khanna's motion for reconsideration and ordered for the staying of the execution of the court a quo's judgment, conditioned upon her posting of the bond in the amount of ₱500,000.00. Such later ruling only indicates that the respondent justices were just exercising their authority to pass upon and in their sound discretion, correct its earlier resolution. We further noted that the later resolution was issued even before the respondent CA justices received a copy of the administrative complaints filed against them. Such scenario rendered the allegations in the complaint against respondent CA justices illogical. If money was the consideration for a favorable ruling, then why was the motion for reconsideration of Khanna granted if she declined to accede to the alleged demand for money? The only plausible answer is that the resolution was issued based on the merits of the case.

In the aforesaid resolution dated 8 January 2015, the respondent CA justices explained that since Khanna was in possession of the property and was able to adduce evidence that she spent millions in renovating the subject property, it is but proper to stay the execution of the judgment and preserve the status *quo*.

In fine, in the absence of proof to the contrary, the presumption is that the respondent CA justices issued the resolutions in good faith. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[12]

The same thing cannot be said with respect to the other respondents herein. In the case of Judge Exmundo, Judge Gomez-Guillen and Sheriff Juan, the evidence presented by Khanna which were based on her personal knowledge, if established, would be sufficient to hold them administratively liable.

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

It appears that complainant is primarily to be blamed for the extortions because even at the outset she kept on looking for people who could assist her in getting favorable rulings from the courts where her cases are pending. It is regrettable, however, that Judge Exmundo, Judge Gomez-Guillen and Sheriff Juan allowed themselves to be part of that scheme to thwart the administration of justice. These officials and personnel of the court preyed on a willing victim. Their actions although they may have been done outside the confines of their courts clearly tarnished the image of the judiciary.

WHEREFORE, in the light of the foregoing premises, the Court hereby resolved to:

1) **RE-DOCKET** the instant administrative complaint filed by Dolora Cadiz Khanna as a regular administrative matter against Judge Ronald H. Exmundo, Regional Trial Court, Branch 4, Kalibo, Aklan, Judge Fricia C. Gomez-Guillen, Branch 15, Metropolitan Trial Court, Manila and Apolinar S. Juan, Sheriff III, Branch 17, Metropolitan Trial Court, Manila;

2) **DIRECT** the Court Administrator, through any of his Deputy Court Administrators, to investigate the aforesaid administrative complaint and **SUBMIT** a report and recommendation thereon within Forty Five (45) days from receipt hereof;

3) **DISMISS** the administrative complaint against Associate Justices Edgardo L. Delos Santos; Marilyn B. Lagura-Yap; and Jhosep Y. Lopez, all of the Nineteenth Division, Court of Appeals for utter lack of merit.

SO ORDERED.

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

EN BANC

[I.P.I. NO. 16-241-CA-J. November 29, 2016]

CLEMENTE F. ATOC, *complainant, vs.* **EDGARDO A. CAMELLO, OSCAR V. BADELLES and PERPETUA T. ATAL-PAÑO, Associate Justices, Court of Appeals, Cagayan de Oro City,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUSTICES AND JUDGES; A JUDGE MAY NOT BE ADMINISTRATIVELY SANCTIONED FROM MERE ERRORS OF JUDGMENT IN THE ABSENCE OF SHOWING OF ANY BAD FAITH, FRAUD, MALICE, GROSS IGNORANCE, CORRUPT PURPOSE, OR A DELIBERATE INTENT TO DO AN INJUSTICE ON HIS OR HER PART, AS JUDICIAL OFFICERS CANNOT BE SUBJECTED TO ADMINISTRATIVE DISCIPLINARY ACTIONS FOR THEIR PERFORMANCE OF DUTY IN GOOD FAITH.— [I]t is clear that the assailed resolutions were issued by respondent Associate Justices in the proper exercise of their judicial functions. As such, these are not subject to administrative disciplinary action. Other than complainant's bare allegations, there were no evidence presented to show any wrong-doings or bad faith on the part of respondent associate justices. We have settled the rule that a judge may not be administratively sanctioned from mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part. Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.

2. ID.; ID.; CHARGE OF GROSS IGNORANCE OF THE LAW; TO BE HELD LIABLE FOR GROSS IGNORANCE OF THE LAW, IT MUST BE SHOWN THAT IN THE ISSUANCE OF THE ASSAILED RESOLUTIONS, THE JUSTICES HAVE COMMITTED AN ERROR THAT WAS GROSS OR PATENT, DELIBERATE OR MALICIOUS.— To be held

liable for gross ignorance of the law, it must be shown that in the issuance of the assailed resolutions, the justices have committed an error that was gross or patent, deliberate or malicious. In the instant case, it was shown that the justices based their findings on existing facts and jurisprudence. There was no proof presented to show that they were moved by ill-will or malicious intention to violate the law and extend favor to a party. In fact, their findings were thoroughly discussed in the *ratio decidendi* of the resolution.

3. ID.; ID.; ID.; AS A MATTER OF PUBLIC POLICY, A JUDGE CANNOT BE SUBJECTED TO LIABILITY FOR ANY OF HIS OFFICIAL ACTS, NO MATTER HOW ERRONEOUS, AS LONG AS HE ACTS IN GOOD FAITH, FOR TO HOLD OTHERWISE WOULD BE TO RENDER JUDICIAL OFFICE UNTENABLE, FOR NO ONE CALLED UPON TO TRY THE FACTS OR INTERPRET THE LAW IN THE PROCESS OF ADMINISTERING JUSTICE CAN BE INFALLIBLE IN HIS JUDGMENT.— In assailing the resolutions issued by the CA, complainant failed to realize that unfavorable rulings are not necessarily erroneous. If a party disagrees with a ruling of the court, assuming these were incorrect, there are judicial remedies available to them under the Rules of Court. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

4. ID.; ID.; ADMINISTRATIVE COMPLAINTS AGAINST MAGISTRATES CANNOT BE PURSUED SIMULTANEOUSLY WITH THE JUDICIAL REMEDIES ACCORDED TO PARTIES AGGRIEVED BY THE ERRONEOUS ORDERS OR JUDGMENTS OF THE FORMER, AS ADMINISTRATIVE REMEDIES ARE NEITHER ALTERNATIVE TO JUDICIAL REVIEW NOR DO THEY CUMULATE THERETO, WHERE SUCH REVIEW IS STILL AVAILABLE TO THE AGGRIEVED PARTIES AND THE CASES HAVE NOT YET BEEN RESOLVED WITH FINALITY.— [W]e have explained that administrative complaints against magistrates cannot be pursued simultaneously with the judicial remedies

accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases not yet been resolved with finality. Here, it is evident that the parties aggrieved by the resolution can avail or may have already availed of other judicial remedies. Quite significant is the fact that the instant administrative complaint was filed by someone who is not a party or privy to the case. As correctly noted by the respondent justices in their Joint-Comment, Atoc did not even disclose the capacity in which he brings the present administrative complaint.

D E C I S I O N

PEREZ, *J.*:

This refers to the verified complaint[1] dated 12 January 2016 filed by Clemente F. Atoc (complainant) charging Edgardo A. Camello (Justice Camello), Oscar V. Badelles (Justice Badelles) and Perpetua T. Atal-Paño (Justice Atal-Paño), all Associate Justices of the Court of Appeals (CA), Cagayan de Oro City, with gross ignorance of the law, gross violation of Attorney's oath, gross violation of Code of Professional Responsibility (Canon 1, Rules 7.03, 10.01, 10.03), gross violation of Code of Judicial Conduct (Canon 1, Rules 1.01 and 1.02; Canon 3, Rules 3.01 and 3.02), gross violation of Professional Ethics (22), gross violation of Code of Judicial Ethics (2,15,18,22 and 31), grave abuse of authority, gross misconduct, manifest partiality, gross violation of Sections 4(a), 4(b) and 4(c) of Republic Act (R.A.) No. 6713, and gross violation of Section 3(e) of R.A. No. 3019.

The complaint stemmed from the resolutions[2] the respondent justices issued in CA-G.R. SP Nos. 07072-MIN and 07073-

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[1] *Rollo*, pp. 2-15.

[2] *Id*. at 40-41 and 102-109.

MIN entitled "*Oscar S. Moreno and Glenn C. Bañez v. Hon. Conchita Carpio Morales in her capacity as the Ombudsman; Department of the Interior and Local Government represented by Hon. Mel Senen Sarmiento in his capacity as Secretary and William G. Guilani*."

Culled from the records are the following antecedent facts:

On 13 March 2015,[3] William G. Guillani filed a complaint for grave abuse of authority, grave misconduct and violation of Republic Act No. 6713 against Oscar S. Moreno (Moreno) and Glenn C. Bañez (Bañez), in their capacity as City Mayor and Officer-in-charge Treasurer, respectively, of the Local Government Unit of Cagayan de Oro City, before the Office of the Ombudsman-Mindanao (OMB).

In a Decision dated 14 August 2015, the OMB found Moreno and Bañez administratively guilty of grave misconduct. The dispositive portion of the decision reads:

> WHEREFORE, the Office finds respondents Oscar S. Moreno and Glenn C. Bañez GUILTY of Grave Misconduct and are meted out the penalty of Dismissal from service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service. Further, the charges of Grave Abuse of Authority and violation of R.A. No. 6713 are dismissed.[4] (Underlining omitted)

On 3 November 2015, the OMB furnished the Department of Interior and Local Government (DILG) copy of the decision for implementation of the order of dismissal against Moreno and Bañez.[5]

In order to stay the implementation of the OMB decision, Moreno and Bañez filed their respective Petitions for *Certiorari*

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[3] *Id.* at 41

[4] *Id.* at 42.

[5] *Id.*

with Extremely Urgent Prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI) on 11 November 2015.

On 12 November 2015, the DILG served a copy of the decision on Moreno.[6]

On even date, incumbent Vice Mayor Caesar Ian Acenas and Councilor Candy Darimbang were sworn in office and assumed the positions of City Mayor and Vice Mayor of Cagayan de Oro City, respectively.

On 13 November 2015, the CA issued a resolution granting Moreno and Bañez's prayer for issuance of a TRO. The TRO which is effective for a period of 60 days, unless sooner revoked, enjoined the DILG, its officers and agents and all persons acting under them, from enforcing, implementing and effecting the OMB decision which dismissed Moreno and Bañez from the service.[7]

On 17 November 2015, the DILG filed a Manifestation informing the CA that as of 6:12 in the evening of 12 November 2015, it has already implemented the OMB decision dismissing Moreno and Bañez from the service. The DILG averred that it was only on 13 November 2015 at around 7:32 in the evening that it received a copy of the CA resolution granting the TRO.[8]

On the same date, the DILG filed a second pleading denominated as Manifestation with Urgent Motion for Clarification. The motion seeks to clarify as to who should be recognized as Mayor of Cagayan de Oro City considering that the department received the CA Resolution on the granting of the TRO a day after the OMB decision was served and implemented against Moreno.[9]

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[6] *Id*.

[7] *Id*. at 44.

[8] *Id*. at 45.

[9] *Id*.

On 18 November 2015, the CA issued a resolution clarifying the validity and enforceability of the TRO it earlier issued. The CA ratiocinated that:

> In the instant case, the last actual, peaceable and uncontested condition before the DILG the assailed Ombudsman Decision is petitioner Oscar Moreno sitting as the elected Cagayan de Oro City Mayor and Glenn Bañez as the Officer-in-Charge of the City Treasurer's Office. Therefore, that is the situation sought to be upheld by the TRO pending the resolution of the injunction. The status existing at the time the present petition was filed before this [c]ourt was that the mayor and the officer-in-charge of the City Treasurer's office were herein [Moreno and Bañez]. That precisely is the status referred to in a TRO taking into account the litany of decisions defining how a TRO operates. To construe otherwise would counter settled jurisprudence. In fact, the DILG has correctly understood and captured the concept and essence of a restraining order. x x x"[10]

The dispositive portion of the resolution thus reads:

> In view thereof, there is nothing further to elucidate. The DILG appropriately acknowledged [Moreno and Bañez'] powers and authority by virtue of the TRO issued by this [c]ourt. That declaration of the DILG, a party to this case, is conclusive as to the *status quo* sought to be preserved by [o]ur TRO which binds all parties, agencies or persons concerned to refrain from doing any act or acts disruptive of the *status quo*.[11]

The aforesaid resolution was penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Camello and Pablito A. Perez concurring.

On 11 January 2016,[12] the CA, through Associate Justice Camello as ponente with the concurrence of Associate Justices Badelles and Atal-Paño, issued a Writ of Preliminary Injunction to be effective throughout the pendency of the action unless elsewhere revoked or modified, enjoining and preventing the

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[10] *Id*. at 19.

[11] *Id*.

[12] *Id*. at 102-109.

respondent DILG, its officers, agents, and/or any person assisting it or acting for and in its behalf, from enforcing and implementing the 14 August 2015 decision of the OMB.

Claiming that he was aggrieved by the resolutions issued by the CA in the subject cases, complainant, a resident of Cagayan de Oro City, filed a verified complaint against the respondent associate justices of the CA who issued the latest resolution praying that they be disbarred and their names be deleted as members of the Integrated Bar of the Philippines (IBP).

On 26 July 2016, this Court required the respondent associate justices to comment on the complaint.

In compliance with the Court's directive, the respondent associate justices submitted their Joint Comment[13] on 11 October 2016.

They reported that not so long after the CA issued the TRO dated 13 November 2015 on the subject case, complainant charged the members of the Special 22nd Division of the CA, which was then composed of Justices Camello, Henri Jean Paul B. Inting (Justice-in-charge), and Pablito A. Perez, with gross ignorance of the law, gross violation of attorney's oath, gross violation of the Code of Professional Responsibility, gross violation of the Code of Judicial Conduct, gross violation of professional ethics, gross violation of the Code of Judicial Ethics, grave abuse of authority, gross misconduct, manifest partiality, and violation of R.A. No. 3019. The complaint was docketed as I.P.I. No. 16-238-CA-J (Re: Verified Complaint of Clemente F. Atoc).

They further reported that when the CA upgraded the provisional remedy of TRO to a Writ of Preliminary Injunction on 11 January 2016, complainant hastily recycled his previous complaint against Justices Camello, Henri Jean Paul B. Inting and Pablito A. Perez and accused this time the members of the Special 22nd Division, now composed of herein respondent Justices Camello, Badelles and Atal-Paño, of the exact violations,

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[13] *Id*. at (no proper pagination).

based on the exact same circumstances, and raising the exact same issues. They noted that complainant even recycled in the subsequent complaint his original Verification and Certification of Non-Forum Shopping. Complainant certified that he has not filed any complaint involving the same issue/ issues before the Supreme Court, Court of Appeals, any tribunal or agency, when he knows for a fact that I.P.I. No. 16-238-CA-J is still pending.

The respondent associate justices thus iterate the same plea for the dismissal of the utterly baseless complaint and adopts in regard to the instant suit of complainant, the very same comment on complainant's complaint in I.P.I. No. 16-238-CA-J.

The respondent justices submit that case law has been consistent in its caveat that where judicial relief is still available, whether it be ordinary or extra-ordinary remedy, resort to administrative complaint is not allowed.[14] They maintain that the preclusive principle that bars parties to a pending suit from by-passing judicial remedies by resorting to administrative suits against judges applies even more to complainant who is not even a party or privy, but a total stranger to the pending petitions before the CA.[15]

We find the charges against respondent Associate Justices bereft of merit.

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

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[14] *Id*. at (no proper pagination); Joint comment.

[15] *Id*. at 10.

on his or her part.[16] Judicial officers cannot be subjected to administrative disciplinary actions for their performance of duty in good faith.[17]

To be held liable for gross ignorance of the law, it must be shown that in the issuance of the assailed resolutions, the justices have committed an error that was gross or patent, deliberate or malicious.[18] In the instant case, it was shown that the justices based their findings on existing facts and jurisprudence. There was no proof presented to show that they were moved by ill-will or malicious intention to violate the law and extend favor to a party. In fact, their findings were thoroughly discussed in the *ratio decidendi* of the resolution.

In assailing the resolutions issued by the CA, complainant failed to realize that unfavorable rulings are not necessarily erroneous. If a party disagrees with a ruling of the court, assuming these were incorrect, there are judicial remedies available to them under the Rules of Court. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[19]

Moreover, we have explained that administrative complaints against magistrates cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases not yet been resolved with finality.[20] Here,

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

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

[18] *Zarate v. Balderian*, 386 Phil. 1, 8 (2000) citing *In Re: Joaquin T. Borromeo*, 311 Phil. 441 (1995).

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

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

it is evident that the parties aggrieved by the resolution can avail or may have already availed of other judicial remedies. Quite significant is the fact that the instant administrative complaint was filed by someone who is not a party or privy to the case. As correctly noted by the respondent justices in their Joint-Comment, Atoc did not even disclose the capacity in which he brings the present administrative complaint.

Anent the determination on whether the respondent Associate Justices made an error in enjoining the decision of the OMB, the same would be squarely addressed by this Court the moment the issue is raised before it in a proper judicial proceeding. We cannot make a ruling in this administrative case on the correctness of the issuance of the injunction.[21]

We stated in the case of *Morales I v. CA Justices Real-Dimagiba, Lopez and Garcia*:[22]

> To press the point, the present Resolution should not be read as an allowance *carte blanche* for the issuance of TROs against the OMB's decision in criminal and administrative complaints against officials and employees of the government. Foremost, we did not rule on the validity of the issuance of the TRO by the respondent associate justices. What we said is that there is a relevant ruling in the *Binay, Jr.* case which removes the issuance by respondent associate justices from the ambit of gross ignorance of the law. Just as important, the validity of the issuance of a TRO, owing to the fact that a TRO is merely a provisional remedy which is an adjunct to a main suit, which in this case is the main petition of Mayor Gatchalian pending before the CA, is a judicial issue that cannot be categorically resolved in the instant administrative matter.
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> x x x x x x x x x
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> The remedy against the issuance of the TRO is unarguably and by its very nature, resolvable only thru judicial procedures which are, a motion for reconsideration and, if such motion is denied, a special civil action of *certiorari* under Rule 65. It is the ruling granting

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[21] See *Morales I v. CA Justices Real-Dimagiba, Lopez and Garcia*, I.P.I. No. 16-243-CA-J, 11 October 2016.

[22] *Id*.

the prayer for the writ of *certiorari* that a basis for an administrative action against the judge issuing the TRO may arise. Such happens when, from the decision on the validity of the issuance, there is a pronouncement that indicates gross ignorance of the law of the issuing judge. The instant administrative complaint cannot be a substitute for the aforesaid judicial remedies.

WHEREFORE, in view of the foregoing, the instant administrative complaint filed by Clemente F. Atoc against Associate Justices Edgardo A. Camello, Oscar V. Badelles and Perpetua T. Atal-Paño, all of the Court of Appeals, Cagayan de Oro City, is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

EN BANC

[G.R. Nos. 181912 & 183347. November 29, 2016]

RAMON M. ALFONSO, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES and DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO 6657); JUST COMPENSATION; IN DETERMINING JUST COMPENSATION, COURTS ARE OBLIGATED TO APPLY BOTH THE COMPENSATION VALUATION FACTORS ENUMERATED BY THE CONGRESS UNDER SECTION 17 OF RA 6657,

AND THE BASIC FORMULA LAID DOWN BY THE DEPARTMENT OF AGRARIAN REFORM (DAR).— In determining just compensation, courts are obligated to apply both the compensation valuation factors enumerated by the Congress under Section 17 of RA 6657, and the basic formula laid down by the DAR. This was the holding of the Court on July 20, 2004 when it decided the case of *Landbank of the Philippines v. Banal (Banal)* which involved the application of the DAR-issued formulas. There, we declared: x x x. x x x **In determining the valuation of the subject property, the trial court shall consider the factors provided under Section 17 of R.A. 6657, as amended, mentioned earlier. The formula prescribed by the DAR in Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, shall be used in the valuation of the land.** x x x. *Banal* would thereafter be considered the landmark case on binding character of the DAR formulas.

2. ID.; ID.; ID.; THE DAR VALUATION FORMULA, BEING AN ADMINISTRATIVE REGULATION ISSUED BY THE DAR PURSUANT TO ITS RULE-MAKING AND SUBORDINATE LEGISLATION POWER UNDER RA 6657, HAS THE FORCE AND EFFECT OF LAW; UNLESS DECLARED INVALID IN A CASE WHERE ITS VALIDITY IS DIRECTLY PUT IN ISSUE, COURTS MUST CONSIDER THEIR USE AND APPLICATION. — [T]he formula, being an administrative regulation issued by the DAR pursuant to its rule-making and subordinate legislation power under RA 6657, has the force and effect of law. Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application. In *Land Bank of the Philippines v. Celada (Celada)*, we held: x x x. While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5,

s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The SAC was at no liberty to disregard the formula which was devised to implement the said provision.** It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. **As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.**

3. ID.; ID.; ID.; IN THE EXERCISE OF THEIR JUDICIAL DISCRETION, THE COURT MAY RELAX THE APPLICATION OF THE FORMULA TO FIT THE PECULIAR CIRCUMSTANCES OF A CASE; THEY MUST, HOWEVER, CLEARLY EXPLAIN THE REASON FOR ANY DEVIATION; OTHERWISE, THEY WILL BE CONSIDERED IN GRAVE ABUSE OF DISCRETION.— [C]ourts, in the exercise of their judicial discretion, may relax the application of the formula to fit the peculiar circumstances of a case. They must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion. This rule, set forth in *Land Bank of the Philippines v. Yatco Agricultural Enterprises (Yatco),* was a qualification of the application of *Celada,* to wit: x x x **In other words, in the exercise of the Court's essentially judicial function of determining just compensation, the RTC-SACs are not granted unlimited discretion and must consider and apply the R.A. No. 6657 — enumerated factors and the DAR formula that reflect these factors.** x x x. **When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.**

4. ID.; ID.; ID.; THE STATEMENT THAT THE GOVERNMENT'S VALUATION IS "UNREALISTICALLY LOW," WITHOUT MORE, IS INSUFFICIENT TO JUSTIFY THE NON-APPLICATION OF THE LEGISLATIVE FACTORS AND THE DAR-PRESCRIBED FORMULA.— That the SAC's adoption of the Cuervo Report valuation constitutes deviation from Section 17 and the prescribed formula is fairly evident. Commissioner Chua employed a different formula, other than that set forth in DAR AO No. 5 (1998), to compute the valuation. x x x. [D]eviation from the strict application of the DAR formula is not absolutely proscribed. For this reason, we find that the Court of Appeals erred in setting aside the SAC's Decision *on the mere fact of deviation* from the prescribed legislative standards and basic formula. *Yatco* teaches us that courts may, in the exercise of its judicial discretion, relax the application of the DAR formula, subject only to the condition that the reasons for said deviation be clearly explained. x x x. **The statement that the government's valuation is "unrealistically low," *without more,* is insufficient to justify its deviation from Section 17 and the implementing DAR formula.** There is nothing in the SAC's Decision to show *why* it found Commissioner Chua's method more appropriate for purposes of appraising the subject properties, apart from the fact that his method yields a much higher (thus, in its view, "more realistic") result. The Cuervo Report itself does not serve to enlighten this Court as to the reasons behind the non-application of the legislative factors and the DAR-prescribed formula.

5. ID.; ID.; ID.; INDIRECT ATTACKS ON THE CONSTITUTIONALITY OF A PROVISION OF LAW AND OF AN ADMINISTRATIVE RULE OR REGULATION IS NOT ALLOWED UNDER THE COURTS REGIME OF JUDICIAL REVIEW.— Petitioner is a direct-injury party who could have initiated a direct attack on Section 17 and DAR AO No. 5 (1998). His failure to do so prevents this case from meeting the "case and controversy" requirement of *Angara.* It also deprives the Court of the benefit of the "concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." The dissents are, at their core, indirect attacks on the constitutionality of a provision of law and of an administrative rule or regulation. This is not allowed under our regime of judicial review. As we held in *Angara v. Electoral Commission*, our

power of judicial review is limited: x x x **[T]o actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.** Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

6. ID.; ID.; ID.; THE PRESUMPTION OF CONSTITUTIONALITY OF SECTION 17 OF RA 6657 AND DAR ADMINISTRATIVE ORDER (AO) NO. 5 SERIES OF 1998 MUST PREVAIL, AS THERE IS NO FACTUAL FOUNDATION OF RECORD TO PROVE THE INVALIDITY OR UNREASONABLENESS THEREOF. — [S]ince petitioner did not initiate a direct attack on constitutionality, there is no factual foundation of record to prove the invalidity or unreasonableness of Section17 and DAR AO No. 5 (1998). This complete paucity of evidence cannot be cured by the arguments raised by, and debated among, members of the Court. As we held in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila:* It admits of no doubt therefore that there being a presumption of validity, **the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here.** x x x**. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.** x x x. Issues on the constitutionality or validity of Section 17 of RA 6657 and DAR AO No. 5 (1998) not having been raised by the petitioner, much less properly pleaded and ventilated, it behooves the Court to apply, not abandon, *Banal, Celada* and *Yatco,* and postpone consideration of the dissents' arguments in a case directly attacking Section 17 of RA 6657 and DAR AO No. 5 (1998).

7. ID.; ID.; ID.; THE GRANT TO THE DAR OF PRIMARY JURISDICTION TO DETERMINE JUST COMPENSATION DOES NOT LIMIT OR DEPRIVE COURTS OF THEIR JUDICIAL POWER, AS THERE IS NO CONSTITUTIONAL PROVISION, POLICY, PRINCIPLE, VALUE OR JURISPRUDENCE THAT PLACES THE DETERMINATION OF A JUSTICIABLE CONTROVERSY BEYOND THE REACH OF CONGRESS' CONSTITUTIONAL POWER TO REQUIRE, THROUGH A GRANT OF PRIMARY JURISDICTION, THAT A PARTICULAR CONTROVERSY BE FIRST REFERRED TO AN EXPERT ADMINISTRATIVE AGENCY FOR ADJUDICATION, SUBJECT TO SUBSEQUENT JUDICIAL REVIEW.— Section 1, Article VIII of the 1987 Constitution provides that "judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable." The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution. The determination of just compensation in cases of eminent domain is thus an actual controversy that calls for the exercise of judicial power by the courts. This is what the Court means when it said that "[t]he determination of 'just compensation' in eminent domain cases is a judicial function." x x x. Does [the] grant to the DAR of primary jurisdiction to determine just compensation limit, or worse, deprive, courts of their judicial power? We hold that it does not. There is no constitutional provision, policy, principle, value or jurisprudence that places the determination of a justiciable controversy beyond the reach of Congress' constitutional power to require, through a grant of primary jurisdiction, that a particular controversy be first referred to an expert administrative agency for adjudication, subject to subsequent judicial review. In fact, the authority of Congress to create administrative agencies and grant them preliminary jurisdiction flows not only from the exercise of its plenary legislative power, but also from its constitutional power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court.

8. ID.; ID.; ID.; THE APPLICATION OF THE DAR VALUATION FORMULA IS DEPENDENT ON THE EXISTENCE OF A CERTAIN SET OF FACTS, THE

ASCERTAINMENT OF WHICH FALLS WITHIN THE DISCRETION OF THE COURT. — Rule 43 of the Revised Rules of Court, which provides for a uniform procedure for appeals from a long list of quasi-judicial agencies to the Court of Appeals, is a loud testament to the power of Congress to vest myriad agencies with the preliminary jurisdiction to resolve controversies within their particular areas of expertise and experience. In fact, our landmark ruling in *Association* has already validated the grant by Congress to the DAR of the primary jurisdiction to determine just compensation. x x x. [T]he scheme provided by Congress under RA 6657 does **not** take discretion away from the courts in determining just compensation in agrarian cases. Far from it. In fact, **the DAR valuation formula is set up in such a way that its application is dependent on the existence of a certain set of facts, the ascertainment of which falls within the discretion of the court.** Applied to the facts of this case, and confronted with the LBP/DAR valuation and the court-appointed commissioner's valuation, it was entirely within the SAC's discretion to ascertain the factual bases for the differing amounts and decide, for itself, which valuation would provide just compensation. If, in its study of the case, the SAC, for example, found that the circumstances warranted the application of a method of valuation different from that of the DAR's, it was free to adopt any other method it deemed appropriate (including the Cuervo method), subject only to the *Yatco* requirement that it provide a reasoned explanation therefor.

9. ID.; ID.; ID.; ID.; COURTS HAVE THE POWER TO LOOK INTO THE "JUSTNESS" OF THE USE OF A FORMULA TO DETERMINE JUST COMPENSATION, AND THE "JUSTNESS" OF THE FACTORS AND THEIR WEIGHTS CHOSEN TO FLOW INTO IT.— [I]n amending Section 17 of RA 6657, Congress provided that the factors **and** the resulting basic formula shall be "subject to the final decision of the proper court." Congress thus clearly conceded that courts *have* the power to look into the "justness" of the use of a formula to determine just compensation, and the "justness" of the factors and their weights chosen to flow into it. In fact, the regulatory scheme provided by Congress sets the stage for a *heightened* judicial review of the DAR's preliminary determination of just compensation pursuant to Section 17 of RA 6657. In case of a proper challenge, SACs are actually empowered to conduct a *de novo* review of the DAR's decision. Under RA 6657, a

full trial is held where SACs are authorized to (1) appoint one or more commissioners, (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of fact anew. In other words, in exercising its **exclusive and original jurisdiction** to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of a Regional Trial Court (RTC) under Rule 67 of the Revised Rules of Court.

10. ID.; ID.; ID.; THE WHOLE REGULATORY SCHEME PROVIDED UNDER RA 6657 AND IMPLEMENTED THROUGH THE DAR FORMULAS ARE REASONABLE POLICY CHOICES MADE BY THE CONGRESS AND THE DAR ON HOW BEST TO IMPLEMENT THE PURPOSES OF THE CARL, WHICH DESERVE A HIGH DEGREE OF DEFERENCE FROM THE COURT, ABSENT CONTRARY EVIDENCE.— The whole regulatory scheme provided under RA 6657 (and implemented through the DAR formulas) are reasonable policy choices made by the Congress and the DAR on how best to implement the purposes of the CARL. These policy choices, in the absence of contrary evidence, deserve a high degree of deference from the Court. [C]ongress, in adopting Section 17, opted for the enumeration of multiple factors provided under RAs 1400 and 3844, to replace the exclusively production based formula provided in PD 27. The Court cannot now fault Congress for not enumerating *all* possible valuation factors, a task even this Court cannot conceivably achieve, and use the Congress' limitation as a reason to void the enumeration. In the absence of evidence of record to the contrary, it is reasonable to assume that the DAR decided that a formula is a practical method to arrive at a determination of just compensation due the landowner.

11. ID.; ID.; ID.; THE AMENDMENT OF SECTION 17 OF RA 6657 CONVERTED THE DAR BASIC FORMULA INTO A REQUIREMENT OF THE LAW ITSELF; HENCE, THE DAR BASIC FORMULA CEASED TO BE MERELY AN ADMINISTRATIVE RULE, BUT IT IS NOW PART OF THE LAW ITSELF ENTITLED TO THE PRESUMPTIVE CONSTITUTIONAL VALIDITY OF A STATUTE.— The argument of *Apo Fruits* that the DAR formula is a mere administrative order has, however, been completely swept aside by the amendment to Section 17 under RA 9700.

> [C]ongress amended Section 17 of RA 6657 by expressly providing that the valuation factors enumerated be "translated into a basic formula by the DAR x x x." This amendment converted the DAR basic formula into a requirement of the law itself. In other words, the formula ceased to be merely an administrative rule, presumptively valid as *subordinate legislation* under the DAR's rule-making power. The formula, now part of the *law* itself, is entitled to the presumptive constitutional validity of a *statute.*

12. ID.; ID.; ID.; SECTIONS 16, 17 AND 18 OF RA 6657, CONSTRUED.— Sections 16, 17 and 18 should all be read together in context as to give effect to the law. This is the essence of the doctrines we laid down in *Banal, Celada* and *Yatco.* Section 16 governs the procedure for the acquisition of private lands x x x. It is clear from the x x x provision that the procedure for acquisition of private land is commenced by the DAR's notice of acquisition and offer of compensation to the landowner. At such point, the DAR does not know whether the landowner will accept its offer. Section 16(a), however, states *without qualification* that the DAR shall make the offer in accordance with Sections 17 and 18. In case the landowner does not reply or rejects the offer, then the DAR initiates summary administrative proceedings to determine just compensation, subject to the final determination of the court. In the summary proceedings, the DAR offer remains founded on the criteria set forth in Section 17. Section 16(a) did not distinguish between the situation where the landowner accepts the DAR's offer and where he/she does not. Section 17, as amended, itself also did not distinguish between a valuation arrived at by agreement or one adjudicated by litigation. Where the law does not distinguish, we should not distinguish. Section 18, on the other hand, merely recognizes the possibility that the landowner will disagree with the DAR/LBP's offer. In such case, and where the landowner elevates the issue to the court, the court needs to rule on the offer of the DAR and the LBP. Since the government's offer is required by law to be founded on Section 17, the court, in exercising judicial review, will necessarily rule on the DAR determination based on the factors enumerated in Section 17. Now, whether the court accepts the determination of the DAR will depend on its exercise of discretion. This is the essence of judicial review. That the court *can* reverse, affirm or modify

the DAR/LBP's determination cannot, however, be used to argue that Section 18 excuses observance from Section 17 in cases of disagreement.

13. ID.; ID.; ID.; UNTIL A DIRECT CHALLENGE IS SUCCESSFULLY MOUNTED AGAINST SECTION 17 OF RA 6657, DAR AO NO. 5 (1998) AND THE RESULTING DAR BASIC FORMULAS, THEY ARE GIVEN FULL CONSTITUTIONAL PRESUMPTIVE WEIGHT AND CREDIT, AND SHOULD BE APPLIED TO ALL PENDING LITIGATION INVOLVING JUST COMPENSATION IN AGRARIAN REFORM.— The determination of just compensation *is* a judicial function. The "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic formula, and the "justness" of the components (and their weights) that flow into the basic formula, are all matters for the courts to decide. As stressed by *Celada,* however, until Section 17 or the basic formulas are declared invalid in a proper case, they enjoy the presumption of constitutionality. This is more so now, with Congress, through RA 9700, expressly providing for the mandatory consideration of the DAR basic formula. In the meantime, *Yatco,* akin to a legal safety net, has tempered the application of the basic formula by providing for deviation, where supported by the facts and reasoned elaboration. While concededly far from perfect, the enumeration under Section 17 and the use of a basic formula have been the principal mechanisms to implement the just compensation provisions of the Constitution and the CARP for many years. Until a direct challenge is successfully mounted against Section 17 and the basic formulas, they and the collective doctrines in *Banal, Celada* and *Yatco* should be applied to all pending litigation involving just compensation in agrarian reform. This rule, as expressed by the doctrine of *stare decisis,* is necessary for securing certainty and stability of judicial decisions. This Court thus for now gives full constitutional presumptive weight and credit to Section 17 of RA 6657, DAR AO No. 5 (1998) and the resulting DAR basic formulas.

SERENO, *C.J., separate concurring opinion*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657);

EXPROPRIATION OF AGRICULTURAL LANDS; JUST COMPENSATION; SECTION 17 OF R.A. NO. 6657 DOES NOT TAKE AWAY, MUCH LESS LIMIT, THE POWER OF THE COURTS TO INQUIRE INTO THE "JUSTNESS" OF THE COMPENSATION, FOR ALL THAT IT REQUIRES IS FOR THE COURTS TO CONSIDER THE FACTORS ENUMERATED THEREIN, BUT THE PROVISION DOES NOT MANDATE THAT THE COURTS USE THOSE FACTORS EXCLUSIVELY FOR THE DETERMINATION OF JUST COMPENSATION. — [C]ourts have a legal duty to consider the factors provided in Section 17 of Republic Act (R.A.) No. 6657, as amended. [D]eviation therefrom is authorized, provided it is explained and is supported by the evidence on record. x x x. [T]here should be no conflict between the duty to consider the factors laid down by Section 17, as amended, and the established rule that the determination of just compensation is a judicial function. R.A. No. 9700 amended Section 17 of R.A. No. 6657 to make the consideration of the factors enumerated therein mandatory. x x x. With the amendment, courts are now bound to consider the enumerated factors in the determination of just compensation. [T]his does not straitjacket them and thereby unduly restrain their power to determine just compensation, which has been established to be exclusively a judicial function. Section 17 does not tread on dangerous grounds. All that it requires is the consideration by the courts of the enumerated factors. The provision does not mandate that they use those factors exclusively for the determination of just compensation. Congress even circumscribed the consideration of the factors with the clause, "subject to the final decision of the proper court." They are, at most, guidelines to assist the courts in the determination of just compensation. Therefore, Section 17 does not take away, much less limit, the power of the courts to inquire into what *EPZA v. Dulay* termed the "justness" of the compensation.

2. STATUTORY CONSTRUCTION; STATUTES; INTERPRETATION AND CONSTRUCTION; AN INTERPRETATION SHOULD, IF POSSIBLE, BE AVOIDED UNDER WHICH A STATUTE OR PROVISION BEING CONSTRUED IS DEFEATED, OR AS OTHERWISE EXPRESSED, NULLIFIED, DESTROYED, EMASCULATED, REPEALED, EXPLAINED AWAY, OR RENDERED INSIGNIFICANT, MEANINGLESS, INOPERATIVE

OR NUGATORY; THE VALUATION METHOD UNDER SECTION 17 OF R.A. NO. 6657, AS AMENDED, SHOULD BE ACCORDED THE PRESUMPTION OF CONSTITUTIONALITY AS IT REFLECTS THE WISDOM OF CONGRESS IN PRESCRIBING THE MANNER OF IMPLEMENTING THE CONSTITUTIONAL MANDATE.— We should give effect to the legislatively mandated mode of valuation as prescribed in Section 17, following the default rule in the interpretation of statutes: In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the legislature is not presumed to have done a vain thing in the enactment of a statute. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory. R.A. No. 6657 was designed to breathe life to the constitutional mandate for land reform. In particular, the valuation method under Section 17 reflects the wisdom of Congress in prescribing the manner of implementing the constitutional mandate. [There is] no reason why we should not accord the provision the presumption of constitutionality that it fairly deserves. We must consequently avoid an interpretation whereby the constitutional directive for land reform would be rendered ineffective.

CARPIO, *J.*, *separate concurring opinion*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. No. 6657), JUST COMPENSATION; THE DEPARTMENT OF AGRARIAN REFORM'S (DAR) COMPUTATION OF JUST COMPENSATION IS NOT BINDING ON THE LANDOWNER.— The first paragraph of Section 18 of RA 6657 reads*:* Section 18. *Valuation and Mode of — Compensation.* — The LBP shall compensate the landowner in such amounts **as may be agreed upon by the landowner and the DAR and the LBP**, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or as may be finally determined by the court, as the just compensation for the land**. This provision on valuation of just compensation consists of two parts. The first part refers to the amount of just

compensation "as may be agreed upon by the landowner and the DAR and the LBP" while the second part pertains to the amount of just compensation "as may be finally determined by the court." **In other words, the amount of just compensation may either be (1) by an agreement among the parties concerned; or (2) by a judicial determination thereof.** In the first case, there must be an **agreement** on the amount of just compensation between the landowner and the DAR. Such **agreement** must be in accordance with the criteria under Sections 16 and 17 of RA 6657. Section 16 outlines the procedure for acquiring private lands while Section 17 provides for the factors to be considered in determining just compensation. To translate such factors, the DAR devised a formula, which is presently embodied in DAO No. 5. The DAR, using the formula in DAO No. 5, will make an initial determination of the value of the land and thereafter offer such amount to the landowner. If the landowner accepts the DAR's offer, he shall be paid the amount of just compensation as computed by the DAR. If the landowner rejects the DAR's offer, he may opt to file an action before the courts to finally determine the proper amount of just compensation. **Clearly, the DAR cannot mandate the value of the land because Section 18 expressly states that the landowner shall be paid the amount of just compensation "as may be agreed upon" by the parties.** In other words, the DAR's valuation of the land is not final and conclusive upon the landowner. **Simply put, the DAR's computation of just compensation is not binding on the landowner.**

2. ID.; ID.; ID.; COURTS MUST BE GIVEN THE DISCRETION TO ACCEPT, MODIFY, OR REJECT THE DAR'S VALUATION.— Since the landowner is not bound to accept the DAR's computation of just compensation, with more reason are courts not bound by DAR's valuation of the land. To mandate the courts to adhere to the DAR's valuation, and thus require the courts to impose such valuation on the landowner, is contrary to the first paragraph of Section 18 which states that the DAR's valuation is not binding on the landowner. If the law intended courts to be bound by DAR's valuation, and to impose such valuation on the landowner, then Section 18 should have simply directly stated that the landowner is bound by DAR's valuation. To hold that courts are bound by DAR's valuation makes resort to the courts an empty exercise. To avoid

violating Section 18, courts must be given the discretion to accept, modify, or reject the DAR's valuation.

3. ID.; ID.; ID.; THE REGIONAL TRIAL COURTS, SITTING AS SPECIAL AGRARIAN COURTS (SACs), HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ACTIONS FOR THE DETERMINATION OF JUST COMPENSATION.— The law itself vests in the Regional Trial Courts, sitting as Special Agrarian Courts (SAC), the original and exclusive jurisdiction over actions for the determination of just compensation. Section 57 of RA 6657 reads: Section 57. *Special Jurisdiction.* — **The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this act** x x x. In *Land Bank of the Philippines v. Montalvan,* the Court reiterated the exclusive jurisdiction of the SAC to determine just compensation, to wit: The SAC has been statutorily determined to have original and exclusive jurisdiction over all petitions for the determination of just compensation due to landowners under the CARP. This legal principle has been upheld in a number of this Court's decisions and has passed into the province of established doctrine in agrarian reform jurisprudence. In fact, this Court has sustained the exclusive authority of the SAC over the DARAB, even in instances when no administrative proceedings were conducted in the DARAB.

4. ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION IS ESSENTIALLY A JUDICIAL FUNCTION; THUS, THE VALUATION BY THE DAR, PRESENTED BEFORE THE AGRARIAN COURTS, SHOULD ONLY BE REGARDED AS INITIAL OR PRELIMINARY.— It is settled that the determination of just compensation is essentially a judicial function. The judicial determination of just compensation is what the second part of the first paragraph of Section 18 of RA 6657 comprehends, as it states that "The LBP shall compensate the landowner in such amounts x x x *as may be finally determined by the court,* as the just compensation for the land." In *Land Bank of the Philippines v. Escandor,* the Court held: It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party.

In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be. Considering that the SACs exercise exclusive jurisdiction over petitions for determination of just compensation, the valuation by the DAR, presented before the agrarian courts, should only be regarded as initial or preliminary. As such, the DAR's computation of just compensation is not binding on the courts.

5. ID.; ID.; ID.; THE DAR VALUATION, BASED ON THE FORMULA IN DEPARTMENT ADMINISTRATIVE ORDER NO. 05-S.1998 (DAO NO. 5), IS NOT CONTROLLING ON THE COURTS, AS NO ADMINISTRATIVE ORDER CAN DEPRIVE THE COURTS OF THE POWER TO REVIEW WITH FINALITY THE DAR'S DETERMINATION OF JUST COMPENSATION IN THE EXERCISE OF A JUDICIAL FUNCTION.— That the DAR valuation, based on the formula in DAO No. 5, is not controlling on the courts is likewise enunciated in *Apo Fruits Corporation v. Court of Appeals,* to wit: x x x **[T]he basic formula and its alternatives – administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) — although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts.** To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. **Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance.** The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its

own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors[.] x x x. Suffice it to state that no administrative order can deprive the courts of the power to review with finality the DAR's determination of just compensation in the exercise of what is admittedly a judicial function. What the DAR is empowered to do is only to determine in a preliminary manner the amount of just compensation, leaving to the courts the ultimate power to decide this issue.

6. ID.; ID.; ID.; ADHERENCE TO THE FORMULA IN DAO NO. 5, IN EVERY INSTANCE, CONSTITUTES AN UNDUE RESTRICTION OF THE POWER OF THE COURTS TO DETERMINE JUST COMPENSATION.— [T]o adhere to the formula in DAO No. 5, in every instance, constitutes an undue restriction of the power of the courts to determine just compensation. This is clear from the case of *Land Bank of the Philippines v. Heirs of Puyat* which stated: As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

7. ID.; ID.; ID.; WHILE THE COURTS ARE STATUTORILY REQUIRED TO CONSIDER THE DAR FORMULA, THE COURTS ARE DEFINITELY NOT MANDATED TO ADOPT SUCH FORMULA IN DETERMINING JUST COMPENSATION. — [R]A 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 by adding other factors to be considered and clarifying that: In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessments made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into **a basic formula by the DAR shall be considered, subject to the final decision of the proper court**. x x x. The clause "a basic formula by the DAR shall be considered, subject to the final decision of the

proper court" means that the law requires the courts to consider the DAR formula in determining just compensation, but the courts are not bound by the DAR formula since the determination of just compensation is essentially a judicial function. This amendment recognizes that the DAR adopted a formula under DAO No. 5. However, the amendment also recognizes that any DAR formula is always subject, in the appropriate case, to the final decision of the proper court. The phrase "subject to the final decision of the proper court" does not appear in the old Section 17. Congress, in amending Section 17 of RA 6657 and adding such phrase, recognizes and, in fact, emphasizes that the final determination of just compensation rests exclusively with the proper court, which is the SAC in this case. In short, while the courts are statutorily required to consider the DAR formula, the courts are definitely not mandated to adopt such formula in determining just compensation. With the amendment of Section 17 of RA 6657, there can no longer be any doubt whatsoever that the DAR valuation of just compensation is not binding or mandatory on the courts.

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; STATUTES AND EXECUTIVE ISSUANCES FIXING OR PROVIDING FOR THE METHOD OF COMPUTING JUST COMPENSATION ARE NOT BINDING ON COURTS AND, AT BEST, ARE TREATED AS MERE GUIDELINES IN ASCERTAINING THE AMOUNT THEREOF.— In *Export Processing Zone Authority v. Dulay*, this Court declared a law which provided for a specific method of valuation as unconstitutional, stating clearly that: The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation. This doctrine

was further reiterated in *National Power Corporation v. Spouses Baylon:* The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. *As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government*." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof. Provisions in the Bill of Rights do not simply inform Congress and the President as to the limits of their powers. They contain substantive individual and collective rights which can be invoked in a proper case against a law or an executive issuance.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW, AS AMENDED (R.A. NO. 6657); JUST COMPENSATION; THE REGIONAL TRIAL COURTS SITTING AS SPECIAL AGRARIAN COURTS HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS.— Republic Act No. 6657 as amended by Republic Act No. 7881, 7905, 8532, and 9700 explicitly provides under Section 57: Section 57. Special Jurisdiction. — The Special Agrarian Courts shall have ***original and exclusive jurisdiction*** over all petitions ***for the determination of just compensation to landowners*** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act. Regional Trial Courts sitting as Special Agrarian Courts have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. The jurisdiction is original. Petitions must be initiated in the Special Agrarian Court. The jurisdiction is also exclusive. No other court may exercise original jurisdiction over these cases.

3. ID.; ID.; ID.; FULL AND FINAL DISCRETION TO DETERMINE WHETHER COMPENSATION IS JUST IS STRICTLY WITHIN THE AMBIT OF THE TRIAL COURT

SITTING AS A SPECIAL AGRARIAN COURT, AND THE LATTER MAKES THIS DETERMINATION IN ITS FIRST INSTANCE.— Under the agrarian reform program, two kinds of compensation take place. The first is just compensation, which must be paid to the landowner by the state upon the taking of the land. The second is compensation that may be paid by agrarian reform beneficiaries who acquire ownership of the land through certificate of land ownership awards. Section 3 (d) of Republic Act No. 6657 only refers to the second kind of compensation. All matters relating to just compensation by the state to the landowners remains under the exclusive and original jurisdiction of the trial court acting as a Special Agrarian Court. To rule otherwise would run counter not only to the clear and unambiguous provision of Section 57, but also to the constitutional right to just compensation. In *Land Bank of the Philippines v. Court of Appeals*, this Court noted that: It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." ***This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions***. x x x. An examination of the statutory provision as well as the holding in *Land Bank of the Philippines v. Court of Appeals* leads to the conclusion that full and final discretion to determine whether compensation is just is strictly within the ambit of the trial court sitting as a Special Agrarian Court. The Regional Trial Court makes this determination in its first instance.

4. ID.; ID.; ID.; JUST COMPENSATION MUST BE DETERMINED BASED ON THE FAIR MARKET VALUE OF THE PROPERTY AT THE TIME OF THE TAKING; FACTORS AFFECTING MARKET VALUE.— Valuation cannot be exactly prescribed in law or in an executive issuance. It depends on the unique situation of every parcel of land to be taken for purposes of agrarian reform. Just compensation must be determined based on the fair market value of the property at the time of the taking. Thus, in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*: The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being

that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property. This market value is often arrived at through compromise between the buyer and the seller. Factors affecting market value include the "time and terms of sale, relationship of the parties involved, knowledge [and evaluation] concerning the rights to be conveyed, present and possible potential uses to which the property may be put, and the immediate transferability of good and marketable title."

5. ID.; ID.; ID.; JUST COMPENSATION REFERS TO A FAIR AND FULL EQUIVALENT FOR THE LOSS SUSTAINED, WHICH IS THE MEASURE OF THE INDEMNITY, NOT WHATEVER GAIN WOULD ACCRUE TO THE EXPROPRIATING AUTHORITY.— Just compensation also refers to "the full and fair equivalent of the property taken from its owner by the expropriator." It is the "equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating authority." In other words, the measure of just compensation "is not the taker's gain but the owner's loss."

6. ID.; ID.; ID.; ID.; THE INCOME GENERATED OR MAY BE GENERATED MUST BE CONSIDERED IN DETERMINING JUST COMPENSATION; OTHER FACTORS THAT MAY BE CONSIDERED IN JUDICIAL VALUATION OF PROPERTY.— Loss is not exclusive to physical loss of expropriated property. The property may be generating income. The income generated or may be generated must also be considered in determining just compensation. We explained in *Apo Fruits Corporation v. Land Bank of the Philippines* that: The owner's loss . . . is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is

not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness. Other factors that may be considered in judicial valuation of property are the "assessed value of the property," the "schedule of market values [as] determined by the provincial or city appraisal committee," and the "nature and character of the [property] at the time of its taking."

7. ID.; ID.; ID.; THE CONCEPT OF JUST COMPENSATION EMBRACES NOT ONLY THE CORRECT DETERMINATION OF THE AMOUNT TO BE PAID TO THE OWNERS OF THE LAND, BUT ALSO PAYMENT WITHIN A REASONABLE TIME FROM ITS TAKING.— In *Land Bank of the Philippines v. Orilla*, this Court clarified that just compensation is not only about the correctness of the valuation of the property. Prompt payment is equally important, thus: The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

8. ID.; ID.; ID.; COMPENSATION SHOULD BE "JUST" TO ENSURE A BALANCE THAT THE PROPERTY IS NOT TO BE TAKEN FOR PUBLIC USE AT THE EXPENSE OF PRIVATE INTERESTS, AND THAT THE EQUIVALENT TO BE RENDERED FOR THE PROPERTY TO BE TAKEN SHALL BE REAL, SUBSTANTIAL, FULL, AND AMPLE.— In *Apo Fruits*, we characterized the purpose of qualifying the word, "compensation," found in Article III, Section 9 of the Constitution: It is not accidental that Section 9 specifies that compensation should be "just" as the safeguard is there to ensure a balance — property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of property causes through compensation for what is taken, ***value for value.***

Nor is it accidental that the Bill of Rights is interpreted liberally in favor of the individual and strictly against the government. The protection of the individual is the reason for the Bill of Rights' being; to keep the exercise of the powers of government within reasonable bounds is what it seeks. Further, we explained in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform* that "[t]he word 'just' is used to intensify the meaning of the word 'compensation' to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample."

9. ID.; ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION CANNOT BE LEFT TO THE SELF-SERVING DISCRETION OF THE EXPROPRIATING AGENCY.— Compensation cannot be just if its determination is left to the discretion of one of the parties to the expropriation proceeding. It is even more unjust if the court's discretion to determine just compensation is removed. We noted in *National Power Corporation v. Ileto* that "[t]he 'just'-ness of just compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property x x x. [T]he determination of just compensation cannot be left to the self-serving discretion of the expropriating agency." The role of the Department of Agrarian Reform as an implementing agency in agrarian reform cases is to represent the state as the buyer of properties for distribution to farmers. The landowner is the seller. The procedure for the acquisition of properties to be distributed as part of the agrarian reform program allows the parties to negotiate on the valuation of the property. As the buyer, the Department of Agrarian Reform is expected to ensure that the government can purchase the property at the lowest possible price. It would be inequitable if the Department of Agrarian Reform, as the buyer, is allowed to dictate through its issuances the means by which the landowner's property would be valuated.

10. ID.; ID.; ID.; THE STATE MUST ENSURE THAT THE INDIVIDUAL WHOSE PROPERTY IS TAKEN IS NOT SHORTCHANGED AND MUST HENCE CARRY THE BURDEN OF SHOWING THAT THE "JUST COMPENSATION" REQUIREMENT OF THE BILL OF RIGHTS IS SATISFIED.— The policy of the State to promote social justice is not a justification for the violation of fundamental

rights. In *Apo Fruits Corporation v. Land Bank of the Philippines*, we emphasized: [S]horn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the **purchase** by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values — the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. . . . **in the value-for-value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.**

11. ID.; ID.; ID.; SECTION 17 OF REPUBLIC ACT NO. 6657, WHICH CONTAINS ONLY A FINITE ENUMERATION OF VARIABLES TO BE CONSIDERED IN DETERMINING JUST COMPENSATION, IS CHARACTERIZED AS MERE GUIDANCE ON LAND VALUATION.— The Department of Agrarian Reform Administrative Order No. 5, Series of 1998, acknowledges that properties have particularities that must be considered in determining just compensation. It also acknowledges the inexactness of land valuation as well as the human qualities required in its determination. x. x x Understandably, therefore, Section 17 of Republic Act No. 6657, which contains only a finite enumeration of variables to be considered in determining just compensation, is characterized as mere "guidance on land valuation."

12. ID.; ID.; ID.; ID.; THE TRIAL COURT'S ADOPTION OF THE AVERAGE OF THE MARKET DATA APPROACH AND CAPITALIZED INCOME APPROACH, RATHER THAN WHAT WAS LAID OUT IN SECTION 17 OF REPUBLIC ACT NO. 6657 AND DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO.05, SERIES OF 1998, IN COMPUTING THE JUST COMPENSATION FOR THE SUBJECT PROPERTIES WAS AN EXERCISE OF DISCRETION NECESSARY IN THE PERFORMANCE OF ITS JUDICIAL FUNCTION.— Only by considering all relevant factors can just compensation

be most closely approximated, and therefore, the fundamental rights of landowners be upheld. Proper valuation of properties is a result of a complex interaction of variables, which may not be encompassed in a single formula. No single formula guarantees a fair property valuation. However, this does not mean that valuation or just compensation cannot be determined. This is precisely why the final determination is to be done by a court of law. The judge receives a report from commissioners that were appointed following the procedure outlined in the Rules of Court. The commissioners deliberate on the required valuation given the peculiarities of the property in question. Hence, the trial court cannot be said to have erred when, in determining the just compensation for the subject properties, it adopted an approach different from what was laid out in Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 05, Series of 1998. According to the trial court, its valuation was based on the evidence submitted by both petitioner Alfonso and respondents Land Bank and Department of Agrarian Reform, the report of the appointed commissioner, the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits of the land to the community, the Bureau of Internal Revenue zonal values, the assessor's schedule of market values, and community facilities and utilities in the area. The trial court's adoption of the average of the Market Data Approach and Capitalized Income Approach in computing the just compensation for the subject properties was an exercise of discretion necessary in the performance of its judicial function. Having considered the indicators available and deemed as relevant, the trial court did not arbitrarily arrive at a valuation. What the court did was to exercise its duty to determine just compensation in accordance with the available data. It cannot, therefore, be set aside for not adhering to the Department of Agrarian Reform's fixed formula without impairing judicial functions.

13. ID.; ID.; ID.; INTERPRETING SECTION 17 OF REPUBLIC ACT NO. 6657 AND DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 5 AS MANDATE TO THE COURTS IS TANTAMOUNT TO UNDERRATING THE EFFECT OF EACH PROPERTY'S PECULIARITIES, AND TO SANCTION THE

DISREGARD OF THESE PARTICULARITIES ENDANGERS THE RIGHT OF LANDOWNERS TO JUST COMPENSATION. — [W]e have to recognize that the administrative determination of land value will never be perfected, and not all landowners will settle for the administratively determined offer. Due to the particularities of each case, disagreement as to the valuation of land between the landowner and the expropriator will always exist. The judicial determination of just compensation is there to break bargaining deadlocks between buyer and seller when these administrative formulations cannot be modified fast enough to accommodate the exigencies of the situation. Judicial determination will provide more flexibility in order to achieve the ideal where government, as buyer, will pay without coercion, and the landowner, as seller, will accept without compulsion. Interpreting Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5 as mandate to the courts is tantamount to underrating the effect of each property's peculiarities. To sanction disregard of these particularities endangers the right of landowners to just compensation. It is even inconsistent with the Prefatory Statement of Administrative Order No. 5, which emphasizes the role of these particularities in the proper determination of just compensation.

14. ID.; ID.; ID.; THE COURT SHOULD BE ALLOWED TO DEVIATE FROM THE DEPARTMENT OF AGRARIAN REFORM'S FORMULAS IF IT FINDS A DIFFERENT METHOD OF VALUATION BASED ON THE EVIDENCE PRESENTED.— At present, the judiciary's role as guardian of and final arbiter over transgressions of fundamental rights remains. The judiciary cannot effectively exercise such a role if its powers with respect to the determination of just compensation is restricted by laws and issuances dictating how just compensation should be determined. We must, therefore, abandon our rulings in *Land Bank of the Philippines v. Spouses Banal* and *Land Bank of the Philippines v. Celada* that executive and legislative issuances providing for the proper determination of just compensation must be adhered to by the courts. Mandating strict adherence to these executive and legislative issuances is not only tantamount to an unwarranted abdication of judicial authority, it also endangers rights against undue deprivation of property and to just compensation. The policies adhered to

by the executive branch may also change with every election period. It would be unwise to mandate that the courts follow a single formula for determining just compensation considering that the current formula of the Department of Agrarian Reform can just as easily be discontinued by another administration. While this case should be remanded to the Special Agrarian Court for the determination of just compensation, the court should be allowed to deviate from the Department of Agrarian Reform's formulas if it finds a different method of valuation based on the evidence presented.

VELASCO, JR., *J., dissenting opinion*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657); JUST COMPENSATION; THE DEPARTMENT OF AGRARIAN REFORM (DAR) IS PRECLUDED FROM VESTING UPON ITSELF THE POWER TO DETERMINE THE AMOUNT OF JUST COMPENSATION A LANDOWNER IS ENTITLED TO, NOTWITHSTANDING THE QUASI-JUDICIAL POWERS GRANTED TO IT, AS IT IS THE SPECIAL AGRARIAN COURTS (SACs) WHICH HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION FOR PROPERTY TAKEN PURSUANT TO THE CARL.— The jurisdiction bestowed by Congress to the SACs to entertain petitions for the determination of just compensation for property taken pursuant to the CARL is characterized as "original and exclusive." This could not be any clearer from the language of Sec. 57 of the law x x x. The fundamental tenet is that jurisdiction can only be granted through legislative enactments, and once conferred cannot be diminished by the executive branch. It can neither be expanded nor restricted by executive issuances in the guise of law enforcement. Thus, although the DAR has the authority to promulgate its own rules of procedure, it cannot modify the "original and exclusive jurisdiction" to settle the issue of just compensation accorded the SACs. Stated in the alternative, the DAR is precluded from vesting upon itself the power to determine the amount of just compensation a landowner is entitled to, notwithstanding the quasi-judicial powers granted the DAR under Sec. 50 of the CARL.

2. ID.; ID.; ID.; THE DAR CANNOT PROMULGATE RULES TO COVER MATTERS OUTSIDE OF ITS JURISDICTION. AT BEST, IT CAN ONLY SERVE TO GOVERN THE INTERNAL WORKINGS OF THE ADMINISTRATIVE AGENCY, BUT DEFINITELY CANNOT CONTROL THE COURT PROCEEDINGS BEFORE THE SACs.— We clarified in *LBP v. Belista* that further excepted from the coverage of the DAR's jurisdiction, aside from those specifically mentioned in Sec. 50, are petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA 6657, which are within the jurisdiction of the SACs pursuant to Sec. 57 of the law. x x x. In *Republic v. CA*, the Court explained: Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving **the determination of just compensation** and criminal cases for violations of R.A. No. 6657 **as excepted from the plenitude of power conferred on the DAR**. Indeed, there is a reason for this distinction. **The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657)** and over criminal cases. x x x. Corollary to the above-quoted pronouncement, the rule-making power of the DAR cannot then extend to the determination of just compensation by the SACs. **The DAR cannot promulgate rules to cover matters outside of its jurisdiction.** At best, it can only serve to govern the internal workings of the administrative agency, but definitely cannot control the court proceedings before the SACs.

3. ID.; ID.; ID.; EVEN THOUGH THE LANDOWNER WAS NOT ABLE TO UNDERGO THE COMPLETE ADMINISTRATIVE PROCESS BEFORE THE DAR PURSUANT TO SECTION 16 OF THE CARL, HE IS NOT PRECLUDED FROM IMMEDIATELY AND DIRECTLY FILING A COMPLAINT FOR JUST COMPENSATION BEFORE THE SAC, AS THE VALUATION OF PROPERTY OR DETERMINATION OF JUST COMPENSATION IN EMINENT DOMAIN PROCEEDINGS IS ESSENTIALLY

A JUDICIAL FUNCTION WHICH IS VESTED WITH THE COURTS AND NOT WITH ADMINISTRATIVE AGENCIES.— The original and exclusive jurisdiction of the SACs to determine just compensation is further strengthened by the fact that even without completing the process outlined in Sec. 16 of the CARL, the landowner affected by the taking could immediately seek court action to determine the amount he is entitled to. x x x [F]rom the DAR ruling, the landowner has the option of whether or not to accept or reject the recalibrated offer. Should the landowner refuse the offer still, he or she may file the necessary petition for determination of just compensation with the RTC acting as a SAC that has jurisdiction over the property being taken. [T]he administrative procedure before the DAR can be bypassed by the landowner by invoking the original and exclusive jurisdiction of the SACs. Thus, even though the landowner was not able to undergo the complete administrative process before the DAR pursuant to Sec. 16 of the CARL, he is not precluded from immediately and directly filing a complaint for just compensation before the SAC. More than being the prevailing interpretation of Sec. 57 of the CARL, this is also in line with the oft-cited ruling that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.

4. ID.; ID.; ID.; THE DAR'S LAND VALUATION IS MERELY PRELIMINARY, AND IS NOT, BY ANY MEANS, FINAL AND CONCLUSIVE UPON THE LANDOWNER OR ANY OTHER INTERESTED PARTY, AS THE COURTS STILL HAVE THE FINAL SAY ON WHAT THE AMOUNT OF JUST COMPENSATION WILL BE.— In contradistinction with the original and exclusive jurisdiction of the SACs under Sec. 57 of the CARL, the valuation process undertaken by DAR under Sec. 16 of the same law is merely **preliminary** in character. x x x. In *LBP v. Escandor*, the Court further made the following distinctions: **It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.** x x x. The preliminary valuation conducted by the

DAR serves very limited purposes, the first of which is the recalibration of the offer to the landowner. The proceeding before the DAR is not for making a binding determination of rights between the parties. Rather, it must be understood as a venue for negotiations between the government and the landowner, allowing the latter to present his counter-offer to the proposed sale, and providing the parties involved with the opportunity to agree on the amount of just compensation.

5. ID.; ID.; ID.; JUST COMPENSATION IS A CONSTITUTIONAL LIMITATION TO ALL MODALITIES OF THE GOVERNMENT'S EXERCISE OF ITS RIGHT OF EMINENT DOMAIN, NOT JUST IN AGRARIAN REFORM CASES. — "[J]*ust compensation*" is a constitutional limitation to all modalities of the government's exercise of its right of eminent domain, not just in agrarian reform cases. Despite making numerous appearances in various provisions of the fundamental law, however, **it was the understanding among the members of the Constitutional Commission that the concept of just compensation would, nevertheless, bear the same meaning all throughout the document, and to apply the same rules for all types of expropriation, whether commenced under the CARL or not**. x x x. **Clearly then, the framers intended that the concept of just compensation in the country's agrarian reform programs be the same as those in other cases of eminent domain. No special definition for "just compensation" for properties to be expropriated under the country's land reform program was reached by the Commission**. As settled by jurisprudence, the term "just compensation" refers to the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.

6. ID.; ID.; ID.; ID.; THERE SHOULD BE NO MANDATORY FORMULA FOR THE COURTS TO APPLY IN DETERMINING THE AMOUNT OF JUST COMPENSATION TO BE PAID IN AGRARIAN REFORM CASES AND IN OTHER FORMS OF GOVERNMENT TAKING.— It is conceded that the SACs are bound to consider the x x x factors embodied in Sec. 17 in determining just

compensation. Nevertheless, it would be a stretch, if not downright erroneous, to claim that its formulaic translation by the DAR is just as binding on the SACs. x x x. There is xx neither rhyme nor reason to treat agrarian reform cases differently insofar as the determination of just compensation is concerned. In all instances, the measure is not the taker's gain, but the owner's loss. The amount of just compensation does not depend on the purpose of expropriation, for compensation should be "just" irrespective of the nobility or loftiness of the public aim sought to be achieved. And as in other cases of eminent domain, "*any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount*." In **all** cases of eminent domain proceedings, there should be no mandatory formula for the courts to apply in determining the amount of just compensation to be paid.

7. ID.; ID.; ID.; ID.; NO MANDATORY FIXED WEIGHTS SHOULD BE ACCORDED TO THE FACTORS ENUMERATED IN SEC. 17 OF CARL IN DETERMINING JUST COMPENSATION, AS IT IS THE PREROGATIVE OF THE COURTS TO ASSESS THE SIGNIFICANCE OF THESE FACTORS IN EACH INDIVIDUAL CASE, AND IN THE PROCESS, ASSIGN THEM WEIGHTS IN DETERMINING JUST COMPENSATION.— There are limitless approaches towards approximating what would constitute just compensation and there are endless criteria for determining what is "just." As the DAR itself emphatically declares: "***Land valuation is not an exact science*** *but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just*." Thus, **while Sec. 17 enumerates the factors to consider in determining just compensation, no mandatory fixed weights should be accorded to them. It is the prerogative of the courts** to assess the significance of these factors in each individual case, and in the process, assign them weights in determining just compensation. It lies within the discretion of the SACs to determine which valuation method to select.

8. ID.; ID.; ID.; THE SACs ARE NOT BOUND TO APPLY DEPARTMENT ADMINISTRATIVE ORDER (DAO) NO. 5. — [S]ec. 58 of the CARL provides**: Section 58. Appointment of Commissioners. %** The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, **may appoint one or more commissioners to examine, investigate and ascertain facts** relevant to the dispute **including the valuation of properties**, and to file a written report thereof with the court. This could, however, only serve to strengthen the position that the SACs are not bound to apply DAO No. 5. Notwithstanding the prior ruling of the DAR, what is being resolved by the SAC in the exercise of its original and exclusive jurisdiction is a *de novo* complaint. Therefore, the SACs **may,** in the exercise of its discretion, disregard the valuations by the DAR and proceed with its own examination, investigation, and valuation of the subject property through its appointed commissioners. Plainly, the SACs are not barred from disregarding the prior findings of the DAR and substituting their own valuation in its stead. Nowhere in the law can it be seen that the court-appointed commissioners are precluded from utilizing their own valuation methods. All RA 6657 requires is that the factors in Sec. 17 be considered, but not in any specific way.

9. ID.; ID.; ID.; ONLY UPON THE EFFECTIVITY OF RA 9700 WERE THE SACs REQUIRED TO TAKE INTO CONSIDERATION THE BASIC FORMULA OF THE DAR, BUT THE SAME IS MERELY AN ADDITIONAL VARIABLE TO CONSIDER, NOT A CONTROLLING FORMULA FOR THE COURTS TO APPLY, AS THE VALUATIONS ARE STILL SUBJECT TO THE FINAL DECISION OF THE PROPER COURT.— A cursory examination of Sec. 17 of RA 6657, as amended by RA 9700, easily leads to the inescapable conclusion that the law never intended that the DAR shall formulate an inflexible norm in determining the value of agricultural lands for purposes of just compensation, one that is binding on courts. A comparison of the former and current versions of Sec. 17 evinces that it was only upon the enactment of RA 9700 that the courts were mandated by law to "consider" the DAR formula in determining just compensation. There was no such requirement under RA 6657. Prior to RA 9700's enactment, there was then even lesser statutory basis, if not none at all, for the mandatory imposition

of the DAR formula. Sec. 7 of RA 9700, which was approved on August 7, 2009, amended Sec. 17 of the CARL x x x. The non-retroactivity of RA 9700's amendment to Sec. 17, and its inapplicability in the current case, is expressed under Sec. 5 thereof x x x. The amendments introduced RA 9700, which was enacted after the taking of the subject properties was commenced, cannot then be invoked in this case. At the time of taking, there was no statutory mandate for the SAC's to consider the DAR formula in determining the proper amount of just compensation. It was only upon the effectivity of RA 9700 were the SACs required to take into consideration the basic formula of the DAR. But despite such requirement, it must still be borne in mind that **the language of the law does not even treat the formula and its resultant valuations as binding on the SACs**; for though they shall be "considered," **the valuations are still subject to the final decision of the proper court. It is merely an additional variable to consider, but not a controlling formula for the courts to apply.**

10. ID.; ID.; ID.; THERE IS NO NEED TO DECLARE EITHER SECTION 17 OF THE CARL OR DAO NO. 5 AS UNCONSTITUTIONAL, THE FORMULA IS, AS IT REMAINS TO BE, VALID, BUT ITS APPLICATION OUGHT TO BE LIMITED TO MAKING AN INITIAL GOVERNMENT OFFER TO THE LANDOWNER AND RECALIBRATING THE SAME THEREAFTER.— The Court is not being asked to declare DAO No. 5 as null and void. Rather, it is the postulation that **DAO No. 5 should not be made mandatory on the courts**. The formula is, as it remains to be, valid, but its application ought to be limited to making an initial government offer to the landowner and recalibrating the same thereafter as per Sec. 16 of the CARL. The Court cannot interfere with the DAR's policy decision to adopt the direct capitalization method of the market value in determining just compensation in the same way that the DAR cannot likewise prevent the courts from adopting its own method of valuation. [T]here is no need to declare either Sec. 17 of the CARL or DAO No. 5 as unconstitutional.

APPEARANCES OF COUNSEL

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D E C I S I O N

JARDELEZA, *J.*:

The main issue presented in this case concerns the legal duty of the courts, in the determination of just compensation under Republic Act No. 6657,[1] (RA 6657), in relation to Section 17 of RA 6657 and the implementing formulas of the Department of Agrarian Reform (DAR).

The Court *En Banc* reaffirms the established jurisprudential rule, that is: until and unless declared invalid in a proper case, courts have the positive legal duty to consider the use and application of Section 17 and the DAR basic formulas in determining just compensation for properties covered by RA 6657. When courts, in the exercise of its discretion, find that deviation from the law and implementing formulas is warranted, it must clearly provide its reasons therefor.

The Case

This is a petition for review on *certiorari* of the Decision[2] and Resolution,[3] dated July 19, 2007 and March 4, 2008, respectively, of the Court of Appeals in CA-G.R. SP No. 90615 and CA-G.R. SP No. 90643. The Court of Appeals granted the individual petitions filed by the DAR and the Land Bank of

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[1] Comprehensive Agrarian Reform Law of 1988.

[2] Through Associate Justice Arcangelita M. Romilla-Lontok, with Justices Mariano C. Del Castillo and Romeo F. Barza concurring, *rollo*, pp. 24-32.

[3] Through Associate Justice Arcangelita M. Romilla-Lontok, with Justices Mariano C. Del Castillo and Romeo F. Barza concurring, *id.* at 34-35.

the Philippines (LBP) and set aside the Decision[4] dated May 13, 2005 of the Regional Trial Court fixing the total amount of ₱6,090,000.00 as just compensation.[5]

The Facts

Cynthia Palomar (Palomar) was the registered owner of two (2) parcels of land. One is located in San Juan, Sorsogon City, with an area of 1.6530 hectares covered by Transfer Certificate of Title (TCT) No. T-21136,[6] and the other in Bibincahan, Sorsogon City, with an area of 26.2284 hectares covered by TCT No. T-23180.[7]

Upon the effectivity of RA 6657, the DAR sought to acquire Palomar's San Juan and Bibincahan properties at a valuation of ₱36,066.27 and ₱792,869.06,[8] respectively. Palomar, however, rejected the valuations.

Land Valuation Case Nos. 68-01 and 70-01 were consequently filed before the DAR Provincial Adjudication Board (Board) for summary determination of just compensation. In the meantime, or on April 16, 2001, Palomar sold her rights over the two properties to petitioner Ramon M. Alfonso (Alfonso).[9]

Upon orders from the Board, the parties submitted their position papers and evidence to support their respective proposed valuations. On June 20, 2002, Provincial Adjudicator Manuel M. Capellan issued Decisions[10] in Land Valuation Case Nos. 68-01 and 70-01.

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[4] By Judge Honesto A. Villamor, in Civil Cases No. 2002-7073 and 2002-7090, *id.* at 58-66.

[5] *Id* at 66.

[6] CA *rollo* (CA-G.R. SP No. 90615), p. 107.

[7] *Id.* at 110.

[8] *Id.* at 108, 111.

[9] *Rollo*, p. 59.

[10] CA *rollo* (CA-G.R. SP No. 90615). 107-112.

Applying DAR Administrative Order No. 5, Series of 1998, (DAR AO No. 5 [1998]), Provincial Adjudicator Capellan valued the properties as follows:

San Juan Property:

Land Value = CNI x 0.9 + MV x 0.1

Thus:

666.67 kls AGP / FIR
16.70 ASP / PCA data

CNI = 666.67 x 16.70 x .70 - .12 X 0.9
= 58,450.29

MV = 30,600 x 1.2 x .90 + 70 x 150.00
x 1.2 x .90 x 0.1
= 4,438.80

Land Value = 58,450.29 + 4,438.80
= 62,889.09 x 1.6530hectares
= **103,955.66**[11]

Bibincahan Property:

Land Value = CNI x 0.9 + MV x 0.1

Thus:

952 kls AGP/ FIR
16.70 ASP / PCA data

CNI = 952 x 16.70 x .70 - .12 x 0.9
= 83,466.59

MV = 30,600 x 1.2 x .90 + 90 x 150.00
x 1.2 x .90 x 0.1
= 4,762.80

Land Value = 83,466.59 + 4,762.80
= 88,229.39 x 26.2284 hectares
= **2,314,115.73**[12]

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[11] PARAD Decision, *rollo*, pp. 49-50. Emphasis supplied.

[12] PARAD Decision, *id.* at 52-53. Emphasis supplied.

Respondent LBP, as the CARP financial intermediary pursuant to Section 64 of RA 6657,[13] filed a motion seeking for a reconsideration of the Provincial Adjudicator's valuations. This was denied in an Order[14] dated September 13, 2002.

Both the LBP[15] and Alfonso[16] filed separate actions for the judicial determination of just compensation of the subject properties before Branch 52 of the Regional Trial Court, sitting as Special Agrarian Court (SAC), of Sorsogon City. These actions were docketed as Civil Case No. 2002-7073 and Civil Case No. 2002-7090, respectively. Upon Alfonso's motion, the cases were consolidated on December 10, 2002[17] and Amado Chua (Chua) of Cuervo Appraisers, Inc. was appointed Commissioner who was ordered to submit his report (Cuervo Report) within thirty (30) days.[18]

Trial on the merits ensued, with each party presenting witnesses and documentary evidence to support their respective case. Aside from presenting witnesses, the LBP submitted as evidence the following documents: Field Investigation Report, Land Use Map and Market Value per Ocular Inspection for each of the affected properties.[19] Alfonso, for his part, submitted as evidence the Cuervo Report and the testimony of Commissioner Chua.[20]

In his appraisal of the properties, Commissioner Chua utilized two approaches in valuing the subject properties, the Market Data Approach (MDA) and the Capitalized Income Approach (CIA), due to their "different actual land use."[21] He opined that

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[13] *Id.* at 54.

[14] CA *rollo* (CA-G.R. SP No. 90615), p. 93.

[15] *Id.* at 94-98.

[16] *Id.* at 99-102.

[17] *Id.* at 116.

[18] *Rollo,* p. 26.

[19] CA *rollo* (CA-G.R. SP No. 90615), pp. 121-136.

[20] *Id.* at 139-140.

[21] Cuervo Report, p. 11, records, p. 66.

"the *average* of the two indications reasonably represented the just compensation (fair market value) of the land with productive coconut trees":[22]

Site	Unit Land Value (Php/Sq. M.)[23]		
	Market Data Approach (MDA)	Capitalized Income Approach (CIA)	**Average (rounded to the nearest tens)**
1	Php 25	Php18.1125	**22**
2	Php 22	Php17.1275	**20**

He thereafter computed the final land value as follows:[24]

	Area(Sq. m.)	Unit Land Value (Php)	**Just Compensation (Fair Market Value)**
Site 1			
Coconut Land	15,765	22	Php346,830
Residential Land	600	160	96,000
Irrigation Canal	165	*	*
Total for Site 1 -	**16,530sq.m.**		**Php 442,830**
Site 2			
Coconut Land	258,534	20	Php 5,170,680
Residential Land	3,000	160	480,000
Irrigation Canal	750	*	*
Total for Site 2 -	**262,284sq.m.**		**Php 5,650,680**
Grand Total (Sites 1 & 2) -	**278,814sq.m.**		**Php 6,093,510**
		Say -	**Php 6,094,000**

Ruling of the SAC

On May 13, 2005, the SAC rendered its Decision. Finding the valuations of both the LBP and the Provincial Adjudicator to be "unrealistically low,"[25] the SAC adopted Commissioner Chua's valuation as set out in the Cuervo Report. It also held

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[22] Cuervo Report, p. 11, records, p. 66. Emphasis in the original.

[23] *Id.*

[24] Cuervo Report, pp. 17-18, records, p. 66. Emphasis in the original.

[25] RTC Decision, *rollo*, p. 65.

that the provisions of Section 2, Executive Order No. 228 (EO 228) were mere "guiding principles" which cannot substitute the court's judgment "as to what amount [of just compensation] should be awarded and how to arrive at such amount."[26] The dispositive portion of the SAC's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1) Fixing the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS ([₱]442,830.00)[ ], Philippine currency for Site 1 with an area of 16,530 sq. m. covered by TCT No. T-21136 situated at San Juan, Sorsogon City and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY [PESOS] ((₱]5,650,680.00) Philippine currency for Site 2 with an area of 262,284 sq. m. covered by TCT No. T-23180 situated at Bibincahan, Sorsogon City or a total amount of SIX MILLION NINETY THOUSAND PESOS ([₱]6,090,000.00) for the total area of 278,814 sq. m. in the name of Cynthia Palomar/Ramon M. Alfonso which property was taken by the government pursuant to the Agrarian Reform Program of the government as provided by R.A. 6657.
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> 2) Ordering the Petitioner Land Bank of the Philippines to pay the Plaintiff/Private Respondent the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS ([₱]442,830.00) and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND AND SIX HUNDRED EIGHTY PESOS ([₱]5,650,680.00) or the total amount of SIX MILLION NINETY THOUSAND PESOS ([₱]6,090,000.00) Philippine currency for Lots 1604 and 2161 respectively, in the manner provided by R.A. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the private respondents from the Petitioner Land Bank of the Philippines as part of the just compensation.
>
> 3) Without pronouncement as to costs.
>
> SO ORDERED.[27]

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[26] *Id.*

[27] RTC Decision, *rollo*, pp. 65-66.

In an Order[28] dated July 5, 2005, the SAC denied the motions filed by the LBP and the DAR seeking reconsideration of the Decision. These government agencies filed separate petitions for review before the Court of Appeals.

In its petition, docketed as CA-G.R. SP No. 90615, the LBP faulted the SAC for giving considerable weight to the Cuervo Report and argued that the latter's valuation was arrived at in clear violation of the provisions of RA 6657, DAR AO No. 5 (1998), and the applicable jurisprudence.[29]

According to the LBP, there is nothing in Section 17 of RA 6657 which provides that capitalized income of a property can be used as a basis in determining just compensation. Thus, when the SAC used the capitalized income of the properties as basis for valuation, "it actually modified the valuation factors set forth by RA 6657."[30]

The DAR, for its part, imputed error on the part of the SAC for adopting "the average between the Market Data Approach and Capitalized Income Approach as the just compensation of subject landholdings."[31]

Ruling of the Court of Appeals

In its challenged Decision dated July 19, 2007, the Court of Appeals found that the SAC failed to observe the procedure and guidelines provided under DAR AO No. 5 (1998). It consequently granted the petitions filed by the LBP and the DAR and ordered the remand of the case to the SAC for the determination of just compensation in accordance with the DAR basic formula.[32]

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[28] CA *rollo* (G.R. No. 90643), p. 31.

[29] *Rollo,* p. 80.

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

[31] Records, p. 190.

[32] *Id.*

Alfonso filed a motion seeking reconsideration of the Court of Appeals' Decision.[33] Finding no cogent reason to reverse its earlier Decision, the Court of Appeals denied Alfonso's motion.[34]

Hence, this petition.

Issue

As stated in the outset, the issue sought to be resolved in this case involves the legal duty of the courts in relation to Section 17 and the implementing DAR formulas. Otherwise stated, are courts obliged to apply the DAR formula in cases where they are asked to determine just compensation for property covered by RA 6657?

The resolution of the issue presented is fairly straightforward given the established jurisprudence on the binding character of the DAR formulas. During the course of the deliberations of this case, however, concerns were strongly raised (by way of dissents and separate concurring opinion) on the propriety of maintaining the present rule.

This case presents an opportunity for the Court *en banc* not only to reaffirm the prevailing doctrine, but also expound, more explicitly and unequivocally, on our understanding of the exercise of our "judicial function" in relation to legislatively-defined factors and standards and legislatively-provided regulatory schemes.

Ruling of the Court

We **GRANT** the petition in part.

The ruling of the Court will thus be divided into four (4) component parts.

To provide context for proper understanding, Part I will discuss the history of Philippine land reform, with emphasis on the development, over the years, of the manner of fixing just

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[33] Records, pp. 113-118.

[34] *Id.* at 34-35.

compensation, as well as the development of jurisprudence on the same.

In Part II, the Court will evaluate the challenged CA ruling based on the law and prevailing jurisprudence.

Part III will address all issues raised by way of dissents and separate concurring opinion against the mandatory application of the DAR formulas. It will also discuss (1) primary jurisdiction and the judicial function to determine just compensation; (2) how the entire regulatory scheme provided under RA 6657 represents reasonable policy choices on the part of Congress and the concerned administrative agency, given the historical and legal context of the government's land reform program; and (3) how matters raised in the dissents are better raised in a case directly challenging Section 17 and the resulting DAR formulas. We shall also show how the current valuation scheme adopted by the DAR is at par with internationally-accepted valuation standards.

Part IV will conclude by affirming the law, the DAR regulations and prevailing jurisprudence which, save for a successful direct change, must be applied to secure certainty and stability of judicial decisions.

I. Contextual Background

A. History of Philippine land reform laws

Section 4, Article XIII of the Constitution provides:

> Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Congress first attempted to provide for land reform in 1955, when it enacted Republic Act No. 1400, or the Land Reform Act of 1955 (RA 1400). Its scope was limited to the expropriation of private agricultural lands in excess of 300 hectares of contiguous area, if held by a natural person, and those in excess of 600 hectares if owned by corporations.[35] With respect to determining just compensation, it provided that the courts take into consideration the following:

(a) Prevailing prices of similar lands in the immediate area;

(b) Condition of the soil, topography, and climate hazards;

(c) Actual production;

(d) Accessibility; and

(e) Improvements.[36]

Afterwards, Congress enacted Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code of 1963 (RA 3844). Its scope, though expanded, was limited by an order of priority based on utilization and area.[37] Just compensation

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[35] Republic Act No. 1400 (1955), Sec. 6(2).

[36] Republic Act No. 1400 (1955), Sec. 12(2). See also *Republic v. Nable-Lichauco*, G.R. No. L-18001, July 30, 1965, 14 SCRA 682.

[37] Republic Act No. 3844 (1963), Sec. 51(1) provides:

> Sec. 51. *Powers and Functions.* — It shall be the responsibility of the Authority:
>
> (1) To initiate and prosecute expropriation proceedings for the acquisition of private agricultural lands x x x for the purpose of subdivision into economic family-size farm units and resale of said farm units to *bona fide* tenants, occupants and qualified farmers: *Provided,* That the powers herein granted shall apply only to private agricultural lands subject to the terms and conditions and order of priority hereinbelow specified:
>
> x x x x x x x x x
>
> c. in expropriating private agricultural lands declared by the National Land Reform Council or by the Land Authority within a land reform district to be necessary for the implementation of the provisions of this Code, tho following order of priority shall be observed:

under this law was based on the annual lease rental income, without prejudice to the other factors that may be considered.[38]

On October 21, 1972, then President Ferdinand Marcos issued Presidential Decree No. 27[39] (PD 27). It provided for a national land reform program covering all rice and corn lands.[40] This was a radical shift in that, for the first time in the history of land reform, its coverage was national, compulsorily covering all rice and corn lands. Even more radical, however, is its system of land valuation. Instead of providing factors to be considered in the determination of just compensation, similar to the system under RA 1400 and RA 3844, PD 27 introduced a valuation process whereby just compensation is determined using a *fixed mathematical formula provided within the law itself.* The formula

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1. idle or abandoned lands;
2. those whose area exceeds 1,024 hectares;
3. those whose area exceeds 500 hectares but is not more than 1,024 hectares.
4. those whose area exceeds 144 hectares but is not more than 500 hectares; and
5. those whose area exceeds 75 hectares but is not more than 144 hectares.

[38] Republic Act No. 3844 (1963), Sec. 56 reads:

Sec. 56. *Just Compensation.* – In determining the just compensation of the land to be expropriated pursuant to this Chapter, the Court, in land under leasehold, shall consider as a basis, without prejudice to considering other factors also, **the annual lease rental income authorized by law capitalized at the rate of six *per centum per annum.***

The owner of the land expropriated shall be paid in accordance with Section eighty of this Act by the Land Bank and pursuant to an arrangement herein authorized. (Emphasis supplied.)

[39] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[40] Notably, agrarian reform first appeared, as a constitutional policy, only under the 1973 Constitution. Under Section 12, Article XIV, it was provided that:"The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."

was also exclusively production based, that is, based only on the income of the land.

Under PD 27, landowner's compensation was capped to 2.5 times the annual yield, as follows:

Land Value = Average harvest of 3 normal crop years x (2.5)

Notably, this valuation scheme under PD 27 closely resembled those applied in agrarian reform programs earlier implemented in other Asian countries. In Taiwan, for example, compensation was capped at 2.5 times the annual yield of the main crop, when the land values at the time averaged four to six times the annual yield.[41] South Korea, which commenced its land reform program sometime in the 1940s, on the other hand, capped compensation at 1.25 times the value of the annual yield, when the land values at the time averaged five times the annual yield.[42] In Japan, the price for the acquisition of agricultural land under its land reform program, at one point, "could not be greater than forty times the 'official rental value' *(chintai-kakaku)* of rice fields or forty-eight times the 'official rental value' of dry fields x x x."[43]

While the constitutionality of PD 27 was upheld in the cases of *De Chavez v. Zobel*[44] and *Gonzales v. Estrella*,[45] these cases did not rule on the validity of the mathematical valuation formula employed.

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[41] Iyer and Maurer, THE COST OF PROPERTY RIGHTS: ESTABLISHING INSTITUTIONS ON THE PHILIPPINE FRONTIER UNDER AMERICAN RULE, 1898-1918, Harvard Business School Working Paper 09-023,2008, p. 31, citing Yager, TRANSFORMING AGRICULTURE IN TAIWAN: THE EXPERIENCE OF THE JOINT COMMISSION ON RURAL RECONSTRUCTION, 1988, Ithaca and London: Cornell University Press.

[42] *Id.* citing Eddy Lee, EGALITARIAN PEASANT FARMING AND RURAL DEVELOPMENT: THE CASE OF SOUTH KOREA, 1979, World Development 7, p. 508.

[43] Bernas, *CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, NOTES AND CASES*, PART II, 1996 Edition, p. 1009, citing *C. Tanaka v. Japan,* 7 Minshui 1523 (1953).

[44] G.R. Nos. L-28609-10, January 17, 1974, 55 SCRA 26.

[45] G.R. No. L-35739, July 2, 1979, 91 SCRA 294.

Under President Corazon C. Aquino's Executive Order No. 228 (EO 228) issued on July 17, 1987, the system under PD 27 was more or less retained for purposes of valuing the remaining *unvalued* rice and corn lands. Land value under EO 228 was computed based on the average gross production (AGP) multiplied by 2.5, the product of which shall be multiplied by either ₱35.00 or ₱31.00, the Government Support Price (GSP) for one *cavan* of palay or corn, respectively. Thus:

Land Value = (AGP x 2.5) x GSP[46]

On June 10, 1988, RA 6657 was enacted implementing a comprehensive agrarian reform program (CARP). Unlike PD 27 which covered only rice and com lands, CARP sought to cover *all* public and private agricultural lands. It was (and remains to be) an ambitious endeavor, targeting an estimated 7.8 million hectares of land for acquisition and redistribution to landless farmer and farmworker beneficiaries.[47]

B. Regulatory scheme to determine just compensation under RA 6657

With an undertaking of such magnitude, the Congress set up a regulatory scheme for the determination of just compensation founded on four major features.

First, under Section 17 of RA 6657, Congress identified factors to be considered in the determination of just compensation in the expropriation of agricultural lands. This Section reads:

Sec. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or

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[46] Executive Order No. 228 (1987), Sec. 2.

[47] Q and A on CARP <http://www.dar.gov.ph/q-and-a-on-carp/english> (last accessed June 14, 2016).

loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Second, under Section 49, Congress vested the DAR and the Presidential Agrarian Reform Council (PARC)[48] with the power to issue rules and regulations, both substantive and procedural, to carry out the objects and purposes of the law:

Sec. 49. *Rules and Regulations.*— The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

It is on the basis of this section that the DAR would issue its basic formulas.

Third, under Section 16(d) and (f), Congress gave the DAR primary jurisdiction to conduct summary administrative proceedings to determine and decide the compensation for the land, in case of disagreement between the DAR/LBP and the landowners:

Sec. 16. *Procedure for Acquisition of Private Lands.* – For purposes of acquisition of private lands, the following procedures shall be followed:

x x x x x x x x x

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

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[48] The PARC, under Section 41 of RA 6657, is headed by the President of the Philippines as chairman, with designated department secretaries and other government officials, three (3) representatives of affected landowners to represent Visayas and Mindanao, and six (6) representatives of agrarian reform beneficiaries, as members.

x x x x x x x x x

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Fourth, to implement Section 16(f), Congress provided for the judicial review of the DAR preliminary determination of just compensation. Under Sections 56 and 57, it vested upon designated Special Agrarian Courts the special original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners:

Sec. 56. *Special Agrarian Court.* – The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court. The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations. The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts. The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts.

Sec. 57. *Special Jurisdiction.* – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

We shall later on show how this regulatory scheme provided by Congress (and implemented by the DAR) is a reasonable policy choice given the grand scale of the government's agrarian reform program.

C. Development of the DAR basic formula

On March 8, 1989, the DAR issued Administrative Order No. 6[49] (DAR AO No. 6 [1989]), its first attempt to translate the factors laid down by Congress in Section 17 into a formula.

Making use of "the multi-variable approach which subsumes the ten *factors* mentioned under Section 17," the DAR set out a *formula* to estimate "a composite value based on land market price, assessor's market value and landowner's declared value."[50] Reduced to equation form, the formulation is as follows:

$$\textbf{Total Land Value} = \frac{\textbf{MV + AMV + DV}}{\textbf{3}}$$

where:

Market Value (MV)	=	Refers to the latest and comparable transactions within the municipality/ province/region, depending on availability of data. Mortgages which take into account bank exposures shall also be considered in computing for this value.
Assessor's Market Value(AMV)	=	Refers to the assessment made by government assessors.
Declared Value (DV)	=	Refers to the landowner's declaration under EO 229 or RA 6657.[51]

Between June 1988 to December 1989, the University of the Philippines Institute of Agrarian Studies (UP-IAS) conducted an agrarian reform study, which analyzed, among others, the land valuation scheme of the government under DAR AO No.6 (1989).[52]

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[49] Rules and Procedures on Land Valuation and Just Compensation.

[50] Part IV, DAR AO No. 6 (1989).

[51] *Id.*

[52] Institute of Agrarian Studies, College of Economics and Management, STUDIES ON AGRARIAN REFORM ISSUES, UPLB, College, Laguna, pp. 6-7.

The UP-IAS study, which Justice Leonen cites in his dissenting opinion, criticized DAR AO No. 6 (1989) for averaging the values based on the land market price, assessor's market value and landowner's declared value. The UP-IAS study said:

> If agricultural lands are to be distributed to landless farmers and farmworkers for agricultural purposes, then landowners should be compensated for their lands based on its agricultural potential. **The appropriate formula, therefore, is to value land based only on production/productivity.** The land valuation on PD 27, which stipulates that the value is equivalent to 2.5 x average production of three preceding normal croppings is a classic illustration of simplicity and productivity-based land valuation.[53] (Emphasis supplied.)

According to the study, the AMV component had no cut-off date, while the MV factor had no guidelines for determining comparable sales, which makes the DAR formula prone to manipulation.[54] It thus suggested control measures to prevent manipulation of the existing formula, including the setting of cut-off dates for AMV and guidelines for comparable sales.[55] It went on to suggest that "x x x major components could be assigned weights *with more emphasis attached to the production-based value.* Should the declared value be unavailable, then the value should be based only on the components that are available, rather than employ the maximum limit, that is, assuming DV to be equivalent to the sum of the other components. x x x"[56]

It was also around this time that the infamous Garchitorena estate deal was exposed. Under this deal, land acquired privately for only ₱3.1 Million in 1988 was proposed to be purchased by the DAR a year later at "an extremely inflated price" of ₱62.5 Million.[57] In his book *A Captive Land: The Politics of Agrarian Reform in the Philippines*, Dr. James Putzel wrote:

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[53] *Id.* at 91.

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

[55] *Id.* at 90-93.

[56] *Id.* at 92. Emphasis supplied.

[57] The Garchitorena estate was a 1,888 hectare former abaca plantation in Camarines Sur that was no longer useful for cultivation. It was bought

Under the compensation formula finally included in the law and the early [guidelines] of DAR, landowners could secure even *more than [market value]* compensation for their lands. x x x With the passage of [RA 6657] in June 1988, DAR decided that the value of land would be determined by averaging three estimates of market value: the 'assessed market value' (AMV) reported in a landowner's most recent tax declaration, the 'market value' (MV) as an average of three sales of comparable land in the vicinity of a landholding inflated by the consumer price index, and the owner's own 'declaration of fair market value' (DMV) made during the government's land registration programme, *Listasaka 1 and II*, between 1987 and 1988. While the compensation formula included a safeguard against extreme [overvaluation] in the owner's own declaration, it still permitted compensation at up to 33 per cent more than the market value xxx.

Such a compensation formula might have guaranteed against excessive compensation, in terms of the [market value] criteria enunciated in the law, if state institutions like DAR or the tax bureau[] were immune to landowner influence. However, DAR officials were urged to demonstrate results by closing as many deals as possible with landowners. There were several ways in which the formula was abused. First, DAR officials often chose to establish market value (MV) as an average of three sales of highly-valued land, labelling the sales as 'comparable.' The arbitrary character of their choice along with the tendency for land speculation demonstrated the unsoundness of using 'comparable sales' as an element in the

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by Sharp Marketing Inc. from the United Coconut Planters Bank (UCPB) in 1988 for ₱3.1 Million. Sharp, in 1989, or less than a year later, tried to sell the estate to the DAR under the CARP's VOS program for ₱62.5 Million. The DAR, through then Secretary Phillip Juico, approved the sale. Then LBP President Deogracias Vistan, however, refused to give his consent to the deal, saying that Sharp had over reported the productivity of the land and that the beneficiaries had been coerced to accept the value. President Vistan later reported the matter to Congress. The exposure of the deal led to a congressional investigation, the filing by Sharp of a case for *mandamus (Sharp International Marketing v. Court of Appeals*, G.R. No. 93661, September 4, 1991, 201 SCRA 299), and the filing of cases with the Sandiganbayan, among others. As previously noted, subsequently, under EO 405, the LBP was given primary responsibility to determine land valuation and compensation. See also Putzel, *A Captive Land: The Politics of Agrarian Reform in the Philippines*, 1992, Catholic Institute for International Relations (London, UK) and Monthly Review Press (New York, USA).

compensation formula. Secondly, landowners were able to pay just one tax instalment on the basis of an inflated land value and thus raise the level of 'assessed market value' (AMV). The nearer that assessed value was to the market value, the higher could be their own declared value and the resulting compensation. There was no obligation for landowners to pay unpaid tax arrears at the inflated level, but beneficiaries who received the land would be required to pay taxes at this level. Thirdly, because DAR officials discussed with landowners the level of comparable sales being chosen, landowners could both influence that choice and plan the most advantageous level for their 'declared market value' (DMV). The formula was therefore extremely susceptible to abuse by the landowners and opened the door to corrupt practices by DAR officials.[58]

Within the same year, DAR Administrative Order No. 17[59] (DAR AO No. 17 [1989]) was issued revising the land valuation formula under DAR AO No. 6 (1989). This revision appears to be a reaction to the recent developments, with the new formula reflecting lessons learned from the Garchitorena estate scandal and the UP-IAS study's comments and suggested improvements.

Under DAR AO No. 17 (1989), the DAR laid down guidelines for the determination of the Comparable Sales (CS) component,[60] provided a cut-off date for Market Value per Tax Declaration

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[58] Putzel, A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES, 1992, Catholic Institute for International Relations (London, UK) and Monthly Review Press (New York, USA), pp. 312-314.

[59] Rules and Regulations Amending Valuation of Lands Voluntarily Offered Pursuant to EO 229 and RA 6657 and Those Compulsorily Acquired Pursuant to RA 6657.

[60] I. Definition of Terms/Applicability of Factors

A. Comparable Sales (CS) – This factor shall refer to the AVERAGE of three (3) comparable sales transactions, the criteria of which are as follows:

1. Sale transactions shall be in the same municipality. In the absence thereof, sales transactions within the province may be considered[;]
2. One transaction must involve land whose area is at least ten percent (10%) of the area being offered or acquired

(MV),[61] and placed greater weight to productivity through the Capitalized Net Income (CNI) factor, among others. Thus:

Land Value= (CS x 0.3) + (CNI x 0.4) + (MV x 0.3)

Where:

CS = Comparable Sales

CNI = Capitalized Net Income

MV = Market Value per Tax Declaration[62]

In case of unavailability of figures for the three main factors, the DAR, in keeping with the UP-IAS study, also came up with alternate formulas using the available components, always with more weight given to CNI, the production-based value.

On April 25, 1991, the capitalization rate (relevant for the CNI factor) was lowered from 20% to 16%.[63] This decrease was presumably made for the benefit of the landowners, considering a lower capitalization rate results to a higher CNI valuation.

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but in no case should it be less than one (1) hectare. The two others should involve land whose area is at least one (1) hectare each;

3. The land subject of acquisition as well as those subject of comparable sales should be similar in topography, land use, *i.e.*, planted to the same crop. Further, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density; and

4. The comparable sales should have occurred between the periods 1985 and June 15, 1988.

[61] E. *Market Value per Tax Declaration (MV)* — This shall refer to the market value per tax declaration (TD) issued **before August 29, 1987 (effectivity of EO 229)**. The most recent tax assessment made prior to August 29, 1987 shall be considered. x x x (Emphasis supplied.)

[62] II. Land Valuation Formula for VOS Received Before June 15, 1988 and Valued by the Municipal Agrarian Reform Officer (MARO) as of October l4, 1988. x x x.

[63] DAR Administrative Order No. 3 (1991).

The next major change in the basic formula came with the issuance of DAR Administrative Order No. 6[64] (DAR AO No. 6 [1992]) on October 30, 1992, which, among others, gave even more weight to the CNI factor, and further lowering the capitalization rate to 12%.[65]

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[64] Rules and Regulations Amending the Valuation of Lands Voluntarily Offered and Compulsorily Acquired as Provided for Under Administrative Order No. 17, Series of 1989, as Amended, Issued Pursuant to Republic Act No. 6657.

[65] II. The following rules and regulations are hereby promulgated to amend certain provisions of Administrative Order No. 17, series of 1989, as amended by Administrative Order No. 3, [s]eries of 1991 which govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).

A. There shall be one basic formula for the valuation of lands covered by VOS or CA regardless of the date of offer or coverage of the claim:

LV= (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

A.4 In all the above, the computed value using the applicable formula or the Declared Value by Landowner (DV), whichever is lower, shall be adopted as the Land Value. DV shall refer to the amount

indicated in the Landowner's offer or the Listasaka declaration, whichever is lower, in case of VOS. In case of CA, this shall refer to the amount indicated in the Listasaka. Both LO's offer and Listasaka shall be grossed-up using the immediately preceding semestral Regional Consumer Price Index (RCPI), from the date of the offer or the date of Listasaka up to the date of receipt of claimfolders by LBP from DAR for processing.

B. Capitalized Net Income (CNI) – This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form

$$\mathbf{CNI = \frac{(AGP \times SP) - CO}{.12}}$$

Where:

CNI = Capitalized Net Income

AGP = One year's Average Gross Production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.

SP = Selling Price shall refer to average prices for the immediately preceding calendar year from the date of receipt of the claimfolder by LBP for processing secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or in their absence, from Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations. Whenever the cost of operations could not be obtained or verified an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/ coverage shall continue to use the 70% NIR. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

.12 = Capitalization Rate

B.1 Industry data on production, cost of operations and selling price shall be obtained from government/private entities. Such entities shall include, but not limited to the Department of Agriculture

This basic formula[66] was retained under DAR AO No. 5 (1998), issued on April 15, 1998. Parenthetically, DAR AO No. 5 (1998)

(DA), the Sugar Regulatory Authority (SRA), the Philippine Coconut Authority (PCA) and other private persons/entities knowledgeable in the concerned industry.

B.2 **The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required.** These data shall be validated/verified by the Department of Agrarian Reform and Land Bank of the Philippines field personnel. The actual tenants/farmworkers of the subject property will be the primary source of information for purposes of verification or if not available, the tenants/farmworkers of adjoining property.

In case of failure by the landowner to submit the statement within three weeks from the date of receipt of letter-request from the Municipal Agrarian Reform Office (MARO) or the data stated therein cannot be verified/validated from the farmers, LBP may adopt any available industry data or in the absence thereof may conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding.

B.3 For landholdings planted to permanent crops which are introduced by the farmer-beneficiaries, CNI shall be equal to 25% of the annual net income capitalized at 12%. (Emphasis supplied.)

[66] **LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)**

Where:

LV	=	Land Value
CNI	=	Capitalized Net Income
CS	=	Comparable Sales
MV	=	Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

gave landowners the opportunity to take part in the valuation process, including participation in the DAR's field investigations[67] and submission of statements as to the income claimed to be derived from the property (whether from the crop harvest/lease of the property).[68] It is only when the landowner fails to submit the statement, or the claimed value cannot be validated from the actual inspection of the property, that the DAR and the LBP are allowed to "adopt any applicable industry data or, in the absence thereof, conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding."[69]

Recognizing that not all agricultural properties are always similarly circumstanced, the DAR also introduced alternative CNI formulas which can be applied depending on a property's peculiar situation. There were CNI formulas for when land is devoted to intercropping, or the practice of planting seasonal or other permanent crop/s between or under existing permanent or seasonal crops[70] and to account for lease contracts.[71] There

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A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

A.4 When the land planted to permanent crops is not yet productive or not yet fruit-bearing at the time of Field Investigation (FI), the land value shall be equivalent to the value of the land plus the cumulative development cost (CDC) of the crop from land preparation up to the time of FI. In equation form:

LV = (MVx 2) + CDC

[67] Republic Act No. 6657, Sec. 34.

[68] Part II.B.2 of DAR AO No. 5 (1998).

[69] Part II.B.2 of DAR AO No. 5 (1998).

[70] See Part II.B.4 to II.B.5 of DAR AO No. 5 (1998).

[71] Part II.B.6 of DAR AO No. 5 (1998).

are existing valuation guidelines which also take into account the types of crops found in the property sought to be covered, *i.e.*, Cavendish bananas,[72] sugarcane,[73] rubber,[74] and standing commercial trees,[75] among others.

D. First extension of life of CARP

Ten (10) years after RA 6657, the CARP's Land Acquisition and Distribution component was still far from finished. Thus, in 1998, Congress enacted Republic Act No. 8532[76] (RA 8532), extending the CARP implementation for another ten (10) years and providing funds augmentation of ₱50 billion.[77] This additional allocation of funds expired in June 2008. In Joint Resolution No. 1 approved by both Houses of Congress in January 2009, Congress temporarily extended CARP to until June 2009.[78]

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[72] Guidelines in the Determination of Valuation Inputs for Landholdings, Planted to Cavendish Banana, Joint DAR-LBP Memorandum Circular No. 06 (2007).

[73] Supplemental Guidelines on the DAR-LBP Joint Financing for Rubber Replanting Under the Credit Assistance Program for Program Beneficiaries Development (CAP-PBD), Joint DAR-LBP Memorandum Circular No. 12 (1999).

[74] Revised Valuation Guidelines for Rubber Plantations, Joint DAR-LBP Memorandum Circular No. 07 (1999); Guidelines in the Valuation of Rubber Lands Covered by DARAB's Order to Re-compute, Joint DAP-LBP Memorandum Circular No. 8 (1999).

[75] Guidelines on the Valuation of Standing Commercial Trees that are Considered as Improvement on the Land, Joint DAR-LBP Memorandum Circular No. 11 (2003).

[76] An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP) by Providing Augmentation Fund Therefor, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as "The CARP Law of 1988."

[77] With this, DAR AO No. 5 (l998) was issued, revising the rules and regulations governing the valuation of lands. The **basic** valuation formula under DAR AO No. 6 (1992) was, however, retained. DAR AO No. 5 (1998) was the prevailing rule at the time the controversy involving Alfonso's properties arose.

[78] *Options for CARP After 2014,* CPBR12D Notes No. 2014-08, Congressional Policy and Budget Research Department (House of Representative), p. 1.

E. Republic Act No. 9700 and the amendment of Section 17 of RA 6657

By the end of June 2009, there was still a substantial balance (about 1.6 million hectares for distribution) from the projected target.[79] So, on August 7, 2009, Congress passed Republic Act No. 9700[80] (RA 9700), extending the program to June 30, 2014. It also amended Section 17 to read:

> Sec. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, *the value of the standing crop*, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, *and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR),* ***translated into a basic formula by the DAR*** shall be considered, ***subject to the final decision of the proper court***. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Italics, emphasis and underscoring supplied.)

To implement the amendments to Section 17, the DAR issued, among others, DAR Administrative Order No. 1[81] (DAR AO No. 1 [2010]) and Administrative Order No. 7[82] (DAR AO No. 7 [2011]). Despite retaining the basic formula for valuation, these administrative orders introduced a change in the reckoning date of average gross product (AGP) and selling rice (SP), both

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[79] *Id.*

[80] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution Of All Agricultural Lands. Instituting Necessary Reforms, Amending For The Purpose Certain Provisions Of Republic Act No. 6657, Otherwise, Known As The Comprehensive Agrarian Reform Law of 1988, As Amended, And Appropriating Funds Therefor.

[81] Rules and Regulations on Valuation and Landowners Compensation Involving Tenanted Rice and Corn Lands Under Presidential Decree (P.D.) No. 27 and Executive Order (E.O.) No. 228.

[82] Revised Rules and Procedures Governing the Acquisition and Distribution of Private Agricultural Lands Under Republic Act (R.A.) No. 6657, as Amended.

of which are relevant to the CNI factor, to June 30, 2009.[83] The MV factor was also amended and adjusted to the fair market value equivalent to seventy percent (70%) of the Bureau of Internal Revenue (BIR) zonal valuation.[84] The basic formula under DAR AO No. 7 (2011) appears to be the prevailing land formula to date.

F. Constitutional challenge to RA 6657

Shortly after the enactment of RA 6657, its constitutionality was challenged in a series of cases filed with the Court. Among other objections, landowners argued that entrusting to the DAR the manner of fixing just compensation violated judicial prerogatives. This claim was unanimously rejected in our landmark holding in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform (Association)*:[85]

> Objection is raised, however, to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d), which provides that in case of the rejection or disregard by the owner of the offer of the government to buy his land—
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> > x x x [T]he DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.
>
> To be sure, the determination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government. [*EPZA v. Dulay*] resolved a challenge to several decrees promulgated by President Marcos

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[83] Part IV. 1, DAR AO No. 1 (2010).

[84] Part IV.2, DAR AO No. 1 (2010) and Section 85, DAR AO No. 7 (2011).

[85] G.R. No. 78742, July 14, 1989, 175 SCRA 343.

providing that the just compensation for property under expropriation should be either the assessment of the property by the government or the sworn valuation thereof by the owner, whichever was lower. In declaring these decrees unconstitutional, the Court held through Mr. Justice Hugo E. Gutierrez, Jr.:

> The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under this Constitution is reserved to it for final determination.
>
> Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply *stating* the lower value of the property as declared either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned.
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> x x x x x x x x x
>
> In the present petition, we are once again confronted with the same question of whether the courts under P.D. No. 1533, which contains the same provision on just compensation as its predecessor decrees, still have the power and authority to determine just compensation, independent of what is stated by the decree and to this effect, to appoint commissioners for such purpose.
>
> This time, we answer in the affirmative.

x x x x x x x x x

> It is violative of due process to deny the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to the basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.

A reading of the aforecited Section 16(d) will readily show that it does not suffer from the arbitrariness that rendered the challenged decrees constitutionally objectionable. Although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:

> Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final detern1ination of just compensation.

The determination made by the DAR is only *preliminary* unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review *with finality* the said determination in the exercise of what is admittedly a judicial function.[86] (Emphasis and underscoring supplied. Citations omitted.)

G. *Controlling doctrines after Association*

Since this landmark ruling in *Association,* the Court has, over the years, set forth a finely wrought body of jurisprudence governing the determination of just compensation under RA 6657. This body of precedents is built upon three strands of related doctrines.

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[86] *Id.* at 380-382.

First, in determining just compensation, courts are obligated to apply both the compensation valuation factors enumerated by the Congress under Section 17 of RA 6657,[87] and the basic formula laid down by the DAR.[88] This was the holding of the Court on July 20, 2004 when it decided the case of *Landbank of the Philippines v. Banal*[89] *(Banal)* which involved the application of the DAR-issued formulas. There, we declared:

> While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations (DAR Administrative Order No. 6, as amended by DAR Administrative Order No. 11).
>
> x x x **In determining the valuation of the subject property, the trial court shall consider the factors provided under Section 17 of R.A. 6657, as amended, mentioned earlier. The formula prescribed by the DAR in Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, shall be used in the valuation of the land.** Furthermore, upon its own initiative, or at the instance of any of the parties, the trial court may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute.[90] (Emphasis and underscoring supplied.)

Banal would thereafter be considered the landmark case on binding character of the DAR formulas. It would be cited in the greatest number of subsequent cases involving the issue of application of the DAR-issued formulas in the determination of just compensation.[91]

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[87] Comprehensive Agrarian Reform Law (1988).

[88] *Landbank of the Philippines v. Banal,* G.R. No. 143276, July 20, 2004, 434 SCRA 543.

[89] *Id.*

[90] *Id.* at 554.

[91] *Land Bank of the Philippines v. Escandor,* G.R. No. 171685, October 11, 2010, 632 SCRA 504, 513-514; *Land Bank of the Philippines v. Kumassie*

Second, the formula, being an administrative regulation issued by the DAR pursuant to its rule-making and subordinate legislation power under RA 6657, has the force and effect of law. Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application.[92] In *Land Bank of the Philippines v. Celada*[93] *(Celada)*, we held.

As can be gleaned from above ruling, the SAC based its valuation solely on the observation that there was a "patent disparity" between the price given to respondent and the other landowners. We note that it did not apply the DAR valuation formula since according to the SAC, it is Section 17 of RA No. 6657 that "should be the principal basis of computation as it is the law governing the matter." The SAC further held that said Section 17 "cannot be superseded by any administrative order of a government agency," thereby implying that the valuation formula under DAR Administrative Order No. 5, Series of 1998 (DAR AO No. 5, s. of 1998), is invalid and of no effect.

While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The SAC**

Plantation Company, Incorporated, G.R. Nos. 177404 & 178097, December 4, 2009, 607 SCRA 365, 369; *Land Bank of the Philippines v. Heirs of Honorato de Leon*, G.R. No. 164025, May 8, 2009, 587 SCRA 454, 462; *Allied Banking Corporation v. Land Bank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301, 311-312; *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108, 129; *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, G.R No. 175175 September 29, 2008, 567 SCRA 31, 39.

[92] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[93] *Id*.

was at no liberty to disregard the formula which was devised to implement the said provision.

It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. **As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.**[94] (Emphasis and underscoring supplied.)

Third, courts, in the exercise of their judicial discretion, may relax the application of the formula to fit the peculiar circumstances of a case. They must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion.[95] This rule, set forth in *Land Bank of the Philippines v. Yatco Agricultural Enterprises*[96] *(Yatco)*, was a qualification of the application of *Celada*, to wit:

That the RTC-SAC must consider the factors mentioned by the law (and consequently the DAR's implementing formula) is not a novel concept. In *Land Bank of the Philippines v. Sps. Banal*, we said that the RTC-SAC **must consider** the factors enumerated under Section 17 of R.A. No. 6657, as translated into a basic formula by the DAR, in determining just compensation.

We stressed the RTC-SAC's duty to apply the DAR formula in determining just compensation in *Landbank of the Philippines v. Celada* and reiterated this same ruling in *Land Bank of the Philippines v. Lim*, *Land Bank of the Philippines v. Luciano*, and *Land Bank of the Philippines v. Colarina*, to name a few.

In the recent case of *Land Bank of the Philippines v. Honeycomb Farms Corporation*, we again affirmed the need to apply Section 17 of R.A. No. 6657 and DAR AO 5-98 in just compensation cases.

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[94] *Id.* at 506-507.

[95] *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, G.R. No. 172551, January 15, 2014, 713 SCRA 370, 382-383.

[96] *Id.*

There, we considered the CA and the RTC in grave error when they opted to come up with their own basis for valuation and completely disregarded the DAR formula. The need to apply the parameters required by the law cannot be doubted; the DAR's administrative issuances, on the other hand, partake of the nature of statutes and have in their favor a presumption of legality. Unless administrative orders are declared invalid or unless the cases before them involve situations these administrative issuances do not cover, the **courts must apply them.**

In other words, in the exercise of the Court's essentially judicial function of determining just compensation, the RTC-SACs are not granted unlimited discretion and must consider and apply the R.A. No. 6657 — enumerated factors and the DAR formula that reflect these factors. These factors and formula provide the uniform framework or structure for the computation of the just compensation for a property subject to agrarian reform. This uniform system will ensure that they do not arbitrarily fix an amount that is absurd, baseless and even contradictory to the objectives of our agrarian reform laws as just compensation. This system will likewise ensure that the just compensation fixed represents, at the very least, a close approximation of the full and real value of the property taken that is fair and equitable for both the farmer-beneficiaries and the landowner.

When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.

The situation where a deviation is made in the exercise of judicial discretion should at all times be distinguished from a situation where there is utter and blatant disregard of the factors spelled out by law and by the implementing rules. For in such a case, the RTC-SAC's action already amounts to grave abuse of discretion for having been taken outside of the contemplation of the law.[97] (Emphasis and underscoring supplied.)

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[97] *Id.* at 381-383. Citations omitted.

Prescinding from *Association*, the cases of *Banal, Celada* and *Yatco* combined provide the three strands of controlling and unifying doctrines governing the determination of just compensation in agrarian reform expropriation.

For clarity, we restate the body of rules as follows: **The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.**

In Part II, we shall evaluate the challenged rulings of the Court of Appeals based on the foregoing guidelines.

II. The SAC deviated, without reason or explanation, from Sect. 17 and the DAR-issued formula when it adopted the Cuervo Report

Petitioner Alfonso challenges the Decision of the Court of Appeals which reversed the SAC's findings for failing to observe

the procedure and guidelines provided under the relevant DAR rule.[98]

Applying DAR AO No. 5 (1998), the LBP and the DAR considered the following in its valuation of Alfonso's properties: (1) data from the Field Investigation Reports conducted on the properties;[99] (2) data from the Philippine Coconut Authority (PCA) as to municipal selling price for coconut in the Sorsogon Province;[100] and (3) the Schedule of Unit Market Value (SUMV).[101]

Due to the absence of relevant comparable sales transactions in the area,[102] the DAR and the LBP used the following formula:

LV= (CNI x 0.9) + (MV x 0.1)

It valued the San Juan and Bibincahan properties at ₱39,974.22[103] and ₱792,869.06,[104] respectively.

The SAC, in its Decision dated May 13, 2005, **rejected** this valuation for being "unrealistically low"[105] and instead adopted Commissioner Chua's Cuervo Report, which valued the San Juan and Bibincahan properties at the "more realistic" amounts of ₱442,830.00 and ₱5,650,680.00, respectively.[106]

That the SAC's adoption of the Cuervo Report valuation constitutes deviation from Section 17 and the prescribed formula is fairly evident.

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[98] *Rollo,* p. 31.

[99] Records, pp. 85-101.

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

[101] *Id.* at 154-159.

[102] *Id.* at 145, 149.

[103] *Id.* at 141, 145.

[104] *Id.* at 141, 150.

[105] *Id.* at 133.

[106] *Id.* at 132. See also Exhibit "1-o" and "1-p", Cuervo Report, pp. 17-18, records, p. 66.

Commissioner Chua employed a different formula, other than that set forth in DAR AO No. 5 (1998), to compute the valuation. While the DAR-issued formula generally uses the three (3) traditional approaches to value, each with assigned weights, Commissioner Chua chose to apply only two approaches, namely, the Market Data Approach (MDA) and the Capitalized Income Approach (CIA)[107] and *averaged* the indications resulting from the two approaches. He thereafter concluded that the result "reasonably represented the just compensation (fair market value) of the land with productive coconut trees."[108]

In addition, in his computation of the CNI factor, Commissioner Chua used, without any explanation, a capitalization rate of eight percent (8%),[109] instead of the twelve percent (12%) rate provided under DAR AO No. 5 (1998).

As earlier explained, deviation from the strict application of the DAR formula is not absolutely proscribed. For this reason, we find that the Court of Appeals erred in setting aside the SAC's Decision *on the mere fact of deviation* from the prescribed legislative standards and basic formula. *Yatco* teaches us that courts may, in the exercise of its judicial discretion, relax the application of the DAR formula, subject only to the condition that the reasons for said deviation be clearly explained.

In this case, the SAC, in adopting the Cuervo Report valuation, merely said:

> Considering all these factors, the valuation made by the Commissioner and the potentials of the property, **the Court considers that the valuation of the Commissioner as the more realistic appraisal which could be the basis for the full and fair equivalent of the property taken from the owner while the Court finds that the valuation of the [LBP] as well as the Provincial Adjudicator of Sorsogon in this (sic) particular parcels of land for acquisition areunrealistically low.**[110] (Emphasis and underscoring supplied.)

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[107] Exhibit "1-j", Cuervo Report, p. 11, records, p. 66; records, p. 129.

[108] Exhibit "1-o", Cuervo Report, p. 17, records, p. 66; records, p. 132.

[109] See Exhibit "1-m", Cuervo Report, p. 15, records, p. 66.

[110] *Rollo*, p. 65.

The statement that the government's valuation is "unrealistically low," ***without more,*** **is insufficient to justify its deviation from Section 17 and the implementing DAR formula.**[111] There is nothing in the SAC's Decision to show *why* it found Commissioner Chua's method more appropriate for purposes of appraising the subject properties, apart from the fact that his method yields a much higher (thus, in its view, "more realistic") result.

The Cuervo Report itself does not serve to enlighten this Court as to the reasons behind the non-application of the legislative factors and the DAR-prescribed formula.

For example, the Cuervo Report cited a number of "comparable sales" for purposes of its market data analysis.[112] Aside from lack of proof of fact of said sales, the Report likewise failed to explain how these purported "comparable" sales met the guidelines provided under DAR AO No. 5 (1998). The relevant portion of DAR AO No.5 (1998) reads:

> II. C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:
>
> a. When the required number of STs is not available at the barangay level, additional STs may be secured from the municipality where the land being offered/covered is situated to complete the required three comparable STs. In case there are more STs available than what is required at the municipal level, the most recent transactions shall be considered. The same rule shall apply at the provincial level when no STs are available at the municipal level. In all cases, the combination of STs sourced from the barangay, municipality and province shall not exceed three transactions.
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> b. The land subject of acquisition as well as those subject of comparable sales transactions should be similar in topography, land use, i.e., planted to the same crop. Furthermore, in case of permanent crops, the subject properties should be more

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[111] *Land Bank of the Philippines v. Celada, supra* note 92 at 505-506.

[112] Cuervo Report, pp. 12, 14, records, p. 66.

or less comparable in terms of their stages of productivity and plant density.

c. The comparable sales transactions should have been executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988.

d. STs shall be grossed up from the date of registration up to the date of receipt of CF by LBP from DAR for processing, in accordance with Item II.A.9. (Emphasis and underscoring supplied.)

To this Court's mind, a reasoned explanation from the SAC to justify its deviation from the foregoing guidelines is especially important considering that both the DAR and the LBP were unable to find sales of comparable nature.

Worse, further examination of the cited sales would show that the same far from complies with the guidelines as to the cut-off dates provided under the DAR AO No. 5 (1998). The purported sales were dated between November 28, 1989 (at the earliest) to March 12, 2002 (at the latest),[113] whereas DAR AO No. 5 (1998) had already and previously set the cut-off between June to September of 1988. We also note that these purported sales involve much smaller parcels of land (the smallest involving only 100 square meters). We can hardly see how these sales can be considered "comparable" for purposes of determining just compensation for the subject land.

Neither was there any explanation as to the glaring discrepancies between the government and Commissioner Chua's *factual* findings. Where, for example, the DAR and the LBP claim an average yield of 666.67kg/ha.[114] and 952kgs./ha.,[115] the Cuervo Report asserts 1,656 kgs./ha. and 1,566 kgs./ha.,[116] for the San Juan and Bibincahan properties, respectively. Where

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[113] Cuervo Report, pp. 12, 14, records, p. 66.

[114] *Id.* at 145.

[115] *Id.* at 149.

[116] Exhibit "1-n", Cuervo Report, p. 16, records, p. 66.

the government alleges an average selling price of ₱5.58 for coconuts,[117] the Cuervo Report claims ₱12.50.[118] The Cuervo Report, however, is completely bereft of evidentiary support by which the SAC could have confirmed or validated the statements made therein. In contrast, the valuations submitted by the DAR and the LBP were amply supported by the relevant PCA data, SFMV and Field Investigation Reports.

Considering the foregoing, we cannot but conclude that the SAC committed the very thing cautioned about in *Yatco,* that is, "utter and blatant disregard of the factors spelled out by the law and by the implementing rules."[119] In this sense, we AFFIRM the Court of Appeals' finding of grave abuse of discretion and order the REMAND of the case to the SAC for computation of just compensation in accordance with this Court's ruling in *Yatco*.

Part III shall now address the concerns raised in the dissents.

III. The Dissents/Separate Concurring Opinion

A. Summary of issues raised Dissents/Separate Concurring Opinion

Justice Leonen proposes that this Court abandon the doctrines in *Banal* and *Celada,* arguing that Section 17 of RA 6657 and DAR AO No. 5 (1998) are unconstitutional to the extent they suggest that the basic formula is mandatory on courts.[120] His principal argument is grounded on the premise that determination of just compensation is a judicial function. Along the same lines, Justice Carpio cites *Apo Fruits Corporation v. Court of Appeals (Apo Fruits)*[121] to support his view that the basic formula "does not and cannot strictly bind the courts."[122] Justice Velasco,

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[117] *Id*. at 149.

[118] Exhibit "1-n", Cuervo Report, p. 16, records, p. 66.

[119] *Supra* note 95 at 383.

[120] Dissenting Opinion of Justice Leonen, p. 22.

[121] *Apo Fruits Corporation v. Court of Appeals,* G.R. No. 164195, December 19, 2007, 541 SCRA 117.

[122] Separate Concurring Opinion of Justice Carpio, pp. 4-5.

for his part, calls for a revisit of the decided cases because a rule mandating strict application of the DAR formula could only straitjacket the judicial function. Justice Carpio also raises an issue of statutory construction.[123] He argues that Section 17 and DAR AO No. 5 (1998) apply only when the landowner and the tenant agree on the proffered value, but not otherwise.

B. Dissents as indirect constitutional attacks

At this juncture, we emphasize that petitioner Alfonso never himself questioned the constitutionality of Section 17 of RA No. 6657 and the DAR Administrative Order implementing the same. The main thrust of Alfonso's petition concerns itself only with the non-binding nature of Section 17 of RA 6657 and the resulting DAR formula in relation to the judicial determination of the just compensation for his properties.

Petitioner is a direct-injury party who could have initiated a direct attack on Section 17 and DAR AO No. 5 (1998). His failure to do so prevents this case from meeting the "case and controversy" requirement of *Angara*.[124] It also deprives the Court of the benefit of the "concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[125]

The dissents are, at their core, indirect attacks on the constitutionality of a provision of law and of an administrative rule or regulation. This is not allowed under our regime of judicial review. As we held in *Angara v. Electoral Commission*,[126] our power of judicial review is limited.

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[123] Dissenting Opinion of Justice Velasco, p. 20.

[124] See also *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461, October 5, 2010, 632 SCRA 146, 176.

[125] *Association of Flood Victims v. Commission on Elections*, G.R. No. 203775, August 5, 2014, 732 SCRA 100, 108-109, citing *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81, 100.

[126] G.R. No. 45081, July 15, 1936, 63 Phil. 139.

x x x **[T]o actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.** Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[127] (Emphasis supplied.)

Our views as individual justices cannot make up for the deficiency created by the petitioner's failure to question the validity and constitutionality of Section 17 and the DAR formulas. To insist otherwise will be to deprive the government (through respondents DAR and LBP) of their due process right to a judicial review made only "after full opportunity of argument by the parties."[128]

Most important, since petitioner did not initiate a direct attack on constitutionality, there is no factual foundation of record to prove the invalidity or unreasonableness of Section17 and DAR AO No. 5 (1998). This complete paucity of evidence cannot be cured by the arguments raised by, and debated among, members of the Court. As we held in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila:*[129]

It admits of no doubt therefore that there being a presumption of validity, **the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here.** The principle has been nowhere better expressed than in the

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[127] *Id.* at 158-159.

[128] *Id.* at 158. Cite also in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra* at 175-176.

[129] G.R. No. L-24693, July 31, 1967, 20 SCRA 849.

leading case of O'Gorman & Young v. Hartford Fire Insurance Co., where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: "[t]he statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. **As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute."**No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside.[130] (Emphasis and underscoring supplied.)

Issues on the constitutionality or validity of Section 17 of RA 6657 and DAR AO No. 5 (1998) not having been raised by the petitioner, much less properly pleaded and ventilated, it behooves the Court to apply, not abandon, *Banal*, *Celada* and *Yatco*, and postpone consideration of the dissents' arguments in a case directly attacking Section 17 of RA 6657 and DAR AO No. 5 (1998).

If, however, left unanswered, the objections now casting Section 17 and the DAR formulas in negative light might be used as bases for the abandonment of the rule established in *Banal* and clarified in *Yatco*. The net practical effect, whether intended or not, of such a course of action would be to strip the implementing DAR regulations of all presumption of validity. We would then place upon the government the burden of proving the formula's appropriateness in every case, as against the valuation method chosen by the landowner, *whatever it may be*. It would allow the landowner to cherry-pick, so to speak, a factor or set of factors to support a proposed valuation method. As the case below has shown, such a process has allowed the

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[130] *Id.* at 857. Citations omitted. Cited in Bernas, *CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, NOTES AND CASES*, PART II, 1996, pp. 36-37.

SAC to conclude, without explanation, that Commissioner Chua's higher valuation was "more realistic" than the government's "ridiculously low" valuation and, therefore, in its opinion, more just.

Allowing the SAC to arrive at a determination of just compensation based on open-ended standards like "more realistic" and "ridiculously low" bodes ill for the future of land reform implementation. One can only imagine the havoc such a ruling, made in the name of ensuring absolute freedom of judicial discretion, would have on the government's agrarian reform program and the social justice ends it seeks to further. It could open the floodgates to the mischief of the Garchitorena estate scandal where, to borrow terms used by the SAC in this case, a property acquired at a "ridiculously low" cost of ₱3.1 million was proposed to be purchased by the DAR for the "more realistic" amount of ₱6.09 million.

We thus feel compelled to address these issues, if only to assure those directly affected, that the law and the implementing DAR regulations are reasonable policy choices made by the Legislative and Executive departments on how best to implement the law, hence, the heavy premium given their application.

C. Primary jurisdiction and the judicial power/function to determine just compensation

Section 1, Article VIII of the 1987 Constitution[131] provides that "judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."

The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and

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[131] Sec. 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.

enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution.[132] The determination of just compensation in cases of eminent domain is thus an actual controversy that calls for the exercise of judicial power by the courts. This is what the Court means when it said that "[t]he determination of 'just compensation' in eminent domain cases is a judicial function."[133]

Before RA 6657, the courts exercised the power to determine just compensation under the Rules of Court. This was true under RAs 1400 and 3844 and during the time when President Marcos in Presidential Decree No. 1533 attempted to impermissibly restrict the discretion of the courts, as would be declared void in *EPZA v. Dulay (EPZA).* RA 6657 changed this process by providing for preliminary determination by the DAR of just compensation.

Does this grant to the DAR of primary jurisdiction to determine just compensation limit, or worse, deprive, courts of their judicial power? We hold that it does not. There is no constitutional provision, policy, principle, value or jurisprudence that places the determination of a justiciable controversy beyond the reach of Congress' constitutional power to require, through a grant of primary jurisdiction, that a particular controversy be first referred to an expert administrative agency for adjudication, subject to subsequent judicial review.

In fact, the authority of Congress to create administrative agencies and grant them preliminary jurisdiction flows not only from the exercise of its plenary legislative power,[134] but also

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[132] This section provides: "Private property shall not be taken for public use without just compensation."

[133] *Export Processing Zone Authority (EPZA) v. Dulay,* G.R. No. 59603, April 29, 1987, 149 SCRA 305, 316.

[134] *Bank of Commerce v. Planters Development Bank,* G.R. Nos. 154470-71 & 154589-90, September 24, 2012, 681 SCRA 521, 564.

from its constitutional power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court.[135]

Tropical Homes, Inc. v. National Housing Authority,[136] has settled that "[t]here is no question that a statute may vest exclusive original jurisdiction in an administrative agency over certain disputes and controversies falling within the agency's special expertise."[137]

In *San Miguel Properties, Inc. v. Perez*,[138] we explained the reasons why Congress, in its judgment, may choose to grant primary jurisdiction over matters within the erstwhile jurisdiction of the courts, to an agency:

> **The doctrine of *primary jurisdiction* has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. A case that requires for its determination the expertise, specialized skills, and knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact,** relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts. The application of the doctrine does not call for the dismissal of the case in the court but only for its suspension until after the matters within the competence of the administrative body are threshed out and determined.
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> To accord with the doctrine of primary jurisdiction, the courts cannot and will not determine a controversy involving a question within the competence of an administrative tribunal, the controversy having been so placed within the special competence of the administrative tribunal under a regulatory scheme. In that instance, the judicial process is suspended pending referral to the administrative

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[135] *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.,* G.R. No. L-5694, May 12, 1954, 94 Phil. 932, 938. See also CONSTITUTION, Art. VIII, Sec. 2.

[136] G.R. No. L-48672, July 31, 1987, 152 SCRA 540.

[137] *Id.* at 548.

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

body for its view on the matter in dispute. Consequently, if the courts cannot resolve a question that is within the legal competence of an administrative body prior to the resolution of that question by the latter, especially where **the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, suspension or dismissal of the action is proper**.[139] (Emphasis and underscoring supplied.)

Rule 43 of the Revised Rules of Court, which provides for a uniform procedure for appeals from a long list of quasi-judicial agencies to the Court of Appeals, is a loud testament to the power of Congress to vest myriad agencies with the preliminary jurisdiction to resolve controversies within their particular areas of expertise and experience.

In fact, our landmark ruling in *Association* has already validated the grant by Congress to the DAR of the primary jurisdiction to determine just compensation. There, it was held that RA 6657 does not suffer from the vice of the decree voided in *EPZA*,[140] where the valuation scheme was voided by the Court for being an "impermissible encroachment on judicial prerogatives."[141] In *EPZA*, we held:

> The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under the Constitution is reserved to it for final determination.
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> x x x [T]he strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for

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

[140] *Supra* at 133.

[141] *Id.* at 311.

the judge insofar as the determination of constitutional just compensation is concerned.[142]

Unlike *EPZA*, and in answer to the question raised in one of the dissents,[143] the scheme provided by Congress under RA 6657 does **not** take discretion away from the courts in determining just compensation in agrarian cases. Far from it. In fact, **the DAR valuation formula is set up in such a way that its application is dependent on the existence of a certain set of facts, the ascertainment of which falls within the discretion of the court.**

Applied to the facts of this case, and confronted with the LBP/DAR valuation and the court-appointed commissioner's valuation, it was entirely within the SAC's discretion to ascertain the factual bases for the differing amounts and decide, for itself, which valuation would provide just compensation. If, in its study of the case, the SAC, for example, found that the circumstances warranted the application of a method of valuation different from that of the DAR's, it was free to adopt any other method it deemed appropriate (including the Cuervo method), subject only to the *Yatco* requirement that it provide a reasoned explanation therefor.

As pointed out earlier in this Opinion, however, the SAC in this case simply adopted the Cuervo valuation as the "more realistic" amount and rejected the DAR/LBP valuation for being "unrealistically low." In fact, there is nothing in its Decision to indicate that the SAC actually looked into the evidentiary bases for the opposing valuations to satisfy itself of the factual bases of each. This, in turn, explains the utter dearth of explanation for the stark inconsistencies between Commissioner Chua and the DAR/LBP's *factual* findings. Thus, and with all due respect, it is quite incorrect to say that the present rule requiring strict application of the DAR formula completely strips courts of any discretion in determining what compensation is just for properties covered by the CARP.

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[142] *Id.* at 311-312.

[143] Dissenting Opinion of Justice Velasco. p. 17.

More importantly, in amending Section 17 of RA 6657, Congress provided that the factors **and** the resulting basic formula shall be "subject to the final decision of the proper court." Congress thus clearly conceded that courts *have* the power to look into the "justness" of the use of a formula to determine just compensation, and the "justness" of the factors and their weights chosen to flow into it.

In fact, the regulatory scheme provided by Congress in fact sets the stage for a *heightened* judicial review of the DAR's preliminary determination of just compensation pursuant to Section 17 of RA 6657. In case of a proper challenge, SACs are actually empowered to conduct a *de novo* review of the DAR's decision. Under RA 6657, a full trial is held where SACs are authorized to (1) appoint one or more commissioners,[144] (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of fact anew.[145] In other words, in exercising its **exclusive and original jurisdiction** to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of a Regional Trial Court (RTC) under Rule 67 of the Revised Rules of Court.

In such manner, the SAC thus conducts a more *exacting* type of review, compared to the procedure provided either under Rule 43 of the Revised Rules of Court, which governs appeals from decisions of administrative agencies to the Court of Appeals, or under Book VII, Chapter 4, Section 25[146] of the Administrative

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[144] Republic Act No. 6657 (1988), Sec. 58.

[145] Republic Act No. 6657 (1988). Sec. 57.

[146] This provision reads as follows:

Sec. 25. *Judicial Review.*—

(1) Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.

(2) Any party aggrieved or adversely affected by an agency decision may seek judicial review.

(3) The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.

Code of 1987,[147] which provides for a default administrative review process. In both cases, the reviewing court decides based on the record, and the agency's findings of fact are held to be binding when supported by substantial evidence.[148] The SAC, in contrast, retries the whole case, receives new evidence, and holds a full evidentiary hearing.

Having established that the regulatory scheme under RA 6657 does not, in principle, detract from (but rather effectuates) the

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(4) Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order. Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall show, by stating the specific material dates, that it was filed within the period fixed in this chapter.

(5) The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.

(6) The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.

(7) Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.

[147] Executive Order No. 292.

[148] See Section 25(7), Chapter 4, Book VII of the Administrative Code of 1987 and *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, G.R. No. 184950, October 11, 2012, 684 SCRA 152, 163.

exercise of the judicial function, we shall now show how the DAR valuation process is at par with internationally-accepted valuation practices and standards.

H. DAR Valuation process is at par with international standards

Valuation is not an exact science.[149] In clear recognition of the inherent difficulty such a task entails, the DAR declared:

> Just compensation in regard to land cannot be an absolute amount disregarding particularities of productivity, distance to the marketplace and so on. Hence, land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just.[150]

Nevertheless, there are existing standards which are observed to ensure the competence and integrity of valuation practice. At present, we have the Philippine Valuation Standards (PVS), or the reference standards for local government assessors and other agencies undertaking property valuations.[151] The PVS are,

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[149] Prefatory Statement, DAR AO No. 5 (1998).

[150] *Id.*

[151] See Prescribing the Philippine Valuation Standards (1st Edition) Adoption of the IVSC Valuation Standards under Philippine Setting, DOF Department Order No. 37-09 (2009). We also quote from *Philippine Valuation Standards, Adoption of the IVSC Valuation Standards under Philippine Setting,* 1st Edition, 2009, Department of Finance/Bureau of Local Government Finance, p. 1, which declares:

> The publication of these Philippine Valuation Standards (1st Edition) – Adoption of the IVSC Valuation Standards under the Philippine Setting is part of a wider on-going program of land reform in the Philippines. The Government has made a long-term commitment to alleviate poverty and to sustain economic growth by improving the land tenure security of the Filipino people and by fostering efficient land markets. This will be **achieved through a land reform program that promotes a clear, coherent and consistent set of land administration policies and laws; an efficient land administration system supported by a sustainable financing mechanism; and an**

in turn, based on the International Valuation Standards (IVS), also known as the Generally Accepted Valuation Principles (GAVP). The IVS represents the internationally accepted best practices in the valuation profession and were formulated by the International Valuations Standards Committee (IVSC).[152]

Of note is the IVSC's stature in the valuation profession. Composed of professional valuation associations from around the world, the IVSC is a non-governmental organization (NGO) member of the United Nations which provides advice and counsel relating to valuation and seeks to coordinate its Standards and work programs with related professional discipline in the public interest, and cooperates with international agencies in determining and promulgating new standards. It was granted Roster status with the United Nations Economic and Social Council in May 1985.[153]

There also exists a **process** which allows for a systematic procedure[154] to be followed in answering questions about real property value:

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effective and transparent land valuation system that is in line with internationally accepted standards. (Emphasis and underscoring supplied.)

Note also that the Securities and Exchange Commission (SEC), for example, in its Guidelines for Asset Valuations, uses the IVS in its conduct of subject valuation engagement. (SEC Memorandum Circular No. 2 (2014])

[152] "x x x By promulgating internationally accepted standards and by developing their standards only after public disclosure, debate among nations, and liaison with other international standards bodies, the IVSC offers **objective, unbiased, and well-researched standards** that are a source of agreement among nations and provide guidance for domestic standards." THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, p. 640. Emphasis supplied.

[153] PHILIPPINE VALUATION STANDARDS, ADOPTION OF THE IVSC VALUATION STANDARDS UNDER PHILIPPINE SETTING, 1st Edition, 2009, Department of Finance/Bureau of Local Government Finance, pp. 7-9.

[154] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, pp. 49-51. See Figure 4.1.

Part One: Definition of the Problem						
Identification of client/ intended users	Intended use of appraisal	Purpose of appraisal (including definition of value)	Date of opinion of value	Identification of characteristics of property (including location and property rights to be valued)	Extra-ordinary assumptions	Hypo-thetical conditions
Part Two: Scope of Work						
Part Three: Data Collection and Property Description						
Market Area Data		**Subject Property Data**		**Comparable Property Data**		
General characteristics of region, city and neighborhood		Specific characteristics of land and improvement, personal property, business assets, etc.		Sale, listings, offerings, vacancies, cost and depreciation, income and expenses, capitalization rates, etc.		
Part IV. Data Analysis						
Market Analysis				**Highest and Best Use Analysis**		
Demand studies Supply studies Marketability studies				Site as though vacant Ideal improvement Property as improved		
Part V. Land Value Opinion						
Part VI. Application of the Approaches to Value						
Cost		Sales Comparison		Income		
Part VII. Reconciliation of Value Indications and Final Opinion of Value						
Part VIII. Report of Defined Value						

Based on the foregoing, the process involves, among others, utilizing one or more valuation approaches, with each individual approach producing a particular value indication,[155] and thereafter, reconciling the different value indications to arrive at "a supported opinion of defined value."[156]

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[155] *Id.*

[156] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, pp. 597-603.

The valuation process is applied to develop a well-supported opinion of a defined value based on an analysis of pertinent general and specific data. Appraisers develop an opinion of property value with specific appraisal procedures that reflect the different approaches to data analysis.[157]

The PVS and the IVS, discussed earlier, list three market-based valuation approaches: the sales comparison approach, the income capitalization approach and the cost approach.[158]

The sales comparison approach considers the sales of similar or substitute properties and related market data, and establishes a value estimate by processes involving comparison. In general, a property being valued is compared with sales of similar properties that have been transacted in the market.[159]

In the income capitalization approach, income and expense data relating to the property being valued are considered and value is estimated through a capitalization process. Capitalization relates income (usually a net income figure) and a defined value type by converting an income amount into a value estimate. This process may consider *direct* relationships (known as capitalization rates), yield or *discount* rates (reflecting measures of return on investment), or both.[160]

The cost approach considers the possibility that, as an alternative to the purchase of a given property, one could acquire a modern equivalent asset that would provide equal utility. In a real estate context, this would involve the cost of acquiring equivalent land and constructing an equivalent new structure. Unless undue time, inconvenience and risk are involved, the price that a buyer would pay for the asset being valued would not be more than the cost of the modern equivalent. Often the

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[157] *Id.* at 62.

[158] *Id.*

[159] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, p. 63.

[160] *Id.* at 64-65.

asset being valued will be less attractive than the cost of the modern equivalent because of age or obsolescence.[161]

These approaches are used in *all* estimations of value.[162] Depending on the circumstances attendant to each particular case, one or more of these approaches may be used.

The final analytical step in the valuation process is the reconciliation of the value indications derived into a single peso figure or a range into which the value will most likely fall:

> In the valuation process, more than one approach to value is usually applied, and each approach typically results in a different indication of value. If two or more approaches are used, the appraiser must reconcile at least two value indications. Moreover, several value indications may be derived in a single approach. x x x
>
> x x x Resolving the differences among various value indications is called *reconciliation.* x x x[163] (Emphasis supplied.)

Reconciliation requires appraisal judgment and a careful, logical analysis of the procedures that lead to each value indication. Appropriateness, accuracy and quantity of evidence are the criteria with which an appraiser forms a meaningful, defensible and credible final opinion of value.[164]

The valuation process concludes with a final report/opinion of value. This reported value is the appraiser's *opinion*[165] and reflects the *experience and judgment* that has been applied to the study of the assembled data.[166]

For a well-supported opinion of a defined value, however, there must be an analysis of pertinent general and specific data[167]

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[161] *Id.* at 63.

[162] *Id.* at 62.

[163] *Id.* at 597.

[164] *Id.* at 600.

[165] *Id.* at 605-606.

[166] *Id.* at 598.

[167] *Id.* at 62.

using an accepted and systematic valuation process. Following the generally accepted valuation process, there is an application of the appropriate approaches to value and, where multiple approaches have been employed, the reconciliation of the different value indications to arrive at a final opinion of value. Reconciliation, in large part, relies on the proper application of appraisal techniques and the *appraiser's judgment and experience.*[168]

The Philippines has kept abreast with the internationally-recognized and accepted standards for valuation practice.

As previously discussed, we already have the PVS used by local government assessors and other agencies in conducting property valuations.[169] There is also Republic Act No. 9646 (RA 9646), otherwise known as the Real Estate Service Act of the Philippines, which mandates the conduct of licensure examinations to ensure the technical competence, responsibility and professionalism of real estate practitioners in general (including appraisers, in particular).[170]

Actual valuation reforms to overcome the "multiplicity of fragmented policies and regulations which have previously characterized both the public and private sectors"[171] have also been undertaken. In April 2010, the Department of Finance (DOF) issued a Mass Appraisal Guidebook for the "operationalization and practical application of the Philippine Valuation Standards."[172] The PVS also appear in the Manual on Real Property Appraisal

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[168] *Id.* at 598.

[169] See discussion on pp. 37-38.

[170] Republic Act No. 9646 (2009), Secs. 2 and 12.

[171] Prescribing the Philippine Valuation Standards (1st Edition) Adoption of the IVSC Valuation Standards under Philippine Setting, DOF Department Order No. 37-09 (2009). Introduction of the Philippine Valuation Standards (1st Edition)

[172] Prescribing the "Mass Appraisal Guidebook: A Supplement to the Manual on Real Property Appraisal and Assessment Operations (with Expanded Discussions on Valuation of Special Purpose Properties and Plant, Machinery & Equipment)," DOF Department Order No. 10-2010 (2010). Message of Secretary Margarito B. Teves.

and Assessment Operations published by the DOF as guidelines to aid local assessors in discharging their functions.[173]

A Valuation Reform Act[174] is currently being proposed to harmonize valuation in *both* public and private sectors by providing uniform valuation standards which "shall conform with generally accepted international valuation standards and principles."[175]

The existence of these standards and measures highlights the emerging importance of valuation, not only in the context of land reform implementation, but as a profession, with high standards of competence, a distinct body of knowledge continually augmented by contributions of practitioners, and a code of ethics and standards of practice with members willing to be subject to peer review.[176]

An examination of the terms of the DAR issuances would show that the implementing agency has indeed taken pains to ensure that its valuation system is at par with local and international valuation standards. The pertinent portion of DAR AO No. 7 (2011) reads:

Section 85. **Formula for Valuation.** The basic formula for the valuation of lands covered by VOS or CA shall be:

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

Where:

LV	=	Land Value
CNI	=	Capitalized Net Income (based on land use and productivity)
CS	=	Comparable Sales (based on fair market value equivalent to 70% of BIR Zonal Value)

[173] Department of Finance, Local Assessment Regulations No. 1-04 (2004).

[174] Senate Bill No. 415 titled *The Real Property Valuation and Assessment Reform Act of 2013* filed in the Sixteenth Congress by Senator Ferdinand R. Marcos, Jr., per inquiry, still pending at this time.

[175] Section 12 of Senate Bill No. 415.

[176] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, p. 651.

MV = Market Value per Tax declaration (based on Government assessment)

The CS factor refers to the **Market Data Approach under the standard appraisal approaches** which is based primarily on the principle of substitution where a prudent individual will pay no more for a property than it would **cost** to purchase a comparable substitute property. This factor is determined by the use of 70% of the BIR zonal valuation.

The CNI factor, on the other hand, refers to the **Income Capitalization Approach under the standard appraisal approaches** which is considered the most applicable valuation technique for income-producing properties such as agricultural landholdings. Under this approach, the value of the land is determined by taking the sum of the net present value of the streams of income, in perpetuity, that will be forgone by the LO due to the coverage of his landholding under CARP.

The MV factor is equivalent to the **Market Data Approach**, except that this is intended for taxation purposes only. (Emphasis and underscoring supplied.)

The administrative order's express reference to "standard appraisal approaches," namely the Market Data Approach and the Income Capitalization Approach, as discussed earlier, is in line with the PVS and the IVS/GAVP.

I. The whole regulatory scheme provided under RA 6657 (and operationalized through the DAR formulas) are reasonable policy choices to best implement the purposes of the law

The whole regulatory scheme provided under RA 6657 (and implemented through the DAR formulas) are reasonable policy choices made by the Congress and the DAR on how best to implement the purposes of the CARL. These policy choices, in the absence of contrary evidence, deserve a high degree of deference from the Court.

On the Section 17 enumeration. Congress, in adopting Section 17, opted for the enumeration of multiple factors provided under RAs 1400 and 3844, to replace the exclusively production based formula provided in PD 27. The Court cannot now fault Congress

for not enumerating *all* possible valuation factors, a task even this Court cannot conceivably achieve, and use the Congress' limitation as a reason to void the enumeration.

On the use of a formula. In the absence of evidence of record to the contrary, it is reasonable to assume that DAR decided that a formula is a practical method to arrive at a determination of just compensation due the landowner. This became necessary considering the multiple factors laid down by the Congress in Section 17. For one, the formulas provide a concrete, uniform and consistent equation, applicable to all agricultural land nationwide, regardless of their location. It thus assures prompt, consistent and even-handed implementation by limiting the exercise of discretion by DAR officials. We have also earlier noted how formulas worked in the agrarian reform programs of other Asian countries. Finally, we have also noted how the absence of a formula resulted in the Garchitorena estate scandal. The Garchitorena estate scandal underscores the wisdom of deferring to the DAR's choice to use a formula in its judgment, "uniformity of ruling is essential to comply with the purposes of[RA 6657]."[177]

On the choice of the formula's components and their weights. DAR reformulated its formulas every so often as it gained experience in its implementation. We can see from AO No. 5 (1998) that the DAR finally settled on two approaches to value: the income capitalization approach and the sales comparison approach, represented under the CNI and CS factors, respectively. While the cost approach was excluded, market value of the land as per tax declaration of the owner (MV) is nevertheless considered. DAR also decided on the relative weights to allocate to each component.

The inclusion of the CNI as a component factor was in apparent reaction to the suggestion of the UP-IAS study, which roundly criticized DAR AO No. 6 (1989) for not having considered the production income of the land. While the same study recommended that the appropriate formula should "value land

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[177] *San Miguel Properties, Inc. v. Perez, supra* note 138 at 61.

based **only** on production/productivity,"[178] he DAR, however, chose to also consider comparable sales and market value as per tax declaration. This is in keeping with the mandate of Section 17 which provided that "current value of like properties" and "the sworn valuation by the owner, the tax declarations," and the "assessment made by government assessors" shall also be considered.

We note that while "cost of acquisition of the land" was also included as a factor to be considered in determining just compensation, it was not included as a component in the basic formula. Again, in the absence of contrary evidence of record, it is reasonable to assume that the DAR acted, on the knowledge that most agricultural lands are inherited. This makes their acquisition cost nil. To include the same as a component of the formula would only serve to reduce the resulting value, much to the prejudice of the landowner.[179]

On the formula as DAR's expert opinion. The general function of an appraisal or valuation exercise is to develop an *opinion* of a certain type of value.[180] This process, though subjective, is amenable to a rigorous process that should result in a *considered* opinion of value. As earlier discussed, there is an application of the generally accepted approaches to value and, where multiple approaches have been employed, the reconciliation of the different value indications to arrive at a final opinion of value.[181] In this case, the DAR, applying the law and using the accepted valuation process and approaches to value, acted no different from a valuation appraiser and gave an opinion as to what components make up the right formula.

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[178] Institute of Agrarian Studies, College of Economics and Management, STUDIES ON AGRARIAN REFORM ISSUES, UPLB, College, Laguna, p. 91.

[179] Under Section Part II (E) and (F) of DAR AO No. 5 (1998), non-crop improvements introduced by the landowner are also compensated, with the valuation to be undertaken by the LBP.

[180] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute p. 53.

[181] *Id.* at 598

Similar to the valuation profession which recognizes that the integrity and credibility of a valuation opinion rests in large part on the appraiser's judgment and experience,[182] the DAR's choices on the formula's component parts and their corresponding weights was based on its expertise, judgment and actual experience in the field of agrarian reform. We have taken pains to show how the DAR formula, and valuation process, is consistent and at par with recognized, international relation processes. There is no contrary evidence of record.

We shall now discuss the detailed arguments of the dissents as they relate to the DAR formulas.

J. Responses to specific arguments in the Dissents and Separate Concurring Opinion

Justice Leonen asserts that the Congress and the DAR failed to capture all the factors[183] (if not the "important,"[184] "highly influential,"[185] and "critical"[186] ones) to fully determine market value. Since the listing of factors in Section 17 is incomplete, any formula derived therefrom would also (and necessarily) be incomplete for purposes of arriving at just compensation.

We note that Justice Leonen cites the UP-IAS study in his dissent. This study analyzed the DAR formula under DAR AO No. 06 (1989). Our case now involves the DAR formula under DAR AO No. 5 (1998). Not only is the latter formula completely different from that under DAR AO No. 6 (1989), it has, as earlier discussed, already "improved" on the formula by incorporating the suggestions and recommendations of the UP-IAS study cited.

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[182] *Id.*

[183] Dissenting Opinion of Justice Leonen, p. 14.

[184] Dissenting Opinion of Justice Leonen, p. 17.

[185] Dissenting Opinion of Justice Leonen, p. 16.

[186] Dissenting Opinion of Justice Leonen, p. 16.

Furthermore, Justice Leonen did not point to a complete or exhaustive listing of factors upon which he based his assertion of the law's incompleteness. Neither did he show how courts are to actually approach valuation (in the absence of Section 17 and the implementing DAR formula) as to avoid "underrating the effect of each property's peculiarities."[187]

Even granting, for the sake of argument, that there is an *infinite* number of factors that can be considered in the valuation of property, we see no conceptual inconsistency between applying *a* formula to determine just compensation and giving all attendant factors due consideration.

This is evident when one considers the indispensability of the approaches to value in any estimation of value.[188] Following the generally-accepted valuation process, *after* all relevant market area data, subject property data and comparable property data have been gathered and analyzed,[189] the approaches to value will be applied[190] and the resulting value indications reconciled[191] to arrive at a final opinion of value. Thus, while there can arguably be an infinite number of factors that can be considered for purposes of determining a property's value, they would all ultimately be distilled into any one of the three valuation approaches. In fact, and as part of their discipline, appraisers are expected to "apply all the approaches that are applicable and for which there is data."[192]

Justice Leonen also seems to favor the use of the discounted cash flow (DCF)/discounted future income method (a variant

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[187] Dissenting Opinion of Justice Leonen, p. 18.

[188] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute p. 62.

[189] Parts Three and Four of the Systematic Valuation Process. See Table at p. 38.

[190] Part Six of the Systematic Valuation Process. *Id.*

[191] Part Seven of the Systematic Valuation Process. *Id.*

[192] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, p. 62.

of the yield capitalization technique) where the present DAR basic formula makes use of the direct capitalization technique.[193] He thereafter equates this to a lack of consideration for future income and ventures that, in turn, might be the reason why landowners always feel that the DAR/LBP assessment is severely undervalued.[194]

We disagree. Direct capitalization and yield capitalization are *both* methods used in the income capitalization approach to value.

> Direct capitalization is distinct from yield capitalization x x x in that the former does not directly consider the individual cash flows beyond the first year. Although yield capitalization explicitly calculates year-by-year effects of potentially changing income patterns, changes in the original investment's value, and other considerations, direct capitalization processes a single year's income into an indication of value. x x x[195]

In fact, *and applied to the same set of facts*, use of either method can be expected to produce similar results:

> x x x Either direct capitalization or yield capitalization may correctly produce a supportable indication of value when based on relevant market information derived from comparable properties, which should have similar income- expense ratios, land value-to-building value ratios, risk characteristics, and future expectations of income and value changes over a typical holding period. **A choice of capitalization method does not produce a different indication of value under this circumstance**.[196] (Emphasis supplied.)

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[193] Here, the yield rate is applied to a set of projected income streams and a reversion to determine whether the investment property will produce a required yield given a known acquisition price. If the rate of return is known, DCF analysis can be used to solve for the present value of the property. If the property's purchase price is known, DCF analysis can be applied to find the rate of return. See THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, p. 569.

[194] Dissenting Opinion of Justice Leonen, p. 15.

[195] THE APPRAISAL OF REAL ESTATE, 12th Edition, 2001, Appraisal Institute, p. 529.

[196] *Id.* at 529-530.

Selection of the appropriate income capitalization method to use depends on the attendant circumstances. While direct capitalization is used when properties are already *operating on a stabilized basis*, it is not useful where the property sought to be valued is going through an initial lease-up or when *income and/or expenses are expected to change in an irregular pattern* over time. In the latter case, yield capitalization techniques are considered to be more appropriate.[197]

In fact, the DAR uses yield capitalization methods where, based on its experience, such method is appropriate. In Joint Memorandum Circular No. 07, Series of 1999, for example, the DAR and the LBP revised their initial valuation guidelines for *rubber plantations*, to wit:

I. PREFATORY STATEMENT

The rubber plantation income models presented under the old rubber Land Valuation Guideline (LVG No. 6, Series of 1990) recognized the income of rubber plantations based on processed crumb rubber. However, **recent consultations with rubber authorities (industry, research, etc.) disclosed that the standard income approach to valuation should measure the net income or productivity of the land based on the farm produce (in their raw forms) and not on the entire agri-business income enhanced by the added value of farm products due to processing. Hence, it is more appropriate to determine the Capitalized Net Income (CNI) of rubber plantations based on the actual yield and farm gate prices of raw products (field latex and cuplump) and the corresponding cost of production.**

There is also a growing market for old rubber trees which are estimated to generate net incomes ranging between ₱20,000 and ₱30,000 per hectare or an average of about ₱100 per tree, depending on the remaining stand of old trees at the end of its economic life. This market condition for old rubber trees was not present at the time LVG No. 6, Series of 1990, was being prepared. (The terminal or salvage value of old rubber trees was at that time pegged at only ₱6,000 per hectare, representing the amount then being paid by big landowners to contractors for clearing and uprooting old trees.)

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[197] *Id.* at 529.

LVG No. 6, Series of 1990, was therefore revised to address the foregoing considerations and in accordance with DAR Administrative Order (AO) No. 05, Series of 1998. (Emphasis and underscoring supplied.)

What *can* be fairly inferred from the DAR's adoption of the direct capitalization method in its formula is the operational assumption[198] that the agricultural properties to be valued are, in general, operating on a stabilized basis, or are expected to produce on a steady basis. This choice of capitalization method is a policy decision made by the DAR drawn, we can presume, from its expertise and actual experience as the expert administrative agency.

Justice Velasco, for his part, calls for a revisit of the established rule on the ground that the same "have veritably rendered hollow and ineffective the maxim that the determination of just compensation is a judicial function."[199] According to him, the view that application of the DAR formulas cannot be made mandatory on courts is buttressed by: (1) Section 50 of RA 6657 which expressly provides that petitions for determination of just compensation fall within the original and exclusive jurisdiction of the SACs;[200] (2) *Land Bank of the Philippines v. Belista*[201] which already settled that petitions for the determination of just compensation are excepted from the cases falling under the DAR's special original and exclusive jurisdiction under Section 57 of RA 6657; and (3) *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, (Heirs of Vidad)*[202] which held that the DAR's process of valuation under Section 16 of RA 6657 is only preliminary, the conclusion of which is not a precondition for purposes of

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[198] Drawn from existing knowledge and actual experience in Philippine crop cycles.

[199] Dissenting Opinion of Justice Velasco, p. 18.

[200] Dissenting Opinion of Justice Velasco, pp. 4-5.

[201] G.R. No. 164631, June 26 2009, 591 SCRA 137; Dissenting Opinion of Justice Velasco, pp. 5-6.

[202] G.R. No. 166461, April 30, 2010, 619 SCRA 609.

invoking the SAC's original and exclusive jurisdiction to determine just compensation.

Justice Velasco correctly pointed out this Court's statement in *Belista* excepting petitions for determination of just compensation from the list of cases falling within the DAR's original and exclusive jurisdiction.[203] Justice Velasco is also correct when he stated that the Court, in *Heirs of Vidad,* summarized and affirmed rulings which "invariably upheld the [SAC's] original and exclusive jurisdiction x x x notwithstanding the seeming failure to exhaust administrative remedies before the DAR."[204] Later on, he would point out, again correctly, the seemingly conflicting rulings issued by this Court regarding the imposition upon the courts of *a* formula to determine just compensation.

We acknowledge the existence of statements contained in our rulings over the years which may have directly led to the inconsistencies in terms of the proper interpretation of the CARL. As adverted to earlier in this Opinion, this Court thus takes this case as a good opportunity to affirm, for the guidance of all concerned, what it perceives to be the better jurisprudential rule.

Justice Velasco reads both *Belista* and *Heirs of Vidad* as bases to show that SACs possess original and exclusive jurisdiction to determine just compensation, regardless of prior exercise by the DAR of its primary jurisdiction.

We do not disagree with the rulings in *Belista* and *Heirs of Vidad,* both of which acknowledge the grant of primary jurisdiction to the DAR, subject to judicial review. We are, however, of the view that the better rule would be to read these seemingly conflicting cases without having to disturb established doctrine.

Belista, for example, should be read in conjunction with *Association,* the landmark case directly resolving the

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[203] Dissenting Opinion of Justice Velasco, p. 5.

[204] Dissenting Opinion of Justice Velasco, p. 8.

constitutionality of RA 6657. In *Association,* this Court unanimously upheld the grant of jurisdiction accorded to the DAR under Section 16 to preliminarily determine just compensation. This grant of primary jurisdiction is specific, compared to the general grant of quasi-judicial power to the DAR under Section 50. *Belista,* which speaks of exceptions to the **general** grant of quasi-judicial power under Section 50, cannot be read to extend to the **specific** grant of primary jurisdiction under Section 16.

Heirs of Vidad should also be read in light of *our* ruling in *Land Bank of the Philippines v. Martinez*[205] another landmark case directly and affirmatively resolving the issue of whether the DAR's preliminary determination (of just compensation) can attain finality. While the determination of just compensation is an essentially judicial function, *Martinez* teaches us that the administrative agency's otherwise preliminary determination may become conclusive **not because judicial power was supplanted by the agency's exercise of primary jurisdiction but because a party failed to timely invoke the same.** The Court said as much in *Heirs of Vidad:*

> It must be emphasized that the taking of property under RA 6657 is an exercise of the State's power of eminent domain. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. When the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties. **On the other hand, the determination of just compensation in the RARAD/DARAB requires the voluntary agreement of the parties. Unless the parties agree, there is no settlement of the dispute before the RARAD/DARAB, except if the aggrieved party fails to file a petition for just compensation on time before the RTC.**[206] (Emphasis and underscoring supplied.)

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[205] G.R. No. 169008, July 31, 2008. 560 SCRA 776.

[206] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, supra* at 630.

Considering the validity of the grant of primary jurisdiction, our ruling in *Heirs of Vidad* should also be reconciled with the rationale behind the doctrine of primary jurisdiction. In this sense, neither landowner nor agency can disregard the administrative process provided under the law without offending the already established doctrine of primary jurisdiction:

> x x x [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. **Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure**.[207] (Emphasis supplied.)

Arguing against the binding nature of the DAR formula, Justice Carpio, in his Separate Concurring Opinion, cites *Apo Fruits*[208] which held, to wit:

> What is clearly implicit, thus, is that the basic formula and its alternatives—administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998)—although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. x x x[209]

The argument of *Apo Fruits* that the DAR formula is a mere administrative order has, however, been completely swept aside by the amendment to Section 17 under RA 9700. To recall, Congress amended Section 17 of RA 6657 by expressly providing that the valuation factors enumerated be "translated into a basic

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[207] *Far East Conference v. United States*, 342 U.S. 570, 574-575 (1952).

[208] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 19, 2007, 541 SCRA 117.

[209] *Id.* at 131.

formula by the DAR x x x." This amendment converted the DAR basic formula into a requirement of the law itself. In other words, the formula ceased to be merely an administrative rule, presumptively valid as *subordinate legislation* under the DAR's rule-making power. The formula, now part of the *law* itself, is entitled to the presumptive constitutional validity of a *statute*.[210] More important, *Apo Fruits* merely states that the formula cannot "strictly" bind the courts. The more reasonable reading of *Apo Fruits* is that the formula does not strictly apply in certain circumstances. *Apo Fruits* should, in other words, be read together with *Yatco.*

Justice Carpio also raises an issue of statutory construction of Section 18 of RA 6657 in relation to Section 17. Section 18 reads:

> Sec. 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or** as may be finally determined by the court, as the just compensation for the land.

The Justice reads Section 18 to mean that Section 17 and the implementing DAR formula operate only to qualify the offer to be made by the DAR and the LBP to the landowner. Section 17 is not a qualifying imposition on the court in its determination of just compensation. Stated differently, where there is disagreement on the issue of just compensation, Section 17 and the basic formula do not apply.

We disagree. Sections 16, 17 and 18 should all be read together in context[211] as to give effect to the law.[212] This is the essence of the doctrines we laid down in *Banal, Celada* and *Yatco.*

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[210] See *Abakada Guro Party List v. Purisima,* G.R. No. 166715, August 14, 2008, 562 SCRA 251 as cited in *Dacudao v. Gonzales,* G.R. No. 188056, January 8, 2013, 688 SCRA 109.

[211] *Aisporna v. Court of Appeals,* G.R. No. L-39419, April 12, 1982, 113 SCRA 459, 467. See also *Civil Service Commission v. Joson, Jr.,* G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786.

[212] In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the

Section 16 governs the procedure for the acquisition of private lands. The relevant provision reads:

> Sec. 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:
>
> (a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located.**Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.** x x x (Emphasis supplied.)

It is clear from the foregoing provision that the procedure for acquisition of private land is commenced by the DAR's notice of acquisition and offer of compensation to the landowner. At such point, the DAR does not know whether the landowner will accept its offer. Section 16(a), however, states *without qualification* that the DAR shall make the offer in accordance with Sections 17 and 18. In case the landowner does not reply or rejects the offer, then the DAR initiates summary administrative proceedings to determine just compensation, subject to the final determination of the court. In the summary proceedings, the DAR offer remains founded on the criteria set forth in Section 17. Section 16(a) did not distinguish between the situation where the landowner accepts the DAR's offer and where he/she does not. Section 17, as amended, itself also did not distinguish between a valuation arrived at by agreement or

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legislature is not presumed to have done a vain thing in the enactment of a statute. As held by this Court in *Paras v.Commission on Elections,* G.R. No. 123169, November 4, 1996, 264 SCRA 49, 54-55: "An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory."

one adjudicated by litigation. Where the law does not distinguish, we should not distinguish.[213]

Section 18, on the other hand, merely recognizes the possibility that the landowner will disagree with the DAR/LBP's offer. In such case, and where the landowner elevates the issue to the court, the court needs to rule on the offer of the DAR and the LBP. Since the government's offer is required by law to be founded on Section 17, the court, in exercising judicial review, will necessarily rule on the DAR determination based on the factors enumerated in Section 17.

Now, whether the court accepts the determination of the DAR will depend on its exercise of discretion. This is the essence of judicial review. That the court *can* reverse, affirm or modify the DAR/LBP's determination cannot, however, be used to argue that Section 18 excuses observance from Section 17 in cases of disagreement.

Finally, there is no cogent policy or common sense reason to distinguish. Worse, this reading flies in the face of the contemporaneous interpretation and implementation given by the DAR and the LBP to Sections 16, 17 (as amended) and 18. DAR AO No. 5 (1998) expressly provides that the basic formula applies to both voluntary offers to sell and to compulsory acquisition?[214]

K. The matters raised by the dissents are better resolved in a proper case directly challenging Section 17 of RA 6657 and the resulting DAR formulas

The following central issues of fact underlying many of the arguments raised by the dissents are better raised in a case directly impugning the validity of Section 17 and the DAR formulas:

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[213] *Republic v. Yahon*, G.R. No. 201043, June 16, 2014, 726 SCRA 438, 454.

[214] Part II, DAR AO No. 5 (1998). See also Section 85, DAR AO No. 7 (2011).

1) Whether, under the facts of a proper case, the use of a basic formula (based on factors enumerated by Congress) to determine just compensation is just and reasonable.

Evidence must be taken to determine whether, given the scale of the government's agrarian reform program, the DAR and the LBP (and later, Congress) acted justly and within reason in choosing to implement the law with the enumeration of factors in Section 17 and the use of a basic formula, *or*, whether, under the facts, it is more just and reasonable to employ a *case to case* method of valuation.

A core and triable question of fact is whether the DAR and the LBP can effectively and fairly implement a large scale land reform program without some guide to canalize the discretion of its employees tasked to undertake valuation. Otherwise stated, how can the DAR and the LBP commence CARP implementation if the different DAR and LBP employees tasked with making the offer, and spread nationwide, are each given complete discretion to determine value from their individual reading of Section 17? This will resolve the factual underpinnings of the argument advanced that the valuation factors enumerated in Section 17 apply only where there is agreement on value as between the DAR/LBP and the landowner, but not when there is disagreement.

(2) Whether, under the facts of a proper case, the enumeration of the factors in Section 17 and the resulting formula, are themselves just and reasonable.

To resolve this, there must be a hearing to determine: (a) whether, following generally-accepted valuation principles, the enumeration under Section 17 is sufficient or under-inclusive; (2) how the DAR arrived at selecting the components of the formula and their assigned weights; (3) whether there are fairer or more just and reasonable alternatives, or combinations of alternatives, respecting valuation components and their weights; and (4) whether the DAR properly computes or recognizes net present value under the CNI factor, and whether DAR employs a fair capitalization rate in computing CNI.

All things considered, it is important that the DAR and the LBP be heard so that they can present evidence on the cost and other implications of doing away with the use of a basic formula, or using a different mix of valuation components and weights.

IV. Conclusion

The determination of just compensation *is* a judicial function. The "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic formula, and the "justness" of the components (and their weights) that flow into the basic formula, are all matters for the courts to decide. As stressed by *Celada,* however, until Section 17 or the basic formulas are declared invalid in a proper case, they enjoy the presumption of constitutionality. This is more so now, with Congress, through RA 9700, expressly providing for the mandatory consideration of the DAR basic formula. In the meantime, *Yatco,* akin to a legal safety net, has tempered the application of the basic formula by providing for deviation, where supported by the facts and reasoned elaboration.

While concededly far from perfect, the enumeration under Section 17 and the use of a basic formula have been the principal mechanisms to implement the just compensation provisions of the Constitution and the CARP for many years. Until a direct challenge is successfully mounted against Section 17 and the basic formulas, they and the collective doctrines in *Banal, Celada* and *Yatco* should be applied to all pending litigation involving just compensation in agrarian reform. This rule, as expressed by the doctrine of *stare decisis,* is necessary for securing certainty and stability of judicial decisions, thus:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from

the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[215]

This Court thus for now gives full constitutional presumptive weight and credit to Section 17 of RA 6657, DAR AO No. 5 (1998) and the resulting DAR basic formulas. To quote the lyrical words of Justice Isagani Cruz in *Association:*

> The CARP Law and the other enactments also involved in these cases have been the subject of bitter attack from those who point to the shortcomings of these measures and ask that they be scrapped entirely. To be sure, these enactments are less than perfect; indeed, they should be continuously re-examined and rehoned, that they may be sharper instruments for the better protection of the farmer's rights. But we have to start somewhere. In the pursuit of agrarian reform, we do not tread on familiar ground but grope on terrain fraught with pitfalls and expected difficulties. This is inevitable. The CARP Law is not a tried and tested project. On the contrary, to use Justice Holmes's words, "it is an experiment, as all life is an experiment," and so we learn as we venture forward, and, if necessary, by our own mistakes. We cannot expect perfection although we should strive for it by all means. Meantime, we struggle as best we can in freeing the farmer from the iron shackles that have unconscionably, and for so long, fettered his soul to the soil.[216]

For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not

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[215] *Commissioner of Internal Revenue v. The Insular Life Assurance, Co., Ltd.*, G.R. No. 197192, June 4, 2014, 725 SCRA 94, 96-97.

[216] *Supra* note 85 at 392.

warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[217]

A final note

We must be reminded that the government (through the administrative agencies) and the courts are not adversaries working towards different ends; our roles are, rather, complementary. As the United States Supreme Court said in *Far East Conference v. United States*:[218]

> x x x [C]ourt and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. **Court and agency are the means adopted to attain the prescribed end, and, so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action.** Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim.[219] (Emphasis supplied.)

The Congress (which wrote Section 17 and funds the land reform land acquisition), the DAR (author of DAR AO No.5 [1998] and implementer of land reform), and the LBP (tasked under EO 405 with the valuation of lands) are partners to the

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[217] See *Association of Small Landowners v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343 and *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010, 619 SCRA 609, 630.

[218] 342 U.S. 570 (1952).

[219] *Id.* at 575.

courts. All are united in a common responsibility as instruments of justice and by a common aim to enable the farmer to "banish from his small plot of earth his insecurities and dark resentments and "rebuild in it the music and the dream."[220] Courts and government agencies must work together if we are to achieve this shared objective.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Civil Case Nos. 2002-7073 and 2002-7090 are **REMANDED** to the Special Agrarian Court for the determination of just compensation in accordance with this ruling.

SO ORDERED.

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

Sereno, C.J., Carpio, and *Leonen, JJ.,* see concurring opinions.

Velasco, Jr., J., see dissenting opinion.

Del Castillo, J., no part.

SEPARATE CONCURRING OPINION

SERENO, *C.J.*:

I fully agree with the majority's view that courts have a legal duty to consider the factors provided in Section 17 of Republic Act (R.A.) No. 6657, as amended. I also agree that deviation therefrom is authorized, provided it is explained and is supported by the evidence on record. I only write this opinion to make a clarification.

To my mind, there should be no conflict between the duty to consider the factors laid down by Section 17, as amended, and the established rule that the determination of just compensation is a judicial function.

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[220] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* note 85 at 393.

R.A. No. 9700 amended Section 17 of R.A. No. 6657 to make the consideration of the factors enumerated therein mandatory. Using the word "shall," the amended provision now reads:

> SEC.l7. *Determination of Just Compensation.* —In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), **translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court.** The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land **shall be considered** as additional factors to determine its valuation. (Emphases Supplied)

With the amendment, courts are now bound to consider the enumerated factors in the determination of just compensation.[1] For reasons to be discussed below, this does not straitjacket them and thereby unduly restrain their power to determine just compensation, which has been established to be exclusively a judicial function.[2]

Section 17 does not tread on dangerous grounds. All that it requires is the consideration by the courts of the enumerated factors. The provision does not mandate that they use those factors exclusively for the determination of just compensation. Congress even circumscribed the consideration of the factors with the clause, "subject to the final decision of the proper court." They are, at most, guidelines to assist the courts in the determination of just compensation. Therefore, Section 17 does not take away, much less limit, the power of the courts to inquire into what *EPZA v. Dulay* termed the "justness" of the compensation.[3]

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[1] *SM Land, Inc. v. BCDA*, G.R. No. 203655, 13 August 2014, 733 SCRA 68.

[2] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987).

[3] *Id*.

We should give effect to the legislatively mandated mode of valuation as prescribed in Section 17, following the default rule in the interpretation of statutes:

> In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the legislature is not presumed to have done a vain thing in the enactment of a statute. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory.[4]

R.A. No. 6657 was designed to breathe life to the constitutional mandate for land reform.[5] In particular, the valuation method under Section 17 reflects the wisdom of Congress in prescribing the manner of implementing the constitutional mandate. I see no reason why we should not accord the provision the presumption of constitutionality that it fairly deserves.[6] We must consequently avoid an interpretation whereby the constitutional directive for land reform would be rendered ineffective.

Accordingly, I vote to GRANT the Petition and REMAND the case to the Special Agrarian Court for a proper determination of the just compensation.

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[4] *Paras v. Commission on Elections,* 332 Phil. 56-67 (1996).

[5] Section 4, Article XIII of the Constitution states:

> SECTION 4. The State shall, by Law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[6] *Carpio v. Executive Secretary,* G.R. No. 96409, 14 February 1992, 206 SCRA 290.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

The application of DAO 11, s. of 1994, as amended by DAO 5, s. of 1998, is not mandatory on Special Agrarian Courts in the determination of just compensation. I submit this Separate Concurring Opinion to clarify further the first paragraph of Section 18 of Republic Act No. 6657 (RA 6657) or the *Comprehensive Agrarian Reform Law of 1988.*

The first paragraph of Section 18 of RA 6657 reads:

> Section 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amounts **as may be agreed upon by the landowner and the DAR and the LBP**, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or as may be finally determined by the court, as the just compensation for the land**. (Emphasis supplied)

This provision on valuation of just compensation consists of two parts. The first part refers to the amount of just compensation "as may be agreed upon by the landowner and the DAR and the LBP" while the second part pertains to the amount of just compensation "as may be finally determined by the court." **In other words, the amount of just compensation may either be (1) by an agreement among the parties concerned; or (2) by a judicial determination thereof.**

In the first case, there must be an **agreement** on the amount of just compensation between the landowner and the DAR. Such **agreement** must be in accordance with the criteria under Sections 16 and 17 of RA 6657.[1] Section 16 outlines the procedure for

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[1] Section 16 of RA 6657 provides:

SECTION 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous

acquiring private lands while Section 17 provides for the factors to be considered in determining just compensation. To translate

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place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other monuments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Section 17 of RA 6657 provides:

SECTION 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

such factors, the DAR devised a formula, which is presently embodied in DAO No. 5.[2] The DAR, using the formula in DAO No. 5, will make an initial determination of the value of the land and thereafter offer such amount to the landowner. If the landowner accepts the DAR's offer, he shall be paid the amount of just compensation as computed by the DAR. If the landowner rejects the DAR's offer, he may opt to file an action before the courts to finally determine the proper amount of just compensation.[3] **Clearly, the DAR cannot mandate the value of the land because Section 18 expressly states that the landowner shall be paid the amount of just compensation "as may be agreed upon" by the parties.** In other words, the DAR's valuation of the land is not final and conclusive upon the landowner. **Simply put, the DAR's computation of just compensation is not binding on the landowner.**

Since the landowner is not bound to accept the DAR's computation of just compensation, with more reason are courts not bound by DAR's valuation of the land. To mandate the courts to adhere to the DAR's valuation, and thus require

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Republic Act No. 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 to read as follows:

> SEC. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessments made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[2] DAO No. 5, entitled *Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657*, amended DAO No. 11, series of 1994, which in turn amended DAO No. 6, series of 1992, entitled the *Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired.*

[3] *Republic v. Court of Appeals*, 331 Phil. 1070, 1077 (1996).

the courts to impose such valuation on the landowner, is contrary to the first paragraph of Section 18 which states that the DAR's valuation is not binding on the landowner. If the law intended courts to be bound by DAR's valuation, and to impose such valuation on the landowner, then Section 18 should have simply directly stated that the landowner is bound by DAR's valuation. To hold that courts are bound by DAR's valuation makes resort to the courts an empty exercise. To avoid violating Section 18, courts must be given the discretion to accept, modify, or reject the DAR's valuation.

The law itself vests in the Regional Trial Courts, sitting as Special Agrarian Courts (SAC), the original and exclusive jurisdiction over actions for the determination of just compensation. Section 57 of RA 6657 reads:

> Section 57. *Special Jurisdiction.* — **The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners,** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied)

In *Land Bank of the Philippines v. Montalvan*,[4] the Court reiterated the exclusive jurisdiction of the SAC to determine just compensation, to wit:

> The SAC has been statutorily determined to have original and exclusive jurisdiction over all petitions for the determination of just compensation due to landowners under the CARP. This legal principle has been upheld in a number of this Court's decisions and has passed into the province of established doctrine in agrarian reform jurisprudence. In fact, this Court has sustained the exclusive authority of the SAC over the DARAB, even in instances when no administrative proceedings were conducted in the DARAB.

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[4] 689 Phil. 641, 650-651 (2012).

It is settled that the determination of just compensation is essentially a judicial function. The judicial determination of just compensation is what the second part of the first paragraph of Section 18 of RA 6657 comprehends, as it states that "The LBP shall compensate the landowner in such amounts x x x *as may be finally determined by the court,* as the just compensation for the land." In *Land Bank of the Philippines v. Escandor,*[5] the Court held:

> It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. **In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be**. (Emphasis supplied)

Considering that the SACs exercise exclusive jurisdiction over petitions for determination of just compensation, the valuation by the DAR, presented before the agrarian courts, should only be regarded as initial or preliminary. As such, the DAR's computation of just compensation is not binding on the courts. In *Heirs of Lorenza and Carmen Vidad v. Land Bank of the Philippines*,[6] the Court held:

> **In fact, RA 6657 does not make DAR's valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and not the DAR, make the final determination of just compensation.** It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function. (Emphasis supplied)

That the DAR valuation, based on the formula in DAO No. 5, is not controlling on the courts is likewise enunciated in *Apo Fruits Corporation v. Court of Appeals,*[7] to wit:

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[5] 647 Phil. 20, 28 (2010).

[6] 634 Phil. 9, 31 (2010).

[7] 565 Phil. 418, 433-434 (2007).

x x x **[T]he basic formula and its alternatives – administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) — although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts.** To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. **Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance.** The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors[.] x x x. (Emphasis supplied)

Suffice it to state that no administrative order can deprive the courts of the power to review with finality the DAR's determination of just compensation in the exercise of what is admittedly a judicial function.[8] What the DAR is empowered to do is only to determine in a preliminary manner the amount of just compensation, leaving to the courts the ultimate power to decide this issue.[9]

Further, to adhere to the formula in DAO No. 5, in every instance, constitutes an undue restriction of the power of the courts to determine just compensation. This is clear from the

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[8] See *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* 256 Phil. 777, 815 (1989).

[9] *Republic v. Court of Appeals, supra* note 3 at 1077.

case of *Land Bank of the Philippines v. Heirs of Puyat*[10] which stated:

> As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

To repeat, under the first paragraph of Section 18 of RA 6657, the amount of just compensation may be determined by (1) agreement between the landowner and the DAR; or (2) judicial decision. In either case, the computation by the DAR of just compensation, using the formula in DAO No. 5, is merely initial or preliminary. **As such, the DAR valuation of just compensation is not binding or mandatory on the landowner or the courts.**

Significantly, RA 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 by adding other factors to be considered and clarifying that:

> In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessments made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into **a basic formula by the DAR shall be considered, subject to the final decision of the proper court**. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasis supplied)

The clause "a basic formula by the DAR shall be considered, subject to the final decision of the proper court" means that

[10] 689 Phil. 505, 522 (2012).

the law requires the courts to consider the DAR formula in determining just compensation, but the courts are not bound by the DAR formula since the determination of just compensation is essentially a judicial function. This amendment recognizes that the DAR adopted a formula under DAO No. 5. However, the amendment also recognizes that any DAR formula is always subject, in the appropriate case, to the final decision of the proper court.

The phrase "subject to the final decision of the proper court" does not appear in the old Section 17. Congress, in amending Section 17 of RA 6657 and adding such phrase, recognizes and, in fact, emphasizes that the final determination of just compensation rests exclusively with the proper court, which is the SAC in this case. In short, while the courts are statutorily required to consider the DAR formula, the courts are definitely not mandated to adopt such formula in determining just compensation. With the amendment of Section 17 of RA 6657, there can no longer be any doubt whatsoever that the DAR valuation of just compensation is not binding or mandatory on the courts.

Accordingly, I vote to **GRANT** the petition and to **REMAND** the case to the Special Agrarian Court for proper determination of the just compensation.

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

In the exercise of the judicial power to determine just compensation in cases where there is a taking of property, courts may consider — though it should not be strictly bound by — the factors that a statute may provide. It may also take into consideration formulas provided by an executive issuance or an administrative order pursuant to a provision of law. In doing so, courts have the power to determine whether, given the circumstances of a specific case, the methods of valuation of

property taken by the state reasonably approximates fair market value for the owner. Should it arrive at a different method of valuation, the trial court — as in all cases — must show the reasonable fit of the formula it uses based on the facts established by evidence to determine the final value of just compensation.

Neither the law nor an administrative order may constrict courts from determining just compensation. The formula to be used as well as the amount awarded as fair market value equivalent to the constitutional requirement of just compensation is a present or contemporary value that cannot be fully encompassed by a single formula. Valuation, rather than being a science, is an act that can only be approximated given present conditions. Thus, the constitutional guarantee of payment of just compensation can only be fulfilled by judicial action.

We are asked to decide which among the Legislative, Executive, and Judicial branches have the final power to determine the just compensation to be paid to the landowner in agrarian cases. The principal issue is whether legislative and executive issuances setting parameters for the determination of just compensation in expropriation proceedings should be binding or mandatory on our courts.

The determination of just compensation — a concept provided for clearly in constitutional text — is a judicial function.[1]

The determination of just compensation involves the appreciation of specific facts that can only be inferred from evidence presented in a court tasked to make those determinations. Valuation requires the exercise of judicial discretion to determine the land value appropriate to replace the loss of the landowner's title. Each parcel of land taken for purposes of agrarian reform requires its own unique assessment. The factors that should be considered cannot be limited to what can be normatively prescribed. The formulas provided in statutes or in executive

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[1] See for example *Export Processing Zone Authority v. Dulay,* 233 Phil. 313 (1987) [Per *J*. Gutierrez, Jr., *En Banc*] and *Land Bank of the Philippines v. Hon. Natividad,* 497 Phil. 738, 746 (2005) [Per *J*. Tinga, Second Division].

issuances are only recommendatory. They cannot capture the full range of options that a trial court judge may consider.

Trial courts acting as Special Agrarian Courts should not be reduced to simply affirming the actions of administrative bodies when their full discretion is required by the Constitution.

This is a Petition for Review on *Certiorari* brought through Rule 45 of our Rules impugning the validity of the Court of Appeals Decision dated July 19, 2007 and its Resolution dated March 4, 2008. The Court of Appeals set aside the Regional Trial Court Decision dated April 13, 2005, which adopted the appointed commissioner's land valuation. The Court of Appeals, in the Decision now brought before for our review, ordered that the case be remanded to the court of origin for proper determination of just compensation.

The facts, as understood from the records of the case, are as follows:

Cynthia Palomar (Palomar) was the owner of parcels of land with an aggregate area of about 28 hectares in Sorsogon City.[2] The Department of Agrarian Reform, pursuant to the Comprehensive Agrarian Reform Program, acquired the land.[3]

Land Bank of the Philippines' aggregate valuation of the land was set at ₱828,935.33.[4] Palomar rejected this finding.[5] The case was, thus, brought to the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon for a summary proceeding on the proper value of the land.[6]

After examining the records, the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon found that there was a need to re-compute the land valuation.[7] Applying

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[2] *Rollo*, p. 25.

[3] *Id*.

[4] *Id*. at 55.

[5] *Id*. at 25.

[6] *Id*. at 59.

[7] *Id*. at 37.

the formula in Department of Agrarian Reform Administrative Order No. 5, Series of 1998, the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon pegged the aggregate value of the properties at ₱2,418,071.39.[8]

On April 16, 2001, Palomar sold the properties to Ramon Alfonso (Alfonso).[9]

Alfonso and the Land Bank of the Philippines (Land Bank) did not agree with the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon's valuation. Alfonso filed a Verified Complaint[10] docketed as Civil Case No. 2002-7090, while Land Bank filed a Petition[11] for the determination of just compensation, docketed as Civil Case No. 2002-7073. These cases were consolidated by the trial court.[12]

Alfonso alleged in his Complaint that the valuation did not take the actual number of fruit-bearing trees; non-fruit-bearing trees; improvements; and the proximity of the properties to commercial centers, markets, roads, national highways, service facilities, commercial establishments, and government offices into full consideration.[13] Alfonso also alleged that despite the disagreement on the proper value of the properties, the Department of Agrarian Reform "already dispossessed [him], deprived him of his rightful share on [the land's] produce and [in his view, the Department of Agrarian Reform] arbitrarily awarded the property to its farmer beneficiaries."[14]

Land Bank, on the other hand, alleged that its valuation was correct, having based its computation on Section 18 of Republic

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[8] *Id.* at 38 and 50. The total is arrived at by adding ₱2,314,115.73 and ₱103,955.66.

[9] *Id.* at 59.

[10] *Id.* at 39-42.

[11] *Id.* at 54-57.

[12] *Id.* at 60.

[13] *Id.* at 40.

[14] *Id.*

Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5, Series of 1998.[15]

The trial court appointed Cuervo Appraisers, Inc. as the commissioner to determine the just compensation and required Cuervo Appraisers to "submit [a] report within 30 days."[16]

Alfonso presented his testimony as well as that of Commissioner Amado Chua's. Cuervo Appraisers, Inc.'s appraisal report was submitted as documentary exhibit.[17]

Land Bank presented as witnesses Francisco Corcuerra, Edwin Digo, and Manuel Depalac. For the documentary exhibits, it presented Field Investigation Reports, Land Use Maps, and Market Value per Ocular Inspection of the properties.[18]

On May 13, 2005, the trial court rendered a Decision ordering Land Bank to pay Alfonso the amount of ₱6,090,000.00 as just compensation for the taking of the parcels of land.[19] The amount was later amended to ₱6,093,000.00 after discovery of some typographical errors.[20]

The trial court's Decision, in part, reads:

> The Court after careful examination of the evidence presented by the Petitioner/Defendant LBP as well as the Private Respondent/ Plaintiff, particularly the Report of the Commissioner, Amado Chua of the Cuervo Appraisers Inc. the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits that the landholding can give to the community, the BIR zonal values of Real Properties in [B]arangay Bibincahan, Sorsogon City under Department Order No. 34-97 effective 30 April 1997, the Current Assessor's Schedule of Market Values of Real Properties in Sorsogon City effective year 1999 and the community

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[15] *Id.* at 56.

[16] *Id.* at 60.

[17] *Id.*

[18] *Id.*

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

[20] *Id.* at 11.

facilities and utilities, it is the considered Opinion of the Court that the Provincial Adjudicator did not abuse his discretion in making the valuation assailed by the Petitioner LBP, as a matter of fact the valuation made by the said Provincial Adjudicator is still very low after taking into consideration other factors which said Provincial Adjudicator failed to consider.[21]

The trial court adopted the commissioner's determination of just compensation, "considering that said Commissioner is an expert in real property appraisal and considering further the facts and equities of the case and the appropriate law and jurisprudence."[22] According to the trial court, it did not consider Land Bank's and the Provincial Adjudicator's valuation because they are "grossly very low, confiscatory and did not take into consideration that the property is very near the commercial center of the city and subdivision in the vicinity."[23]

The commissioner's use of both the Market Data Approach, which is the measure of the supply and demand conditions of real estate in the market, and the Capitalized Income Approach, which is the method used to extract the investment or income potential of the property, was noted by the trial court.[24] In the commissioner's opinion, the average of the two approaches "reasonably represented the just compensation [of the subject properties]."[25]

Considering all the factors for the determination of just compensation enumerated in Republic Act No. 6657, the trial court ruled that the commissioner's valuation gave a more realistic appraisal of the property.[26] On the other hand, Land Bank's and the Provincial Adjudicator's valuations were unrealistically low.[27]

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[21] *Id.* at 61.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 61 and 64.

[25] *Id.* at 64.

[26] *Id.* at 65.

[27] *Id.*

In August 2005, Land Bank and the Department of Agrarian Reform filed a Petition for Review[28] of the trial court's Decision with the Court of Appeals. They claimed that the just compensation fixed by the trial court was a clear violation of Republic Act No. 6657 and its implementing rules, particularly Department of Agrarian Reform Administrative Order No. 5, Series of 1998, "as well as the jurisprudential principles laid down by the Supreme Court in the case of *[Land Bank of the Philippines v. Spouses Banal]*."[29] They continued to claim that the court's reliance on the appraisal report of Cuervo Appraisers, Inc. was a serious error since it was a violation of Administrative Order No. 5.[30] According to them, nothing in Section 17 of Republic Act No. 6657 provides that "capitalized income of a property can be used as basis in determining just compensation."[31]

Land Bank and the Department of Agrarian Reform further insist that this Court was explicit in stating that the "actual use and income of a property at the time of its taking by the government shall be considered as the basis in determining just compensation."[32] Thus, they claim that the use of capitalized income as a basis for valuation is a modification of the valuation factors in Republic Act No. 6657.[33] Moreover, the trial court failed to consider that the taking of private property for purposes of agrarian reform is not a traditional exercise of the power of eminent domain. Citing *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform,*[34] Land Bank pointed out that there is a "revolutionary kind of expropriation."[35]

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[28] *Id*. at 67-97.

[29] *Id*. at 80-81.

[30] *Id*. at 81.

[31] *Id*. at 86.

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

[33] *Id*. at 87.

[34] *Association of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777 (1989) (Per *J*. Cruz, *En Banc*].

[35] *Id*. at 819.

In his Comment, Alfonso argued that "the determination of just compensation . . . is an exclusive judicial function."[36]

On July 19, 2007, the Court of Appeals set aside the trial court's Decision and ordered the cases to be "remanded to the court of origin for proper determination of just compensation."[37] The Court of Appeals found it imperative to set aside the trial court's Decision for its failure to observe the procedure under Department of Agrarian Reform Administrative Order No. 5, Series of 1998, and its guidelines.[38]

Alfonso filed a Motion for Reconsideration of the Court of Appeals Decision.[39] This was denied in a Court of Appeals Resolution dated March 4, 2008.[40]

Hence, this Petition was filed.

The sole issue is whether the Court of Appeals erred in ruling that adherence to Administrative Order No. 5 in determining just compensation in agrarian reform cases is mandatory, and therefore, binding on the Regional Trial Court.

Petitioner Alfonso argues that:

> It would certainly be inequitable to determine just compensation based on the guideline provided by [the Department of Agrarian Reform Administrative Order No. 5, Series of 1998] without giving merits to the trial court's due consideration to the factors enunciated by Section 17 of [Republic Act No. 6657] and several factors . . . including the documentary exhibits, testimonial evidence of all the parties . . ., the well-balanced appraisal made by the duly appointed commissioner, [and the suggested valuation of both parties.]"[41]

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[36] *Rollo,* p. 105.

[37] *Id.* at 31.

[38] *Id.*

[39] *Id.* at 34.

[40] *Id.* at 35.

[41] *Id.* at 15.

Petitioner Alfonso also argued that the determination of just compensation is a judicial function.[42] Related decrees, circulars, and executive or administrative orders serve merely as guiding posts in the determination of just compensation.[43] Imposing upon the court strict observance of these acts would be an encroachment on the court's judicial powers.[44]

Respondent Land Bank argued in its Comment that petitioner Alfonso raised questions of fact, which this Court cannot properly consider because this Court is not a trier of facts. Therefore, the Petition should be dismissed.[45]

Meanwhile, respondent Department of Agrarian Reform argued in their Comment that the trial court's use of the Market Data Approach was a total defiance of Section 17 and Administrative Order No. 5.[46] The trial court "is not at liberty to disregard the same."[47]

In my view, the Court of Appeals erred in ruling that the courts are mandated to adhere to the parameters set in Section 17 of Republic Act No. 6657 and in the Department of Agrarian Reform Administrative Order No. 5, Series of 1998.

I

In *Export Processing Zone Authority v. Dulay*,[48] this Court declared a law[49] which provided for a specific method of valuation as unconstitutional, stating clearly that:

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[42] *Id*. at 17.

[43] *Id*.

[44] *Id*.

[45] *Id*. at 136-139.

[46] *Id*. at 156.

[47] *Id*.

[48] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per *J*. Gutierrez, Jr., *En Banc*].

[49] Presidential Decree No. 1533 (1978), Section 1. In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be recluded from looking into the "just-ness" of the decreed compensation.[50]

This doctrine was further reiterated in *National Power Corporation v. Spouses Baylon*:[51]

The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. *As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government.* " Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.[52] (Emphasis supplied)

Provisions in the Bill of Rights do not simply inform Congress and the President as to the limits of their powers. They contain substantive individual and collective rights which can be invoked in a proper case against a law or an executive issuance.

The right to property is protected by several layers under the present Constitution.

The first is the due process clause. Article III, Section 1 of the Constitution provides that "[n]o person shall be deprived

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by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property.

[50] *Id*. at 326.

[51] 702 Phil. 491 (2013) [Per *J*. Del Castillo, Second Division].

[52] *Id*. at 500.

of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."[53]

The second is on the right to just compensation. Article III, Section 9 of the Constitution states that "[p]rivate property shall not be taken for public use without just compensation."[54]

The constitutional provision relating to agrarian reform also recognizes the landowner's right to just compensation. Article XIII, Section 4 states:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and *subject to the payment of just compensation.* In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.[55] (Emphasis supplied)

Republic Act No. 6657[56] reiterates this right of the affected landowner to just compensation:

> Section 2. *Declaration of Principles and Policies.* –
>
> . . . . . .
>
> To this end, a more equitable distribution and ownership of land, *with due regard to the rights of landowners to just compensation* and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

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[53] CONST., Art. III, Sec. 1.

[54] CONST., Art. III, Sec. 9.

[55] CONST., Art. XIII, Sec. 4.

[56] Comprehensive Agrarian Reform Law (1988).

The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and *subject to the payment of just compensation.* The State shall respect the right of small landowners, and shall provide incentives for voluntary land-sharing. (Emphasis supplied)

II

Regional Trial Courts are not rubber stamps of the Executive.

I agree with Justice Carpio that reading the law in its entirety will also lead to the same conclusion as to what is constitutionally required.

Republic Act No. 6657 as amended by Republic Act No. 7881,[57] 7905,[58] 8532,[59] and 9700[60] explicitly provides under Section 57:

Section 57. Special Jurisdiction – The Special Agrarian Courts shall have ***original and exclusive jurisdiction*** over all petitions ***for the determination of just compensation to landowners*** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act. (Emphasis supplied)

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[57] An Act Amending Certain Provisions of Republic Act No. 6657 (1995).

[58] An Act to Strengthen the Implementation of the Comprehensive Agrarian Reform Program, and for Other Purposes (1995).

[59] An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP), By Providing Augmentation Fund Therefor, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as "The CARP Law of 1988" (1998).

[60] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise, Known as the Comprehensive Agrarian Reform Program Law of 1988, As Amended, and Appropriating Funds Therefor (2009).

Regional Trial Courts sitting as Special Agrarian Courts have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. The jurisdiction is original. Petitions must be initiated in the Special Agrarian Court. The jurisdiction is also exclusive. No other court may exercise original jurisdiction over these cases.[61]

A statute should be read in its entirety. This provision of Republic Act No. 6657 as amended must also be read with Section 16(f) which provides that:

> Section 16. For purposes of acquisition of private lands, the following procedures shall be followed:
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> (a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof . . .
>
> (b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.
>
> (c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government . . .
>
> (d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice . . .
>
> (e) Upon receipt by the landowner ofthe corresponding payment or, in case of rejection or no response from the landowner,

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[61] See *Ong v. Parel*, 240 Phil. 734, 742-743 (1987) [Per *J.* Gutierrez, Jr., Third Division] and the Separate Concurring Opinion of Leonen in *Limkaichong v. Land Bank of the Philippines*, G.R. No. 158464, August 2, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf > [Per *J.* Bersamin, *En Banc*].

upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) *Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.* (Emphasis supplied)

The key word in the statute is *"final."* Regional Trial Courts acting as a Special Agrarian Court or SAC can make a binding decision regarding land value in the exercise of its judicial discretion. The Regional Trial Court is not seen merely as an appellate court for the Department of Agrarian Reform's determination of just compensation.

Section 57 of Republic Act No. 6657 must also be read with Section 50, the provision which outlines the scope the Department of Agrarian Reform's jurisdiction over agrarian matters:

Section 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with ***the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform*** except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). (Emphasis supplied)

The law grants the Department of Agrarian Reform primary administrative jurisdiction over agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform. Agrarian disputes are defined under Section 3(d) of Republic Act No. 6657:

SECTION 3. Definitions. —

. . . . . .

(d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

As defined, an agrarian dispute includes "any controversy relating to compensation" between a landowner to a farmer, or between the landowner to a tenant, or between a landowner to an agrarian refonn beneficiary. This definition does not include any conflict on compensation between the landowner *and the state.*

Under the agrarian reform program, two kinds of compensation take place. The first is just compensation, which must be paid to the landowner by the state upon the taking of the land. The second is compensation that may be paid by agrarian reform beneficiaries who acquire ownership of the land through certificate of land ownership awards. Section 3 (d) of Republic Act No. 6657 only refers to the second kind of compensation. All matters relating to just compensation by the state to the landowners remains under the exclusive and original jurisdiction of the trial court acting as a Special Agrarian Court. To rule otherwise would run counter not only to the clear and unambiguous provision of Section 57, but also to the constitutional right to just compensation.[62]

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[62] *See* Separate Concurring Opinion of J. Leonen in *Limkaichong v. Land Bank of the Philippines,* G.R. No. 158464, August 2, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf > [Per *J.* Bersamin, *En Banc*].

In *Land Bank of the Philippines v. Court of Appeals*,[63] this Court noted that:

> It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." ***This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions.*** Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid.[64] (Emphasis supplied)

An examination of the statutory provision as well as the holding in *Land Bank of the Philippines v. Court of Appeals* leads to the conclusion that full and final discretion to determine whether compensation is just is strictly within the ambit of the trial court sitting as a Special Agrarian Court.

The Regional Trial Court makes this determination in its first instance.

There is no point in bringing the issue of just compensation from the Department of Agrarian Reform to the trial court if the latter is merely expected to perfunctorily apply fixed rules and formulas. Issues of just compensation reaching the courts from the Department of Agrarian Reform should not become mere questions of application of the law and administrative rules rather than a continuing interpretation of what the Constitution requires in every case.

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[63] *Land Bank of the Philippines v. Court of Appeals*, 376 Phil. 252 (1999) [Per *J.* Bellosillo, Second Division]; Also cited in *Land Bank of the Philippines v. Montalvan*, 689 Phil. 641 (2012) [Per *J.* Sereno, Second Division].

[64] *Id*. at 262-263.

III

Valuation cannot be exactly prescribed in law or in an executive issuance. It depends on the unique situation of every parcel of land to be taken for purposes of agrarian reform.

Just compensation must be determined based on the fair market value of the property at the time of the taking. Thus, in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform:*[65]

> The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property.[66]

This market value is often arrived at through compromise between the buyer and the seller.[67] Factors affecting market value include the "time and terms of sale, relationship of the parties involved, knowledge [and evaluation] concerning the rights to be conveyed, present and possible potential uses to which the property may be put, and the immediate transferability of good and marketable title."[68]

Just compensation also refers to "the full and fair equivalent of the property taken from its owner by the expropriator."[69] It

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[65] *Association of Small Landowners v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777 (1989) [Per J. Cruz, *En Banc*].

[66] *Id*. at 818 citing *J.M. Tuason & Co. v. Land Tenure Administration,* 142 Phil. 393 (1970) [Per J. Fernando, Second Division].

[67] 1 STUDIES ON AGRARIAN REFORM ISSUES, Institute of Agrarian Studies, College of Economics and Management, University of the Philippines-Los Baños, Laguna *citing* Found 14 (1974).

[68] 1 STUDIES ON AGRARIAN REFORM ISSUES, Institute of Agrarian Studies, College of Economics and Management, University of the Philippines-Los Baños, Laguna *citing* Ring (1970).

[69] *Association of Small Landowners v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777, 812 (1989) [Per J. Cruz, *En Banc*] citing *Manila Railroad Co. v. Velasquez,* 32 Phil. 286 (1915) [Per J. Trent, *En Banc*]. See also

is the "equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating authority."[70] In other words, the measure of just compensation "is not the taker's gain but the owner's loss."[71]

Loss is not exclusive to physical loss of expropriated property. The property may be generating income. The income generated or may be generated must also be considered in determining just compensation. We explained in *Apo Fruits Corporation v. Land Bank of the Philippines*[72] that:

> The owner's loss . . . is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived;

National Power Corporation v. Ileto, 690 Phil. 453 (2012) [Per J. Brion, Second Division].

[70] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 319 (1987) [Per J. Gutierrez, Jr., *En Banc*] citing *Municipality of Daet v. Court of Appeals*, 182 Phil. 81, 96 (1979) [Per J. Guerrero, First Division].

[71] *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 812 (1989) [Per J. Cruz, *En Banc*] *citing Province of Tayabas v. Perez*, 66 Phil. 467 (1938) [Per J. Diaz, *En Banc*]; *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per J. Fernando, Second Division]; *Municipality of Daet v. Court of Appeals*, 182 Phil. 81 (1979) [Per J. Guerrero, First Division]; *Manotok v. National Housing Authority*, 234 Phil. 91 (1987) [Per J. Gutierrez, Jr., *En Banc*]. See also *National Power Corporation v. Ileto*, 690 Phil. 453 (2012) [Per J. Brion, Second Division].

[72] *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251 (2010) [Per J. Brion, *En Banc*].

interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.[73]

Other factors that may be considered in judicial valuation of property are the "assessed value of the property,"[74] the "schedule of market values [as] determined by the provincial or city appraisal committee,"[75] and the "nature and character of the [property] at the time of its taking."[76]

In *Land Bank of the Philippines v. Orilla,*[77] this Court clarified that just compensation is not only about the correctness of the valuation of the property. Prompt payment is equally important, thus:

> The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[78]

In *Apo Fruits,* we characterized the purpose of qualifying the word, "compensation," found in Article III, Section 9 of the Constitution:

> It is not accidental that Section 9 specifies that compensation should be "just" as the safeguard is)here to ensure a balance – property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of

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[73] *Id*. at 276-277.

[74] *National Power Corporation v. Ileto,* 690 Phil. 453, 477 (2012) [Per *J.* Brion, *En Banc*].

[75] *Id*.

[76] *Id*.

[77] *Land Bank of the Philippines v. Orilla,* 578 Phil. 663 (2008) [Per *J.* Nachura, Third Division].

[78] *Id*. at 677.

property causes through compensation for what is taken, ***value for value.***

> Nor is it accidental that the Bill of Rights is interpreted liberally in favor of the individual and strictly against the government. The protection of the individual is the reason for the Bill of Rights' being; to keep the exercise of the powers of government within reasonable bounds is what it seeks.[79]

Further, we explained in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*[80] that "[t]he word 'just' is used to intensify the meaning of the word 'compensation' to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample."[81]

Compensation cannot be just if its determination is left to the discretion of one of the parties to the expropriation proceeding. It is even more unjust if the court's discretion to determine just compensation is removed. We noted in *National Power Corporation v. Ileto*[82] that "[t]he 'just'-ness of just compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property . . . . [T]he determination of just compensation cannot be left to the self-serving discretion of the expropriating agency."[83]

The role of the Department of Agrarian Reform as an implementing agency in agrarian reform cases is to represent the state as the buyer of properties for distribution to farmers. The landowner is the seller. The procedure for the acquisition of properties to be distributed as part of the agrarian reform program allows the parties to negotiate on the valuation of the

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[79] *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251, 269-270 (2010) [Per *J.* Brion, *En Banc*].

[80] 256 Phil. 777 (1989) [Per *J.* Cruz, *En Banc*].

[81] *Id.* at 812 citing *City of Manila v. Estrada*, 25 Phil. 208 (1913) [Per *J.* Trent, First Division]

[82] 690 Phil. 453 (2012) [Per *J.* Brion, *En Banc*].

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

property. As the buyer, the Department of Agrarian Reform is expected to ensure that the government can purchase the property at the lowest possible price. It would be inequitable if the Department of Agrarian Reform, as the buyer, is allowed to dictate through its issuances the means by which the landowner's property would be valuated.

The policy of the State to promote social justice is not a justification for the violation of fundamental rights. In *Apo Fruits Corporation v. Land Bank of the Philippines*,[84] we emphasized:

> [S]horn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the **purchase** by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values – the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. . . . **in the value-for- value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.**[85] (Emphases supplied)

I agree with the trial court that:

> [I]n the pursuit of social justice, it's not only the attainment of the goal of totally emancipating the farmers from their bondage but it is also necessary that in the pursuit of this objective, vigilance over the right of the landowners is equally important because social justice cannot be invoked to trample on the rights of property owners, who under our Constitution and laws, are also entitled to protection.[86]

The Department of Agrarian Reform Administrative Order No. 5, Series of 1998, acknowledges that properties have

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[84] 647 Phil. 251(2010) [Per *J.* Brion, *En Banc*].

[85] *Id*. at 275-276.

[86] *Rollo,* p. 65.

particularities that must be considered in determining just compensation. It also acknowledges the inexactness of land valuation as well as the human qualities required in its determination. Notably, its Prefatory Statement provides that just compensation:

> [C]annot be an absolute amount disregarding particularities of productivity, distance to the marketplace **and so on**. Hence, land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it."[87] (Emphasis supplied)

Understandably, therefore, Section 17 of Republic Act No. 6657, which contains only a finite enumeration of variables to be considered in determining compensation, is characterized as mere "guidance on land valuation."[88]

The law is not particularly exacting on equating just compensation with the economic value of the land. The administrative agencies that were assigned the task of evaluating the value of the land missed several important factors. For instance, Administrative Order No. 5, though more specific than Section 17 of Republic Act No. 6657, does not capture all factors necessary to comply with the constitutional mandate of just compensation.

The Department of Agrarian Reform considers the following formula in determining just compensation:[89]

LV = (CNI x 60%) + (CS x 30%) + (MV x 10%)

Where:

LV	=	Land Value
CNI	=	Capitalized Net Income
CS	=	Comparable Sales

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[87] DAR Adm. O. No. 5 (1998).

[88] DAR Adm. O. No. 5, Sec. I(E).

[89] DAR Adm. O. No. 5, Sec. II(A). This section provides for contingency formulae in case one of the factors in the equation is unavailable.

MV	=	Market Value per Tax Declaration

The first component in the formula is ***Capitalized Net Income***.[90] This refers to the difference between annual gross sales and the total cost of operations capitalized at the interest rate of 12%. This is the closest approximation of the **productivity** of the land.[91] The annual gross product of the land is multiplied by the average annual selling price. The cost of operation is subtracted from this amount to obtain the ***Net Income***. Net income is divided by the interest rate to arrive at the ***Capitalized Net Income***. In formula terms:

CNI= [(AGP x SP)-co] 12%

Where:

CNI	=	Capitalized Net Income
AGP	=	Annual Gross Product
SP	=	Selling Price
CO	=	Cost of Operation
12%	=	Interest Rate

However, ***Capitalized Net Income*** in the Department of Agrarian Reform's formula does not account for the discounted future income stream or the "net present value." This is important because when a landowner lets go of his property, he is not only letting go of income for a year, but he is also letting go of future income. It is possible that this is one major factor why landowners feel that the Department of Agrarian Reform or Land Bank assessment of just compensation is severely undervalued.

The second component is ***Comparable Sales***.[92] This component examines prices of sales transactions of other parcels

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[90] DAR Adm. O. No. 5, Sec. 11(B).

[91] D.G. ROSSITER, ECONOMIC LAND EVALUATION: WHY AND HOW 7 (1995) < http://citeseerx.ist.psu.edu/viewdocdownload? doi= 10.1.1.3.384&rep=rep1&type=pdf > (visited November 15, 2016).

[92] DAR Adm. O. No. 5, Sec. II(C).

of land within the same *barangay* that have the same land use and topography. The Department of Agrarian Reform guidelines recommend the average of at least three comparable sales transactions.

The problem with this is that they cannot fully account for the fact that prices per unit of land fluctuate with the size of the total parcel.[93] The Department of Agrarian Reform also did not give guidelines stating that similar land transactions should be alike in population density as well as the accessibility of the property in terms of road networks and commercial centers.[94] The requirement that it should be from the same *barangay* is less important than land use, population density, and accessibility factors.[95] A more comparable land transaction might be situated in a different province, which would be a better basis than a land transaction in the same *barangay* where the property has different intrinsic and extrinsic land conditions. This is a noticeable gap in the formula considering that land size, population density, and accessibility are highly influential factors in price-setting.

The Department of Agrarian Reform's issuance merely provides for sub-factors or substitutes in the event of insufficient data for comparable sales: first, the *acquisition cost* of the property; and second, the *market value based on mortgage.*

The inclusion of acquisition cost in the computation is in keeping with Section 17 of Republic Act No. 6657. On the other hand, market value based on mortgage refers to the appraised value in a mortgage contract if the property is mortgaged under certain conditions. Market value based on mortgage is used only to a limited extent.

Despite the perception that the Department of Agrarian Reform's rules and regulations try to capture the determinants

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[93] *Agricultural Land Values,* STUDIES ON AGRARIAN REFORM ISSUES 81 (1991).

[94] *Id.* at 92-93.

[95] *Id.* at 81.

enumerated under Republic Act No. 6657, most of the critical land attributes including productivity, acquisition cost, location, and accessibility factors are only *indirectly* corporated.[96]

Moreover, the assigned weights to the factors included in the Department of Agrarian Reform formula are static. Understandably, these are thought of as "control mechanisms to prevent manipulation."[97] However, there is still room for manipulation in the formula itself. For instance, the administrative agency is still given the choice of what land transactions to include in comparable sales.

We noted in *Export Processing Zone Authority v. Dulay*[98] that:

> [I]n estimating the market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in the time and the use to which it is then applied by the owner. All the facts as to the condition of the property and its surroundings, its improvements and capabilities may be shown and considered in estimating its value.[99]

Market value is not fully determined in the Department of Agrarian Reform's formula.

For agricultural land valuation, many other factors may be considered.[100]

For instance, land attributes are important. In some areas, smaller parcels of land may be more costly than larger parcels. Land value per unit of land may decrease as the area of the total land area increases. Topography also matters. Flatlands

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

[97] *Id*. at 88.

[98] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per *J*. Gutierrez, Jr., *En Banc*].

[99] *Id*. at 319 citing *Garcia v. Court of Appeals*, 190 Phil. 518 (1981) [Per *J*. Fernandez, First Division].

[100] *Agricultural Land Values*, STUDIES ON AGRARIAN REFORM ISSUES 19-21 (1991).

for specific crops may be more valuable than those that are sloping or are located in higher terrain. Soil types affect price given the kinds of crops planted in the land. The improvements already existing in the land or surrounding it should also be considered. There can already be access to infrastructure like farm to market roads as well as irrigation. The alternative uses of the property other than for agriculture should also be considered.

A study of agricultural land transactions in the 1980s in Regions IV and IX showed the most significant factors affecting land values: topography, land size, value of improvements, population density, influence of agrarian reform, gross farm income, personal income, and locational/accessibility factors.[101]

Particularities relating to these factors cannot be addressed using only fixed parameters and formulas. The variables that affect the fair market value of a specific property can only be determined on a case-to-case basis. Each property varies in particularities that may or may not affect its value.

We cannot declare that the variables enumerated in the law are already exhaustive. It is not beyond imagination that other variables and variable relationships exist, which, due to the limited information about the particular circumstances of each case, remain undiscovered and unconsidered by the Department of Agrarian Reform. Both the law and the Department of Agrarian Reform, with their consistent revisions of formulations for valuation of land to be expropriated for agrarian reform, attest to this.

Only by considering all relevant factors can just compensation be most closely approximated, and therefore, the fundamental rights of landowners be upheld. Proper valuation of properties is a result of a complex interaction of variables, which may not be encompassed in a single formula. No single formula guarantees a fair property valuation. However, this does not mean that valuation or just compensation cannot be determined.

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[101] *Id*. at 51-55.

This is precisely why the final determination is to be done by a court of law. The judge receives a report from commissioners that were appointed following the procedure outlined in the Rules of Court.[102] The commissioners deliberate on the required valuation given the peculiarities of the property in question.

Hence, the trial court cannot be said to have erred when, in determining the just compensation for the subject properties, it adopted an approach different from what was laid out in Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 05, Series of 1998. According to the trial court, its valuation was based on the evidence submitted by both petitioner Alfonso and respondents Land Bank and Department of Agrarian Reform, the report of the appointed commissioner, the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits of the land to the community, the Bureau of Internal Revenue zonal values, the assessor's schedule of market values, and community facilities and utilities in the area.

The trial court's adoption of the average of the Market Data Approach and Capitalized Income Approach in computing the just compensation for the subject properties was an exercise of discretion necessary in the performance of its judicial function.

Having considered the indicators available and deemed as relevant, the trial court did not arbitrarily arrive at a valuation. What the court did was to exercise its duty to determine just compensation in accordance with the available data. It cannot, therefore, be set aside for not adhering to the Department of Agrarian Reform's fixed formula without impairing judicial functions.

Moreover, we have to recognize that the administrative determination of land value will never be perfected, and not all landowners will settle for the administratively determined offer. Due to the particularities of each case, disagreement as to the valuation of land between the landowner and the expropriator will always exist.

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[102] REVISED RULES OF CIVIL PROCEDURE, Rule 67.

The judicial determination of just compensation is there to break bargaining deadlocks between buyer and seller when these administrative formulations cannot be modified fast enough to accommodate the exigencies of the situation. Judicial determination will provide more flexibility in order to achieve the ideal where government, as buyer, will pay without coercion, and the landowner, as seller, will accept without compulsion.

Interpreting Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5 as mandate to the courts is tantamount to underrating the effect of each property's peculiarities. To sanction disregard of these particularities endangers the right of landowners to just compensation. It is even inconsistent with the Prefatory Statement of Administrative Order No. 5, which emphasizes the role of these particularities in the proper determination of just compensation.[103]

IV

At present, the judiciary's role as guardian of and final arbiter over transgressions of fundamental rights remains. The judiciary cannot effectively exercise such a role if its powers with respect to the determination of just compensation is restricted by laws and issuances dictating how just compensation should be determined.

We must, therefore, abandon our rulings in *Land Bank of the Philippines v. Spouses. Banal*[104] and *Land Bank of the Philippines v. Celada*[105] that executive and legislative issuances providing for the proper determination of just compensation must be adhered to by the courts. Mandating strict adherence to these executive and legislative issuances is not only tantamount to an unwarranted abdication of judicial authority, it also

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[103] DAR Adm. O. No. 5 (1998), Sec. 1(D).

[104] 478 Phil. 701 (2004) [Per *J.* Sandoval-Gutierrez, Third Division].

[105] 515 Phil. 467 (2006) [Per *J.* Ynares-Santiago, First Division].

endangers rights against undue deprivation of property and to just compensation.

The policies adhered to by the executive branch may also change with every election period. It would be unwise to mandate that the courts follow a single formula for determining just compensation considering that the current formula of the Department of Agrarian Reform can just as easily be discontinued by another administration.

While this case should be remanded to the Special Agrarian Court for the determination of just compensation, the court should be allowed to deviate from the Department of Agrarian Reform's formulas if it finds a different method of valuation based on the evidence presented.

Accordingly, I vote to remand Civil Case No. 2002-7073 and Civil Case No. 2002-7090 to the Special Agrarian Court for the determination of just compensation.

DISSENTING OPINION

VELASCO, JR., *J.*:

The instant case involves Department of Agrarian Reform (DAR) Department Administrative Order No. 05-s. 1998 (DAO No.5), which provides for a formula in the computation for just compensation that is due to a landowner. The core issue is whether or not the DAR-crafted formula is mandatory on the Regional Trial Court (RTC), acting as a Special Agrarian Court (SAC). While jurisprudence on the matter is not consistent, the pre-dominant holding has been that the application of the formula is mandatory. However, this dictum should now be revisited, in consonance with the postulate that the determination of just compensation is basically a judicial function.

The Facts

The case started when the government, through the DAR, sought to expropriate two (2) parcels of land in San Juan,

Sorsogon City under RA 6657,[1] otherwise known as the Comprehensive Agrarian Reform Law (CARL). The land was originally registered in the name of Cynthia Palomar (Palomar) under Transfer Certificate of Title (TCT) Nos. T-21136 and T-23180 consisting of 1.6350 and 26.2284 hectares, respectively.

Palomar rejected the initial valuation of PhP36,066.27 and PhP792,869.06, respectively, made by the DAR and the Land Bank of the Philippines (LBP) in accordance with Sec. 17 of RA 6657 and DAO 11, s. of 1994, as amended by DAO No.5. She appealed the valuations thus made to the Provincial Adjudication Board of the DAR in Sorsogon (PARAD), docketed as Land Valuation Case No. 68-01 for TCT No. T-21136 and Land Valuation Case No. 70-01 for TCT No. T-23180. On April 16, 2001, Palomar sold the subject lots to petitioner Ramon Alfonso (Alfonso).

In separate decisions both dated June 20, 2002[2] the PARAD made a valuation of the parcels of land of PhP103,955.66 and PhP2,314,115.73, respectively, applying this formula: Land Value = (Capitalized Net Income multiplied by 0.9) plus (Market Value per tax declaration multiplied by 0.1).

From the PARAD decisions, both parties initiated complaints with the RTC of Sorsogon City, Branch 52, SAC, the first docketed as Civil Case No. 2002-7090 filed by Palomar and Alfonso, and the other, Civil Case No. 2002-7073, filed by the LBP.

For their part, Palomar and Alfonso claim that the PARAD valuation did not take into account the following: (a) actual number of trees planted therein, *i.e.,* coconut and other fruit and non-fruit bearing trees; (b) other improvements that were introduced on the properties; and (c) their proximity to the

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[1] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES.

[2] *Rollo,* pp. 51-53; 36-38.

commercial centers and establishments, roads and other value enhancing structures and facilities.

The LBP, on the other hand, insisted on the correctness of its valuation in light of the provisions of DAO No. 11, s. of 1994, as amended by DAO No. 5, s. of 1998.

The court-appointed commissioner tasked to render a report on the just compensation for the covered parcels used both a Market Data Approach (MDA) and Capitalized Income Approach (CIA) in determining the correct value for the subject lands. In the MDA, the valuation is primarily based on sales and listing of comparable properties in the neighborhood adjusted for time of sale, locations and general characteristics of the properties. The CIA, on the other hand, is based on the potential net benefit that may be derived from the ownership of the property.

Thereafter, the SAC rendered a consolidated decision dated May 13, 2005[3] fixing the valuation of the properties at PhP442,830.00 for the land covered by TCT No. T-21136 and PhP5,650,680.00 for the lot covered by TCT No. T-23180. In arriving at such valuation, the SAC, stressing that the matter of valuation is a judicial function, wrote:[4]

> After a thorough study of the indications, and considering all factors relating to the market conditions of the subject property and its neighboring area we are of the opinion that the average of the two indications (MDA and CIA) reasonably represented the just compensation (fair market value) of the land with productive coconut trees.
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> R.A. 6657 provides that "In determining just compensation, the cost of acquisition of the land, the current value of like property, the sworn valuation by the owner, the tax declarations and assessments and the assessments made by government assessors shall be considered. The social and economic benefits contributed by the farmers and farmworkers and by the government to the property as well as the

[3] *Id*. at 58-66.

[4] *Id*. at 64-66.

non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine valuation."

Considering all these factors, the valuation made by the Commissioner and the potentials of the property, the Court considers that the valuation of the Commissioner as the more realistic appraisal which could be the basis for the full and fair equivalent of the property taken from the owner while the Court finds that the valuation of the Petitioner Land Bank as well as the Provincial Adjudicator of Sorsogon in this particular parcels of land for acquisition are unrealistically low.

The provisions of Section 2, Executive Order No. 228 are not binding upon the Courts. Determination of just compensation is a judicial prerogative. Section 2, EO No. 228, however, "may serve merely as a guiding principle or one of the factors in determining just compensation, but may not substitute the Court's own judgment as to what amount should be awarded and how to arrive at such amount." (Republic vs. Court of Appeals, G.R. 74331. March 25, 1988)

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WHEREFORE, premises considered, judgment is hereby rendered:

1. Fixing the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS (PhP442,830.00), Philippine currency for Site 1 with an area of 16,530 sq.m. covered by TCT No. T-21136 situated at San Juan, Sorsogon City and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY (PhP5,650,680.00) Philippine currency for Site 2 with an area of 262,284 sq. m. covered by TCT Bi. T-23180 situated in Bibincahan, Sorsogon City or a total amount of SIX MILLION NINETY THOUSAND PESOS (PhP6,090,000.00) for the total area of 278,814 sq. m. in the name of Cynthia Palomar/Ramon M. Alfonso which property was taken by the government pursuant to the Agrarian Reform Program of the government as provided by R.A. 6657.

2. Ordering the Petitioner Land Bank of the Philippines to pay the Plaintiff/Private Respondent the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS (PhP442,830.00) and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX

HUNDRED EIGHTY (PhP 5,650,680.00) or the total amount of SIX MILLION NINETY THOUSAND PESOS (PhP6,090,000.00), Philippine currency for Lots 1604 and 2161 respectively, in the manner provided by R.A. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the private respondents from the Petitioner Land Bank of the Philippines as part of the just compensation.

3. Without pronouncement as to costs.

SO ORDERED.

Therefrom, the LBP and the DAR appealed to the Court of Appeals (CA), which, by Decision dated July 19, 2007[5] found for the appellants, thus:[6]

For failure to observe the procedure provided in DAR A.O. No. 5, series of 1998 and the guidelines therein, this Court finds it imperative to set aside the assailed decision of April 13, 2005 and REMAND the case to the trial court for proper determination of just compensation.

WHEREFORE, in view of the foregoing, both petitions are GRANTED. The decision of Branch 52, Regional Trial Court of Sorsogon City dated April 13, 2005 in Civil Cases [sic] Nos. 2002-7073 and 2002-7090 is SET ASIDE. Both cases are hereby REMANDED to the court of origin for proper determination of just compensation.

SO ORDERED.

Hence, the instant petition.

The issue posed in the instant petition is whether the SAC erred in assigning to the expropriated lots values under a formula not strictly following that set forth in DAO No. 5. The *ponencia* would deny the petition and affirm the appealed ruling of the CA, remanding the case to the SAC for the proper determination

[5] *Id*. at 24-32. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza.

[6] *Id*. at 31.

of just compensation in accordance with the formula provided by DAO No. 5.

With all due respect, I beg to disagree.

Discussion

The jurisdiction of the SACs to determine just compensation is original and exclusive under Sec. 57 of the CARL[7]

The jurisdiction bestowed by Congress to the SACs to entertain petitions for the determination of just compensation for property taken pursuant to the CARL is characterized as *"original and exclusive."* This could not be any clearer from the language of Sec. 57 of the law, to wit:

> **Section 57.** ***Special Jurisdiction.*** — The Special Agrarian Courts shall have **original and exclusive jurisdiction** over all petitions for the **determination of just compensation to landowners,** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. (emphasis added)

The fundamental tenet is that jurisdiction can only be granted through legislative enactments,[8] and once conferred cannot be diminished by the executive branch. It can neither be expanded nor restricted by executive issuances in the guise of law enforcement. Thus, although the DAR has the authority to promulgate its own rules of procedure,[9] it cannot modify the

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[7] See also Separate Concurring Opinion of Justice Presbitero J. Velasco, Jr. in *Limkaichong v. Landbank of the Philippines,* G.R. No. 158464, August 2, 2016.

[8] *Magno v. People,* G.R. No. 171542, April 6, 2011, citing *Machado v. Gatdula,* G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559; *Spouses Vargas v. Spouses Caminas,* G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin,* G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission,* 229 Phil. 234, 242 (1986).

[9] Sec. 49, RA 6657.

"original and exclusive jurisdiction" to settle the issue of just compensation accorded the SACs. Stated in the alternative, the DAR is precluded from vesting upon itself the power to determine the amount of just compensation a landowner is entitled to, notwithstanding the quasi-judicial powers granted the DAR under Sec. 50 of the CARL, to wit:

> **Section 50.** ***Quasi-judicial Powers of the DAR.*** — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR) x x x.

We clarified in *LBP v. Belista*[10] that further excepted from the coverage of the DAR's jurisdiction, aside from those specifically mentioned in Sec. 50, are petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA 6657, which are within the jurisdiction of the SACs pursuant to Sec. 57 of the law. As held:

> Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. **Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.**

In *Republic v. CA,* the Court explained:

> Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just

[10] G.R. No. 164631, 26 June 2009, 591 SCRA 137, 143-147.

> compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving **the determination of just compensation** and criminal cases for violations of R.A. No. 6657 **as excepted from the plenitude of power conferred on the DAR.** Indeed, there is a reason for this distinction. **The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657)** and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* — we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act. (emphasis added)

Corollary to the above-quoted pronouncement, the rule-making power of the DAR cannot then extend to the determination of just compensation by the SACs. **The DAR cannot promulgate rules to cover matters outside of its jurisdiction**. At best, it can only serve to govern the internal workings of the administrative agency, but definitely cannot control the court proceedings before the SACs.

The original and exclusive jurisdiction of the SACs to determine just compensation is further strengthened by the fact that even without completing the process outlined in Sec. 16 of the CARL, the landowner affected by the taking could immediately seek court action to determine the amount he is entitled to.

In effecting the CARP, the government, through the LBP, makes an initial valuation of the property being taken, which constitutes the initial government offer. Should the landowner reject this offer or otherwise fail to reply, a summary proceeding would ensue. In this proceeding conducted by the DAR, the parties involved, i.e., the landowner and the LBP, submit evidence to justify their claim of the agricultural land's proper valuation. The DAR has thirty (30) days from the date the matter is submitted for decision within which to render a decision. This

framework is outlined under Sec. 16 of the CARP.[11] Its final paragraph reads: *"Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.* "[12]

Thus, from the DAR ruling, the landowner has the option of whether or not to accept or reject the recalibrated offer. Should the landowner refuse the offer still, he or she may file the

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[11] **Section 16.** ***Procedure for Acquisition of Private Lands.*** — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

[12] Sec. 16 (f), RA 6657.

necessary petition for determination of just compensation with the RTC acting as a SAC that has jurisdiction over the property being taken. But as earlier discussed, the administrative procedure before the DAR can be bypassed by the landowner by invoking the original and exclusive jurisdiction of the SACs. The Court has applied this holding in numerous cases summarized in *Heirs of Vidad v. LBP,* to wit:[13]

> In *Land Bank of the Philippines v. Wycoco*,[14] the Court upheld the RTCs jurisdiction over Wycoco's petition for determination of just compensation **even where no summary administrative proceedings was held before the DARAB** which has primary jurisdiction over the determination of land valuation. x x x
>
> In *Land Bank of the Philippines v. Court of Appeals*,[15] the landowner filed an action for determination of just compensation**without waiting for the completion of DARABs re-evaluation of the land.** x x x
>
> In *Land Bank of the Philippines v. Natividad*,[16] wherein Land Bank questioned the alleged **failure of private respondents to seek reconsideration of the DARs valuation,** but instead filed a petition to fix just compensation with the RTC x x x.
>
> In *Land Bank of the Philippines v. Celada*,[17] where the issue was whether the SAC erred in assuming jurisdiction over respondents petition for determination of just compensation **despite the pendency of the administrative proceedings before the DARAB** x x x. (emphasis added)

In the cited cases, the Court invariably upheld the original and exclusive jurisdiction of the SACs over petitions for the determination of just compensation, notwithstanding the seeming failure to exhaust administrative remedies before the DAR.[18]

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[13] G.R No. 166461, April 30, 2010.

[14] G.R. No. 140160, January 13, 2004.

[15] 376 Phil. 252 (1999).

[16] G.R. No. 127198, May 16, 2005.

[17] G.R. No. 164876, January 23, 2006.

[18] Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Limkaichong v. DAR,* G.R No. 158464, August 2, 2016.

More recently, in *LBP v. Montalvan*,[19] therein petitioner argued that the landowner's filing with the SAC of a separate Complaint for the determination of just compensation was premature because the revaluation proceedings in the DAR were still pending. The Court ruled, however, that the pendency of the DAR proceedings could not have ousted the SAC from its original and exclusive jurisdiction over the petition for judicial determination of just compensation since *"the function of fixing the award of just compensation is properly lodged with the trial court and is not an administrative undertaking."*[20]

Thus, even though the landowner was not able to undergo the complete administrative process before the DAR pursuant to Sec. 16 of the CARL, he is not precluded from immediately and directly filing a complaint for just compensation before the SAC. More than being the prevailing interpretation of Sec. 57 of the CARL, this is also in line with the oft-cited ruling that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.[21]

The administrative proceeding before the DAR is merely preliminary and cannot prevail over the judicial determination of just compensation[22]

In contradistinction with the original and exclusive jurisdiction of the SACs under Sec. 57 of the CARL, the valuation process

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[19] G.R No. 190336, June 27, 2012.

[20] *Land Bank of the Philippines v. Montalvan,* G.R. No. 190336, June 27, 2012.

[21] *Id*., citing *Land Bank of the Philippines v. Court of Appeals,* 376 Phil. 252 (1999); and *Land Bank of the Philippines v. Celada,* 515 Phil. 467 (2006).

[22] See *also* Separate Concurring Opinion of Justice Presbitero J. Velasco, Jr. in *Limkaichong v. Landbank of the Philippines,* G.R No. 158464, August 2, 2016.

undertaken by DAR under Sec. 16 of the same law is merely **preliminary** in character. We said as much in *LBP v. Listana*:[23]

In *Republic v. Court of Appeals*, private respondent landowner rejected the government's offer of its lands based on LBP's valuation and the case was brought before the PARAD which sustained LBP's valuation. Private respondent then filed a Petition for Just Compensation in the RTC sitting as [SAC]. However, the RTC dismissed its petition on the ground that private respondent should have appealed to the DARAB x x x. Private respondent then filed a petition for certiorari in the CA which reversed the order of dismissal of RTC and remanded the case to the RTC for further proceedings. The government challenged the CA ruling before this Court via a petition for review on certiorari. This Court, affirming the CA, ruled as follows:

Thus, under the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. **In the terminology of §57, the RTC, sitting as [SAC], has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.**

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from §57 that the original and exclusive jurisdiction

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[23] G.R. No. 168105, July 27, 2011, 654 SCRA 559, 569-571.

to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void. **What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.** (emphasis supplied)

This ruling was reiterated in *LBP v. Montalvan*,[24] to wit:

There is no inherent inconsistency between (a) the primary jurisdiction of the DAR to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all questions involving the implementation of agrarian reform, including those of just compensation; and (b) the original and exclusive jurisdiction of the SAC over all petitions for the determination of just compensation. "The first refers to administrative proceedings, while the second refers to judicial proceedings." The jurisdiction of the SAC is not any less "original and exclusive," because the question is first passed upon by the DAR; as the judicial proceedings are not a continuation of the administrative determination. In *LBP v. Escandor*, the Court further made the following distinctions:

> **It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.**
>
> Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere appellate jurisdiction over just compensation disputes.
>
> We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon

[24] G.R. No. 190336, June 27, 2012, 675 SCRA 380, 393-394.

> by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

The preliminary valuation conducted by the DAR serves very limited purposes, the first of which is the recalibration of the offer to the landowner. The proceeding before the DAR is not for making a binding determination of rights between the parties. Rather, it must be understood as a venue for negotiations between the government and the landowner, allowing the latter to present his counter-offer to the proposed sale, and providing the parties involved with the opportunity to agree on the amount of just compensation.

The other more significant purpose of the valuation is compliance with the deposit requirement to be granted entry into the property. Significantly, the amount deposited should not be confused with the just compensation to be received by the landowner. It merely serves as an assurance to the landowner that he will receive compensation since the deposit, in a way, can be construed as earnest money for the involuntary sale. It is a form of security that payment of just compensation would actually be made thereafter upon court judgment.[25] As explained during the Constitutional Commission deliberations:[26]

MR. REGALADO. It is not correct to state that jurisprudence does not require prior payment. Even the recent presidential decrees of the President always require **a partial deposit of a certain percentage and the rest by a guaranteed payment**. What I am after here is that, as Commissioner Bernas has said, there must at least be an assurance. That assurance may be in the form of a bond which may be redeemable later. But to say that there has never been a situation where prior payment is not required, that is not so even under the

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[25] *City of Manila v. Alegar Corporation*, G.R. No. 187604, June 25, 2012.

[26] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, p. 20; Minutes of the Constitutional Commission dated August 7, 1986.

Rules of Court as amended by presidential decrees. **Even the government itself, upon entry on the land, has to make a deposit and the rest thereafter will be guaranteed under the judgment of a court**, but which judgment, as I have pointed out, is not even realizable by executor process. Does it mean to say that the government can take its own time at determining when the payment is to be made? **At least simultaneously, there should be an assurance in the form of partial payment** in cash or other modes of payment, and the rest thereof being guaranteed by bonds, the issuance whereof should be simultaneous with the transfer. That is my only purpose in saying that there should be prior payment - not payment in cash physically but, at least, contract for payment in the form of an assurance, a guarantee or a promissory undertaking. (emphasis added)

A deposit is likewise required for the government to gain entry in properties expropriated under Rule 67 of the Rules of Court. Sec. 2 of the rule provides that the amount equivalent to the assessed value of the property is deposited, and only from then would the right of the government take possession of the property would commence. The amount deposited, however, is merely an advance to the value of just compensation, which is yet to be determined by the trial court at the second stage of the expropriation proceeding.[27] As such, the amount deposited is not necessarily the amount of just compensation that the law requires. **In the exercise of their judicial functions, the courts still have the final say on what the amount of just compensation will be.**[28]

The same holds true for the taking of private property under RA 6657. In these instances, the government proceeds to take possession of the property subject of the taking, despite the pendency of the just compensation case before the SACs, upon depositing the value of the property as computed by the DAR. Verily, the administrative proceeding before the SACs is a precondition to possess the property but is not necessarily the just compensation contemplated by the Constitution.

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[27] Sec. 5, Rule 67 of the Rules of Court.

[28] *Land Bank of the Philippines v. Escandor*, G.R. No. 171685, October 11, 2010, 632 SCRA 504.

To further highlight the preliminary character of the DAR proceeding, it is noteworthy that DAO No. 5 was not the original issuance on the matter of valuation of expropriated land under RA 6657. The administrative order traces its roots to DAO 6, s. of 1989, or the *Rules and Procedures on Land Valuation and Just Compensation.* DAO 6 relevantly states in its Statement of Policy portion that:

> The final determination of just compensation is a judicial function. However, DAR as the lead implementing agency of the CARP, may **initially determine** the value of lands covered by the CARP. (emphasis supplied)

Although DAO 6 had already been repealed, it bears to reiterate that the land valuation formula presented by the DAR was never intended to control the determination of just compensation by the courts. Recapitulating our pronouncement in *Republic v. Court of Appeals:*[29] "*[w]hat adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.*" The determination of just compensation is, therefore, as it were, a judicial function that cannot be usurped by any other branch of government. **And insofar as agrarian reform cases are concerned, the original and exclusive jurisdiction to determine of just compensation is properly lodged before the SACs, not with the DAR**

There should be no fixed formula in computing for just compensation under the CARL, just as in other forms of expropriation

As a guide to the SACs, Sec. 17 of the CARL enumerates the factors to consider in approximating the amount of just compensation for private agricultural property taken by the government. It reads:

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[29] *Republic v. Court of Appeals,* G.R. No. 122256, October 30, 1996.

Section 17. ***Determination of Just Compensation.*** — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It is conceded that the SACs are bound to consider the above-enumerated factors embodied in Sec. 17 in determining just compensation. Nevertheless, it would be a stretch, if not downright erroneous, to claim that its formulaic translation by the DAR is just as binding on the SACs.

To elucidate, *"just compensation"* is a constitutional limitation to all modalities of the government's exercise of its right of eminent domain, not just in agrarian reform cases.[30] Despite making numerous appearances in various provisions of the

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[30] **Article III. Bill of Rights**

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

Article XII. National Economy and Patrimony

Section 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, **upon payment of just compensation**, transfer to public ownership utilities and other private enterprises to be operated by the Government.

Article XIII. Social Justice and Human Rights

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. In determining retention limits, the State shall respect the right of small

fundamental law, however, **it was the understanding among the members of the Constitutional Commission that the concept of just compensation would, nevertheless, bear the same meaning all throughout the document, and to apply the same rules for all types of expropriation, whether commenced under the CARL or not.**[31] This intent of the framers is evident from the records of, the deliberations specifically bearing on agrarian reform:[32]

MR. CONCEPCION. Thank you.

I think the thrust of the amendment of Commissioner Treñas is that the term **"just compensation"** is used in several parts of the Constitution, and, therefore, it must have a **uniform meaning. It cannot have in one part a meaning different from that which appears in the other portion.** If, after all, the party whose property is taken will receive the real value of the property on just compensation, that is good enough. Any other qualification would lead to the impression that something else other than that meaning of just compensation is used in other parts of the Constitution.

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MR. RODRIGO. I was about to say what Commissioner Concepcion said. I just want to add that the phrase **"just compensation" already has a definite meaning in jurisprudence**. And, of course, I would like to reiterate the fact that "just compensation" here is not the amount paid by the farmers. **It is the amount paid to the owner, and this does not necessarily have to come from the farmer.** x x x

x x x x x x x x x

THE PRESIDENT. Commissioner Regalado is recognized.

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landowners. The State shall further provide incentives for voluntary land-sharing. (emphasis added)

[31] *See also* Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Limkaichong v. DAR*, G.R. No. 158464, August 2, 2016.

[32] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 16-21; Minutes of the Constitutional Commission dated August 7, 1986.

MR. REGALADO. Madam President, I propose an amendment to the proposed amendment of Commissioner Treñas. I support him in his statement that the words **"just compensation" should be used there because it has jurisprudentially settled meaning, instead of putting in other ambivalent and ambiguous phrases which may be misconstrued, especially considering the fact that the words "just compensation" appear in different parts of the Constitution.**However, my proposed amendment would read: "subject to THE PRIOR PAYMENT OF JUST COMPENSATION." x x x

x x x x x x x x x

MR. DAVIDE. If the withdrawal is based on what was supposedly agreed with the Committee, I will still object because we will have the concept of just compensation for the farmers and farm workers more difficult than those in other cases of eminent domain. **So, we should not make a distinction as to the manner of the exercise of eminent domain or expropriations and the manner that just compensation should be paid. It should be uniform in all others** because if we now allow the interpretation of Commissioner Regalado to be the concept of just compensation, then we are making it hard for the farmers and the farm workers to enjoy the benefits allowed them under the agrarian reform policy.

MR. BENGZON. Madam President, as we stated earlier, the **term "just compensation" is as it is defined by the Supreme Court in so many cases and which we have accepted. So, <u>there is no difference between "just compensation" as stated here in Section 5 and "just compensation" as stated elsewhere</u>. There are no two different interpretations.**(emphasis added)

Clearly then, the framers intended that the concept of just compensation in the country's agrarian reform programs be the same as those in other cases of eminent domain. <u>No special definition for "just compensation" for properties to be expropriated under the country's land reform program was reached by the Commission</u>.[33] As settled by jurisprudence, the term "just compensation" refers to the full and fair equivalent

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[33] *Association of Small Landowners in the Philippines v. Hon. Secretary of Agrarian Reform,* G.R. Nos. 78742, 79310, 79744, and 79777, July 14, 1989.

of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[34]

There is then neither rhyme nor reason to treat agrarian reform cases differently insofar as the determination of just compensation is concerned. In all instances, the measure is not the taker's gain, but the owner's loss.[35] The amount of just compensation does not depend on the purpose of expropriation, for compensation should be "just" irrespective of the nobility or loftiness of the public aim sought to be achieved. And as in other cases of eminent domain, "*any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.*"[36] In **all** cases of eminent domain proceedings, there should be no mandatory formula for the courts to apply in determining the amount of just compensation to be paid.

To claim that the courts should apply the DAR formula and should rely on the administrative agency tasked to implement the CARL is to undermine the judicial power of the courts. It is incorrect to claim that the SACs do not have the same expertise the DAR has when it comes to calculating just compensation for agricultural lands. For if an agricultural

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[34] *National Power Corporation v. Spouses Zabala,* G.R. No. 173520, January 30, 2013, citing *Republic v. Rural Bank of Kabacan, Inc.*,G.R. No. 185124, January 25, 2012, 664 SCRA 233, 244; *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* 480 Phil. 470, 479 (2004).

[35] *National Power Corporation v. Spouses Zabala,* G.R. No. 173520, January 30, 2013.

[36] *National Power Corporation v. Bagui* G.R. No. 164964, October 17, 2008, 569 SCRA 401.

land is expropriated under Rule 67 of the Rules of Court instead of the CARL, the courts could still compute the just compensation the landowner is entitled to and need not refer the issue to the DAR.

Consider a parcel of agricultural land subjected to CARL expropriated instead under Rule 67 of the Rules of Court. In either situation, the landowner will be entitled to "just compensation" as understood in its jurisprudentially-settled meaning. However, let us assume that the trial court will apply the DAR formula in the former, while it would exercise a wider latitude of discretion in the latter. Thus, **for the same parcel of agricultural land, the compensation fixed by the trial court under Rule 67 may be totally far off from what would have been considered "just" using the DAR formula**. Since it is allowed to adopt its own valuation method, not constrained to make use of the weighted averages accorded to the various factors for consideration, the discrepancy between two valuations could prove to be significant but **this does not necessarily make the valuation by the court, without applying the DAR formula, "unjust."**

There are limitless approaches towards approximating what would constitute just compensation and there are endless criteria for determining what is "just." As the DAR itself emphatically declares: *"**Land valuation is not an exact science** but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just."*[37] Thus, **while Sec. 17 enumerates the factors to consider in determining just compensation, no mandatory fixed weights should be accorded to them. It is the prerogative of the courts** to assess the significance of these factors in each individual case, and in the process, assign them weights in determining just compensation. It lies within the discretion of the SACs to determine which valuation method to select.

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[37] Paragraph I-D of DAR Administrative Order No. 05-98.

To recall, the concept of just compensation is uniform in all forms of government taking. On this point, it must be borne in mind that Rule 67 of the Rules of Court on Eminent Domain never prescribed any formula for the valuation of taken property. This undeniable fact only goes to show that the trial courts, with the assistance of its appointed commissioners,[38] are competent enough to ascertain the amount of just compensation that the landowner is entitled to without rigidly applying any set formula. **There is then no reason to mandatorily apply a valuation formula for one exercise of eminent domain, but not on the other forms.**

Associate Justice Arturo D. Brion is correct in pointing out that the appointment of commissioners is not mandatory on the SACs. Pertinently, Sec. 58 of the CARL provides:

> **Section 58.** ***Appointment of Commissioners.*** — The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, **may appoint one or more commissioners to examine, investigate and ascertain facts** relevant to the dispute **including the valuation of properties**, and to file a written report thereof with the court. (emphasis added)

This could, however, only serve to strengthen the position that the SACs are not bound to apply DAO No. 5. Notwithstanding the prior ruling of the DAR, what is being resolved by the SAC in the exercise of its original and exclusive jurisdiction is a *de novo* complaint. Therefore, the SACs **may**, in the exercise of its discretion, disregard the valuations by the DAR and proceed with its own examination, investigation, and valuation of the subject property through its appointed commissioners. Plainly, the SACs are not barred from disregarding the prior findings of the DAR and substituting their own valuation in its stead.

Nowhere in the law can it be seen that the court-appointed commissioners are precluded from utilizing their own valuation methods. All RA 6657 requires is that the factors in Sec. 17 be

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[38] Rule 67, Sec. 6 of the Rules of Court.

considered, but not in any specific way. This was the teaching in the landmark case of *Export Processing Zone Authority v. Dulay (Dulay)*[39] wherein the Court held that:

> The determination of "just compensation" in eminent domain cases is a judicial function. **The executive department or the legislature may make the initial determinations but** when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, **no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.** (emphasis added)

Dulay involved an expropriation case for the establishment of an export processing zone. There, the Court declared provisions of Presidential Decree Nos. 76, 464, 794, and 1533 as unconstitutional for encroaching on the prerogative of the judiciary to determine the amount of just compensation the affected landowners were entitled to. The Court further held that, at the most, the valuation in the decrees may only serve as guiding principles or factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[40]

The seminal case of *Dulay* paved the way for similar Court pronouncements in other expropriation proceedings. Thus, in *National Power Corporation v. Zabala*,[41] the Court refused to apply Sec. 3-A of Republic Act No. 6395, as amended,[42] in

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[39] G.R. No. 59603, April 29, 1987.

[40] *EPZA v. Dulay, id.*

[41] G.R. No. 173520, January 30, 2013.

[42] Sec. 3A. x x x

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

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

determining the amount of just compensation that the landowner therein was entitled to. As held:

> x x x The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. **As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.** (emphasis added)

This holding in *Zabala* is not novel and has in fact been repeatedly upheld by the Court in the catena of cases that preceded it. As discussed in *National Power Corporation v. Bagui:*[43]

> Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. **It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function** and that **any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.** (emphasis added)

The very same edict in *Bagui* was reiterated in the cases of *National Power Corporation v. Tuazon*,[44] *National Power Corporation v. Saludares*,[45] and *Republic v. Lubinao*,[46] and

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

[43] G.R. No. 164964, October 17, 2008, 569 SCRA 401.

[44] G.R. No. 193023, June 29, 2011, 653 SCRA 84.

[45] G.R. No. 189127, April 25, 2012, 671 SCRA 266.

[46] G.R. No. 166553, July 30, 2009.

remains to be the controlling doctrine m expropriation cases, including those concerning agrarian reform.

In contrast, the Court in *LBP v. Gonzalez*[47] echoed the ruling for the SAC to adhere to the formula provided in DAO No. 5, explaining:

> While the determination of just compensation is essentially a judicial function vested in the RTC acting as a SAC, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. SACs are not at liberty to disregard the formula laid down in DAR AO No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. **Simply put, courts cannot ignore, without violating the agrarian reform law, the formula provided by the DAR for the determination of just compensation.** (Emphasis supplied)

The cases of *LBP v. Honeycomb Farms Corporation,*[48] *LBP v. Celada*[49] and *LBP v. Lim*[50] were of the same tenor.

In light of the case dispositions in *Honeycomb Farms, Celada* and *Lim,* the question is begged: what discretion is left to the courts in determining just compensation in agrarian cases given the formula provided in DAO No. 5? Apparently, **none**. Our rulings therein have veritably rendered hollow and ineffective the maxim that the determination of just compensation is a judicial function. For DAO No. 5 has effectively relegated the SAC to perform the mechanical duty of plugging in the different variables in the formula.

Precisely, this is an undue restriction on the power of the SAC to judicially determine just compensation. For this reason, the formula provided under DAO No. 5 should no longer be made mandatory on, or tie the hands of the SACs in determining

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[47] G.R. No. 185821, June 13, 2013.

[48] G.R. No. 169903, February 29, 2012, 667 SCRA 255.

[49] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[50] G.R. No. 171941, August 2, 2007, 529 SCRA 129.

just compensation. The courts of justice cannot be stripped of their authority to review with finality the said determination in the exercise of what is admittedly a judicial function, consistent with the Court's roles as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses, and as the final arbiter over transgressions committed against constitutional rights.[51] **Strict adherence to the formula provided in DAO No. 5 must now be abandoned.**

Only upon the enactment of RA 9700 were the SACs mandated to "consider" the DAR formula

A cursory examination of Sec. 17 of RA 6657, as amended by RA 9700, easily leads to the inescapable conclusion that the law never intended that the DAR shall formulate an inflexible norm in determining the value of agricultural lands for purposes of just compensation, one that is binding on courts. A comparison of the former and current versions of Sec. 17 evinces that it was only upon the enactment of RA 9700[52] that the courts were mandated by law to "consider" the DAR formula in determining just compensation. There was no such requirement under RA 6657. Prior to RA 9700's enactment, there was then even lesser statutory basis, if not none at all, for the mandatory imposition of the DAR formula.

Sec. 7 of RA 9700, which was approved on August 7, 2009, amended Sec. 17 of the CARL to read:

SEC. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the value of

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[51] *EPZA v. Dulay*, No. 59603, April 29, 1987.

[52] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), **translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court**. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (emphasis added)

The non-retroactivity of RA 9700's amendment to Sec. 17, and its inapplicability in the current case, is expressed under Sec. 5 thereof, which provides:

Section 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

"SEC. 7. *Priorities.* — x x x

"Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: *Provided,* That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed *Provided, further,*That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: **Provided, furthermore, That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended x x x."** (emphasis added)

In the consolidated cases of *DAR v. Beriña* and *LBP v. Beriña*,[53] the Court held that for pending just compensation cases during

[53] G.R. Nos. 183901 & 183931, July 9, 2014.

RA 9700's enactment, the evidence of land valuation must conform to Section 17 of RA 6657 **prior to its amendment by RA 9700**. The Court categorically stated therein that the law should not be retroactively applied to pending claims, and held that:

> x x x [T]he Court, cognizant of the fact that the instant consolidated petitions for review on certiorari were filed in August 2008, or long before the passage of RA 9700, finds that Section 17 of RA 6657, as amended, prior to its further amendment by RA No. 9700, should control the challenged valuation. (emphasis added)

The amendments introduced RA 9700, which was enacted after the taking of the subject properties was commenced, cannot then be invoked in this case. At the time of taking, there was no statutory mandate for the SAC's to consider the DAR formula in determining the proper amount of just compensation.

It was only upon the effectivity of RA 9700 were the SACs required to take into consideration the basic formula of the DAR. But despite such requirement, it must still be borne in mind that **the language of the law does not even treat the formula and its resultant valuations as binding on the SACs**; for though they shall be "considered," **the valuations are still subject to the final decision of the proper court. It is merely an additional variable to consider, but not a controlling formula for the courts to apply.**

During the Bicameral Conference Committee deliberations on RA 9700, Congress even confirmed that **the valuation process before the DAR is only preliminary, and, more significantly, that the SACs can adjust the preliminary valuation based on the best discretion of the courts**. As discussed:[54]

> REP. P. P. GARCIA Mr. Chairman, just an observation. With respect to the fixing of just compensation, the Supreme Court and even in that case of Association of Small Landowners versus the Secretary of DAR, he said or rule that **the valuation or the determination of**

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[54] Bicameral Conference Committee on the Disagreeing Provisions of House Bill No. 4077 and Senate Bill 2666 (CARP Extension), June 9, 2009.

the valuation made by DAR is only preliminary because the fixing of just compensation is a judicial question. That is why in the law, Republic Act 6657, we have the special agrarian courts whose jurisdiction is to cover cases involving the fixing of just compensation. **So it is not very important that we already determined how much or what percentage of the zonal valuation should be accepted as the just compensation <u>because anyway, it will be the court that will determine the fixing of just compensation.</u>**

CHAIRPERSON HONASAN. Thank you, Congressman Garcia. Can we hear from...

REP. LAGMAN. Mr. Chairman, Mr. Chairman, **in that case, if the determination of the DAR on just compensation is only preliminary and the ultimate authority will be the courts, then there is no harm in providing that it should be 70% of the zonal valuation because, anyway, <u>the court will have to make the final determination. It can increase the valuation consistent with its best discretion.</u>**

CHAIRPERSON HONASAN. Thank you, Congressman Lagman. Senator Pimental.

SEN. PIMENTEL. Can we propose an additional phraseology that might address the concerns of Pabling and, of course, the Chairman of the House contingent, **<u>subject to the final decision by the court, by the proper court.</u> In other words, while preliminarily the 70% of the zonal valuation is inputed into this amendment, ultimately, as has been suggested by Pabling, it will have to be the courts.** (emphasis added)

The clear intention of the lawmakers was then to grant the courts discretion to determine for itself the final amount of just compensation, taking into account the factors enumerated under Sec. 17. As the lawmakers admitted, the 70% zonal value to be included in the valuation is actually **an arbitrary figure,** which is not a cause for alarm since, in any case, **the courts can modify the valuation afterwards, consistent with their best discretion.** Evidently, the phrase *"subject to the final determination of the proper court"* is a license for the SACs to adjust the valuation by the DAR as they deem fit.

There would always be extraneous circumstances for the courts to take into account, which were never expressed by the DAR in mathematical terms. This was readily admitted by Congress when RA 9700 expressly included the subject property's zonal value in the enumeration under Sec. 17 of RA 6657, an apparent omission in RA 6657. Even the *"social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property"* as well as the *"nonpayment of taxes or loans secured from any government financing institution on the said land"* were never given their formulaic equivalents in DAO No. 5. The phrase only appears after the DAR's mandate to translate the other factors into a basic formula. If the SAC would then opt to include these factors and even those unaccounted for under Sec. 17, then they may deviate from the formula upon reasoned explanation and as supported by evidence on record, as suggested by the *ponencia*.

A direct attack on the validity of DAO No. 5 is not necessary to reverse the Court's doctrine

Associate Justices Arturo D. Brion and Francis H. Jardeleza highlight that the case at bar is one for just compensation, and that none of the parties is challenging the constitutionality of Sec. 17 of RA 6657 nor of DAO No. 5. They then argue that it would be premature for the Court to resolve the constitutional questions since they are not the *lis mota* of the case at hand. To pursue the line of thought advanced, according to them, would be premature, and would deprive the State, through the OSG, of the right to defend the constitutionality of Sec. 17 of RA 6657 and DAR No. 5.

It is conceded that the Court herein is not faced with questions on the constitutionality or validity of administrative issuances. What is merely being called for here is a revisit of existing doctrines, more specifically the mandatory application of the DAR formula by the SACs.

The Court is not being asked to declare DAO No. 5 as null and void. Rather, it is the postulation that **DAO No. 5**

should not be made mandatory on the courts. The formula is, as it remains to be, valid, but its application ought to be limited to making an initial government offer to the landowner and recalibrating the same thereafter as per Sec. 16 of the CARL. The Court cannot interfere with the DAR's policy decision to adopt the direct capitalization method of the market value in determining just compensation in the same way that the DAR cannot likewise prevent the courts from adopting its own method of valuation.

All told, there is no need to declare either Sec. 17 of the CARL or DAO No. 5 as unconstitutional. To emphasize, what is being revisited here is the Court's prior holdings in *Honeycomb, Celada, Lim,* and *LBP v. Yatco*[55] that the DAR formula is mandatory on the Courts. As explained, it is not the intention of CARL that the DAR shall peremptorily determine just compensation or set guidelines and formula for the SAC to follow in determining just compensation. RA 6657 merely authorizes the DAR to make an initial valuation of the subject land based on Sec. 17 of the law for purposes of making an offer to the landowner unless accepted by the landowner and other stakeholders. The determination made by DAR is only **preliminary**, meaning courts of justice will still have the right to review with finality the said determination in the exercise of what admittedly is a judicial function, without being straitjacketed by the DAR formula. Otherwise, the SACs will be relegated to an appellate court, in direct conflict with the express mandate of Sec. 57 of RA 6657 that grants them original and exclusive jurisdiction over the just compensation of lots covered by agrarian reform.

Applying the foregoing in the case at bar, the CA is, therefore, incorrect in requiring the SAC to observe and comply with the procedure provided in DAO No. 5 and the guidelines therein.

The determination of just compensation is, as it always has been, a judicial function. *Ergo,* if the parties to the expropriation

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[55] G.R No. 172551, January 15, 2014.

do not agree on the amount of just compensation, it shall be subject to the final determination of the courts as provided under Sec. 18 of RA 6657:

> **Section 18.** ***Valuation and Mode of Compensation.*** — The LBP shall compensate the landowner in such amounts **as may be agreed upon by the landowner and the DAR and the LBP**, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or as may be finally determined by the court,** as the just compensation for the land. (emphasis added)

It is not mandatory but **discretionary** on the SAC to apply the DAR formula in determining the amount of just compensation. While the SAC shall consider applying the DAR-crafted formula, it may, nevertheless, disregard the same with reasons and proceed with its own determination of just compensation and make use of any accepted valuation method, a variation of the DAR formula, or a combination thereof in assigning weights to the factors enumerated under Sec. 17 of the CARL.

The SACs only became legally bound to apply the DAR formula after RA 9700 took effect on August 7, 2009. This does not, however, diminish the discretionary power of the courts because deviation from the strict application of the DAR basic formula is still allowed upon justifiable grounds and based on evidence on record. Sec. 17, as amended by RA 9700, is clear that the determination of just compensation shall be "subject to the final decision of the proper court," referring to the SACs.

Furthermore, the DAR basic formula does not capture all the factors for consideration in determining just compensation under Sec. 17 of the CARL. Guilty of reiteration, the pertinent provision reads:

> SEC. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), **translated into a basic formula by the DAR** shall

be considered, subject to the final decision of the proper court. **The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.** (emphasis added)

"The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non- payment of taxes or loans secured from any government financing institution," having been placed **after** the DAR mandate to translate the earlier enumerated factors into a basic formula, are then excluded in the DAR valuation method. Thus, the SACs may deviate from the DAR formula in order to take these additional factors into account.

In view of the foregoing disquisitions, the doctrine echoed in *Honeycomb, Celada, Lim,* and *Yatco* requiring the mandatory application of the DAR formula must be **abandoned**.

I, therefore, vote to **GRANT** the petition. The July 19, 2007 Decision and the March 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP Nos. 90615 and 90643, as well as the May 13, 2005 Decision of the Regional Trial Court, Branch 52 in Sorsogon City, acting as a Special Agrarian Court, in Civil Case Nos. 2002-7090 and 2002-7073, must be **SET ASIDE**, and the consolidated cases **REMANDED** to the Regional Trial Court, Branch 52 in Sorsogon City for the proper determination of just compensation.

The Court should have further held that, for the guidance of the bench and bar, the following guidelines for determining just compensation in agrarian reform cases must be observed:

1. In actions for the judicial determination of just compensation of property taken pursuant to RA 6657 that were filed prior to August 7, 2009 when RA 9700 took effect, it is not mandatory but discretionary on the Special Agrarian Courts to apply the DAR formula

in determining the amount of just compensation. They shall first consider applying the pertinent DAR formula at the time of filing. In case it disregards the said formula, it shall explain the reason for the departure. Thereafter, it is within their discretion to select the valuation method to apply, which may be a variation of the DAR-crafted formula, any other valuation method, or any combination thereof, provided that all the factors under Sec. 17 of RA 6657, prior to amendment by RA 9700, are taken into consideration.

2. In actions for the judicial determination of just compensation of property taken pursuant to RA 6657 that were filed when RA 9700 took effect on August 7, 2009 and onwards, the Special Agrarian Courts have the duty to apply the prevailing DAR formula at the time of filing. Disregarding the formula or deviating therefrom shall only be allowed upon justifiable grounds and if supported by evidence on record. If the SAC does not apply the DAR formula, it may adopt any other valuation method, a variation of the DAR formula, or a combination of the DAR formula with any other valuation method, provided that all of the factors under Sec. 17 of RA 6657, as amended by RA 9700, shall be taken into consideration. Determination of just compensation "shall be subject to the final decision" of the SACs.

EN BANC

[G.R. No. 210588. November 29, 2016]

SECRETARY OF FINANCE CESAR B. PURISIMA AND COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES, *petitioners, vs.* **REPRESENTATIVE CARMELO F. LAZATIN AND ECOZONE PLASTIC ENTERPRISES CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR DECLARATORY RELIEF; REQUISITES TO PROSPER; IN CASE THE PETITION FOR DECLARATORY RELIEF SPECIFICALLY INVOLVES A QUESTION OF CONSTITUTIONALITY, THE COURTS WILL NOT ASSUME JURISDICTION OVER THE CASE UNLESS THE PERSON CHALLENGING THE VALIDITY OF THE ACT POSSESSES THE REQUISITE LEGAL STANDING TO POSE THE CHALLENGE.— The party seeking declaratory relief must have a *legal interest* in the controversy for the action to prosper. This interest must be material not merely incidental. It must be an interest that which will be affected by the challenged decree, law or regulation. It must be a present substantial interest, as opposed to a mere expectancy or a future, contingent, subordinate, or consequential interest. Moreover, in case the petition for declaratory relief specifically involves a question of constitutionality, the courts will not assume jurisdiction over the case unless the person challenging the validity of the act possesses the requisite *legal standing* to pose the challenge. *Locus standi* is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed. We rule that the respondents satisfy these standards.

2. ID.; CIVIL PROCEDURE; PARTIES; LEGAL STANDING; WHEN THE IMPLEMENTING RULES AND REGULATIONS ISSUED BY THE EXECUTIVE CONTRADICT OR ADD TO WHAT CONGRESS HAS PROVIDED BY LEGISLATION, THE ISSUANCE OF THESE RULES AMOUNTS TO AN UNDUE EXERCISE OF LEGISLATIVE POWER AND AN ENCROACHMENT OF CONGRESS' PREROGATIVES, WHICH MAY BE QUESTIONED BY MEMBERS OF CONGRESS.— In *Biraogo v. The Philippine Truth Commission*, we ruled that legislators have the legal standing to ensure that the prerogatives, powers, and privileges vested by the Constitution in their office remain inviolate. To this end, members of Congress are allowed to question the validity of any official action that infringes on their prerogatives as legislators. Thus, members of Congress possess the legal standing to question acts that amount to a usurpation of the legislative power of Congress. Legislative power is exclusively vested in the Legislature. When the implementing rules and regulations issued by the Executive contradict or add to what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power and an encroachment of Congress' prerogatives. To the same extent that the Legislature cannot surrender or abdicate its legislative power without violating the Constitution, so also is a constitutional violation committed when rules and regulations implementing legislative enactments are contrary to existing statutes. No law can be amended by a mere administrative rule issued for its implementation; administrative or executive acts are invalid if they contravene the laws or to the Constitution. Thus, the allegation that RR. 2-2012 — an executive issuance purporting to implement the provisions of the Tax Code — directly contravenes RA 9400 clothes a member of Congress with legal standing to question the issuance to prevent undue encroachment of legislative power by the executive.

3. ID.; ID.; ID.; ID.; FREEPORT AND ECONOMIC ZONE (FEZ) ENTERPRISES HAVE LEGAL STANDING TO QUESTION THE VALIDITY OF THE IMPLEMENTATION OF REVENUE REGULATION (RR) NO. 2-2012.— It is not disputed that RR 2-2012 relates to the imposition of VAT and excise tax and applies to all petroleum and petroleum products

that are imported directly from abroad to the Philippines, **including FEZs**. As an enterprise located in the Clark FEZ, its importations of petroleum and petroleum products will be directly affected by RR 2-2012. Thus, its interest in the subject matter — a personal and substantial one — gives it legal standing to question the issuance's validity. [T]he respondents' respective interests in this case are sufficiently substantial to be directly affected by the implementation of RR 2-2012. The RTC therefore did not err when it gave due course to Lazatin's petition for declaratory relief as well as EPEC's petition-in-intervention.

4. TAXATION; TAX EXEMPTION; REPUBLIC ACT 7227 (BASES CONVERSION AND DEVELOPMENT ACT OF 1992), AS AMENDED BY REPUBLIC ACT 9400; FEZ ENTERPRISES ENJOY EXEMPTION FROM INTERNAL REVENUE TAXES, SUCH AS VAT AND EXCISE TAX, IMPOSED ON GOODS BROUGHT INTO THE FEZ.— [T]he Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the *transactions* that take place within its special jurisdiction, or the *persons/establishments* within the jurisdiction. From this perspective, the tax incentives enjoyed by *FEZ enterprises* must be understood to *necessarily include* the tax exemption of *importations of selected articles* into the FEZ. We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227 and, by extension, RA 9400. Thus, we recognized that *FEZ enterprises are exempt from both direct and indirect internal revenue taxes*. In particular, they are considered *VAT-exempt entities*. In line with this comprehensive interpretation, we rule that *the tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ, including the Clark FEZ, such as VAT and excise tax*.

5. ID.; ID.; ID.; ID.; THE TAXES IMPOSED BY SECTION 3 OF REVENUE REGULATION (RR) NO. 2-2012 ON THE IMPORTATION OF PETROLEUM AND PETROLEUM PRODUCTS BROUGHT INTO FEZ DIRECTLY CONTRAVENE THE EXEMPTIONS ENJOYED BY THE FEZ ENTERPRISES FROM VAT AND EXCISE TAX.— Since the tax exemptions enjoyed by FEZ enterprises under the law extend even to VAT and excise tax, xxx, it follows and we accordingly rule that *the taxes imposed by Section 3 of RR*

2-2012 directly contravene these exemptions. ***First***, the regulation erroneously considers petroleum and petroleum products brought into a FEZ as taxable importations. ***Second***, it unreasonably burdens FEZ enterprises by making them pay the corresponding taxes — an obligation from which the law specifically exempts them — even if there is a subsequent opportunity to refund the payments made.

6. ID.; ID.; ID.; ID.; THE ACT OF BRINGING THE GOODS INTO AN FEZ IS NOT A TAXABLE IMPORTATION; AS LONG AS THE GOODS REMAIN IN THE FEZ OR RE-EXPORTED TO ANOTHER FOREIGN JURISDICTION, THEY SHALL CONTINUE TO BE TAX-FREE, ONCE THE GOODS ARE INTRODUCED INTO THE PHILIPPINE CUSTOMS TERRITORY, IT CEASES TO ENJOY THE TAX PRIVILEGES ACCORDED TO FEZS, AND SHALL THEN BE CONSIDERED AS AN IMPORTATION SUBJECT TO ALL APPLICABLE NATIONAL INTERNAL REVENUE TAXES AND CUSTOMS DUTIES.— [W]hen goods (*e.g.*, petroleum and petroleum products) are brought into an FEZ, *the goods remain to be in foreign territory* and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws. [G]oods brought into and traded within an FEZ are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to FEZs exempting the *importation itself* from taxes and duties. *Therefore, the act of bringing the goods into an FEZ is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the FEZ) in the FEZ or re-exported to another foreign jurisdiction, they shall continue to be tax-free*. However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an *importation* subject to all applicable national internal revenue taxes and customs duties.

7. ID.; ID.; ID.; ID.; ESSENCE OF TAX EXEMPTION; THE REFUND MECHANISM PROVIDED BY RR 2-2012 CONTRADICTS THE ESSENCE OF FEZ ENTERPRISES' EXEMPTION FROM THE IMPOSITION AND PAYMENT OF A PARTICULAR TAX.— [T]the essence of a tax exemption is the *immunity* or *freedom* from a charge or burden to which

others are subjected. It is a *waiver* of the government's right to collect the amounts that would have been collectible under our tax laws. *Thus, when the law speaks of a tax exemption, it should be understood as freedom from the imposition and payment of a particular tax.* Based on this premise, we rule that the *refund mechanism provided by RR 2-2012 does not amount to a tax exemption*. Even if the possibility of a subsequent refund exists, the fact remains that FEZ enterprises must still spend money and other resources to pay for something they should be immune to in the first place. This completely contradicts the essence of their tax exemption.

8. ID.; ID.; ID.; ID.; FEZ ENTERPRISES HAVE NO DUTY TO PROVE THEIR ENTITLEMENT TO TAX EXEMPTION FIRST BEFORE FULLY ENJOYING THE SAME, AS IT IS THE TAX AUTHORITIES WHICH MUST DETERMINE FIRST IF A PERSON IS LIABLE FOR A PARTICULAR TAX, BEFORE ASKING HIM TO PROVE HIS EXEMPTION THEREFROM. — [W]e cannot agree with the view that FEZ enterprises have the duty to prove their entitlement to tax exemption first before fully enjoying the same; we find it illogical to determine whether a person is exempted from tax without first determining if he is subject to the tax being imposed. We have reminded the tax authorities to determine first if a person is liable for a particular tax, applying the rule of strict interpretation of tax laws, before asking him to prove his exemption therefrom. Indeed, as entities exempted on taxes on importations, FEZ enterprises are clearly beyond the coverage of any law imposing those very charges. There is no justifiable reason to require them to prove that they are exempted from it. More importantly, we have also recognized that the exemption from local and national taxes granted under RA 7227, as amended by RA 9400, are *ipso facto* accorded to FEZs. In case of doubt, conflicts with respect to such tax exemption privilege shall be resolved in favor of these special territories.

9. ID.; ID.; ID; ID.; REGULATIONS MAY NOT ENLARGE, ALTER, RESTRICT, OR OTHERWISE GO BEYOND THE PROVISIONS OF THE LAW THEY ADMINISTER, AND ADMINISTRATORS AND IMPLEMENTORS CANNOT ENGRAFT ADDITIONAL REQUIREMENTS NOT CONTEMPLATED BY THE LEGISLATURE.— The power of the petitioners to interpret tax laws is not absolute. The rule

is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature. It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.* While we recognize petitioners' essential rationale in issuing RR 2-2012, the procedures proposed by the issuance cannot be implemented at the expense of entities that have been clearly granted statutory tax immunity.

10. ID.; ID.; ID.; ID.; TAX EXEMPTIONS ARE GRANTED FOR SPECIFIC PUBLIC INTERESTS THAT THE LEGISLATURE CONSIDERS SUFFICIENT TO OFFSET THE MONETARY LOSS IN THE GRANT OF EXEMPTIONS.— Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.

11. ID.; ID.; THE IMPOSITION OF TAXES, AS WELL AS THE GRANT AND WITHDRAWAL OF TAX EXEMPTIONS, SHALL ONLY BE VALID PURSUANT TO A LEGISLATIVE ENACTMENT; RR 2-2012 DECLARED NULL AND VOID.— [T]he State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment. As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the petitioners have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers. In these lights, we hereby rule and declare that RR 2-2012 is null and void.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Aranas Law Office for respondent Lazatin.
Medina, Miclat & Panaligan for respondent Ecozone Plastic Enterprises Corporation.

D E C I S I O N

BRION, *J.*:

This is a direct recourse to this Court from the Regional Trial Court (*RTC*), Branch 58, Angeles City, through a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court on a pure question of law. The petition seeks the reversal of the November 8, 2013 decision[2] of the RTC in SCA Case No. 12-410. In the assailed decision, the RTC declared Revenue Regulation (*RR*) No. 2-2012 unconstitutional and without force and effect.

The Facts

In response to reports of smuggling of petroleum and petroleum products and to ensure the correct taxes are paid and collected, petitioner Secretary of Finance Cesar V. Purisima — pursuant to his authority to interpret tax laws[3] and upon the recommendation of petitioner Commissioner of Internal Revenue (*CIR*) Kim S. Jacinto-Henares signed RR 2-2012 on February 17, 2012.

The RR requires the payment of value-added tax (*VAT*) and excise tax on the importation of all petroleum and petroleum

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[1] *Rollo*, pp. 47-85.

[2] Penned by RTC Presiding Judge Philbert I. Iturralde; *id*. at 95-125.

[3] Section 4 of the 1997 National Internal Revenue Code (*Tax Code*) provides, "The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

products coming directly from abroad and brought into the Philippines, including Freeport and economic zones (*FEZs*).[4]

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[4] SECTION 3. TAX TREATMENT OF ALL PETROLEUM AND PETROLEUM PRODUCTS IMPORTED AND ITS SUBSEQUENT EXPORTATION OR SALES TO FREEPORT AND ECONOMIC ZONE LOCATORS OR OTHER PERSONS/ENTITIES; REFUND OF TAXES PAID; AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND OTHER ADMINISTRATIVE REQUIREMENTS. — The Value-Added and Excise taxes which are due on all petroleum and petroleum products that are imported and/or brought directly from abroad to the Philippines, including Freeport and Economic zones, shall be paid by the importer thereof to the Bureau of Customs (BOC).

The subsequent exportation or sale/delivery of these petroleum or petroleum products to registered enterprises enjoying tax privileges within the Freeport and Economic zones, as well as the sale of said goods to persons engaged in international shipping or international air transport operations, shall be subject to 0% VAT. With respect to the VAT paid on petroleum or petroleum products by the importer on account of aforesaid 0% VAT transactions/ entities and the Excise taxes paid on account of sales to international carriers of Philippine or Foreign Registry for use or consumption outside the Philippines or exempt entities or agencies covered by tax treaties, conventions and international agreements for their use or consumption (covered by Certification in such entity's favor), as well as entities which are by law exempt from indirect taxes, the importer may file a claim for credit or refund with the BOC, which shall process the claim for refund, subject to the favorable endorsement of the BIR, in accordance with existing rules and procedures: Provided, that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that said petroleum or petroleum products have been sold to a duly registered locator and have been utilized in the registered activity/operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT, and/or exempt from Excise taxes.

In the event that the said Freeport/Economic zone registered enterprise shall subsequently sell/introduce the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations) or another Freeport/Economic zone registered enterprise not enjoying tax privileges, no refund for excise taxes shall be granted to the importer for the product sold. In any event, the possessor of petroleum or petroleum products must be able to present sufficient evidence that the excise taxes due thereon have been paid, otherwise the excise taxes due on said goods shall be collected from said possessor/user.

It then allows the credit or refund of any VAT or excise tax paid *if the taxpayer proves* that the petroleum previously brought in has been sold to a duly registered FEZ locator and used pursuant to the registered activity of such locator.[5]

In other words, an FEZ locator must first pay the required taxes upon entry into the FEZ of a petroleum product, and must thereafter prove the use of the petroleum product for the locator's registered activity in order to secure a credit for the taxes paid.

On March 7, 2012, Carmelo F. Lazatin, in his capacity as Pampanga First District Representative, filed a petition for prohibition and injunction[6] against the petitioners to annul and set aside RR 2-2012.

Lazatin posits that Republic Act No. (RA) 9400[7] treats the Clark Special Economic Zone and Clark Freeport Zone (together

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In case of sale/introduction of petroleum and petroleum products, or part of the volume thereof, by a Freeport/Economic zone registered enterprise, or part/volume thereof, into the customs territory or to a Freeport/Economic zone registered enterprise not enjoying tax privileges, or any sale to an entity not enjoying 0% VAT rate, the seller shall be liable for 12% VAT. In this instance, no refund for VAT shall be allowed the importer or an assessment for VAT shall be issued to the said importer, if the refund has already been granted, and another assessment for VAT shall be made against the seller.

For each and every importation of petroleum and petroleum products, the importer thereof shall secure the prescribed ATRIG from the BIR's Excise Tax Regulatory Division (ETRD), and pay the Value-Added and excise taxes, as computed, before the release thereof from the BOC's custody. In case of subsequent sale/introduction to customs territory by a Freeport/ Economic zone-registered enterprise of petroleum and petroleum products, the importer shall secure the necessary Withdrawal Certificate.

For excise tax purposes, all importers of petroleum and petroleum products shall secure a Permit to Operate with the BIR's ETRD. Such permit shall prescribe the appropriate terms and conditions which shall include, among others, the issuance of a Withdrawal Certificate and the submission of liquidation reports, for the Permitee's strict compliance.

[5] *Id*.

[6] *Rollo*, pp. 131-148.

[7] Also known as "An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes," dated March 20, 2007.

hereinafter referred to as *Clark FEZ*) as a separate customs territory and allows tax and duty-free importations of raw materials, capital and equipment into the zone. Thus, the imposition of VAT and excise tax, even on the importation of petroleum products into FEZs (like *Clark FEZ*), directly contravenes the law.

The respondent Ecozone Plastic Enterprises Corporation *(EPEC*) sought to intervene in the proceedings as a co-petitioner and accordingly entered its appearance and moved for leave of court to file its petition-in-intervention.[8]

EPEC claims that, as a Clark FEZ locator, it stands to suffer when RR 2-2012 is implemented. EPEC insists that RR 2-2012's mechanism of requiring even locators to pay the tax first and to subsequently claim a credit or to refund the taxes paid effectively removes the locators' tax-exempt status.

The RTC initially issued a temporary restraining order to stay the implementation of RR 2-2012. It eventually issued a writ of preliminary injunction in its order dated April 4, 2012.

The petitioners questioned the issuance of the writ. On May 17, 2012, they filed a petition for *certiorari*[9] before the Court of Appeals (CA) assailing the RTC's order. The CA granted the petition[10] and denied the respondents' subsequent motion for reconsideration.[11]

The respondents stood their ground by filing a petition for review on *certiorari* before this Court (G.R. No. 208387) to reinstate the RTC's injunction against the implementation of RR 2-2012, and by moving for the issuance of a temporary restraining order and/or writ of preliminary injunction. We denied

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[8] On April 2, 2012, EPEC filed its Entry of Appearance with Motion for Leave to File Petition-in-Intervention (RTC decision, *id.* at 106).

[9] *Rollo*, pp. 174-205.

[10] In CA decision dated February 14, 2013, *id*. at 207-218.

[11] In CA resolution dated July 29, 2013, *id*. at 220-221.

the motion but nevertheless required the petitioners to comment on the petition.

The proceedings before the RTC in the meanwhile continued. On April 18, 2012, petitioner Lazatin amended his original petition, converting it to a petition for declaratory relief.[12] The RTC admitted the amended petition and allowed EPEC to intervene.

In its decision dated November 8, 2013, the RTC ruled in favor of Lazatin and EPEC.

First, on the procedural aspect, the RTC held that the original petition's amendment is allowed by the rules and that amendments are largely preferred; it allowed the amendment in the exercise of its sound judicial discretion to avoid multiplicity of suits and to give the parties an opportunity to thresh out the issues and finally reach a conclusion.[13]

Second, the RTC held that Lazatin and EPEC had legal standing to question the validity of RR 2-2012. Lazatin's allegation that RR 2-2012 effectively amends and modifies RA 9400 gave him standing as a legislator: the amendment of a tax law is a power that belongs exclusively to Congress. Lazatin's allegation, according to the RTC, sufficiently shows how his rights, privileges, and prerogatives as a member of Congress were impaired by the issuance of RR 2-2012.

The RTC also ruled that the case warrants a relaxation on the rules on legal standing because the issues touched upon are of transcendental importance. The trial court considered the encompassing effect that RR 2-2012 may have in the numerous freeport and economic zones in the Philippines, as well as its potential impact on hundreds of investors operating within the zones.

The RTC then held that even if Lazatin does not have legal standing, EPEC's intervention cured this defect: EPEC, as a

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[12] *Id*. at 223-258.

[13] RTC Decision, *id*. at 116-117.

locator within the Clark FEZ, would be adversely affected by the implementation of RR 2-2012.

Finally, the RTC declared RR 2-2012 unconstitutional. RR 2-2012 violates RA 9400 because it imposes taxes that, by law, are not due in the first place.[14] Since RA 9400 clearly grants tax and duty-free incentives to Clark FEZ locators, a revocation of these incentives by an RR directly contravenes the express intent of the Legislature.[15] In effect, the petitioners encroached upon the prerogative to enact, amend, or repeal laws, which the Constitution exclusively granted to Congress.

The Petition

The petitioners anchor their present petition on two arguments: 1) respondents have *no legal standing*, and 2) RR 2-2012 is *valid and constitutional*.

The petitioners submit that the Lazatin and EPEC do not have legal standing to assail the validity of RR 2-2012.

First, the petitioners claim that Lazatin does not have the requisite legal standing as he failed to exactly show how the implementation of RR 2- 2012 would impair the exercise his official functions. Respondent Lazatin merely generally alleged that his constitutional prerogatives to pass or amend laws were gravely impaired or were about to be impaired by the issuance of RR 2-2012. He did not specify the power that he, as a legislator, would be encroached upon.

While the Clark FEZ is within the district that respondent Lazatin represents, the petitioners emphasize that Lazatin failed to show that he is authorized to file a case on behalf of the locators in the FEZ, the local government unit, or his constituents in general.[16] To the petitioners, if RR 2- 2012 ever caused injury to the locators or to any of Lazatin's constituents, only these injured parties possess the personality to question the petitioners'

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[14] *Id*. at 112.

[15] *Id*. at 114.

[16] Petition, *id*. at 59-60.

actions; respondent Lazatin cannot claim this right on their behalf.[17]

The petitioners claim, too, that the RTC should not have brushed aside the rules on standing on account of transcendental importance. To them, this case does not involve public funds, only a speculative loss of profits upon the implementation of RR 2-2012; nor is Lazatin a party with more direct and specific interest to raise the issues in his petition.[18] Citing *Senate v. Ermita*,[19] the petitioners argue that the rules on standing cannot be relaxed.

Second, petitioners also argue that EPEC does not have legal standing to intervene. That EPEC will ultimately bear the VAT and excise tax as an end-user, is misguided.[20] The burden of payment of VAT and excise tax may be shifted to the buyer[21] and this burden, from the point of view of the transferee is no longer a tax but merely a component of the cost of goods purchased. The statutory liability for the tax remains with the seller. Thus, EPEC cannot say that when the burden is passed on to it, RR 2-2012 effectively imposes tax on it as a Clark FEZ locator.

The petitioners point out that RR 2-2012 imposes an "advance tax" only upon importers of petroleum products. If EPEC is indeed a locator, then it enjoys tax and duty exemptions granted by RA 9400 so long as it does not bring the petroleum or petroleum products to the Philippine customs territory.[22]

The petitioners legally argue that RR 2-2012 is valid and constitutional.

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[17] Id. at 60.

[18] *Rollo*, p. 62.

[19] G.R. No. 169777, April 20, 2006, 488 SCRA 1, 3.

[20] *Rollo*, pp. 63-64.

[21] The petitioner points out that VAT and excise tax are indirect taxes.

[22] *Rollo*, p. 67.

First, petitioner submit that RR 2-2012's issuance and implementation are within their powers to undertake.[23] RR 2-2012 is an administrative issuance that enjoys the presumption of validity in the manner that statutes enjoy this presumption; thus, it cannot be nullified without clear and convincing evidence to the contrary.[24]

Second, petitioners contend that while RA 9400 does grant tax and customs duty incentives to Clark FEZ locators, there are conditions before these benefits may be availed of. The locators cannot invoke outright exemption from VAT and excise tax on its importations without first satisfying the conditions set by RA 9400, that is, the importation must not be removed from the FEZ and introduced into the Philippine customs territory.[25]

These locators enjoy what petitioners call a *qualified tax exemption*. They must first pay the corresponding taxes on its imported petroleum. Then, they must submit the documents required under RR 2-2012. If they have sufficiently shown that the imported products have not been removed from the FEZ, their earlier payment shall be subject to a refund.

The petitioners lastly argue that RR 2-2012 does not withdraw the locators' tax exemption privilege. The regulation simply requires proof that a locator has complied with the conditions for tax exemption. If the locator cannot show that the goods were retained and/or consumed within the FEZ, such failure creates the presumption that the goods have been introduced into the customs territory without the appropriate permits.[26] On the other hand, if they have duly proven the disposition of the goods within the FEZ, their "advance payment" is subject

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[23] *Id.* at 68.

[24] *Id.* at 67-68 citing *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730.

[25] *Id.* at 73.

[26] *Id.* at 75.

to a refund. Thus, to the petitioners, to the extent that a refund is allowable, there is in reality a tax exemption.[27]

Counter-arguments

Respondents Lazatin and EPEC, maintaining that they have standing to question its validity, insist that RR 2-2012 is unconstitutional.

Respondents have standing as lawmaker and FEZ locator.

The respondents argue that a member of Congress has standing to protect the prerogatives, powers, and privileges vested by the Constitution in his office.[28] As a member of Congress, his standing to question executive issuances that infringe on the right of Congress to enact, amend, or repeal laws has already been recognized.[29] He suffers substantial injury whenever the executive oversteps and intrudes into his power as a lawmaker.[30]

On the other hand, the respondents point out that RR 2-2012 explicitly covers FEZs. Thus, being a Clark FEZ locator, EPEC is among the many businesses that would have been directly affected by its implementation.[31]

RR 2-2012 illegally imposes taxes on Clark FEZs.

The respondents underscore that RA 9400 provides FEZ locators certain incentives, such as tax- and duty-free importations of raw materials and capital equipment. These provisions of the law must be interpreted in a way that will give full effect

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[27] *Id*. at 76 citing *CIR v. A.D. Guerrero*, G.R. No. L-20812, September 22, 1967, 21 SCRA 180, 183.

[28] *Id*. at 365.

[29] *Id*. at 366 citing *Biraogo v. The Philippine Truth Commission*, 651 Phil. 374 (2010).

[30] *Id*. at 367 citing *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506-507.

[31] *Id*. at 368.

to law's policy and objective, which is to maximize the benefits derived from the FEZs in promoting economic and social development.[32]

They admit that the law subjects to taxes and duties the goods that were brought into the FEZ and subsequently introduced to the Philippine customs territory. However, contrary to petitioners' position that locators' tax and duty exemptions are *qualified*, their incentives apply *automatically*.

According to the respondents, petitioners' interpretation of the law contravenes the policy laid down by RA 9400, because it makes the incentives subject to a suspensive condition. They claim that the condition — the removal of the goods from the FEZ and their subsequent introduction to the customs territory — is resolutory; locators enjoy the granted incentives *upon bringing the goods into the FEZ*. It is only *when the goods are shown to have been brought into the customs territory* will the proper taxes and duties have to be paid.[33] RR 2-2012 reverses this process by requiring the locators to pay "advance" taxes and duties first and to subsequently prove that they are entitled to a refund, thereafter.[34] RR 2-2012 indeed allows a refund, but a refund of taxes that were not due in the first place.[35]

The respondents add that even the refund mechanism under RR 2-2012 is problematic. They claim that RR 2-2012 only allows a refund when the petroleum products brought into the FEZ are subsequently *sold* to FEZ locators or to entities that similarly enjoy exemption from direct and indirect taxes. The issuance does not envision a situation where the petroleum products are directly brought into the FEZ and are *consumed* by the same entity/locator.[36] Further, the refund process takes

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[32] *Id*. at 369 citing *CIR v. Seagate Technology*, G.R. No. 153866, February 11, 2005, 451 SCRA 132-133; *CIR v. Toshiba*, 503 Phil. 823-825 (2005).

[33] *Id*. at 374.

[34] *Id*. at 375.

[35] *Id*. at 378.

[36] *Id*. at 377.

a considerable length of time to secure, thus requiring cash outlay on the part of locators;[37] even when the claim for refund is granted, the refund will not be in cash, but in the form of a Tax Credit Certificate (*TCC*).[38]

As the challenged regulation directly contravenes incentives legitimately granted by a legislative act, the respondents argue that in issuing RR 2-2012, the petitioners not only encroached upon congressional prerogatives and arrogated powers unto themselves; they also effectively violated, brushed aside, and rendered nugatory the rigorous process required in enacting or amending laws.[39]

Issues

We shall decide the following issues:

I. Whether respondents Lazatin and EPEC have legal standing to bring the action of declaratory relief; and

II. Whether RR 2-2012 is valid and constitutional.

The Court's Ruling

We do not find the petition meritorious.

I. Respondents have legal standing to file petition for declaratory relief.

The party seeking declaratory relief must have a *legal interest* in the controversy for the action to prosper.[40] This interest must be material not merely incidental. It must be an interest that which will be affected by the challenged decree, law or regulation. It must be a present substantial interest, as opposed to a mere

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[37] *Id*.

[38] *Id*.

[39] *Id*. at 381.

[40] *Commissioner of Customs v. Hypermix Feeds Corp*., G.R. No. 179579, February 1, 2012, 664 SCRA 666.

expectancy or a future, contingent, subordinate, or consequential interest.[41]

Moreover, in case the petition for declaratory relief specifically involves a question of constitutionality, the courts will not assume jurisdiction over the case unless the person challenging the validity of the act possesses the requisite *legal standing* to pose the challenge.[42]

Locus standi is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed.[43]

We rule that the respondents satisfy these standards.

Lazatin has legal standing as a legislator.

Lazatin filed the petition for declaratory relief before the RTC in his capacity as a member of Congress.[44] He alleged that RR 2-2012 was issued directly contravening RA 9400, a legislative enactment. Thus, the regulation encroached upon the Congress' exclusive power to enact, amend, or repeal laws.[45] According to Lazatin, a member of Congress has standing to

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[41] *Galicto v. Aquino*, G.R. No. 193978, February 28, 2012, 667 SCRA 150-152, citing *Miñosa v. Lopez., et al.*, G.R. No. 170914, April 13, 2011, 648 SCRA 684.

[42] *Jumamil v. Cafe*, G.R. No. 144570, September 21, 2005, 70 SCRA 475.

[43] *Galicto v. Aquino, supra*, citing *Southern Hemisphere Engagement Network, Inc. v. Anti Terrorism Council*, G.R. Nos. 178552, 178554, 178581, 178890, 179157 and 179461, October 5, 2010, 632 SCRA 146.

[44] *Rollo*, p. 224.

[45] *Id*. at 228.

challenge the validity of an executive issuance if it tends to impair his prerogatives as a legislator.[46]

We agree with Lazatin.

In *Biraogo v. The Philippine Truth Commission*,[47] we ruled that legislators have the legal standing to ensure that the prerogatives, powers, and privileges vested by the Constitution in their office remain inviolate. To this end, members of Congress are allowed to question the validity of any official action that infringes on their prerogatives as legislators.[48]

Thus, members of Congress possess the legal standing to question acts that amount to a usurpation of the legislative power of Congress.[49] Legislative power is exclusively vested in the Legislature. When the implementing rules and regulations issued by the Executive contradict or add to what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power and an encroachment of Congress' prerogatives.

To the same extent that the Legislature cannot surrender or abdicate its legislative power without violating the Constitution,[50] so also is a constitutional violation committed when rules and regulations implementing legislative enactments are contrary to existing statutes. No law can be amended by a mere administrative rule issued for its implementation; administrative or executive acts are invalid if they contravene the laws or to the Constitution.[51]

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[46] *Id*. at 229.

[47] *Supra* note 29.

[48] *Id*. citing *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[49] *Id*. citing *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 520.

[50] *Lokin v. Comelec*, G.R. Nos. 179431-32, June 22, 2010, 621 SCRA 385.

[51] *Id*. citing *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 349-350.

Thus, the allegation that RR. 2-2012 — an executive issuance purporting to implement the provisions of the Tax Code — directly contravenes RA 9400 clothes a member of Congress with legal standing to question the issuance to prevent undue encroachment of legislative power by the executive.

EPEC has legal standing as a Clark FEZ locator.

EPEC intervened in the proceedings before the RTC based on the allegation that, as a Clark FEZ locator, it will be directly affected by the implementation of RR 2-2012.[52]

We agree with EPEC.

It is not disputed that RR 2-2012 relates to the imposition of VAT and excise tax and applies to all petroleum and petroleum products that are imported directly from abroad to the Philippines, **including FEZs**.[53]

As an enterprise located in the Clark FEZ, its importations of petroleum and petroleum products will be directly affected by RR 2-2012. Thus, its interest in the subject matter — a personal and substantial one — gives it legal standing to question the issuance's validity.

In sum, the respondents' respective interests in this case are sufficiently substantial to be directly affected by the implementation of RR 2-2012. The RTC therefore did not err when it gave due course to Lazatin's petition for declaratory relief as well as PEC's petition-in-intervention.

In light of this ruling, we see no need to rule on the claimed transcendental importance of the issues raised.

II. RR 2-2012 is invalid and unconstitutional.

On the merits of the case, we rule that RR 2-2012 is invalid and unconstitutional because: a) it illegally imposes taxes upon

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[52] *Supra* note 31.

[53] See Section 3, RR 2-2012.

FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law (*i.e.*, RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.

FEZ enterprises enjoy tax- and duty-free incentives on its importations.

In 1992, Congress enacted RA 7227 otherwise known as the "Bases Conversion and Development Act of 1992" to enhance the benefits to be derived from the Subic and Clark military reservations.[54] RA 7227 established the Subic Special economic zone and granted such special territory various tax and duty incentives.

To effectively extend the same benefits enjoyed in Subic to the Clark FEZ, the legislature enacted RA 9400 to amend RA 7227.[55] Subsequently, the Department of Finance issued Department Order No. 3-2008[56] to implement RA 9400 (*Implementing Rules*).

Under RA 9400 and its Implementing Rules, Clark FEZ is considered a customs territory *separate* and *distinct* from the Philippines customs territory. Thus, as opposed to *importations* into and *establishments* in the Philippines customs territory,[57]

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[54] Section 2, RA 7227.

[55] Hereinafter, we will refer to RA 7227, as amended, when discussing benefits accorded to FEZs, in general. On the other hand, we will refer to RA 9400 when discussing benefits specifically in relation to the Clark FEZ.

[56] Entitled "Rules and Regulations to Implement Republic Act No. 9400" (*Implementing Rules*) issued by the Department of Finance, dated February 13, 2008, and signed by then Secretary of Finance Margarito B. Teves.

[57] Section 2(oo) of the Implementing Rules defines *customs territory* as "the national territory of the Philippines outside of the boundaries of the Ecozones or Freeport Zones, duly identified or proclaimed in accordance with RA 7227, where the customs and tax laws of the Philippines are in full force or effect, and outside of those areas specifically declared by other laws and/or presidential proclamations to have the status of special economic zones and/or freeports."

which are fully subject to Philippine customs and tax laws, *importations* into and *establishments* located within the Clark FEZ (*FEZ Enterprises*)[58] enjoy special incentives, including tax and duty-free importation.[59] More specifically, Clark FEZ enterprises shall be entitled to the *freeport status* of the zone and a *5% preferential income tax rate* on its gross income, in lieu of national and local taxes.[60]

RA 9400 and its Implementing Rules grant the following:

First, the law provides that *importations of raw materials and capital equipment* into the FEZs shall be *tax- and duty-free*. It is the *specific transaction* (*i.e.*, importation) that is exempt from taxes and duties.

Second, the law also grants *FEZ enterprises tax- and duty-free importation* and a preferential rate in the payment of income tax, in lieu of all national and local taxes. These incentives exempt the *establishment* itself from taxation.

Thus, the Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the *transactions* that take place within its special jurisdiction, or the *persons/establishments* within the jurisdiction. From this perspective, the tax incentives enjoyed by *FEZ enterprises* must be understood to *necessarily include* the tax exemption of *importations of selected articles* into the FEZ.

We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227[61] and, by extension, RA 9400. Thus, we recognized that *FEZ enterprises are exempt*

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[58] The parties in this case have liberally used the term "locator" to denote an entity located within the FEZ. However. we shall hereinafter use "FEZ enterprise" as explicitly defined and used by the Implementing Rules.

[59] Section 2(aa), Implementing Rules.

[60] Section 4(d), Implementing Rules *cf* Section 15, RA 9400.

[61] *Coconut Oil Refiners Association v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 64-65.

from both direct and indirect internal revenue taxes.[62] In particular, they are considered *VAT-exempt entities*.[63]

In line with this comprehensive interpretation, we rule that *the tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ, including the Clark FEZ, such as VAT and excise tax.*

RR 2-2012 illegally imposes VAT and excise tax on goods brought into the FEZs.

Section 3 of RR 2-2012 provides the following:

First, whenever petroleum and petroleum products are *imported* and/or *brought directly* to the Philippines, the *importer* of these goods is required to pay the corresponding **VAT** and **excise tax** due on the importation.

Second, the importer, as the payor of the taxes, may subsequently seek a *refund* of the amount previously paid by filing a corresponding claim with the Bureau of Customs (*BOC*).

Third, the claim shall only be granted upon showing that the *necessary condition* has been fulfilled.

At first glance, this imposition — a mere tax administration measure according to the petitioners — appears to be consistent with the taxation of similar imported articles under the Tax Code, specifically under its Sections 107[64] and 148[65] (in relation with Sections 129[66] and 131[67]) .

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[62] *Supra* note 32.

[63] *Id*.

[64] SEC. 107. Value-Added Tax on Importation of Goods. — (A) In General.— There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) [47] based on the total value used by the Bureau of Customs in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any xxx

However, RR 2-2012 *explicitly covers even petroleum and petroleum products imported and/or brought into the various*

(B) Transfer of Goods by Tax-exempt Persons.— In the case of tax-free importation of goods into the Philippines by persons, entities or agencies exempt from tax where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation. The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.

[65] SEC. 148. Manufactured Oils and Other Fuels.— There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such: (a) Lubricating oils and greases, including but not limited to, basestock for lube oils and greases, high vacuum distillates, aromatic extracts, and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight, Four pesos and fifty centavos (₱4.50): Provided, however, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: Provided, further, That lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: Provided, finally, That locally produced or imported oils previously taxed as such but are subsequently reprocessed, re-refined or recycled shall likewise be subject to the tax imposed under this Section.

(b) Processed gas, per liter of volume capacity, Five centavos (₱0.05);

(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (₱3.50);

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (₱0.05): Provided. That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180o) proof (ninety percent (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;

(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and thirty five centavos (₱4.35): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-

FEZs in the Philippines. Hence, when an FEZ enterprise brings petroleum and petroleum products into the FEZ, under RR 2-2012,

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availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (₱5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35);

(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (₱3.67);

(h) Kerosene, per liter of volume capacity, Zero (₱0.00): Provided, That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;

(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, One peso and zero (₱0.00);

(j) Liquefied petroleum gas, per liter, Zero (₱0.00): Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;

(k) Asphalts, per kilogram, Fifty-six centavos (₱0.56); and

(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, zero (₱0.00).

[66] SEC. 129. Goods subject to Excise Taxes. — Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'

[67] (A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Custom Officers, conformably with the

it shall be considered an importer liable for the taxes due on these products.

The crux of the controversy can be found in this feature of the challenged regulation.

The petitioners assert that RR 2-2012 simply implements the provisions of the Tax Code on collection of internal revenue taxes, more specifically VAT and excise tax, on the importation of petroleum and petroleum products. To them, FEZ enterprises enjoy a *qualified tax exemption* such that they have to pay the tax due on the importation first, and thereafter claim a refund, which shall be allowed only upon showing that the goods were not introduced to the Philippine customs territory.

On the other hand, the respondents contend that RR 2-2012 imposes taxes on FEZ enterprises, which in the first place are not liable for taxes. They emphasize that the tax incentives under RA 9400 apply *automatically* upon the importation of the goods. The proper taxes on the importation shall only be due if the enterprises can later show that the goods were subsequently introduced to the Philippine customs territory.

Since the tax exemptions enjoyed by FEZ enterprises under the law extend even to VAT and excise tax, as we discussed above, it follows and we accordingly rule that *the taxes imposed by Section 3 of RR 2-2012 directly contravene these exemptions.* ***First***, the regulation erroneously considers petroleum and petroleum products brought into a FEZ as taxable importations. ***Second***, it unreasonably burdens FEZ enterprises by making them pay the corresponding taxes — an obligation from which

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regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entitles, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

the law specifically exempts them — even if there is a subsequent opportunity to refund the payments made.

Petroleum and petroleum products brought into the FEZ and ***which remain therein*** *are not taxable importations.*

RR 2-2012 clearly imposes VAT and excise tax on the importation of petroleum and petroleum products into FEZs. S*trictly speaking, however, articles brought into these FEZs are not taxable importations under the law* based on the following considerations:

First, importation refers to bringing goods from abroad *into the Philippine customs jurisdiction*. It begins from the time the goods enter the Philippine jurisdiction and is deemed terminated when the applicable taxes and duties have been paid or the goods *have left the jurisdiction of the BOC*.[68]

Second, under the Tax Code, *imported goods* are subject to VAT and excise tax. These taxes shall be paid prior to the release of the goods from *customs custody*.[69] Also, for VAT purposes,[70] an *importer* refers to any person who brings goods *into the Philippines*.

Third, the Philippine VAT system adheres to the *cross border doctrine*.[71] Under this rule, no VAT shall be imposed to form part of the cost of the goods destined for consumption *outside the Philippine customs territory*.[72] Thus, we have already ruled before that an FEZ enterprise cannot be *directly* charged for

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[68] *General Travel Service, Ltd. v. David*, G.R. No. L-19259, 18 SCRA 59, September 23, 1966, 18 SCRA 59.

[69] Section 4.107-1 (b), RR 16-2005, otherwise known as the Consolidated VAT Regulations of 2004, promulgated to Title IV of the Tax Code, as well as other provisions pertaining to VAT.

[70] Section 4.107-1(a), RR 16-2005, *id*.

[71] *Supra* note 32.

[72] *Id*.

the VAT on its sales, nor can VAT be passed on to them *indirectly* as added cost to their purchases.[73]

Fourth, laws such as RA 7227, RA 7916, and RA 9400 have established certain special areas as *separate customs territories*.[74] In this regard, we have already held that such jurisdictions, such as the Clark FEZ, are, by legal fiction, *foreign territories*.[75]

Fifth, the Implementing Rules provides that goods *initially introduced* into the FEZs and *subsequently brought out* therefrom and introduced into the Philippine customs territory shall be considered as *importations* and thereby subject to the VAT.[76] One such instance is the sale by any FEZ enterprise to a customer located in the customs territory, which the VAT regulations refer to as a *technical importation*.[77]

We find it clear from all these that when goods (*e.g.*, petroleum and petroleum products) are brought into an FEZ, *the goods remain to be in foreign territory* and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws.[78]

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[73] *Id*.

[74] RA 7227 with respect to the Subic Special Economic Zone, RA 7916 with respect to Ecozones as identified by Presidential Proclamations, and RA 9400 with respect to Clark FEZ and Poro Point Freeport Zone.

[75] *Supra* note 32.

[76] Section 7 of the Implementing Rules of RA 9400 provides: "*Tax Treatment of Goods Introduced Into and Brought Out of the Ecozones and Freeport Zones*—A. A. Raw materials, capital goods, and consumer items of domestic origin which are brought out of the Ecozone or Freeport Zone introduced into the customs territory shall be considered as importations into the customs territory and the buyer of the goods shall be treated as importer thereof, hence subject to the VAT on importation. In all instances, raw materials, capital goods, equipment and consumer items and foreign articles introduced into the customs territory, unless authorized under applicable laws, rules and regulations shall be subject to taxes and duties under the National Internal Revenue Code of 1997, as amended, and by the Tariff and Customs Code of the Philippines, as amended."

[77] *Supra* note 69.

[78] *Supra* note 57.

Stated differently, goods brought into and traded within an FEZ are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to FEZs exempting the *importation itself* from taxes and duties.

Therefore, the act of bringing the goods into an FEZ is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the FEZ) in the FEZ or re-exported to another foreign jurisdiction, they shall continue to be tax-free.[79] However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an *importation* subject to all applicable national internal revenue taxes and customs duties.

The tax exemption granted to FEZ enterprises is an immunity from tax liability ***and*** *from the payment of the tax.*

The respondents claim that when RR 2-2012 was issued, petroleum and petroleum products brought into the FEZ by FEZ enterprises suddenly became subject to VAT and excise tax, in direct contravention of RA 9400 (with respect to Clark FEZ enterprises). Such imposition is not authorized under any law, including the Tax Code.[80]

On the other hand, the petitioners argue that RR 2-2012 does not withdraw the tax exemption privileges of FEZ enterprises. As their tax exemption is merely *qualified*, they cannot invoke outright exemption. Thus, FEZ enterprises are required to pay internal revenue taxes first on their imported petroleum under RR 2-2012. They may then refund their previous payment upon showing that the condition under RA 9400 has been satisfied — that is, the goods have not been introduced to the Philippines

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[79] *Coconut Oil Refiners Association v. Torres, supra* note 61 citing Senator Enrile from the records of the Senate containing the discussion of the concept of "special economic zone."

[80] Comment, *rollo*, p. 372.

customs territory.[81] To the petitioners, to the extent that a refund is allowable, there is still in reality a tax exemption.[82]

We disagree with this contention.

First, FEZ enterprises bringing goods into the FEZ should not be considered as *importers* subject to tax in the same manner that the very act of bringing goods into these special territories does not make them *taxable importations*. We emphasize that the exemption from taxes and duties under RA 9400 are granted not only to *importations* into the FEZ, but also specifically to each FEZ enterprise. As discussed, the tax exemption enjoyed by *FEZ enterprises* necessarily includes the tax exemption of the *importations of selected articles* into the FEZ.

Second, the essence of a tax exemption is the *immunity* or *freedom* from a charge or burden to which others are subjected.[83] It is a *waiver* of the government's right to collect[84] the amounts that would have been collectible under our tax laws. *Thus, when the law speaks of a tax exemption, it should be understood as freedom from the imposition and payment of a particular tax.*

Based on this premise, we rule that the *refund mechanism provided by RR 2-2012 does not amount to a tax exemption*. Even if the possibility of a subsequent refund exists, the fact remains that FEZ enterprises must still spend money and other resources to pay for something they should be immune to in the first place. This completely contradicts the essence of their tax exemption.

In the same vein, we cannot agree with the view that FEZ enterprises have the duty to prove their entitlement to tax exemption first before fully enjoying the same; we find it illogical

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[81] *Rollo*, pp. 72-73.

[82] *Id*. at 76 citing *CIR v. A. D. Guerrero, supra* note 27.

[83] *Greenfield v. Meer*, 77 Phil. 394 (1946).

[84] *CIR v. Phil. Ace lines, Inc.*, G.R. Nos. L-20960-61, October 31, 1968, 25 SCRA 912, citing *CIR v. Bothelo Shipping Corporation*, G.R. No. L-21633, June 29, 1967, 20 SCRA 487.

to determine whether a person is exempted from tax without first determining if he is subject to the tax being imposed. We have reminded the tax authorities to determine first if a person is liable for a particular tax, applying the rule of strict interpretation of tax laws, before asking him to prove his exemption therefrom.[85] Indeed, as entities exempted on taxes on importations, FEZ enterprises are clearly beyond the coverage of any law imposing those very charges. There is no justifiable reason to require them to prove that they are exempted from it.

More importantly, we have also recognized that the exemption from local and national taxes granted under RA 7227, as amended by RA 9400, are *ipso facto* accorded to FEZs. In case of doubt, conflicts with respect to such tax exemption privilege shall be resolved in favor of these special territories.[86]

RR 2-2012 is unconstitutional.

According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress.[87] In passing RR 2-2012, petitioners illegally amended the law — a power solely vested on the Legislature.

We agree with the respondents.

The power of the petitioners to interpret tax laws is not absolute. The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.[88]

It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the*

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[85] *CIR v. Court of Appeals*, G.R. No. 115349, April 18, 1997, 271 SCRA 605.

[86] *Supra* note 32. *Cf.* Section 6, RA 7227, as amended by RA 9400.

[87] *Rollo*, p. 379.

[88] *Commissioner of Internal Revenue v. Central Luzon Drug*, G.R. No. 159647, April 15, 2005, 456 SCRA 414.

collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.

While we recognize petitioners' essential rationale in issuing RR 2-2012, the procedures proposed by the issuance cannot be implemented at the expense of entities that have been clearly granted statutory tax immunity.

Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions.[89] To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.[90]

Finally, the State's inherent power to tax is vested exclusively in the Legislature.[91] We have since ruled that the power to tax includes the power to grant tax exemptions.[92] Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the *petitioners have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.

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[89] *Supra* note 84.

[90] *Supra* note 61.

[91] *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015, sc.judiciary.gov.ph.

[92] *Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008, 568 SCRA 496.

[*] Respondents changed to petitioners.

In these lights, we hereby rule and declare that RR 2-2012 is null and void.

WHEREFORE, we hereby **DISMISS** the petition for lack of merit, and accordingly **AFFIRM** the decision of the Regional Trial Court dated November 8, 2013 in SCA Case No. 12-410.

SO ORDERED.

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

Jardeleza, J., no part due to prior action as Solicitor General.

EN BANC

[G.R. No. 213453. November 29, 2016]

PHILIPPINE HEALTH INSURANCE CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT, MA. GRACIA PULIDO TAN, Chairperson; and JANET D. NACION, Director IV,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; DEFINED; THE GIST OF THE QUESTION OF STANDING IS WHETHER A PARTY ALLEGES SUCH A PERSONAL STAKE IN THE OUTCOME OF THE CONTROVERSY AS TO ASSURE THAT CONCRETE ADVERSENESS WHICH SHARPENS THE PRESENTATION OF ISSUES UPON WHICH THE COURT DEPENDS FOR

ILLUMINATION OF DIFFICULT CONSTITUTIONAL QUESTIONS.— Time and again, the Court has defined *locus standi* or legal standing as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

2. ID.; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATION; THE BURDEN OF PROVING THE VALIDITY OR LEGALITY OF THE GRANT OF ALLOWANCE OR BENEFITS IS WITH THE GOVERNMENT AGENCY OR ENTITY GRANTING THE ALLOWANCE OR BENEFIT, OR THE EMPLOYEE CLAIMING THE SAME; THE NON-PARTICIPATION OF THE PARTICULAR EMPLOYEES WHO ACTUALLY RECEIVED THE DISALLOWED BENEFITS DOES NOT PREVENT THE COURT FROM DETERMINING THE ISSUE OF WHETHER THE COMMISSION ON AUDIT (COA) GRAVELY ABUSED ITS DISCRETION IN DECLARING THE ENTITY'S ISSUANCE AS ILLEGAL.— [T]he Court finds that petitioner PHIC certainly possesses the legal standing to file the instant action. Petitioner comes before the Court invoking its power to fix the compensation of its employees and personnel enunciated under the National Health Insurance Act. Accordingly, when respondent disallowed petitioner's grant of certain allowances in its exercise of said power, it effectively and directly challenged petitioner's authority to grant the same. Thus, petitioner must be granted the opportunity to justify its issuances by presenting the basis on which they were made. As petitioner pointed out, whatever benefit received by the personnel as a consequence of PHIC's exercise of its alleged authority is merely incidental to the main issue, which is the validity of PHIC's grant of allowances and benefits. In fact, in light of numerous disallowances being made by the COA, it is rather typical for a government entity to come before the Court and challenge the COA's decision invalidating such entity's disbursement of funds. The non-participation of the particular employees who actually received the disallowed

benefits does not prevent the Court from determining the issue of whether the COA gravely abused its discretion in declaring the entity's issuance as illegal. In *Maritime Industry Authority v. COA,* We explained: **The burden of proving the validity or legality of the grant of allowance or benefits is with the government agency or entity granting the allowance or benefit, or the employee claiming the same.** x x x. **Our laws and procedure have provided the aggrieved party several chances to prove the validity of the grant of the allowance or benefit.**

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE DECISION OF THE COA WHEN IT IS SHOWN TO HAVE BEEN TAINTED WITH UNFAIRNESS AMOUNTING TO GRAVE ABUSE OF DISCRETION. —** As Article IX-A, Section 7 of the 1987 Constitution expressly provides, "unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof." In like manner, Rule 64, Section 2 of the Revised Rules of Civil Procedure also provides that "a judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided." Thus, while findings of administrative agencies, such as the COA herein, are generally respected, when it is shown to have been tainted with unfairness amounting to grave abuse of discretion, the aggrieved party can assail the COA decision in special civil action for *certiorari* under Rule 64 in relation to Rule 65, an extraordinary remedy, the purpose of which is to keep the public respondent within the bounds of its jurisdiction, relieving the petitioner from the public respondent's arbitrary acts.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATION; THE ABSENCE OF EXPLICIT PROVISION IN THE CHARTER OF THE GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC) THAT THE POWER THEREOF TO FIX SALARIES AND ALLOWANCES SHALL BE SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) DOES NOT**

NECESSARILY MEAN THAT THE GOCC HAS UNBRIDLED DISCRETION TO ISSUE ANY AND ALL KINDS OF ALLOWANCES, AS THE POWER OF ITS BOARD TO FIX THE SALARIES AND DETERMINE THE REASONABLE ALLOWANCES, BONUSES AND OTHER INCENTIVES MUST STILL CONFORM TO COMPENSATION AND POSITION CLASSIFICATION STANDARDS LAID DOWN BY APPLICABLE LAW.— The extent of the power of GOCCs to fix compensation and determine the reasonable allowances of its officers and employees had already been conclusively laid down in *Philippine Charity Sweepstakes Office (PCSO) v. COA* x x x. The Court, in the same case, further elaborated on the rule that notwithstanding any exemption granted under their charters, the power of GOCCs to fix salaries and allowances must still conform to compensation and position classification standards laid down by applicable law. x x x. Accordingly, that Section 16(n) of R.A. 7875 granting PHIC's power to fix the compensation of its personnel does not explicitly provide that the same shall be subject to the approval of the DBM or the OP as in Section 19(d) thereof does not necessarily mean that the PHIC has unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter. As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (*OCPC*) under the OBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment, P.D. No. 1597, the SSL, and at present, R.A. 10149. To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature.

5. ID.; ID.; ID.; THE ALLOWANCES AND BENEFITS GRANTED BY THE GOCC SHALL BE UPHELD BY THE DBM WHERE THE SAME ARE IN ACCORDANCE WITH AND AUTHORIZED BY PREVAILING LAW.— [T]he power of review granted to the [DBM] is simply to ensure that the proposed compensation and benefit schemes of the GOCCs

comply with the requirements of applicable laws, rules and regulations. *PRA v. Buñag* clarifies: x x x. **The role of the Department of Budget and Management is supervisorial in nature, its main duty being to ascertain that the proposed compensation, benefits and other incentives to be given to PRA officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.** The rule, therefore, is that for as long as the allowances and benefits granted by petitioner PHIC are in accordance with and authorized by prevailing law, the same shall be upheld by the DBM.

6. ID.; ID.; ID.; WHEN A GRANT OF AN ALLOWANCE IS NOT AMONG THOSE EXCLUDED IN THE ENUMERATION UNDER SECTION 12 OF THE SALARY STANDARDIZATION LAW (SSL) OR EXPRESSLY EXCLUDED BY LAW OR DBM ISSUANCE, SUCH ALLOWANCE IS DEEMED ALREADY GIVEN TO ITS RECIPIENTS IN THEIR BASIC SALARY, AND THE UNAUTHORIZED ISSUANCE AND RECEIPT OF SAID ALLOWANCE IS TANTAMOUNT TO DOUBLE COMPENSATION JUSTIFYING COA DISALLOWANCE.— As Section 29(1), Article VI of the 1987 Constitution provides, "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." Accordingly, in order to determine the validity of PHIC's issuances, the Court must give due regard to x x x Section 12 of the SSL in force at the time of the subject grants x x x. Thus, the general rule is that all allowances are deemed included in the standardized salary except for the following: (1) representation and transportation allowances; (2) clothing and laundry allowances; (3) subsistence allowance of marine officers and crew on board government vessels and hospital personnel; (4) hazard pay; (5) allowances of foreign service personnel stationed abroad; and (6) such other additional compensation not otherwise specified herein as may be determined by the DBM. Time and again, the Court has ruled that Section 12 of the SSL is self-executing. This means that even without DBM action, the standardized salaries of government employees are already inclusive of all allowances, save for those expressly identified in said section. It is only when additional non-integrated allowances will be identified that an issuance of the DBM is required. Thus, until and unless the DBM issues rules and regulations identifying those excluded benefits, the enumerated non-integrated allowances in Section 12 remain exclusive. When a grant of an allowance, therefore,

is not among those excluded in the Section 12 enumeration or expressly excluded by law or DBM issuance, such allowance is deemed already given to its recipient in their basic salary. As a result, the unauthorized issuance and receipt of said allowance is tantamount to double compensation justifying COA disallowance.

7. ID.; ID.; ID.; THE COST OF LIVING ALLOWANCE (COLA) IS DEEMED ALREADY INCORPORATED IN THE STANDARDIZED SALARY RATES OF GOVERNMENT EMPLOYEES UNDER THE GENERAL RULE OF INTEGRATION OF THE SSL; EXCEPTION; THE COURT, IN CERTAIN INSTANCES, SUSTAINS THE CONTINUED GRANT OF ALLOWANCES, WHETHER OR NOT INTEGRATED INTO THE STANDARDIZED SALARIES, BUT ONLY TO THOSE INCUMBENT GOVERNMENT EMPLOYEES WHO WERE ACTUALLY RECEIVING SAID ALLOWANCES BEFORE AND AS OF JULY 1, 1989.— [T]he Court had consistently ruled that not being an enumerated exclusion, the COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration of the SSL. x x x. In certain instances, however, the Court had opted to sustain the continued grant of allowances, whether or not integrated into the standardized salaries, but only to those incumbent government employees who were actually receiving said allowances before and as of July 1, 1989. This is in consonance with the second sentence of the first paragraph of Section 12 of the SSL which states that: "such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized." But unfortunately, petitioner failed to prove such exception.

8. ID.; ID.; ID.; THE DISCRETION OF THE GOCC ON THE MATTER OF COMPENSATION IS NOT ABSOLUTE EVEN IF IT IS A SELF-SUSTAINING GOVERNMENT INSTRUMENTALITY WHICH DOES NOT DEPEND ON THE NATIONAL GOVERNMENT FOR ITS BUDGETARY SUPPORT; ABSENT ANY STATUTORY AUTHORITY OR DBM ISSUANCE EXPRESSLY AUTHORIZING THE GRANT OF THE LABOR MANAGEMENT RELATIONS GRATUITY (LMRG), THE SAME MUST BE DEEMED

INCORPORATED IN THE STANDARDIZED SALARIES OF THE EMPLOYEES OF THE PETITIONER-CORPORATION.— *PCSO v. COA* has already established, in no uncertain terms, that the fact that a GOCC is a self-sustaining government instrumentality which does not depend on the national government for its budgetary support does not automatically mean that its discretion on the matter of compensation is absolute. [R]egardless of any exemption granted under their charters, the power of GOCCs to fix salaries and allowances must still conform to compensation and position classification standards laid down by applicable law, which, in this case, is the SSL. In view of petitioner's failure to present any statutory authority or DBM issuance expressly authorizing the grant of the LMRG, the same must be deemed incorporated in the standardized salaries of the PHIC employees. Accordingly, the Court must necessarily strike its unauthorized issuance as invalid for the receipt by the PHIC employees thereof was tantamount to double compensation.

9. ID.; ID.; ID.; GRANT OF COLLECTIVE NEGOTIATION AGREEMENT SIGNING BONUS (CNASB) DECLARED VALID AS THE SAME WAS EXPRESSLY SANCTIONED BY DBM BUDGET CIRCULAR NO. 2000-19.— [A]s between petitioner PHIC's allegations together with its corresponding documentary evidence consisting of certifications and employee payrolls on the one hand, and respondent COA's plain assertions, unsubstantiated by any sort of proof on the other, the Court finds that the former deserves to be given more weight and credence. Remember that the power granted to the DBM is simply to ensure that the proposed compensation, benefits and other incentives given to GOCC officials and employees adhere to the policies and guidelines issued in accordance with applicable laws. It is only just that the extent of its reviewing authority be sufficiently supported by reasonable proof. Considering, therefore, that the records of the case, taken in conjunction with the circumstances surrounding their issuance, supports a reasonable conclusion that the CNASB was, indeed, paid in 2001 and not in 2004, at the time when the payment thereof was expressly sanctioned by DBM Budget Circular No. 2000-19, the Court holds that respondent COA carelessly and whimsically issued its disallowance in the absence of any sufficient basis in support of the same.

10. ID.; ID.; ID.; GRANT OF WELFARE SUPPORT ASSISTANCE (WESA) UPHELD AS THE SAME WAS SANCTIONED NOT ONLY BY THE SSL BUT ALSO BY STATUTORY AUTHORITY .— The Court finds that the PHIC's grant of the WESA was aptly sanctioned not only by Section 12 of the SSL but also by statutory authority. PHIC Board Resolution No. 385, s. 2001 states that the WESA of ₱4,000.00 each shall be paid to public health workers under the Magna Carta of PHWs in lieu of the subsistence and laundry allowances. Respondent COA contested the same not so much on the propriety of the subsistence and laundry allowances in the form of the WESA, but that the Secretary of Health prescribed the rates thereof not in accordance with the Magna Carta of PHWs. x x x. [T]he law does not prescribe a particular form nor restrict to a specific mode of action by which the Secretary of Health must determine the subject rates of subsistence and laundry allowance. That the Health Secretary approved the grant of the WESA together with ten (10) other members of the Board does not make the act any short of the approval required under the law. As far as the Magna Carta and its Revised IRR are concerned, the then Health Secretary Dr. Alberto G. Romualdez, Jr. voted in favor of the WESA's issuance, and for as long as there exists no deception or coercion that may vitiate his consent, the concurring votes of his fellow Board members does not change the fact of his approval. To rule otherwise would create additional constraints that were not expressly provided for by law.

11. ID.; ID.; ID.; RECIPIENTS OR PAYEES NEED NOT REFUND DISALLOWED BENEFITS OR ALLOWANCES WHEN IT WAS RECEIVED IN GOOD FAITH AND THERE IS NO FINDING OF BAD FAITH OR MALICE; THE OFFICERS WHO PARTICIPATED IN THE APPROVAL OF SUCH DISALLOWED AMOUNT ARE REQUIRED TO REFUND THE AMOUNT RECEIVED IF THEY ARE FOUND TO BE IN BAD FAITH OR GROSSLY NEGLIGENT AMOUNTING TO BAD FAITH.— [E]ven assuming the invalidity of the WESA due to the irregular manner by which the Health Secretary determined its rates, the Court does not find that the PHIC Board of Directors, other responsible officers, and recipients thereof should be ordered to refund the same. On this matter, *PCSO v. COA* summarized the rules as follows: Recipients or payees need not refund disallowed

benefits or allowances when it was received in good faith and there is no finding of bad faith or malice. On the other hand, officers who participated in the approval of such disallowed amount are required to refund only those received if they are found to be in bad faith or grossly negligent amounting to bad faith. Public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarity liable for their reimbursement. The receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of government officials directly responsible. [P]HIC's grant of the WESA was aptly sanctioned not only by Section 12 of the SSL which explicitly identifies laundry and subsistence allowance as excluded from the integrated salary, but also by statutory authority, particularly, Section 22 and 24 of the Magna Carta. In view of such fact, the PHIC officers cannot be found to have approved the issuance of the same in bad faith or in gross negligence amounting to bad faith for it was well within the parameters set by law. Thus, the WESA need not be refunded.

12. ID.; ID.; ID.; THE GOCC OFFICERS ARE NOT PERSONALLY LIABLE FOR THE REFUND OF DISALLOWED ALLOWANCES AS THEIR UNCLEAR KNOWLEDGE OF A RULING BY THE COURT CATEGORICALLY PROHIBITING THE PAYMENT THEREOF IS A BADGE OF GOOD FAITH; COLA NEED NOT BE REFUNDED.— [T]here is no showing that the PHIC officers approved the issuance and payment of the back COLA in bad faith. Similarly, there is no showing that the PHIC officers approved the issuance and payment of the back COLA in bad faith. From the very beginning, petitioner had been invoking, albeit erroneously, Our ruling in *PPA Employees Hired After July 1, 1989 v. COA*, wherein We granted the payment of the COLA back pay to PPA employees for the period beginning July 1, 1989 until March 16, 1999, during the time the DBM-CCC No. 10 was in legal limbo, seemingly believing, in good faith, that on the basis thereof, the PHIC employees could likewise be granted the same. In fact, even respondent COA Director Janet Nacion was under the same impression when she conceded that "no less than the SC has made an imprimatur regarding the employee's entitlement to COLA" during the time the circular was in legal limbo. It is therefore apparent that during such time, there were differing opinions regarding the

true interpretation of a technicality of law. Thus, before the Court was able to clarify that the ruling in *PPA Employees* was limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of the SSL, there was yet no absolute and clear-cut rule regarding the entitlement to the COLA during the period when the DBM circular was in legal limbo. Hence, it might seem rather severe to hold the concerned PHIC officers personally liable to refund the COLA back pay in view of the fact that they may have honestly believed in the propriety of the same. In fact, just recently, We held that since certain officers who authorized the back payment of the COLA were oblivious that said payments were improper, the same need not be refunded. This is because absent any showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties. x x x. Thus, the fact that the PHIC officers had an unclear knowledge of a ruling by this Court categorically prohibiting the particular disbursement herein is a badge of good faith, especially in light of the COA's failure to overturn the presumption of regularity in the performance of their official duties.

13. ID.; ID.; ID.; THE BOARD MEMBERS AND OFFICERS OF THE GOCC MUST INITIALLY DETERMINE THE EXISTENCE OF THE PARTICULAR RULE OF LAW AUTHORIZING THEM TO ISSUE CERTAIN ALLOWANCES BEFORE APPROVING AND RELEASING THEM; THE BOARD MEMBERS AND OFFICIALS OF THE PETITIONER-CORPORATION MUST REFUND THE LMRG, AS THEIR APPROVAL AND RELEASE THEREOF IN SHEER AND UTTER ABSENCE OF THE REQUISITE LAW OR DBM AUTHORITY IS TANTAMOUNT TO GROSS NEGLIGENCE AMOUNTING TO BAD FAITH.— [I]n order to uphold the validity of a grant of an allowance, it must not merely rest on an agency's "fiscal autonomy" alone, but must expressly be part of the enumeration under Section 12 of the SSL, or expressly authorized by law or DBM issuance. x x x [A]t the time of the passage of PHIC Board Resolution No. 717, s. 2004 on July 22, 2004 by virtue of which the PHIC Board resolved to approve the LMRG's issuance, the PHIC Board members and officers had an entire five (5)-year period to be acquainted with the proper rules insofar as the issuance of certain allowances is concerned. They cannot, therefore, be

allowed to feign ignorance to such rulings for they are, in fact, duty-bound to know and understand the relevant rules they are tasked to implement. Thus, even if We assume the absence of bad faith, the fact that said officials recklessly granted the LMRG not only without authority of law, but even contrary thereto, is tantamount to gross negligence amounting to bad faith. Good faith dictates that before they approved and released said allowance, they should have initially determined the existence of the particular rule of law authorizing them to issue the same. In view of the foregoing, the Court holds that the PHIC Board members who approved PHIC Board Resolution No. 717, series of 2004 and the PHIC officials who authorized its release are bound to refund the LMRG.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 64, in relation to Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision No. 2013-208[1] dated November 20, 2013 and Resolution dated April 4, 2014 of the Commission on Audit (*COA*), which affirmed the Notice of Disallowance (*ND*) Philippine Health Insurance Corporation (*PHIC*) 2008-003 (2004)[2] dated February 7, 2008 of the COA Legal Service.

The antecedent facts are as follows:

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[1] Signed by Commissioner Ma. Gracia M. Pulido Tan, Chairperson, with Commissioners Heidi L. Mendoza and Rowena V. Guanzon, concurring; *rollo*, pp. 47-56.

[2] *Id*. at 119-123.

The instant case stems from petitioner PHIC's grant of several allowances to its officers and employees that were subsequently disallowed by respondent COA. In its PHIC Board Resolution No. 406, s. 2001[3] dated May 31, 2001, for one, petitioner granted the payment of the Collective Negotiation Agreement Signing Bonus (*CNASB*) of ₱5,000.00 each to all qualified employees due to the extension of the then existing CNA between the PHIC management and the PhilHealth Employees Association (*PHICEA*) for the period of another three (3) years beginning April of 2001. For another, in its PHIC Board Resolution No. 385, s. 2001[4] effective January 1, 2001, petitioner approved the payment of the Welfare Support Assistance (*WESA*) of ₱4,000.00 each, in lieu of the subsistence and laundry allowances paid to public health workers under Republic Act (*R.A.*) No. 7305, otherwise known as the *Magna Carta of Public Health Workers*. Petitioner then resolved to approve the grant of the Labor Management Relations Gratuity (*LMRG*) by virtue of its PHIC Board Resolution No. 717, s. 2004[5] dated July 22, 2004, in recognition of harmonious labor-management relations of its employees with the management. Finally, for the services rendered during the period beginning July 1989 until January 1995, petitioner paid the Cost of Living Allowance (*COLA*) to personnel it had absorbed from the Philippine Medical Care Commission (*PMCC*) by virtue of Section 51[6] of R.A. No. 7875, otherwise known as *The National Health Insurance Act of 1995*.[7]

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[3] *Id*. at 96.

[4] *Id*. at 109-111.

[5] *Id*. at 112-114.

[6] Section 51 of R.A. No. 7875 provides:

SECTION 51. Merger. – Within sixty (60) days from the promulgation of the implementing rules and regulations, all functions and assets of the Philippine Medical Care Commission shall be merged with those of the Corporation (PHILHEALTH) without need of conveyance, transfer or assignment. The PMCC shall thereafter cease to exist.

The liabilities of the PMCC shall be treated in accordance with existing laws and pertinent rules and regulations.

[7] *Rollo,* p. 7.

On February 7, 2008, however, pursuant to the recommendations of the Supervising Auditor of the PHIC in various Audit Observation Memoranda (*AOM*),[8] respondent Janet D. Nacion, Director IV of the Legal and Adjudication Office – Corporate of the COA, issued ND PHIC 2008-003 (2004), disallowing the payment of the aforementioned allowances granted to PHIC officers and employees in the total amount of ₱87,699,144.00.[9] According to respondent Nacion, the payment of the CNASB was contrary to the doctrine enunciated in *Social Security System (SSS) v. COA*[10] wherein the Court expressly invalidated the payment of the same. With respect to the WESA, Nacion maintained that its payment was made without legal basis in the absence of approval from the Office of the President.[11] As for the payment of the LMRG, Nacion found that it was merely a duplication of the Performance Incentive Bonus (*PIB*) which was granted to employees based on their good performance, increased efficiency and productivity. Lastly, Nacion disallowed the payment of back COLA to PHIC personnel ratiocinating that it should be collected not from petitioner PHIC but from the government agency where the services have been rendered prior to its creation in January 1995.[12]

Petitioner filed its motion for reconsideration which was, however, denied by the COA Legal Services Sector (*LSS*) in its Decision No. 2010-020[13] issued on May 21, 2010. On appeal, the COA Commission Proper (*CP*) sustained the disallowance in its Decision No. 2013-208 dated November 20, 2013.[14] Thereafter, in a Resolution[15] dated April 4, 2014, the COA CP *en banc* further denied petitioner's motion for reconsideration.

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[8] *Id*. at 47.

[9] *Id*. at 119.

[10] 433 Phil. 946 (2002).

[11] *Id*. at 120.

[12] *Id*.

[13] *Id*. at 124.

[14] *Id*. at 47-56.

[15] *Id*. at 57.

Aggrieved, petitioner filed the instant petition before the Court raising the following issues:

I.

WHETHER THE COA GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING THE ASSAILED DECISION AND RESOLUTION.

II.

WHETHER THE COA DISREGARDED THE FISCAL AUTONOMY GRANTED TO PHIC UNDER SECTION 16 (N), R.A. 7875, AS AMENDED, AS WELL AS EXISTING AND RELEVANT JURISPRUDENCE, IN AFFIRMING THE ND PHIC 2008-003 (2004).

III.

WHETHER PHIC'S PAYMENTS OF THE CNASB, LMRG, WESA, AND BACK COLA IN FAVOR OF ITS OFFICERS AND EMPLOYEES AMOUNTING TO PHP87,699,144.00 WAS PROPER.

IV.

GRANTING THAT THE PAYMENTS WERE NOT PROPER, WHETHER THE PHIC OFFICERS AND EMPLOYEES CAN BE REQUIRED TO REFUND THE AMOUNTS RECEIVED.

Petitioner PHIC raises several infirmities attendant in respondent COA's disallowance. *First*, contrary to respondent's findings, petitioner paid the CNASB to its regular *plantilla* personnel in 2001 and not in 2004 as evinced by the Certification and payrolls it duly presented.[16] During said year, such grant was expressly sanctioned by Budget Circular No. 2000-19 issued by the Department of Budget and Management (*DBM*) on December 15, 2000 which authorizes the payment of the signing bonus to each entitled rank-and-file personnel. During said year,

[16] *Id*. at 11.

moreover, the ruling in *SSS v. COA*[17] had not yet been laid down by the Court, which was actually promulgated on July 11, 2002, or more than a year *after* the payment of the subject CNASB. Thus, on the basis of the established principle of prospective application of laws, the invalidation of the CNASB enunciated in the *SSS* case cannot be used as legal basis in disallowing the issuance of said bonus.[18]

Second, petitioner asserts that the WESA was duly granted in compliance with applicable law, particularly R.A. No. 7305 or the *Magna Carta of Public Health Workers (PHW*). According to petitioners, the WESA was issued in *lieu* of the subsistence and laundry allowance due to PHWs under Section 22 of the Magna Carta, which provides that said subsistence allowance shall be "computed in accordance with prevailing circumstances as determined by the Health Secretary in consultation with the Management Health Worker's Consultative Councils." Petitioner explains that respondent COA's assertion that the WESA should be disallowed because it was granted without the participation of the Health Secretary is not entirely accurate. Under Section 18 (a) of R.A. No. 7875, the Board of Directors of the PHIC is composed of eleven (11) members (which was increased to sixteen (16) members under R.A. No. 10606 passed in June 2013) with the Health Secretary sitting as the *Ex-Officio* Chairperson.[19] As part of said PHIC board, its unanimous passage of PHIC Board Resolution No. 385, s. 2001 granting the subject WESA was compliantly the positive act of then Health Secretary Dr. Alberto G. Romualdez, Jr. required under the law.[20] Any official act of the PHIC Board, with the Health Secretary sitting as *Ex-Officio* Chairperson, cannot be considered as an exclusive act of the board, but also as an act of the Health Secretary in his primary capacity as such.

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[17] *Supra* note 10.

[18] *Id*. at 14.

[19] *Id*. at 16.

[20] *Id*. at 17.

Third, petitioner contends that contrary to respondent's allegation, the LMRG is not merely a duplicate of the PIB. The LMRG was passed in the exercise of the PHIC Board of its "fiscal autonomy" to fix compensation and benefits of its personnel under Section 16 (n) of R.A. No. 7875 in recognition of notable labor-management relations, while the PIB was granted as a performance-based incentive under Executive Order (*E.O.*) No. 486, entitled *Establishing a Performance-Based Incentive System for Government-Owned or Controlled Corporations and for Other Purposes*.[21] In addition, the two (2) grants not only have different requirements for entitlement but also differ in their amounts and manner of computation.

Fourth, with respect to the grant of the COLA back pay, petitioner posits that while it agrees with the position taken by respondent COA Director Nacion that the Court, in *De Jesus v. COA*,[22] has given *imprimatur* on the propriety of the said COLA during the time when the DBM Corporate Compensation Circular (*CCC*) 10 was in legal limbo, it, nevertheless, disagrees with her view that the PHIC is not legally bound to pay the same to its absorbed personnel for their services were not rendered to PHIC but to another government agency prior to PHIC's creation.[23] Petitioner recounts that the COLA back pay was for services rendered between July 1989 and January 1995 when the payment of the same had been discontinued by reason of DBM CCC 10 issued in July 1995, pursuant to R.A. No. 6758, or the *Salary Standardization Law* (*SSL*). But the failure to publish the DBM CCC 10 integrating COLA into the standardized salary rates meant that the COLA was not effectively integrated as of July 1989 but only on March 16, 1999 when the circular was published as required by law. Thus, in between those two dates, the employees were still entitled to receive the COLA. But unlike respondent Nacion, who opined that petitioner PHIC has no business to settle the obligations of other government

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[21] *Id*. at 18-19.

[22] 355 Phil. 584 (1998).

[23] *Rollo*, p. 21.

entities having a separate and distinct legal personality therefrom, petitioner PHIC invokes Section 51 of R.A. No. 7875 which transfers all the functions and assets of the defunct PMCC to PHIC. According to petitioner, the term "functions" necessarily means to include then PMCC's obligation to pay the benefits due to its employees who have been absorbed by PHIC such as the COLA that was unduly withdrawn from their salaries after the issuance of DBM CCC 10 in 1989.[24] This is in keeping with the principle of equal protection of laws guaranteed under the Constitution. In the end, petitioner posits that since PHIC personnel received the CNASB, WESA, LMRG and back COLA in good faith, they should not be required to refund them.[25]

For its part, respondent COA initially raised certain procedural defects in petitioner's action. For one, it is alleged that petitioner PHIC is not the real party-in-interest and, therefore, has no *locus standi* to file the instant petition.[26] This is because the parties who benefitted and who will be injured by the disallowance are the officers and employees of PHIC, and not PHIC itself. For another, the special civil action for *certiorari* under Rule 65 is improper as it was not shown that respondent COA acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Substantially, moreover, respondent COA asseverates that PHIC's so-called "fiscal autonomy" does not preclude the COA's power to disallow the grant of allowances.[27] In the exercise of said power, respondent COA claims that petitioner, in granting the subject allowances, cannot rely on Section 16 (n)[28] of R.A.

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[24] *Id*. at 23.

[25] *Id*. at 25.

[26] *Id*. at 169.

[27] *Id*. at 175-176.

[28] Section 16 (n) of R.A. No. 7875 provides:

Section 16. *Powers and Functions* – The Corporation shall have the following powers and functions:

x x x x x x x x x

No. 7875. This is because as held in *Government Service Insurance System (GSIS) v. Civil Service Commission*,[29] the term "compensation" "excludes all bonuses, per *diems*, allowances and overtime pay, or salary pay or compensation given in addition to the base pay of the position or rank as fixed by law or regulations."

Respondent COA further insists that with respect to the CNASB, the payment of the same was made not in 2001, as petitioner claims, but on June 11, 2004, based on an Automatic Debit Advice "dated 6-11-2004."[30] Consequently, *SSS v. COA*[31] is applicable. In fact, in a letter dated October 18, 2004, the DBM reminded the PHIC of the said ruling. Thus, respondent COA posits that while it is true that the payment of the CNASB was allowed under DBM Budget Circular No. 2000-19, dated December 15, 2000, which was the basis of PHIC Board Resolution No. 406, s. 2001 approving said grant, actual payment thereof by petitioner PHIC, however, was made only on June 11, 2004, or after the pronouncement in *SSS v. COA*. Moreover, said Board Resolution has already been made ineffective by Resolution No. 04, s. 2002 and Resolution No. 02, s. 2003 of the Public Sector Labor-Management Council (*PSLMC*), which allows the grant of the CNA Incentive but declares the CNASB illegal as a form of additional compensation.[32] Respondent adds that the pieces of evidence submitted by petitioner consisting of the Certification and payrolls are self-serving for they were made out of court, the COA having no opportunity to impugn the same in open court.[33]

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n) to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation; x x x

[29] G.R. No. 98395, October 28, 1994, 237 SCRA 809, 816.

[30] *Rollo*, pp. 166 and 184.

[31] *Supra* note 10.

[32] *Id*. at 186.

[33] *Id*. at 187.

Respondent COA also rejects petitioner's assertions on the validity of the grant of the WESA claiming that the act of the PHIC Board is not the act of the individual composing the Board in view of the settled rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it.[34] Thus, the act of the PHIC Board of which the Health Secretary is the ex-officio chair is separate and distinct from the Health Secretary. Consequently, the benefit given as WESA is invalid because the rate thereof was not determined by the Health Secretary as mandated by the Magna Carta of PHWs.

As regards the LMRG, respondent maintains that it is exactly the same as the PIB earlier granted to PHIC employees based on their good performance, increased productivity and efficiency, for good performance is the result of a harmonious relationship between the employees and the management.[35] Even assuming that the LMRG does not partake of the nature of the PIB, the former nonetheless remains an additional benefit that requires prior approval of the Office of the President (*OP*) as mandated by Memorandum Order (*MO*) No. 20 dated June 25, 2001. Said MO requires presidential approval, for any increases in salary or compensation of Government-Owned and Controlled Corporations (*GOCCs*) that are not in accordance with the SSL.

As for the COLA back pay, respondent reiterates Nacion's view that petitioner PHIC is unauthorized to settle the obligations PMCC had because it is not one of the powers and functions enumerated in its charter, particularly Section 16 of R.A. 7875. Said functions do not include the obligation to pay the benefits due to the employees of PMCC or other employees of the government who have been absorbed by the PHIC. Respondent adds that at the time covering the period of July 1989 to January 1995, PHIC had no legal personality yet, for it was created only in 1995.[36] Thus, the obligation to pay the COLA commenced

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[34] *Id*. at 180.

[35] *Id*. at 188.

[36] *Id*. at 183-184.

only from that time. Prior to 1995, the COLA of PMCC employees should have been collected from the PMCC where they rendered their services.

The petition is partly meritorious.

At the outset, the Court rejects the alleged procedural barriers that supposedly prevent it from entertaining the instant petition. Respondent claims that petitioner PHIC is not the proper "aggrieved party" to file the petition because the parties who actually received and who will be injured by the disallowance are the officers and employees of PHIC, and not PHIC itself. Time and again, the Court has defined *locus standi* or legal standing as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[37]

In this regard, the Court finds that petitioner PHIC certainly possesses the legal standing to file the instant action. Petitioner comes before the Court invoking its power to fix the compensation of its employees and personnel enunciated under the National Health Insurance Act. Accordingly, when respondent disallowed petitioner's grant of certain allowances in its exercise of said power, it effectively and directly challenged petitioner's authority to grant the same. Thus, petitioner must be granted the opportunity to justify its issuances by presenting the basis on which they were made. As petitioner pointed out, whatever benefit received by the personnel as a consequence of PHIC's exercise of its alleged authority is merely incidental to the main issue, which is the validity of PHIC's grant of allowances and benefits.[38] In fact, in light of numerous disallowances being

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[37] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003).

[38] *Rollo*, p. 307.

made by the COA, it is rather typical for a government entity to come before the Court and challenge the COA's decision invalidating such entity's disbursement of funds.[39] The non-participation of the particular employees who actually received the disallowed benefits does not prevent the Court from determining the issue of whether the COA gravely abused its discretion in declaring the entity's issuance as illegal. In *Maritime Industry Authority v. COA,*[40] We explained:

> **The burden of proving the validity or legality of the grant of allowance or benefits is with the government agency or entity granting the allowance or benefit, or the employee claiming the same**. After the Resident Auditor issues a notice of disallowance, the aggrieved party may appeal the disallowance to the Director within six (6) months from receipt of the decision. **At this point, the government agency or employee has the chance to prove the validity of the grant of allowance or benefit**. If the appeal is denied, a petition for review may be filed before the Commission on Audit Commission Proper. **Finally, the aggrieved party may file a petition for certiorari before this court to assail the decision of the Commission on Audit Commission Proper.**
>
> **Our laws and procedure have provided the aggrieved party several chances to prove the validity of the grant of the allowance or benefit.**[41]

As Article IX-A, Section 7 of the 1987 Constitution expressly provides, "unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof." In like manner, Rule 64, Section 2 of the Revised Rules of Civil Procedure also provides that "a judgment or final order or resolution of the Commission on Elections and the Commission

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[39] *Maritime Industry Authority v. COA*, G.R. No. 185812, January 13, 2015, 745 SCRA 300; *Manila International Airport Authority v. COA*, 681 Phil. 644 (2012).

[40] *Supra*.

[41] *Id*. at 340. (Emphasis ours)

on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided." Thus, while findings of administrative agencies, such as the COA herein, are generally respected, when it is shown to have been tainted with unfairness amounting to grave abuse of discretion, the aggrieved party can assail the COA decision in special civil action for *certiorari* under Rule 64 in relation to Rule 65, an extraordinary remedy, the purpose of which is to keep the public respondent within the bounds of its jurisdiction, relieving the petitioner from the public respondent's arbitrary acts.[42]

The Court shall now proceed to determine the propriety of respondent COA's disallowance. In support of its grant of the subject allowances and benefits, petitioner PHIC persistently invokes its 'fiscal autonomy' enunciated under Section 16(n) of R.A. 7875 "to organize its office, *fix the compensation of* and appoint *personnel* as may be deemed necessary and upon the recommendation of the president of the Corporation." It argued that unlike in *Intia, Jr. v. COA*[43] cited by respondent COA where the charter of the Philippine Postal Corporation expressly stated that it shall ensure that its compensation system conforms closely to the provisions of the SSL, the PHIC charter does not contain a similar limitation thereby removing the PHIC from the ambit thereof.[44] Moreover, had the legislature intended to subject its power to fix its personnel's compensation to the approval of the DBM or the Office of the President (*OP*), its charter should have expressly provided as it did in Section 19(d) thereof which states that "the President shall receive a salary to be fixed by the Board, with the approval of the President of the Philippines, payable from the funds of the Corporation." In further support thereof, petitioner cites certain opinions of the Office of Government Corporate Counsel (*OGCC*) dated December 21, 1999 and March 31, 2004 upholding PHIC's

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[42] *Id.* at 312-313.

[43] 366 Phil. 273 (1999).

[44] *Rollo*, pp. 312-313.

unrestricted 'fiscal autonomy' to fix the compensation of its personnel.[45]

Petitioner adds that in any event, its power to fix its personnel compensation is still subject to certain limitations such as Section 26(b) of R.A. 7875 providing that it may charge various funds under its control for costs of administering the Program for as long as they shall not exceed the twelve percent (12%) of the total contributions to the Program and three percent (3%) of the investment earnings collected during the immediately preceding year.[46] Thus, petitioner posits that it is the intent of the legislature to limit the determination and approval of allowances to the PHIC Board alone, subject only to the 12%-13% limitation.[47] In the end, petitioner emphasizes that it enjoys an unmistakeable authority to exclusively approve its own, internal operating budget for prior DBM approval is only required when national budgetary support is needed.[48]

Petitioner's contentions are devoid of merit.

The extent of the power of GOCCs to fix compensation and determine the reasonable allowances of its officers and employees

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[45] *Id*. at 318-319.

[46] SEC. 26. Financial Management — The use, disposition, investment, disbursement, administration and management of the National Health Insurance Fund, including any subsidy, grant or donation received for program operations shall be governed by resolution of the Board of Directors of the Corporation, subject to the following limitations:

x x x x x x x x x

b) The Corporation is authorized to charge the various funds under its control for the costs of administering the Program. Such costs may include administration, monitoring, marketing and promotion, research and development, audit and evaluation, information services, and other necessary activities for the effective management of the Program. The total annual costs for these shall not exceed twelve percent (12%) of the total contributions, including government contributions to the Program and not more than three (3%) of the investment earnings collected during the immediately preceding year.

[47] *Rollo*, p. 320.

[48] *Id*. at 322.

had already been conclusively laid down in *Philippine Charity Sweepstakes Office (PCSO) v. COA*,[49] to wit:

> The PCSO stresses that it is a self-sustaining government instrumentality which generates its own fund to support its operations and does not depend on the national government for its budgetary support. Thus, it enjoys certain latitude to establish and grant allowances and incentives to its officers and employees.
>
> We do not agree. Sections 6 and 9 of R.A. No. 1169, as amended, cannot be relied upon by the PCSO to grant the COLA. Section 6 merely states, among others, that fifteen percent (15%) of the net receipts from the sale of sweepstakes tickets (whether for sweepstakes races, lotteries, or other similar activities) shall be set aside as contributions to the operating expenses and capital expenditures of the PCSO. Also, Section 9 loosely provides that among the powers and functions of the PCSO Board of Directors is "to fix the salaries and determine the reasonable allowances, bonuses and other incentives of its officers and employees as may be recommended by the General Manager x x x subject to pertinent civil service and compensation laws." **The PCSO charter evidently does not grant its Board the unbridled authority to set salaries and allowances of officials and employees. On the contrary, as a government owned and/or controlled corporation (GOCC), it was expressly covered by P.D. No. 985 or "The Budgetary Reform Decree on Compensation and Position Classification of 1976," and its 1978 amendment, P.D. No. 1597 (Further Rationalizing the System of Compensation and Position Classification in the National Government), and mandated to comply with the rules of then Office of Compensation and Position Classification (OCPC) under the DBM.**
>
> **Even if it is assumed that there is an explicit provision exempting the PCSO from the OCPC rules, the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the DBM review. In *Intia, Jr. v. COA*, the Court stressed that the discretion of the Board of Philippine Postal Corporation on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, i.e., its compensation system, including the allowances granted by the**

[49] G.R. No. 216776, April 19, 2016. (Emphasis ours)

Board, must strictly conform with that provided for other government agencies under R.A. No. 6758 in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the DBM pursuant to Section 6 of P.D. No. 1597.

The Court, in the same case, further elaborated on the rule that notwithstanding any exemption granted under their charters, the power of GOCCs to fix salaries and allowances must still conform to compensation and position classification standards laid down by applicable law. Citing *Philippine Retirement Authority (PRA) v. Buñag*,[50] We said:

> In accordance with the ruling of this Court in Intia, we agree with petitioner PRA that these provisions should be read together with P.D. No. 985 and P.D. No. 1597, particularly Section 6 of P.D. No. 1597. Thus, **notwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.**
>
> Despite the power granted to the Board of Directors of PRA to establish and fix a compensation and benefits scheme for its employees, the same is subject to the review of the Department of Budget and Management. x x x
>
> **The rationale for the review authority of the Department of Budget and Management is obvious. Even prior to R.A. No. 6758, the declared policy of the national government is to provide "equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."** To implement this policy, P.D. No. 985 provided for the standardized compensation of government employees and officials, including those in government-

[50] 444 Phil. 859 (2003).

owned and controlled corporations. Subsequently, P.D. No. 1597 was enacted prescribing the duties to be followed by agencies and offices exempt from coverage of the rules and regulations of the Office of Compensation and Position Classification. **The intention, therefore, was to provide a compensation standardization scheme such that notwithstanding any exemptions from the coverage of the Office of Compensation and Position Classification, the exempt government entity or office is still required to observe the policies and guidelines issued by the President and to submit a report to the Budget Commission on matters concerning position classification and compensation plans, policies, rates and other related details.** This ought to be the interpretation if the avowed policy of compensation standardization in government is to be given full effect. **The policy of "equal pay for substantially equal work" will be an empty directive if government entities exempt from the coverage of the Office of Compensation and Position Classification may freely impose any type of salary scheme, benefit or monetary incentive to its employees in any amount, without regard to the compensation plan implemented in the other government agencies or entities**. Thus, even prior to the passage of R.A No. 6758, consistent with the salary standardization laws in effect, the compensation and benefits scheme of PRA is subject to the review of the Department of Budget and Management.[51]

Accordingly, that Section 16(n) of R.A. 7875 granting PHIC's power to fix the compensation of its personnel does not explicitly provide that the same shall be subject to the approval of the DBM or the OP as in Section 19(d) thereof does not necessarily mean that the PHIC has unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter. As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (*OCPC*) under the DBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards

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[51] *Philippine Retirement Authority (PRA) v. Buñag, supra*, at 869-870. (Emphases ours)

laid down by applicable laws: P.D. No. 985,[52] its 1978 amendment, P.D. No. 1597,[53] the SSL, and at present, R.A. 10149.[54] To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure.[55] Certainly, such effect could not have been the intent of the legislature.

It must be noted, though, that the power of review granted to the DBM is simply to ensure that the proposed compensation and benefit schemes of the GOCCs comply with the requirements of applicable laws, rules and regulations. *PRA v. Buñag*[56] clarifies:

> However, in view of the express powers granted to PRA under its charter, the extent of the review authority of the Department of Budget and Management is limited. As stated in Intia, the task of the Department of Budget and Management is simply to review the compensation and benefits plan of the government agency or entity concerned and determine if the same complies with the prescribed policies and guidelines issued in this regard. **The role of the Department of Budget and Management is supervisorial in nature, its main duty being to ascertain that the proposed compensation, benefits and other incentives to be given to PRA officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.**

The rule, therefore, is that for as long as the allowances and benefits granted by petitioner PHIC are in accordance with and authorized by prevailing law, the same shall be upheld by the DBM.[57] As Section 29(1), Article VI of the 1987 Constitution

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[52] Entitled "The Budgetary Reform Decree on Compensation and Position Classification of 1976."

[53] Entitled "Further Rationalizing the System of Compensation and Position Classification in the National Government."

[54] Entitled "GOCC Governance Act of 2011."

[55] *Intia, Jr. v. COA, supra* note 43, at 291.

[56] *Supra* note 50, at 869-870.

[57] *Yap v. Commission on Audit*, 633 Phil. 174, 193-194 (2010).

provides, "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." Accordingly, in order to determine the validity of PHIC's issuances, the Court must give due regard to the following Section 12 of the SSL in force at the time of the subject grants:

> Section 12. *Consolidation of Allowances and Compensation*. – **All allowances**, **except for** representation and transportation allowances; clothing and **laundry** allowances; **subsistence** allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and **such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed**. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (Emphasis supplied)

Thus, the general rule is that all allowances are deemed included in the standardized salary except for the following: (1) representation and transportation allowances; (2) clothing and laundry allowances; (3) subsistence allowance of marine officers and crew on board government vessels and hospital personnel; (4) hazard pay; (5) allowances of foreign service personnel stationed abroad; and (6) such other additional compensation not otherwise specified herein as may be determined by the DBM.

Time and again, the Court has ruled that Section 12 of the SSL is self-executing. This means that even without DBM action, the standardized salaries of government employees are already inclusive of all allowances, save for those expressly identified in said section.[58] It is only when additional non-integrated

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[58] *Maritime Industry Authority v. Commission on Audit, supra* note 39, at 321.

allowances will be identified that an issuance of the DBM is required. Thus, until and unless the DBM issues rules and regulations identifying those excluded benefits, the enumerated non-integrated allowances in Section 12 remain exclusive.[59] When a grant of an allowance, therefore, is not among those excluded in the Section 12 enumeration or expressly excluded by law or DBM issuance, such allowance is deemed already given to its recipient in their basic salary. As a result, the unauthorized issuance and receipt of said allowance is tantamount to double compensation justifying COA disallowance.[60]

Prescinding from the foregoing, the Court had consistently ruled that not being an enumerated exclusion, the COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration of the SSL.[61] Petitioner's argument that the failure to publish the DBM-CCC No. 10 integrating COLA into the standardized salary rates meant that the COLA was not effectively integrated as of July 1989 but only on March 16, 1999 when the circular was published as required by law has already been definitively addressed in *Maritime Industry Authority v. COA*,[62] *viz.*:

> We cannot subscribe to petitioner Maritime Industry Authority's contention that due to the non-publication of the Department of Budget and Management's National Compensation Circular No. 59, it is considered invalid that results in the non-integration of allowances in the standardized salary.
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> x x x x x x x x x
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> As held in *Philippine International Trading Corporation v. Commission on Audit,* **the non-publication of the Department of**

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[59] *Id*. at 322.

[60] *Id*. at 342.

[61] *Philippine Charity Sweepstakes Office (PCSO) v. COA, supra* note 49; *Gutierrez, et al. v. Dept. of Budget and Mgt., et al.*, 630 Phil. 1, 14 (2010); *Maynilad Water Supervisors Association v. Maynilad Water Services, Inc*. G.R. No. 198935, November 27, 2013, 711 SCRA 110, 119; *Land Bank of the Philippines v. Naval*, G.R. No. 195687, April 14, 2014.

[62] *Supra* note 39.

Budget and Management's issuance enumerating allowances that are deemed integrated in the standardized salary will not affect the execution of Section 12 of Republic Act No. 6758. Thus:

> **There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. Commission on Audit*, for lack of publication. The basis of COA in disallowing the grant of SFI was Section 12 of R.A. No. 6758 and not DBM-CCC No. 10. Moreover, the nullity of DBM-CCC No. 10 will not affect the validity of R.A. No. 6758. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.**

In *Gutierrez v. Department of Budget and Management*, this court held that:

> x x x x x x x x x

> In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the following allowances/additional compensation that are deemed integrated:
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> x x x x x x x x x
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> **The drawing up of the above list is consistent with Section 12 above. R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits.** This leads to the inevitable conclusion **that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive.**

> **Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.**[63]

In certain instances, however, the Court had opted to sustain the continued grant of allowances, whether or not integrated into the standardized salaries, but only to those incumbent government employees who were actually receiving said allowances before and as of July 1, 1989.[64] This is in consonance with the second sentence of the first paragraph of Section 12 of the SSL which states that: "such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized." But unfortunately, petitioner failed to prove such exception. To recall, petitioner merely asserted, as basis for its issuance of the COLA, the ineffectivity of DBM CCC 10 as well as its obligation towards the employees it had absorbed from its predecessor, Philippine Medical Care Commission. While petitioner loosely mentioned that the COLA back pay was for services rendered between July 1989 and January 1995 when the payment of the same had been "discontinued" and "unduly withdrawn," it failed to present any sort of proof, documentary or otherwise, to sufficiently establish that those COLA recipients were, indeed, incumbent government employees who were actually receiving the same as of July 1, 1989. In fact, nowhere in its pleadings filed before the Court was it even invoked that the PHIC officers and employees actually suffered a diminution in pay as a result of the consolidation of the COLA back pay into their standardized salary rates. Petitioner cannot, therefore, rely on Our ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. COA.*[65] As the Court elucidated in *Napocor Employees*

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[63] *Maritime Industry Authority v. COA, supra* note 39, at 323-326. (Emphases ours)

[64] *PCSO v. COA, supra* note 49.

[65] 506 Phil. 382 (2005).

Consolidated Union (NEU) v. National Power Corporation (NPC):[66]

The Court has, to be sure, taken stock of its recent ruling in Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 vs. Commission on Audit. Sadly, however, our pronouncement therein is not on all fours applicable owing to the differing factual milieu. There, the Commission on Audit allowed the payment of back cost of living allowance (COLA) and amelioration allowance previously withheld from PPA employees pursuant to the heretofore ineffective DBM – CCC No. 10, but limited the back payment only to incumbents as of July 1, 1989 who were already then receiving both allowances. COA considered the COLA and amelioration allowance of PPA employees as "not integrated" within the purview of the second sentence of Section 12 of Rep. Act No. 6758, which, according to COA confines the payment of "not integrated" benefits only to July 1, 1989 incumbents already enjoying the allowances.

In setting aside COA's ruling, **we held in PPA Employees that there was no basis to use the elements of incumbency and prior receipt as standards to discriminate against the petitioners therein.** For, DBM-CCC No. 10, upon which the incumbency and prior receipt requirements are contextually predicated, was in legal limbo from July 1, 1989 (effective date of the unpublished DBM-CCC No. 10) to March 16, 1999 (date of effectivity of the heretofore unpublished DBM circular). And being in legal limbo, the benefits otherwise covered by the circular, if properly published, were likewise in legal limbo as they cannot be classified either as effectively integrated or not integrated benefits.

There lies the difference.

Here, the employee welfare allowance was, as above demonstrated, integrated by NPC into the employees' standardized salary rates effective July 1, 1989 pursuant to Rep. Act No. 6758. **Unlike in PPA Employees, the element of discrimination between incumbents as of July 1, 1989 and those joining the force thereafter is not obtaining in this case.** And while after July 1, 1989, PPA employees can rightfully complain about the discontinuance of payment of COLA and amelioration allowance effected due to the incumbency and prior receipt requirements set forth in DBM-CCC No, 10, NPC cannot do

[66] 519 Phil. 372 (2006).

likewise with respect to their welfare allowance since NPC has, for all intents and purposes, never really discontinued the payment thereof.

To stress, herein petitioners failed to establish that they suffered a diminution in pay as a consequence of the consolidation of the employee welfare allowance into their standardized salary. There is thus nothing in this case which can be the subject of a back pay since the amount corresponding to the employee welfare allowance was never in the first place withheld from the petitioners.[67]

Here, petitioner's constant invocation of the equal protection clause is misleading. In its petition, petitioner PHIC insists that all its employees should be treated equally, regardless of whether they rendered their service to the PHIC or to its predecessor, PMCC.[68] Without delving into the matter of whether said employees were employed before or after July 1, 1989, it then concluded that all employees must be paid their back COLA that was unduly withdrawn from them after the issuance of the DBM CCC 10, and for the entire duration that the circular was in legal limbo.[69] It bears stressing, however, that the Court, in *PPA*, accorded equal treatment to all PPA employees whether they were incumbents as of July 1, 1989, the time of effectivity of the SSL, or employed thereafter. Hence, to successfully invoke the guarantee of equal protection clause under the *PPA* doctrine, petitioner needed to prove, to the Court's satisfaction, not a discrimination between the current PHIC employees and those absorbed from PMCC, but rather, a discrimination between incumbent PHIC employees as of July 1, 1989 and those employed thereafter, who, as addressed by the second sentence of Section 12 of the SSL, suffered a diminution in pay. But as previously observed, petitioner never even alleged the same. Resultantly, petitioner can neither invoke the guarantee of equal protection of laws nor the principle of non-diminution of benefits to sustain its grant of the COLA.

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[67] *NAPOCOR Employees Consolidated Union v. National Power Corporation, supra,* at 388-389. (Emphases ours)

[68] *Rollo*, p. 25.

[69] *Id.* at 23.

For parallel reasons, the Court finds that the PHIC's issuance of the LMRG must suffer the same fate. In defending the validity thereof, petitioner PHIC merely asserted, in its petition, its 'fiscal autonomy' to fix compensation and benefits of its personnel under Section 16 (n) of R.A. No. 7875 and the argument that the LMRG is not merely a duplicate of the PIB. Seemingly realizing the insufficiency thereof, petitioner, in its Reply, attempted to provide the Court with additional legal basis by citing certain OGCC opinions and jurisprudence reiterating its "fiscal autonomy" and averring that Section 19, Chapter 3, Book VI of E.O. 292, otherwise known as the 1987 Administrative Code of the Philippines, clearly provides that internal operating budgets of GOCCs are generally subject only of their respective governing boards, and the only exception thereto requiring DBM approval is when national government budgetary support is used. Thus, it was alleged that since the funds used in the disbursement of the LMRG were sourced from PHIC's internal operating budget, DBM approval is unnecessary.[70]

Petitioner fails to persuade.

PCSO v. COA has already established, in no uncertain terms, that the fact that a GOCC is a self-sustaining government instrumentality which does not depend on the national government for its budgetary support does not automatically mean that its discretion on the matter of compensation is absolute. As elucidated above, regardless of any exemption granted under their charters, the power of GOCCs to fix salaries and allowances must still conform to compensation and position classification standards laid down by applicable law, which, in this case, is the SSL. In view of petitioner's failure to present any statutory authority or DBM issuance expressly authorizing the grant of the LMRG, the same must be deemed incorporated in the standardized salaries of the PHIC employees. Accordingly, the Court must necessarily strike its unauthorized issuance as invalid for the receipt by the PHIC employees thereof was tantamount to double compensation.

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[70] *Id.* at 323.

With respect to the CNASB, however, it is undisputed that the same momentarily had DBM approval. Let it be remembered that on December 15, 2000, the DBM issued Budget Circular No. 2000-19 explicitly authorizing the payment of the signing bonus to each entitled rank-and-file personnel. But on July 11, 2002, the Court, in *SSS v. COA*, declared as invalid said signing bonus for being inconsistent with the rule of salary integration under the SSL and for not being "a truly reasonable compensation" due to the fact that peaceful collective negotiations "should not come with a price tag." Thus, while respondent COA admits that the payment of the CNASB was allowed under the DBM Circular, it contends that actual payment thereof was made only on June 11, 2004, or after the pronouncement in *SSS v. COA*, and as a consequence, petitioner PHIC's payment thereof is invalid.

Nevertheless, based on the records of the case, the Court is inclined to give more credence to petitioner PHIC's allegations on the allowance's validity than to the apparently unsubstantiated contentions of respondent COA. In disallowing the grant of the CNASB, respondent COA primarily anchored its decision on a certain "Automatic Debit Advice dated 6-11-2004."[71] Relying solely on the basis thereof, respondent summarily concluded that the actual payment of the CNASB was made only on June 11, 2004 or after the pronouncement in *SSS v. COA*.[72] The Court, however, is unconvinced. Nowhere in the records was the source of said "Automatic Debit Advice" shown. The initial Audit Observation Memorandum, which was the basis of respondent COA's disallowance, simply indicated "ADA No. 01-06-028 dtd. 6/11/2004"[73] and "ADA No. 01-05-029 dtd. 6/11/2004"[74] without even explaining what such code represents. Moreover, as aptly pointed out by petitioner, respondent COA automatically insisted that the CNASB was granted after the

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[71] *Id.* at 166 and 184.

[72] *Id.* at 186.

[73] *Id.* at 116.

[74] *Id.* at 117.

promulgation of *SSS v. COA*, merely mentioning, for the first time in its Comment before the Court, its basis as the "Automatic Debit Advice." Said advice, however, was never shown to petitioner for validation. Worse, it was not even presented before the Court to support the COA disallowance.

Thus, as between petitioner PHIC's allegations together with its corresponding documentary evidence consisting of certifications and employee payrolls on the one hand, and respondent COA's plain assertions, unsubstantiated by any sort of proof on the other, the Court finds that the former deserves to be given more weight and credence. Remember that the power granted to the DBM is simply to ensure that the proposed compensation, benefits and other incentives given to GOCC officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.[75] It is only just that the extent of its reviewing authority be sufficiently supported by reasonable proof. Considering, therefore, that the records of the case, taken in conjunction with the circumstances surrounding their issuance, supports a reasonable conclusion that the CNASB was, indeed, paid in 2001 and not in 2004, at the time when the payment thereof was expressly sanctioned by DBM Budget Circular No. 2000-19, the Court holds that respondent COA carelessly and whimsically issued its disallowance in absence of any sufficient basis in support of the same.

In a similar manner, the Court finds that the PHIC's grant of the WESA was aptly sanctioned not only by Section 12[76] of

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[75] *PRA v. Buñag, supra* note 50, at 870.

[76] Section 12 of R.A. No. 6758 provides:

Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and **laundry** allowances; **subsistence** allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind,

the SSL but also by statutory authority. PHIC Board Resolution No. 385, s. 2001[77] states that the WESA of ₱4,000.00 each shall be paid to public health workers under the Magna Carta of PHWs in lieu of the subsistence and laundry allowances. Respondent COA contested the same not so much on the propriety of the subsistence and laundry allowances in the form of the WESA, but that the Secretary of Health prescribed the rates thereof not in accordance with the Magna Carta of PHWs. According to respondent COA, the WESA is invalid because the act of the PHIC Board, of which the Health Secretary is the *Ex-Officio* Chairperson, in approving the allowance is not the same as the act of the Secretary himself. In this regard, Section 22 and 24 of the Magna Carta pertinently provides:

> Section 22. ***Subsistence** Allowance*. — Public health workers who are required to render service within the premises of hospitals, sanitaria, health infirmaries, main health centers, rural health units and barangay health stations, or clinics, and other health-related establishments in order to make their services available at any and all times, **shall be entitled to full subsistence allowance** of three (3) meals which may be **computed in accordance with prevailing circumstances as determined by the Secretary of Health** in consultation with the Management-Health Worker's Consultative Councils, as established under Section 33 of this Act: Provided, That representation and travel allowance shall be given to rural health physicians as enjoyed by municipal agriculturists, municipal planning and development officers and budget officers.
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> x x x x x x x x x
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> SEC. 24. ***Laundry** Allowance*. — All public health workers who are required to wear uniforms regularly shall be entitled to laundry allowance equivalent to one hundred twenty-five pesos (₱125.00) per month: Provided, That **this rate shall be reviewed periodically and increased accordingly by the Secretary of Health in consultation with the appropriate government agencies concerned**

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being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized. x x x x (Emphases ours)

[77] *Rollo*, pp. 109-111.

taking into account existing laws and prevailing practices. (Emphases ours)

Moreover, the Magna Carta's Revised Implementing Rules and Regulations (*IRR*) issued by the Secretary of Health in November 1999 similarly provide:

> 7.2. **Subsistence** Allowance
>
> 7.2.1. Eligibility for Subsistence Allowance
>
> a. All public health workers covered under RA 7305 are eligible to receive full subsistence allowance as long as they render actual duty.
>
> b. Public Health Workers shall be entitled to full Subsistence Allowance of three (3) meals which may be **computed in accordance with prevailing circumstances as determined by the Secretary of Health** in consultation with the Management Health Workers Consultative Council, as established under Section 33 of the Act.
>
> c. Those public health workers who are out of station shall be entitled to per diems in place of Subsistence Allowance. Subsistence Allowance may also be commuted.
>
> 7.2.2. Basis for Granting Subsistence Allowance
>
> Public health workers shall be granted subsistence allowance based on the number of meals/days included in the duration when they rendered actual work including their regular duties, overtime work or on-call duty as defined in this revised IRR.
>
> Public health workers who are on the following official situations are not entitled to collect/receive this benefit:
>
> a. Those on vacation/sick leave and special privilege leave with or without pay;
>
> b. Those on terminal leave and commutation;
>
> c. Those on official travel and are receiving per diem regardless of the amount; and
>
> d. Those on maternity/paternity leave.
>
> 7.2.3. **Rates** of Subsistence Allowance

a. Subsistence allowance shall be implemented at not less than PhP50.00 per day or PhP1,500.00 per month as certified by head of agency.

b. Non-health agency workers detailed in health and health-related institutions/establishments are entitled to subsistence allowance and shall be funded by the agency where service is rendered.

c. Subsistence allowance of public health workers on full-time and part-time detail in other agency shall be paid by the agency where service is rendered.

d. Part-time public health workers/consultants are entitled to one-half (½) of the prescribed rates received by full-time public health workers.

7.3. **Laundry** Allowance

7.3.1. Eligibility for Laundry Allowance

All public health workers covered under RA 7305 are eligible to receive laundry allowance if they are required to wear uniforms regularly.

7.3.2. **Rate** of Laundry Allowance

The laundry allowance shall be ₱150.00 per month. This shall be paid on a monthly basis regardless of the actual work rendered by a public health worker.

It may be observed, however, that the foregoing excerpts do not prescribe a specific form or process by which the Secretary of Health must compute the rates of the subsistence and laundry allowances. The law simply states that the Health Secretary shall compute said rates "in accordance with prevailing circumstances" and "in consultation with the Management Health Workers Consultative Council." But nowhere in the law was it required that the Secretary of Health, in determining the allowances due to PHWs, must be acting alone. Neither has respondent COA presented any provision of law, rule, or other similar authority to that effect.

Instead, respondent COA insists that since the Health Secretary actually approved the issuance of the WESA by virtue of a

resolution of the PHIC Board, such approval is invalid for the act of the PHIC Board is not the act of the individual composing the Board in view of the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it. The Court, however, cannot subscribe to such argument. It is true that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Resultantly, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities.[78] Moreover, when said corporation's corporate legal entity is used as a cloak for fraud or illegality, the law will regard it as an association of persons or, in case of two corporations, merge them into one.[79] It must be clarified, however, that these principles of separate juridical personalities as well as the piercing of its veil of corporate fiction essentially apply only in determining established liabilities.[80] It is but a legal fiction introduced for purposes of convenience and to subserve the ends of justice.[81] But the issue in the instant case is far from holding a director liable for the obligations of the corporation insofar as claims of third persons are concerned. The issue here, instead, is merely whether the Secretary of Health duly complied with prevalent law in determining the rates of allowances to be granted to qualified PHWs. In this regard, the Court rules in the affirmative.

To repeat, the law does not prescribe a particular form nor restrict to a specific mode of action by which the Secretary of Health must determine the subject rates of subsistence and laundry allowance. That the Health Secretary approved the grant of the WESA together with ten (10) other members of the Board

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[78] *Francisco v. Mallen, Jr.*, 645 Phil. 369, 374 (2010).

[79] *Id.* at 376.

[80] *Kukan International Corporation v. Honorable Reyes*, 646 Phil. 221, 234 (2010).

[81] *Garcia v. Social Security Commission Legal and Collection, Social Security System*, 565 Phil. 193, 214 (2007).

does not make the act any short of the approval required under the law. As far as the Magna Carta and its Revised IRR are concerned, the then Health Secretary Dr. Alberto G. Romualdez, Jr. voted in favor of the WESA's issuance, and for as long as there exists no deception or coercion that may vitiate his consent, the concurring votes of his fellow Board members does not change the fact of his approval. To rule otherwise would create additional constraints that were not expressly provided for by law.

Nevertheless, even assuming the invalidity of the WESA due to the irregular manner by which the Health Secretary determined its rates, the Court does not find that the PHIC Board of Directors, other responsible officers, and recipients thereof should be ordered to refund the same. On this matter, *PCSO v. COA*[82] summarized the rules as follows:

> Recipients or payees need not refund disallowed benefits or allowances when it was received in good faith and there is no finding of bad faith or malice. On the other hand, officers who participated in the approval of such disallowed amount are required to refund only those received if they are found to be in bad faith or grossly negligent amounting to bad faith. Public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement. The receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of government officials directly responsible.

As previously discussed, PHIC's grant of the WESA was aptly sanctioned not only by Section 12 of the SSL which explicitly identifies laundry and subsistence allowance as excluded from the integrated salary, but also by statutory authority, particularly, Section 22 and 24 of the Magna Carta. In view of such fact, the PHIC officers cannot be found to have approved the issuance of the same in bad faith or in gross negligence amounting to bad faith for it was well within the parameters set by law. Thus, the WESA need not be refunded.

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[82] *Supra* note 49.

Neither must the concerned PHIC officers and employees be ordered to refund the CNAB because, as previously mentioned, the same was expressly authorized by DBM Budget Circular No. 2000-19. Contrary to respondent COA's unsubstantiated assertion, the Court is convinced that the CNAB was paid in 2001, before the payment of the same was invalidated by Our ruling in *SSS v. COA*. The PHIC approving officers, therefore, had no knowledge of the fact that the payment of the CNAB was contrary to the SSL for the same was actually authorized by the DBM itself.

Similarly, there is no showing that the PHIC officers approved the issuance and payment of the back COLA in bad faith. From the very beginning, petitioner had been invoking, albeit erroneously, Our ruling in *PPA Employees Hired After July 1, 1989 v. COA*, wherein We granted the payment of the COLA back pay to PPA employees for the period beginning July 1, 1989 until March 16, 1999, during the time the DBM-CCC No. 10 was in legal limbo, seemingly believing, in good faith, that on the basis thereof, the PHIC employees could likewise be granted the same. In fact, even respondent COA Director Janet Nacion was under the same impression when she conceded that "no less than the SC has made an imprimatur regarding the employee's entitlement to COLA" during the time the circular was in legal limbo.[83] It is therefore apparent that during such time, there were differing opinions regarding the true interpretation of a technicality of law. Thus, before the Court was able to clarify that the ruling in *PPA Employees* was limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of the SSL,[84] there was yet no absolute and clear-cut rule regarding the entitlement to the COLA during the period when the DBM circular was in legal limbo. Hence, it might seem rather severe to hold the concerned PHIC officers personally liable to refund the COLA back pay in view of the fact that they may have

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[83] *Rollo*, p. 132.

[84] *Maritime Industry Authority v. COA, supra* note 39, at 326.

honestly believed in the propriety of the same. In fact, just recently, We held that since certain officers who authorized the back payment of the COLA were oblivious that said payments were improper, the same need not be refunded.[85] This is because absent any showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.[86] As the Court explained in *Philippine Economic Zone Authority (PEZA) v. COA*:[87]

> x x x It is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When the government service becomes unattractive, it could only have adverse consequences for society.[88]

Thus, the fact that the PHIC officers had an unclear knowledge of a ruling by this Court categorically prohibiting the particular disbursement herein is a badge of good faith,[89] especially in light of the COA's failure to overturn the presumption of regularity in the performance of their official duties.

The same does not hold true, however, with respect to the LMRG. Unlike the issuances of the WESA, CNAB, and COLA, which need not be refunded either for being expressly sanctioned by law or for being issued in an honest belief that the same was authorized by recent jurisprudence, petitioner's issuance of the LMRG cannot be said to have been done in good faith. Time and again, the Court has defined good faith

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[85] *Zamboanga City Water District (ZCWD) v. COA,* G.R. No. 213472, January 26, 2016.

[86] *Id*.

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

[88] *Id*.

[89] *Id*.

as "a state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious."[90]

As previously mentioned, the PHIC Board members and officers approved the issuance of the LMRG in sheer and utter absence of the requisite law or DBM authority, the basis thereof being merely PHIC's alleged "fiscal autonomy" under Section 16(n) of RA 7875.[91] But again, its authority thereunder to fix its personnel's compensation is not, and has never been, absolute. As previously discussed, in order to uphold the validity of a grant of an allowance, it must not merely rest on an agency's "fiscal autonomy" alone, but must expressly be part of the enumeration under Section 12 of the SSL, or expressly authorized by law or DBM issuance. This directive was definitively established by the Court as early as 1999 in *National Tobacco Administration v. Commission on Audit*,[92] which was even subsequently affirmed in *Philippine International Trading Corporation v. Commission on Audit*[93] in 2003. Thus, at the time of the passage of PHIC Board Resolution No. 717, s. 2004 on July 22, 2004 by virtue of which the PHIC Board resolved to approve the LMRG's issuance, the PHIC Board members and officers had an entire five (5)-year period to be acquainted with the proper rules insofar as the issuance of certain allowances is concerned. They cannot, therefore, be allowed to feign ignorance to such rulings for they are, in fact, duty-bound to know and understand the relevant rules they are tasked to implement.[94] Thus, even if We assume the absence of bad faith, the fact that

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[90] *Id*.

[91] *Rollo*, p. 112.

[92] 370 Phil. 793 (1999).

[93] 461 Phil. 737 (2003).

[94] *PCSO v. COA*, *supra* note 49.

said officials recklessly granted the LMRG not only without authority of law, but even contrary thereto, is tantamount to gross negligence amounting to bad faith. Good faith dictates that before they approved and released said allowance, they should have initially determined the existence of the particular rule of law authorizing them to issue the same.

In view of the foregoing, the Court holds that the PHIC Board members who approved PHIC Board Resolution No. 717, series of 2004 and the PHIC officials who authorized its release are bound to refund the LMRG. It is unclear, however, from a review of the records of the case, which of the PHIC Board members and officials named in the COA's Notice of Disallowance were the ones responsible for the issuance of the LMRG, considering that what was listed therein were the "Persons Liable" for the grant and release of all four (4) allowances lumped together as subject of the instant case, without any distinction as to the particular set of officers responsible for the approval of a respective type of allowance as well as its corresponding amount.[95] Hence, for the proper implementation of this judgment, the COA is hereby ordered to identify, in a clear and certain manner, the specific PHIC Board members and officials who approved the grant of the LMRG and authorized its release as well as to compute the exact amount they received.

With respect to the PHIC officials and employees, however, who merely received the subject LMRG but had no participation in the approval and release thereof, the Court deems them to have acted in good faith, honestly believing that the PHIC Board Resolution was issued in the Board's valid exercise of its power. Thus, they are absolved from refunding the LMRG they received.

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED.** The November 20, 2013 Decision and April 4, 2014 Resolution of the COA Commission Proper, which affirmed the Notice of Disallowance PHIC 2008-003 (2004) dated February 7, 2008, are **AFFIRMED WITH MODIFICATION.**

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[95] *Rollo,* pp. 119-123.

The recipients and officers who authorized the following disbursements need not refund the amounts paid in connection therewith: (1) the Collective Negotiation Agreement Signing Bonus; (2) the Welfare Support Assistance; and (3) the back payment of Cost of Living Allowance. As for the Labor Management Relations Gratuity, only the PHIC Board members who approved PHIC Board Resolution No. 717, series of 2004 and the PHIC officials who authorized its release are bound to refund the same. For this purpose, the COA is hereby **ordered** to: (1) particularly identify the PHIC Board members and officials responsible for the approval and release of the LMRG; and (2) compute the exact amount of the LMRG that said responsible officers respectively received.

SO ORDERED.

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

EN BANC

[G.R. No. 218406. November 29, 2016]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), REPRESENTED BY ITS PRESIDENT FERDINAND MARTIN G. ROMUALDEZ, FRANCISCO S. TATAD, ARCHBISHOP RAMON C. ARGUELLES, ARCHBISHOP ROMULO T. DE LA CRUZ, ARCHBISHOP FERNANDO R. CAPALLA, AND NORBERTO B. GONZALES, *petitioners, vs.* **PHILIPPINE GOVERNMENT (GPH), represented by MARVIC M.V.F. LEONEN, and MIRIAM CORONEL FERRER, MORO ISLAMIC LIBERATION FRONT, FLORENCIO B. ABAD, AND COMMISSION ON AUDIT,** *respondents.*

[G.R. No. 218761. November 29, 2016]

TANGGULANG DEMOKRASYA (TAN DEM), INC., represented by its PRESIDENT TERESITA DAZA BALTAZAR, PILAR L. CALDERON, RIZALITO YAP DAVID, ROSITA K. IMPERIAL, MA. SALOME A. MABLE, SERAFIN G. OCAMPO, and ELENA SAN AGUSTIN, *petitioners, vs.* **PHILIPPINE GOVERNMENT (GPH), REPRESENTED BY MARVIC M.V.F. LEONEN AND MIRIAM CORONEL FERRER, AND MORO ISLAMIC LIBERATION FRONT, represented by Mohagher Iqbal,** *respondents.*

[G.R. No. 204355. November 29, 2016]]

REV. VICENTE LIBRADORES AQUINO, REV MERCIDITA S. REDOBLE, and INTERNATIONAL MINISTRIES FOR PERFECTION AND PARTY AGAINST COMMUNISM AND TERRORISM, INC., represented by its president, *petitioners, vs.* **GPH PEACE PANEL CHIEF NEGOTIATOR ATTY. MARVIC M.V.F. LEONEN, HON. SECRETARY TERESITA QUINTOS-DELES, PRESIDENTIAL ADVISER ON THE PEACE PROCESS, HON. PAQUITO L. OCHOA, EXECUTIVE SECRETARY, and MEMBERS OF THE GPH PEACE PANEL,** *respondents.*

[G.R. No. 218407. November 29, 2016]

JACINTO V. PARAS, *petitioner, vs.* **MIRIAM CORONEL FERRER, SENEN C. BACANI, YASMIN BUSRAN-LAO, MEHOL K. SADAIN, AND TERESITA DELES,** *respondents.*

[G.R. No. 204354. November 29, 2016]

REV. ELLY VELEZ PAMATONG, ESQ., *petitioner, vs.* **GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES PEACE PANEL ON BANGSAMORO,**

represented by its NEGOTIATORS, MARVIC M.V.F. LEONEN, AND PRESIDENT BENIGNO S. AQUINO III, *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT'S JUDICIAL REVIEW POWER IS LIMITED TO ACTUAL CASES OR CONTROVERSIES, OR THAT WHICH INVOLVES A CONFLICT OF LEGAL RIGHTS, AN ASSERTION OF OPPOSITE OR LEGAL CLAIMS, SUSCEPTIBLE OF JUDICIAL RESOLUTION, AS DISTINGUISHED FROM A HYPOTHETICAL OR ABSTRACT DIFFERENCE OR DISPUTE, FOR THE COURT GENERALLY DECLINES TO ISSUE ADVISORY OPINIONS OR TO RESOLVE HYPOTHETICAL OR FEIGNED PROBLEMS, OR MERE ACADEMIC QUESTIONS.— Section 1, Article VIII of the Constitution spells out what judicial power is, to wit: 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. Pursuant to this constitutional provision, it is clear that the Court's judicial review power is limited to actual cases or controversies. The Court generally declines to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The limitation of the power of judicial review to actual cases and controversies assures that the courts will not intrude into areas specifically confined to the other branches of government.

2. ID.; ID.; ID.; ID.; REQUIREMENT OF ACTUAL CASE; THERE MUST BE A CONTRAST OF LEGAL RIGHTS THAT CAN BE INTERPRETED AND ENFORCED ON THE BASIS OF EXISTING LAW AND JURISPRUDENCE.— An actual case or controversy 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. There must be a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. The Court can decide the constitutionality of an act, either by the Executive or Legislative, only when an actual case between opposing parties is submitted for judicial determination.

3. ID.; ID.; ID.; ID.; REQUIREMENT OF RIPENESS; FOR A CASE TO BE CONSIDERED RIPE FOR ADJUDICATION, IT IS A PREREQUISITE THAT AN ACT HAD THEN BEEN ACCOMPLISHED OR PERFORMED BY EITHER BRANCH OF GOVERNMENT BEFORE A COURT MAY INTERFERE, AND THE PETITIONER MUST ALLEGE THE EXISTENCE OF AN IMMEDIATE OR THREATENED INJURY TO HIMSELF AS A RESULT OF THE CHALLENGED ACTION.— Closely linked to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual or entity challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.

4. ID.; BANGSAMORO BASIC LAW; CONGRESS IS EXPECTED TO SERIOUSLY CONSIDER THE COMPREHENSIVE AGREEMENT ON THE BANGSAMORO (CAB) AND THE FRAMEWORK AGREEMENT ON THE BANGSAMORO (FAB), BUT THE EXECUTIVE BRANCH CAN NEITHER COMPEL CONGRESS TO ADOPT THE CAB AND THE FAB, NOR DICTATE ON CONGRESS THE CONTENTS OF THE BANGSAMORO BASIC LAW.— The CAB and the FAB require the enactment of the Bangsamoro Basic Law for their implementation. It is a fundamental constitutional principle that Congress has full discretion to enact the kind of Bangsamoro Basic Law that Congress, in its wisdom, deems necessary and proper to promote peace and development in Muslim areas in Mindanao. Congress is expected to seriously consider the CAB and the FAB but Congress is not bound by

the CAB and the FAB. Congress is separate, independent, and co-equal of the Executive branch that alone entered into the CAB and the FAB. The Executive branch cannot compel Congress to adopt the CAB and the FAB. Neither can [the Executive branch] dictate on Congress the contents of the Bangsamoro Basic Law, or the proposed amendments to the Constitution that Congress should submit to the people for ratification.

5. ID.; ID.; ID.; THE CAB AND THE FAB REMAIN PEACE AGREEMENTS WHOSE PROVISIONS CANNOT BE ENFORCED AND GIVEN ANY LEGAL EFFECT UNLESS THE BANGSAMORO BASIC LAW IS DULY PASSED BY CONGRESS AND SUBSEQUENTLY RATIFIED IN ACCORDANCE WITH THE CONSTITUTION.— The CAB and the FAB cannot be implemented without the passage of the Bangsamoro Basic Law. The CAB and the FAB remain peace agreements whose provisions cannot be enforced and given any legal effect unless the Bangsamoro Basic Law is duly passed by Congress and subsequently ratified in accordance with the Constitution. The CAB and the FAB are preparatory documents that can "trigger a series of acts" that may lead to the exercise by Congress of its power to enact an organic act for an autonomous region under Section 18, Article X of the Constitution. The CAB and the FAB do not purport to preempt this Congressional power.

6. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THERE CAN BE NO JUSTICIABLE CONTROVERSY INVOLVING THE CONSTITUTIONALITY OF A PROPOSED BILL, AS THE POWER OF JUDICIAL REVIEW COMES INTO PLAY ONLY AFTER THE PASSAGE OF A BILL, AND NOT BEFORE; ANY QUESTION ON THE CONSTITUTIONALITY OF THE CAB AND THE FAB, WITHOUT THE IMPLEMENTING BANGSAMORO BASIC LAW, IS PREMATURE AND NOT RIPE FOR ADJUDICATION.— It is not the CAB or the FAB that will establish the Bangsamoro but the Bangsamoro Basic Law enacted by Congress and ratified in a plebiscite in accordance with the Constitution. Congress must still enact a Bangsamoro Basic Law. The requirement of a Bangsamoro Basic Law under the CAB and the FAB ensures that the pitfalls under the invalid MOA-AD will be avoided. Even if there were today

an existing bill on the Bangsamoro Basic Law, it would still not be subject to judicial review. The Court held in *Montesclaros v. COMELEC* that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised in *vacuo*. As the Court in *Montesclaros* noted, invoking Section 1, Article VIII of the Constitution, there can be no justiciable controversy involving the constitutionality of a proposed bill. The power of judicial review comes into play only after the passage of a bill, and not before. Unless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review. Clearly, any question on the constitutionality of the CAB and the FAB, without the implementing Bangsamoro Basic Law, is premature and not ripe for adjudication. Until a Bangsamoro Basic Law is passed by Congress, it is clear that there is no actual case or controversy that requires the Court to exercise its power of judicial review over a co-equal branch of government.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioners in G.R. No. 218406.
The Solicitor General for public respondents.
Demosthenes B. Donato for petitioners in G.R. No. 218761.
Ateneo Legal Services Center for movant-intervenors.
Lozano and Lozano-Endriano Law Office for WMCFI & CC.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are consolidated petitions[1] challenging the constitutionality and validity of the Comprehensive Agreement on the Bangsamoro (CAB) and the Framework Agreement on

[1] G.R. No. 204354 is a petition to declare the Framework Agreement on Bangsamoro unconstitutional and to prohibit further negotiation and implementation thereof.

the Bangsamoro (FAB) entered into between the Government of the Philippines and the Moro Islamic Liberation Front (MILF) on 27 March 2014 and 12 October 2012, respectively.

In G.R. No. 218406, petitioners Philippine Constitution Association (Philconsa), represented by its President Ferdinand Martin G. Romualdez, Francisco S. Tatad, Archbishop Ramon C. Arguelles, Archbishop Fernando R. Capalla, Archbishop Romulo T. de la Cruz, and Norberto B. Gonzales contend that the provisions of the CAB and the FAB violate the Constitution and existing laws. They argue that the conduct of the peace process was defective since the Government of the Republic of the Philippines (GRP) Peace Panel negotiated only with the MILF and not with the other rebel groups. Hence, respondents violated Section 3(e) and (g) of Republic Act No. 3019[2] in giving unwarranted advantages to the MILF. Petitioners further

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G.R. No. 204355 is a petition for *certiorari*, prohibition, *mandamus*, and writ of preliminary injunction with prayer for the issuance of a temporary restraining order.

G.R. No. 218406 is a petition for *certiorari*, prohibition, and *mandamus* with prayer for issuance of temporary restraining order and writ of preliminary injunction.

G.R. No. 218407 and G.R. No. 218761 are petitions for *certiorari*.

[2] These provisions read:

Section 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

argue that respondents committed grave abuse of discretion when they "committed to cause the amendment of the Constitution and existing laws to conform to the FAB and CAB x x x."[3]

In G.R. No. 218761, petitioners Tanggulang Demokrasya (TAN DEM), Inc., represented by its President Teresita Daza Baltazar, Pilar L. Calderon, Rizalito Yap David, Rosita K. Imperial, Ma. Salome A. Mable, Serfin G. Ocampo, and Elena San Agustin claim that the CAB and the FAB are unconstitutional since the agreements seek to create a virtual sub-state known as the Bangsamoro Political Entity (BPE) to replace the Autonomous Region of Muslim Mindanao (ARMM), and guarantee to make amendments to the Constitution to shift from the present unitary state to a new federal state which is beyond the GRP Peace Panel's power and authority to commit.

In G.R. No. 204355, petitioners Rev. Vicente Libradores Aquino, Rev. Mercidita S. Redoble, and International Ministries for Perfection and Party Against Communism and Terrorism, Inc. (IMPPACT, Inc.) argue that the GRP Peace Panel usurped the power of Congress to enact, amend, or repeal laws since it bound Congress to agree to the provisions of the FAB and abolish the ARMM. Petitioners add that the FAB provisions are replete with ambiguities, violative of the provisions of the Constitution, and inconsistent with Republic Act No. 9054.[4]

In G.R. No. 218407, petitioner Jacinto V. Paras argues that the CAB and the FAB violate the provisions of the Constitution, as well as the consultation requirement under Executive Order (EO) No. 3 and Memorandum of Instructions of the President. Petitioner further contends that respondents exceeded their authority when they guaranteed the amendment of certain

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[3] *Rollo* (G.R. No. 218406), p. 11.

[4] An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, entitled "An Act Providing for the Autonomous Region in Muslim Mindanao," as amended. Lapsed into law on 31 March 2001 without the President's signature.

provisions of the Constitution to conform to the CAB and the FAB.

In G.R. No. 204354, petitioner Rev. Elly Velez Pamatong claims that the constitutionally infirm MOA-AD of 2008 and the FAB are substantially the same since they are both aimed at creating a "fully independent Islamic State" covering Mindanao, Palawan, and Sulu.[5] Petitioner argues, among others, that there were no consultations regarding the FAB. Petitioner further contends that the doctrine of *res judicata* applies since the MOA-AD and the FAB are similar. Consequently, the decision in the MOA-AD case is applicable. In addition, petitioner argues that the FAB is void for being unconstitutional since (1) under Section 18, Article X of the Constitution, an autonomous region can only be created by Congress and the President does not have the power to establish the Bangsamoro with the rebel group MILF; (2) the FAB is not a peace agreement but allegedly a conspiracy to establish an independent Bangsamoro Republic under Malaysian tutelage; and (3) the FAB guarantees constitutional amendments, which act is contrary to the mechanisms set forth in the Constitution itself.

Essentially, the petitions commonly seek to declare the CAB and the FAB unconstitutional for being similar to the void MOA-AD, which was struck down by the Court for violating, among others, the constitutional provisions on constitutional amendments.

The Facts

On 15 September 1993, President Fidel V. Ramos issued EO No. 125[6] creating the Office of the Presidential Adviser on the Peace Process and calling for a "comprehensive, integrated and holistic peace process with Muslim rebels" in Mindanao. On 28 February 2001, President Gloria Macapagal-Arroyo issued

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[5] *Rollo* (G.R. No. 204354), p. 7.

[6] Defining the Approach and Administrative Structure for Government's Comprehensive Peace Efforts.

EO No. 3[7] which amended EO No. 125 to reaffirm the government's commitment to achieve just and lasting peace in the Philippines through a comprehensive peace process.

Pursuant to EO No. 3, the Government Peace Negotiating Panel (GPNP) held negotiations with the MILF, an armed, revolutionary Muslim separatist group based in Mindanao seeking separation of the Muslim people from the central government. The negotiations eventually led to the preparation of the Memorandum of Agreement on Ancestral Domain (MOA-AD) on 27 July 2008. However, on 14 October 2008, in the case of *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,[8] the Court declared the MOA-AD unconstitutional.

During the administration of President Benigno S. Aquino III, the government resumed peace negotiations with the MILF. Marvic M.V.F. Leonen[9] headed the GPNP and became the government's chief peace negotiator with the MILF in July 2010.

On 15 October 2012, a preliminary peace agreement called the FAB[10] was signed between the government and the MILF. The FAB called for the creation of an autonomous political entity named Bangsamoro, replacing the ARMM.

After further negotiations, the following Annexes and Addendum to the FAB were also signed in Kuala Lumpur, Malaysia:

a) Annex on Transitional Arrangements and Modalities;[11]

b) Annex on Revenue Generation and Wealth Sharing;[12]

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[7] Defining Policy and Administrative Structure for Government's Comprehensive Peace Efforts.

[8] 589 Phil. 387 (2008).

[9] Now a Member of this Court.

[10] *Rollo* (G.R. No. 218761), pp. 34-48.

[11] *Id*. at 49-54.

[12] *Id*. at 55-62.

c) Annex on Power Sharing;[13]

d) Annex on Normalization;[14] and

e) On the Bangsamoro Waters and Zones of Joint Cooperation Addendum to the Annex on Revenue Generation and Wealth Sharing and the Annex on Power Sharing.[15]

The Annexes and Addendum discussed the following:

a) The Annex on Transitional Arrangements and Modalities, signed on 27 February 2013, established the transitional process for the establishment of the Bangsarnoro and detailed the creation of the Bangsamoro Transition Commission, the Bangsamoro Basic Law and the Bangsamoro Transition Authority.

b) The Annex on Revenue Generation and Wealth Sharing, signed on 13 July 2013, enumerated the creation of sources of revenues for the Bangsamoro government and its power to levy taxes, fees and charges.

c) The Annex on Power Sharing, signed on 8 December 2013, discussed intergovernmental relations of the central government, the Bangsamoro government and the constituent units under the Bangsamoro.

d) The Annex on Normalization, signed on 25 January 2014, outlined the laying down of weapons of MILF members and their transition to civilian life.

e) The Addendum on the Bangsamoro Waters and Zones of Joint Cooperation, signed on 25 January 2014, detailed the scope of waters under the territorial jurisdiction of the Bangsamoro (12 nautical miles from the coast) and Zones of Joint Cooperation in the Sulu Sea and the Moro Gulf.

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[13] *Id*. at 63-74.

[14] *Id*. at 75-87.

[15] *Id*. at 88-90.

On 7 December 2012, Miriam Coronel-Ferrer succeeded Marvic M.V.F. Leonen as GPNP Chairperson.

On 17 December 2012, President Benigno S. Aquino III issued EO No. 120,[16] constituting the Bangsamoro Transition Commission, tasked, among others, to (1) draft the proposed Bangsamoro Basic Law with provisions consistent with the FAB, and (2) recommend to Congress or the people proposed amendments to the 1987 Philippine Constitution.[17] Under Section 5 of the same EO, the Bangsamoro Transition Commission shall cease to operate upon the enactment by Congress of the Bangsamoro Basic Law.

On 27 March 2014, the Philippine Government, represented by GPNP Chairperson Miriam Coronel-Ferrer, signed the CAB,[18] which was an integration of the FAB, the Annexes and the other agreements[19] previously executed by the government and the MILF.

On 10 September 2014, a draft of the Bangsamoro Basic Law, referred to as House Bill (HB) No. 4994,[20] was presented by President Aquino to the 16th Congress. On 27 May 2015, in Committee Report No. 747, the Ad Hoc Committee on the Basic Bangsamoro Law of the House of Representatives substituted said bill and passed another version known as House Bill No. 5811.[21]

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[16] Constituting the Transition Commission and For Other Purposes.

[17] Section 3 a. and b., respectively, of EO No. 120.

[18] *Rollo* (G.R. No. 218761), pp. 91-97.

[19] *Id*. at 98-182,

[20] Introduced by Representatives Feliciano Belmonte, Jr., Henedina R. Abad, Giorgidi B. Aggabao, Sergio A.F. Apostol, Pangalian M. Balindong, Carlos M. Padilla, Roberto V. Puno, Neptali M. Gonzales II, Mel Senen S. Sarmiento, Enrique M. Cojuangco, Mark Llandro L. Mendoza, Eleandro Jesus F. Madrona, Elpidio F. Barzaga, Jr., Antonio F. Lagdameo, Jr., Rolando G. Andaya, Jr., Nicanor M. Briones, and Raymond Democrito C. Mendoza.

[21] Sponsored by Representatives Rufus B. Rodriguez, Pangalian M. Balindong, Jim Hataman-Salliman, Bai Sandra A. Sema, Henry S. Oaminal, Tupay T. Loong, Romeo M. Acop, Raymond Democrito C. Mendoza, Sergio A.F. Apostol.

In the Senate, a revised version of the Bangsamoro Basic Law, known as the Basic Law for the Bangsamoro Autonomous Region or Senate Bill No. 2894,[22] was presented on 10 August 2015. However, on 6 June 2016, the 16th Congress adjourned[23] without passing the proposed Bangsamoro Basic Law.

Meanwhile, several petitions were filed with this Court assailing the constitutionality of the CAB, including the FAB, and its Annexes. G.R. Nos. 204354 and 204355, which were both filed in 2012, were consolidated pursuant to a Resolution[24] dated 11 December 2012. Likewise, in a Resolution[25] dated 23 June 2015, G.R. Nos. 218406 and 218407 were consolidated. In a Resolution[26] dated 12 January 2016, the Court granted the consolidation of G.R. No. 218761 with G.R. Nos. 218406 and 218407. In a Resolution dated 22 November 2016, all five petitions were consolidated.

On 7 November 2016, President Rodrigo Roa Duterte issued EO No. 08[27] expanding the membership and functions of the Bangsamoro Transition Commission. EO No. 08 expands the number of members of the Bangsamoro Transition Commission from 15 to 21. Section 3 of EO No. 120, as amended by EO No. 08, provides for the functions of the Bangsamoro Transition

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[22] Prepared jointly by the Committees on Local Government; Peace Unification and Reconciliation; and Constitutional Amendments and Revision of Codes with Senators Franklin M. Drilon, Vicente C. Sotto III, Loren B. Legarda, Ralph G. Recto, Maria Lourdes Nancy S. Binay, Francis G. Escudero, Paolo Benigno "Bam" Aquino IV, Juan Edgardo M. Angara, Pia S. Cayetano, Gregorio B. Honasan II, Teofisto Guingona III, Ferdinand R. Marcos, Jr., and Miriam Defensor Santiago, as authors.

[23] *Sine Die* Adjournment.

[24] *Rollo* (G.R. No. 204355), p. 70.

[25] *Rollo* (G.R. No. 218407), pp. 151-152.

[26] *Rollo* (G.R. No. 218761), p. 225-C.

[27] Amending Further Executive Order No. 120 (s. 2012), as Amended by Executive Order No. 187 (s. 2015), on the Bangsamoro Transition Commission and for Other Purposes, http://www.gov.ph/downloads/2016/11nov/20161107-EO-8-RRD.pdf (last accessed on 11 November 2016).

Commission, which include drafting proposals for a Bangsamoro Basic Law, to be submitted to the Office of the President for submission to Congress, and recommending to Congress or the people proposed amendments to the 1987 Philippine Constitution.

The Issue

The threshold issue in this case is whether the CAB, including the FAB, is constitutional.

The Court's Ruling

We dismiss the petitions.

Not ripe for adjudication due to non-enactment of the Bangsamoro Basic Law

Section 1, Article VIII of the Constitution spells out what judicial power is, to wit:

> 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.

Pursuant to this constitutional provision, it is clear that the Court's judicial review power is limited to actual cases or controversies. The Court generally declines to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The limitation of the power of judicial review to actual cases and controversies assures that the courts will not intrude into areas specifically confined to the other branches of government.[28]

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial

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[28] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *supra* note 8, at 480-481.

resolution as distinguished from a hypothetical or abstract difference or dispute.[29] There must be a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[30] The Court can decide the constitutionality of an act, either by the Executive or Legislative, only when an actual case between opposing parties is submitted for judicial determination.[31]

Closely linked to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual or entity challenging it.[32] For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.[33] Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[34]

In *Province of North Cotabato v. GRP* (MOA-AD case),[35] which involved the Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001, the Court faced the same issue of ripeness. There, the Court explained the limits of the power of judicial review and the prerequisites for the judicial determination of a case.

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[29] *Philippine Amusement and Gaming Corporation v. Thunderbird Pilipinas Hotels and Resorts, Inc., et al.*, 730 Phil. 543, 562 (2014).

[30] *Id*.

[31] *Id*., citing *Didipio Earth Savers' Multi-Purpose Association, Inc. v. Sec. Gozun*, 520 Phil. 457 (2006).

[32] *Guingona v. Court of Appeals*, 354 Phil. 415, 427 (1998).

[33] *Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172, 207563, 8 April 2014, 721 SCRA 146, 280.

[34] *Id*.

[35] *Supra* note 8.

In the MOA-AD case, the Court rejected the argument of the Solicitor General that there was no justiciable controversy that was ripe for adjudication. The Court disagreed with the Solicitor General's contention that the initialed but "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 agreement. x x x [T]he 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."[36] The Court ruled that "[w]hen an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute."[37] Moreover, in the MOA-AD case, the Executive was about to sign the initialed MOA-AD with the MILF in Kuala Lumpur, Malaysia in the presence of representatives of foreign states. Only the prompt issuance by this Court of a temporary restraining order stopped the signing, averting the implications that such signing would have caused.

In the present case, however, the Court agrees with the Solicitor General that there is no actual case or controversy requiring a full-blown resolution of the principal issue presented by petitioners.

Unlike the unconstitutional MOA-AD, the CAB, including the FAB, mandates the enactment of the Bangsamoro Basic Law in order for such peace agreements to be implemented. In the MOA-AD case, there was nothing in the MOA-AD which required the passage of any statute to implement the provisions of the MOA-AD, which in essence would have resulted in dramatically dismembering the Philippines by placing the provinces and areas covered by the MOA-AD under the control and jurisdiction of a Bangsamoro Juridical Entity.[38]

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[36] *Supra* note 8, at 482.

[37] *Supra* note 8, at 486.

[38] Under the MOA-AD, "[b]oth Parties agree that the Bangsamoro Juridical Entity (BJE) shall have the authority and jurisdiction over the Ancestral

The MOA-AD as an agreement did not provide for the enactment of subsequent legislation to implement its provisions. In fact, its provisions were immediately implementable after its signing warranting the timely intervention by this Court to rule on its constitutionality.

Further, under the MOA-AD, the Executive branch assumed the mandatory obligation to amend the Constitution to conform to the MOA-AD. The Executive branch guaranteed to the MILF that the Constitution would be drastically overhauled to conform to the MOA-AD. In effect, the Executive branch usurped the sole discretionary power of Congress to propose amendments to the Constitution as well as the exclusive power of the sovereign people to approve or disapprove such proposed amendments.[39] Thus, this Court struck down the MOA-AD as unconstitutional since such *ultra vires* commitment by the Executive branch constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

In the present case, there is no such guarantee when the CAB and the FAB were signed. The government gives no commitment, express or implied, that the Constitution will be amended or that a law will be passed comprising all the provisions indicated in the CAB and the FAB. Thus, contrary to the imagined fear of petitioners, the CAB and the FAB are not mere reincarnations or disguises of the infirm MOA-AD.

The CAB and the FAB require the enactment of the Bangsamoro Basic Law for their implementation. It is a fundamental constitutional principle that Congress has full discretion to enact the kind of Bangsamoro Basic Law that Congress, in its wisdom, deems necessary and proper to promote peace and development in Muslim areas in Mindanao. Congress

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Domain and Ancestral lands, including both alienable and non-alienable lands encompassed within their homeland and ancestral territory, as well as the delineation of ancestral domain/lands of the Bangsamoro people located therein." (paragraph 6, Concepts and Principles, MOA-AD)

[39] Justice Carpio's Separate Concurring Opinion in *Province of North Cotabato v. GRP*, *supra* note 8, at 585, 589, 603.

is expected to seriously consider the CAB and the FAB but Congress is not bound by the CAB and the FAB. Congress is separate, independent, and co-equal of the Executive branch that alone entered into the CAB and the FAB. The Executive branch cannot compel Congress to adopt the CAB and the FAB. Neither can Executive dictate on Congress the contents of the Bangsamoro Basic Law, or the proposed amendments to the Constitution that Congress should submit to the people for ratification.

The CAB and the FAB cannot be implemented without the passage of the Bangsamoro Basic Law. The CAB and the FAB remain peace agreements whose provisions cannot be enforced and given any legal effect unless the Bangsamoro Basic Law is duly passed by Congress and subsequently ratified in accordance with the Constitution. The CAB and the FAB are preparatory documents that can "trigger a series of acts"[40] that may lead to the exercise by Congress of its power to enact an organic act for an autonomous region under Section 18, Article X[41] of the Constitution. The CAB and the FAB do not purport to preempt this Congressional power.

Provision I(C) of the Annex on Transitional Arrangements and Modalities provides that "[t]he proposed Basic Law shall

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[40] Office of the Solicitor General's (OSG) Comment *Ad Cautelam, rollo* (G.R. No. 218406), p. 420.

[41] This provision reads:

Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective-and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

be submitted to the Office of the President" and that "[t]he President shall submit the proposed Basic Law to Congress as a legislative proposal. The bill for the proposed Basic Law shall be certified as urgent by the President." The CAB, as the consolidation of the peace agreements between the government and the MILF, requires the drafting of the Bangsamoro Basic Law, its submission to the Office of the President and the President's submission of a draft Bangsamoro Basic Law to Congress as a legislative proposal. It is a fundamental premise of the CAB that a law and a ratification process are required for its "actual implementation."

Significantly, President Rodrigo Roa Duterte issued EO No. 08 expanding the membership and functions of the Bangsamoro Transition Commission. EO No. 08 increases the number of members of the Bangsamoro Transition Commission from 15 to 21. Section 3 of EO No. 120, as amended by EO No. 08, provides for the functions of the Bangsamoro Transition Commission, which include drafting proposals for a Bangsamoro Basic Law, to be submitted to the Office of the President for submission to Congress, and recommending to Congress proposed amendments to the Constitution for submission to the people for ratification.

The functions of the Bangsamoro Transition Commission, which explicitly include the drafting of proposals for a Bangsamoro Basic Law, as required under the CAB and the FAB, highlight the fact that the CAB and the FAB are mere preliminary framework agreements which will guide the Bangsamoro Transition Commission in the formulation of the proposed Bangsamoro Basic Law for submission to Congress, which may adopt such proposed law in whole or in part, amend or revise the same, or even reject it outright.

During the Aquino administration, the Bangsamoro Transition Commission submitted its proposed Bangsamoro Basic Law to former President Benigno S. Aquino III, who submitted the same to the 16th Congress, which however failed to enact the same before its adjournment. Thus, the bill proposing the Bangsamoro Basic Law has to be refiled with the present

Congress. With the signing of EO No. 08 by President Duterte, the expanded Bangsamoro Transition Commission shall redraft the proposed Bangsamoro Basic Law to be submitted to the President who is expected to certify it to the present Congress as an urgent bill. Congress, in turn, may or may not accept the proposed Bangsamoro Basic Law as it is worded. There is therefore no guarantee that Congress will enact the Bangsamoro Basic Law. Congress has the sole discretion whether or not to pass the Bangsamoro Basic Law, as proposed by the Bangsamoro Transition Commission.

It is not the CAB or the FAB that will establish the Bangsamoro but the Bangsamoro Basic Law enacted by Congress and ratified in a plebiscite in accordance with the Constitution. Congress must still enact a Bangsamoro Basic Law. The requirement of a Bangsamoro Basic Law under the CAB and the FAB ensures that the pitfalls under the invalid MOA-AD will be avoided.

Even if there were today an existing bill on the Bangsamoro Basic Law, it would still not be subject to judicial review.[42] The Court held in *Montesclaros v. COMELEC*[43] that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised in *vacuo*. As the Court in *Montesclaros* noted, invoking Section 1, Article VIII of the Constitution, there can be no justiciable controversy involving the constitutionality of a proposed bill. The power of judicial review comes into play only after the passage of a bill, and not before.[44] Unless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review.

Clearly, any question on the constitutionality of the CAB and the FAB, without the implementing Bangsamoro Basic Law, is premature and not ripe for adjudication. Until a Bangsamoro

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[42] See OSG's Comment, *rollo* (G.R. No. 204354), p. 210.

[43] 433 Phil. 620, 634 (2002).

[44] *Id*.

Basic Law is passed by Congress, it is clear that there is no actual case or controversy that requires the Court to exercise its power of judicial review over a co-equal branch of government.

WHEREFORE, we **DISMISS** the petitions on the ground of prematurity.

SO ORDERED.

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

Leonen, Jardeleza, and *Caguioa, JJ.*, no part.

EN BANC

[G.R. No. 224302. November 29, 2016]

HON. PHILIP A. AGUINALDO, HON. REYNALDO A. ALHAMBRA, HON. DANILO S. CRUZ, HON. BENJAMIN T. POZON, HON. SALVADOR V. TIMBANG, JR., and the INTEGRATED BAR OF THE PHILIPPINES (IBP), *petitioners, vs.* **HIS EXCELLENCY PRESIDENT BENIGNO SIMEON C. AQUINO III, HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, HON. MICHAEL FREDERICK L. MUSNGI, HON. MA. GERALDINE FAITH A. ECONG, HON. DANILO S. SANDOVAL, HON. WILHELMINA B. JORGE-WAGAN, HON. ROSANA FE ROMERO-MAGLAYA, HON. MERIANTHE PACITA M. ZURAEK, HON. ELMO M. ALAMEDA, and HON. VICTORIA C. FERNANDEZ-BERNARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; BEING A NOMINEE FOR THE POSITION OF ASSOCIATE JUSTICE OF THE SANDIGANBAYAN IS NOT A CLEAR RIGHT TO THE SAID POSITION, AND THEREFORE NOT A PROPER PARTY TO A *QUO WARRANTO* PROCEEDING; CASE AT BAR.— Rule 66 of the Revised Rules of Court particularly identifies who can file a special civil action of *Quo Warranto* x x x A *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment. x x xPetitioners Aguinaldo, *et al.*, as nominees for the 16th Sandiganbayan Associate Justice, did not have a clear right to said position, and therefore not proper parties to a *quo warranto* proceeding. Being included in the list of nominees had given them only the possibility, but not the certainty, of being appointed to the position, given the discretionary power of the President in making judicial appointments. It is for this same reason that respondents Jorge-Wagan, *et al.*, nominees for the 21st Sandiganbayan Associate Justice, may not be impleaded as respondents or unwilling plaintiffs in a *quo warranto* proceeding. Neither can the IBP initiate a *quo warranto* proceeding to oust respondents Musngi and Econg from their currents posts as Sandiganbayan Associate Justices for the IBP does not qualify under Rule 66, Section 5 of the Revised Rules of Court as an individual claiming to be entitled to the positions in question.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; EXPANDED POWER OF JUDICIAL REVIEW; THE COURT WILL EXERCISE ITS POWER OF JUDICIAL REVIEW ONLY IF THE CASE IS BROUGHT BEFORE IT BY A PARTY WHO HAS LEGAL STANDING TO RAISE THE CONSTITUTIONAL OR LEGAL QUESTION; CASE AT BAR.— Article VIII, Section 1 of the 1987 Constitution vests upon the Court the expanded power of judicial review x x x The Court recognized in *Jardeleza v. Sereno* (*Jardeleza Decision*) that a "petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground 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 would not be the first time that the Court, in the exercise of its expanded power of judicial review, takes cognizance of a petition for *certiorari* that challenges a presidential appointment for being unconstitutional or for having been done in grave abuse of discretion. x x xThe Court will exercise its power of judicial review only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question. "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged; while "interest" refers to material interest, an interest in issue and to be affected by the decree or act assailed, as distinguished from mere interest in the question involved, or a mere incidental interest. The interest of the plaintiff must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party. In *David v. Macapagal-Arroyo*, the Court acknowledged exceptional circumstances which justified liberality and relaxation of the rules on legal standing: x x x Given that the constitutional issue in the Petition at bar is of transcendental importance and of public interest, and for the above-mentioned reasons, the Court shall accord petitioners the legal standing to sue.

3. ID.; EXECUTIVE DEPARTMENT; PRESIDENTIAL IMMUNITY; THE PRESIDENTIAL IMMUNITY FROM SUIT REMAINS PRESERVED IN THE SYSTEM OF GOVERNMENT EVEN THOUGH NOT EXPRESSLY RESERVED IN THE 1987 CONSTITUTION.— The presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution. The President is granted the privilege of immunity from suit "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention."

4. ID.; ID.; PRESIDENTIAL POWERS; APPOINTMENT; THE COURT CITED FOUR ELEMENTS WHICH MUST CONCUR FOR AN APPOINTMENT TO BE VALID, COMPLETE, AND EFFECTIVE.— For an appointment to

be valid, complete, and effective, four elements must always concur, to wit: "(1) authority to appoint and evidence of the exercise of authority, (2) transmittal of the appointment paper and evidence of the transmittal, (3) a vacant position at the time of appointment, and (4) receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications."

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* AS A RULE, *CERTIORARI* SHOULD BE INSTITUTED WITHIN A PERIOD OF 60 DAYS FROM NOTICE OF THE JUDGMENT, ORDER, OR RESOLUTION SOUGHT TO BE ASSAILED; EXCEPTIONS TO THE RULE, CITED.— Rule 65, Section 4 of the Revised Rules of Court explicitly states that *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. x x x Just like any rule, however, there are recognized exceptions to the strict observance of the 60-day period for filing a petition for *certiorari*, *viz.*: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. There should be an effort, though, on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules. x x x The Court reiterates that there can be no valid objection to its discretion to waive one or some procedural requirements if only to remove any

impediment to address and resolve the constitutional question of transcendental importance raised in this Petition, the same having far-reaching implications insofar as the administration of justice is concerned.

6. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL (JBC); THE JBC'S POWER TO RECOMMEND CANNOT BE USED TO RESTRICT OR LIMIT THE PRESIDENT'S POWER TO APPOINT, AS THE LATTER'S PREROGATIVE TO CHOOSE SOMEONE WHOM HE/SHE CONSIDERS WORTH APPOINTING TO THE VACANCY IN THE JUDICIARY IS STILL PARAMOUNT.— Article VIII, Section 9 of the 1987 Constitution provides that "[t]he Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy." x x x The JBC was created under the 1987 Constitution with the principal function of recommending appointees to the Judiciary. It is a body, representative of all the stakeholders in the judicial appointment process, intended to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities. x x x It should be stressed that the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid. x x x The President is not bound by the clustering of nominees by the JBC and may consider as one the separate shortlists of nominees concurrently submitted by the JBC. As the Court already ratiocinated herein, the requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the vacant posts in a collegiate court; and if an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It is worthy of note that the JBC, in previous instances of closely successive vacancies in collegiate courts, such as the Court of Appeals and the Supreme Court, faithfully observed the practice of submitting only a single list of nominees for all the available vacancies, with at least three nominees for every vacancy, from which the President made his appointments on the same occasion. This is in keeping with the constitutional provisions on the

President's exclusive power to appoint members of the Judiciary and the mandate of the JBC to recommend qualified nominees for appointment to the Judiciary.

7. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; INTERVENTION; THE ALLOWANCE OR DISALLOWANCE OF A MOTION FOR INTERVENTION RESTS ON THE SOUND DISCRETION OF THE COURT AFTER CONSIDERATION OF THE APPROPRIATE CIRCUMSTANCES.— Intervening in a case is not a matter of right but of sound discretion of the Court. The allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. It is not an absolute right. The statutory rules or conditions for the right of intervention must be shown. The procedure to secure the right to intervene is to a great extent fixed by the statute or rule, and intervention can, as a rule, be secured only in accordance with the terms of the applicable provision. x x x The Revised Rules of Court explicitly requires that the pleading-in-intervention already be attached to the motion for intervention.

8. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL (JBC); THE REVISED RULES FOR SIMULTANEOUS VACANCIES IN COLLEGIATE COURTS CONSTITUTE UNDUE LIMITATION ON AND IMPAIRMENT OF THE POWER OF THE PRESIDENT TO APPOINT MEMBERS OF THE JUDICIARY UNDER THE 1987 CONSTITUTION.— The Court takes judicial notice of the fact that the JBC promulgated on September 20, 2016 JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council" (Revised JBC Rules), to take effect on October 24, 2016. x x x As the Court has categorically declared herein, the clustering by the JBC of nominees for simultaneous vacancies in collegiate courts constitute undue limitation on and impairment of the power of the President to appoint members of the Judiciary under the 1987 Constitution. It also deprives qualified nominees equal opportunity to be considered for all vacancies, not just a specific one. Incorporating such Whereas clause into the Revised JBC Rules will not serve to legitimize an unconstitutional and unfair practice. Accordingly, such Whereas clause shall not bind the President pursuant to the pronouncements of the Court in the present Petition.

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL AND BAR COUNCIL (JBC); IN CARRYING OUT ITS MAIN FUNCTION, THE JBC IS GIVEN THE AUTHORITY TO SET STANDARDS OR CRITERIA IN CHOOSING ITS NOMINEES FOR EVERY VACANCY IN THE JUDICIARY.— The Judicial and Bar Council is mandated to recommend appointees to the judiciary "and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary." In carrying out its main function, the Judicial and Bar Council is given the authority to set standards or criteria in choosing its nominees for every vacancy in the judiciary. Nonetheless, this authority does not give the Judicial and Bar Council unbridled license to act in performing its duties.

2. ID.; ID.; ID.; THE SUPREME COURT EXERCISES THE POWER OF SUPERVISION ONLY THROUGH JUDICIAL REVIEW OVER THE JBC AND ONLY WHEN THERE IS GRAVE ABUSE OF DISCRETION; CASE AT BAR.— This Court exercises the powers of supervision only through judicial review over the Judicial and Bar Council and only when there is grave abuse of discretion. Nothing in the Constitution diminishes the fully independent character of the Judicial and Bar Council. It is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. x x x *Chavez v. Judicial and Bar Council* explains that the Judicial and Bar Council was created to address the clamor to rid the process of appointments to the judiciary from political pressure and partisan activities. In our dissent in *Jardeleza v. Sereno*, we emphasized that the Judicial and Bar Council is a fully independent constitutional body, which functions as a check on the President's power of appointment, and called for judicial restraint. x x x Nonetheless, the independent character of the Judicial and Bar Council as a constitutional body does not remove it from the Court's jurisdiction when the assailed acts involve grave abuse of discretion. x x x The Judicial and Bar Council may have acted in excess of its constitutional mandate to recommend nominees to the President when it clustered the Sandiganbayan applicants, in six separate groups, purportedly to account for

each newly created division. There seems to be no rational basis in the positioning of the applicants in their respective clusters, with some of the shortlists containing five names, while others having six, and two clusters even containing as many as seven names. x x x President Aquino did not commit grave abuse of discretion in disregarding the shortlists submitted to him by the Judicial and Bar Council and treating all six shortlists as one shortlist from which he can choose the new Sandiganbayan justices.

3. ID.; ID.; ID.; ID.; THE SUPREME COURT CANNOT MEDDLE IN THE JBC's INTERNAL RULES AND POLICIES AS THIS WOULD BE AN UNCONSTITUTIONAL AFFRONT TO THE JBC's INDEPENDENCE.— The exercise of this Court's power of judicial review over the Judicial and Bar Council must always be balanced with the Judicial and Bar Council's independent nature. The Court's authority over the Judicial and Bar Council should, thus, be considered as primarily administrative, with the Chief Justice, as the *ex-officio* Chair, exercising overall administrative authority in the execution of the Judicial and Bar Council's mandate. x x x This Court's power of judicial review is only to ensure that rules are followed, but with neither the power to lay down such rules nor the discretion to modify or replace them. The internal rules of the Judicial and Bar Council are necessary and incidental to the function conferred to it by the Constitution. The Constitution has provided the qualifications of the members of the judiciary, but has given the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate. This Court cannot meddle in the Judicial and Bar Council's internal rules and policies precisely because doing so would be an unconstitutional affront to the Judicial and Bar Council's independence.

4. ID.; ID.; JUDICIAL REVIEW; THE EXPANDED POWER OF JUDICIAL REVIEW GIVES THE COURT THE AUTHORITY TO STRIKE DOWN ACTS OF ALL GOVERNMENT INSTRUMENTALITIES THAT ARE CONTRARY TO THE CONSTITUTION.— Judicial review is the mechanism provided by the Constitution to settle actual controversies and to determine whether there has been grave abuse of discretion on the part of any branch or instrumentality

of the Government. The expanded power of judicial review gives the court the authority to strike down acts of all government instrumentalities that are contrary to the Constitution. *Angara v. Electoral Commission* points out that judicial review is not an assertion of the superiority of the judiciary over other departments, rather, it is the judiciary's promotion of the superiority of the Constitution: x x x

5. ID.; ID.; ID.; ID.; CONDITIONS BEFORE THE SUPREME COURT MAY EXERCISE ITS EXPANDED JURISDICTION UNDER JUDICIAL REVIEW, CITED.— This Court may exercise its expanded jurisdiction under judicial review, but certain conditions must first be met before this Court can exercise this power: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very lis mota of the case. The rationale for the conditions for the exercise of the power of judicial review is to prevent courts from entangling themselves in abstract disagreements, and for this Court to be satisfied that the case does not present a hypothetical injury or claim contingent upon some event that has not and indeed may never transpire. Thus, the vetting by this Court of the Judicial and Bar Council's internal rules do not fall under the power of judicial review as there is no justiciable controversy in the absence of clashing legal rights.

APPEARANCES OF COUNSEL

Vicente M. Joyas for petitioners.
The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for *Quo Warranto* under Rule 66 and *Certiorari* and Prohibition under Rule 65 with Application

for Issuance of Injunctive Writs[1] filed by petitioners Judge Philip A. Aguinaldo (Aguinaldo) of the Regional Trial Court (RTC), Muntinlupa City, Branch 207; Judge Reynaldo A. Alhambra (Alhambra) of RTC, Manila, Branch 53; Judge Danilo S. Cruz (D. Cruz) of RTC, Pasig City, Branch 152; Judge Benjamin T. Pozon (Pozon) of RTC, Makati City, Branch 139; Judge Salvador V. Timbang, Jr. (Timbang) of RTC, Las Piñas City, Branch 253; and the Integrated Bar of the Philippines (IBP), against respondents former President Benigno Simeon C. Aquino III (Aquino), Executive Secretary Paquito N. Ochoa (Ochoa), Sandiganbayan Associate Justice Michael Frederick L. Musngi (Musngi), Sandiganbayan Associate Justice Ma. Geraldine Faith A. Econg (Econg), Atty. Danilo S. Sandoval (Sandoval), Atty. Wilhelmina B. Jorge-Wagan (Jorge-Wagan), Atty. Rosana Fe Romero-Maglaya (Romero-Maglaya), Atty. Merianthe Pacita M. Zuraek (Zuraek), Atty. Elmo M. Alameda (Alameda), and Atty. Victoria C. Fernandez-Bernardo (Fernandez-Bernardo). The Petition assails President Aquino's appointment of respondents Musngi and Econg as Associate Justices of the Sandiganbayan.[2]

I
FACTUAL ANTECEDENTS

On June 11, 1978, then President Ferdinand E. Marcos (Marcos) issued Presidential Decree No. 1486, creating a special court called the Sandiganbayan, composed of a Presiding Judge and eight Associate Judges to be appointed by the President, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations.[3] A few months later, on December 10, 1978, President Marcos also issued

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[1] *Rollo*, pp. 3-40.

[2] Respondents Sandoval, Jorge-Wagan, Romero-Maglaya, Zuraek, Alameda, and Fernandez-Bernardo are sued as unwilling co-plaintiffs pursuant to Rule 3, Section 10 of the Revised Rules of Court.

[3] 1973 Constitution, Article XIII, Section 5.

Presidential Decree No. 1606,[4] which elevated the rank of the members of the Sandiganbayan from Judges to Justices, co-equal in rank with the Justices of the Court of Appeals; and provided that the Sandiganbayan shall sit in three divisions of three Justices each.[5] Republic Act No. 7975[6] was approved into law on March 30, 1995 and it increased the composition of the Sandiganbayan from nine to fifteen Justices who would sit in five divisions of three members each. Republic Act No. 10660,[7] recently enacted on April 16, 2015, created two more divisions of the Sandiganbayan with three Justices each, thereby resulting in six vacant positions.

On July 20, 2015, the Judicial and Bar Council (JBC) published in the Philippine Star and Philippine Daily Inquirer and posted on the JBC website an announcement calling for applications or recommendations for the six newly created positions of Associate Justice of the Sandiganbayan.[8] After screening and selection of applicants, the JBC submitted to President Aquino six shortlists contained in six separate letters, all dated October 26, 2015, which read:

1) For the 16th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SIXTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

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[4] Revising Presidential Decree No. 1486 Creating A Special Court To Be Known As "Sandiganbayan" And For Other Purposes.

[5] Presidential Decree No. 1606, Section 3.

[6] An Act To Strengthen The Functional And Structural Organization Of The Sandiganbayan, Amending For That Purpose Presidential Decree No. 1606, As Amended.

[7] An Act Strengthening Further The Functional And Structural Organization Of The Sandiganbayan, Further Amending Presidential Decree No. 1606, As Amended, And Appropriating Funds Therefor.

[8] *Rollo*, p. 13.

1. AGUINALDO, PHILIP A.	-	5 votes
2. ALHAMBRA, REYNALDO A.	-	5 votes
3. CRUZ, DANILO S.	-	5 votes
4. POZON, BENJAMIN T.	-	5 votes
5. SANDOVAL, DANILO S.	-	5 votes
6. TIMBANG, SALVADOR JR.	-	5 votes[9]

2) For the 17th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SEVENTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. CORPUS-MAÑALAC, MARYANN E.	-	6 votes
2. MENDOZA-ARCEGA, MARIA THERESA V.	-	6 votes
3. QUIMBO, RODOLFO NOEL S.	-	6 votes
4. DIZON, MA. ANTONIA EDITA CLARIDADES	-	5 votes
5. SORIANO, ANDRES BARTOLOME	-	5 votes[10]

3) For the 18th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the EIGHTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. BAGUIO, CELSO O.	-	5 votes
2. DE GUZMAN-ALVAREZ, MA. TERESA E.	-	5 votes
3. FERNANDEZ, BERNELITO R.	-	5 votes
4. PANGANIBAN, ELVIRA DE CASTRO	-	5 votes
5. SAGUN, FERNANDO JR. T.	-	5 votes
6. TRESPESES, ZALDY V.	-	5 votes[11]

4) For the 19th Sandiganbayan Associate Justice:

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[9] *Id.* at 51.

[10] *Id.* at 55.

[11] *Id.* at 57.

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the NINETEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. GUANZON, FRANCES V.	-	6 votes
2. MACARAIG-GUILLEN, MARISSA	-	6 votes
3. CRUZ, REYNALDO P.	-	5 votes
4. PAUIG, VILMA T.	-	5 votes
5. RAMOS, RENAN E.	-	5 votes
6. ROXAS, RUBEN REYNALDO G.	-	5 votes[12]

5) For the 20th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTIETH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes.

1. MIRANDA, KARL B.	-	6 votes
2. ATAL-PAÑO, PERPETUA	-	5 votes
3. BUNYI-MEDINA, THELMA	-	5 votes
4. CORTEZ, LUISITO G.	-	5 votes
5. FIEL-MACARAIG, GERALDINE C.	-	5 votes
6. QUIMPO-SALE, ANGELENE MARY W.	-	5 votes
7. JACINTO, BAYANI H.	-	4 votes[13]

6) For the 21st Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTY-FIRST ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

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[12] *Id*. at 59.

[13] *Id*. at 61.

1. JORGE-WAGAN, WILHELMINA B.	-	6 votes
2. ECONG, GERALDINE FAITH A.	-	5 votes
3. ROMERO-MAGLAYA, ROSANNA F	-	5 votes
4. ZURAEK, MERIANTHE PACITA M.	-	5 votes
5. ALAMEDA, ELMO M.	-	4 votes
6. FERNANDEZ-BERNARDO, VICTORIA C.	-	4 votes
7. MUSNGI, MICHAEL FREDERICK L.	-	4 votes[14]

President Aquino issued on January 20, 2015 the appointment papers for the six new Sandiganbayan Associate Justices, namely: (1) respondent Musngi; (2) Justice Reynaldo P. Cruz (R. Cruz); (3) respondent Econg; (4) Justice Maria Theresa V. Mendoza-Arcega (Mendoza-Arcega); (5) Justice Karl B. Miranda (Miranda); and (6) Justice Zaldy V. Trespeses (Trespeses). The appointment papers were transmitted on January 25, 2016 to the six new Sandiganbayan Associate Justices, who took their oaths of office on the same day all at the Supreme Court Dignitaries Lounge. Respondent Econg, with Justices Mendoza-Arcega and Trespeses, took their oaths of office before Supreme Court Chief Justice Maria Lourdes P. A. Sereno (Sereno); while respondent Musngi, with Justices R. Cruz and Miranda, took their oaths of office before Supreme Court Associate Justice Francis H. Jardeleza (Jardeleza).[15]

Arguments of the Petitioners

Petitioners Aguinaldo, Alhambra, D. Cruz, Pozon, and Timbang (Aguinaldo, *et al*.), were all nominees in the shortlist for the 16th Sandiganbayan Associate Justice. They assert that they possess the legal standing or *locus standi* to file the instant Petition since they suffered a direct injury from President Aquino's failure to appoint any of them as the 16th Sandiganbayan Associate Justice.

Petitioner IBP avers that it comes before this Court through a taxpayer's suit, by which taxpayers may assail an alleged illegal official action where there is a claim that public funds

[14] *Id*. at 53.

[15] *Id*. at 72.

are illegally disbursed, deflected to an improper use, or wasted through the enforcement of an invalid or unconstitutional law. Petitioner IBP also maintains that it has *locus standi* considering that the present Petition involves an issue of transcendental importance to the people as a whole, an assertion of a public right, and a subject matter of public interest. Lastly, petitioner IBP contends that as the association of all lawyers in the country, with the fundamental purpose of safeguarding the administration of justice, it has a direct interest in the validity of the appointments of the members of the Judiciary.

Petitioners base their instant Petition on the following arguments:

PRESIDENT AQUINO VIOLATED SECTION 9, ARTICLE VIII OF THE 1987 CONSTITUTION IN THAT:

(A) HE DID NOT APPOINT ANYONE FROM THE SHORTLIST SUBMITTED BY THE JBC FOR THE VACANCY FOR POSITION OF THE 16TH ASSOCIATE JUSTICE OF THE SANDIGANBAYAN; AND

(B) HE APPOINTED UNDERSECRETARY MUSNGI AND JUDGE ECONG AS ASSOCIATE JUSTICES OF THE SANDIGANBAYAN TO THE VACANCY FOR THE POSITION OF 21ST ASSOCIATE JUSTICE OF THE SANDIGANBAYAN.

(C) THE APPOINTMENTS MADE WERE NOT IN ACCORDANCE WITH THE SHORTLISTS SUBMITTED BY THE JUDICIAL AND BAR COUNCIL FOR EACH VACANCY, THUS AFFECTING THE ORDER OF SENIORITY OF THE ASSOCIATE JUSTICES.[16]

According to petitioners, the JBC was created under the 1987 Constitution to reduce the politicization of the appointments to the Judiciary, *i.e.*, "to rid the process of appointments to the Judiciary from the political pressure and partisan activities."[17]

Article VIII, Section 9 of the 1987 Constitution contains the mandate of the JBC, as well as the limitation on the President's appointing power to the Judiciary, thus:

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[16] *Id*. at 15-16.

[17] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 188 (2012).

Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

It is the function of the JBC to search, screen, and select nominees recommended for appointment to the Judiciary. It shall prepare a list with at least three qualified nominees for a particular vacancy in the Judiciary to be submitted to the President, who, in turn, shall appoint from the shortlist for said specific vacancy. Petitioners emphasize that Article VIII, Section 9 of the 1987 Constitution is clear and unambiguous as to the mandate of the JBC to submit a shortlist of nominees to the President for "every vacancy" to the Judiciary, as well as the limitation on the President's authority to appoint members of the Judiciary from among the nominees named in the shortlist submitted by the JBC.

In this case, the JBC submitted six separate lists, with five to seven nominees each, for the six vacancies in the Sandiganbayan, particularly, for the 16th, 17th, 18th, 19th, 20th, and 21st Associate Justices. Petitioners contend that only nominees for the position of the 16th Sandiganbayan Associate Justice may be appointed as the 16th Sandiganbayan Associate Justice, and the same goes for the nominees for each of the vacancies for the 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices. However, on January 20, 2016, President Aquino issued the appointment papers for the six new Sandiganbayan Associate Justices, to wit:

VACANCY IN THE SANDIGANBAYAN	PERSON APPOINTED	BAR CODE NO.	SHORTLISTED FOR
16th Associate Justice	Michael Frederick L. Musngi	PNOY019445	21st Associate Justice
17th Associate Justice	Reynaldo P. Cruz	PNOY019446	19th Associate Justice
18th Associate Justice	Geraldine Faith A. Econg	PNOY019447	21st Associate Justice
19th Associate Justice	Maria Theresa V. Mendoza-Arcega	PNOY019448	17th Associate Justice
20th Associate Justice	Karl B. Miranda	PNOY019449	20th Associate Justice
21st Associate Justice	Zaldy V. Trespeses	PNOY019450	18th Associate Justice

Petitioners observe the following infirmities in President Aquino's appointments:

a. Michael Frederick L. Musngi, nominated for the vacancy of the 21st Associate Justice, was appointed as the 16th Associate Justice;

b. Reynaldo P. Cruz, nominated for the vacancy of the 19th Associate Justice, was appointed as the 17th Associate Justice;

c. Geraldine Faith A. Econg, also nominated for the vacancy of the 21st Associate Justice, but was appointed as the 18th Associate Justice;

d. Maria Theresa V. Mendoza[-Arcega], nominated for the vacancy of the 17th Associate Justice, but was appointed as the 19th Associate Justice;

e. Zaldy V. Trespeses, nominated for the vacancy of the 18th Associate Justice, but was appointed as the 21st Associate Justice.

f. Only the appointment of Karl B. Miranda as the 20th Associate Justice is in accordance with his nomination.[18]

Petitioners insist that President Aquino could only choose one nominee from each of the six separate shortlists submitted by the JBC for each specific vacancy, and no other; and any appointment made in deviation of this procedure is a violation of the Constitution. Hence, petitioners pray, among other reliefs, that the appointments of respondents Musngi and Econg, who belonged to the same shortlist for the position of 21st Associate Justice, be declared null and void for these were made in violation of Article VIII, Section 9 of the 1987 Constitution.

Arguments of the Respondents

The Office of the Solicitor General (OSG), on behalf of the Office of the President (OP), filed a Comment,[19] seeking the dismissal of the Petition on procedural and substantive grounds.

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[18] *Rollo*, p. 22.

[19] *Id*. at 65-93.

On matters of procedure, the OSG argues, as follows:

First, President Aquino should be dropped as a respondent in the instant case on the ground of his immunity from suit.

Second, petitioners Aguinaldo, *et al*. cannot institute an action for *quo warranto* because usurpation of public office, position, or franchise is a public wrong, and not a private injury. Hence, only the State can file such an action through the Solicitor General or public prosecutor, under Sections 2 and 3, Rule 66[20] of the Rules of Court. As an exception, an individual may commence an action for *quo warranto* in accordance with Section 5, Rule 66[21] of the Rules of Court if he/she claims entitlement to a public office or position. However, for said individual's action for *quo warranto* to prosper, he/she must prove that he/she suffered a direct injury as a result of the usurpation of public office or position; and that he/she has a clear right, and not merely a preferential right, to the contested office or position. Herein petitioners Aguinaldo, *et al*. have failed to show that they are entitled to the positions now being held by respondents Musngi and Econg, as the inclusion of petitioners Aguinaldo, *et al*. in the shortlist for the 16th Sandiganbayan Associate Justice had only given them the possibility, not the certainty, of appointment

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[20] Sec. 2. *When Solicitor General or Public Prosecutor Must Commence Action*. — The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

Sec. 3. *When Solicitor General or Public Prosecutor May Commence Action with Permission of Court*. — The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.

[21] Sec. 5. *When An Individual May Commence Such An Action*. — A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

to the Sandiganbayan. Petitioners Aguinaldo, *et al.*, as nominees, only had an expectant right because their appointment to the Sandiganbayan would still be dependent upon the President's discretionary appointing power.

Third, petitioner IBP can only institute the *certiorari* and prohibition case, but not the action for *quo warranto* against respondents Musngi and Econg because it cannot comply with the direct injury requirement for the latter. Petitioner IBP justifies its *locus standi* to file the petition for *certiorari* and prohibition by invoking the exercise by this Court of its expanded power of judicial review and seeking to oust respondents Musngi and Econg as Sandiganbayan Associate Justices based on the alleged unconstitutionality of their appointments, and not on a claim of usurpation of a public office. Yet, based on *Topacio v. Ong*,[22] a petition for *certiorari* or prohibition is a collateral attack on a public officer's title, which cannot be permitted. Title to a public office can only be contested directly in a *quo warranto* proceeding.

Moreover, it is the JBC, not petitioner IBP, which has legal standing to file the present suit, as the dispute here is between the JBC and the OP. The fundamental question in this case is "whether the JBC can corral the discretion of the President to appoint, a core constitutional prerogative, by designating qualified nominees within specific, artificial numerical categories and forcing the President to appoint in accordance with those artificial numerical categories." The Court, though, is barred from deciding said question because the JBC is not a party herein.

Fourth, petitioners have erroneously included Jorge-Wagan, Romero-Maglaya, Zuraek, Alameda, and Fernandez-Bernardo (Jorge-Wagan, *et. al.*) as unwilling co-petitioners in the Petition at bar. Apart from the fact that Jorge-Wagan, *et al*. do not claim entitlement to the positions occupied by respondents Musngi and Econg, non-appointed nominees for the positions of 16th and 21st Associate Justices of the Sandiganbayan cannot simultaneously claim right to assume two vacancies in said special court.

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[22] 595 Phil. 491, 503 (2008).

And *fifth*, petitioners disregarded the hierarchy of courts by directly filing the instant Petition for *Quo warranto* and *Certiorari* and Prohibition before this Court. Even in cases where the Court is vested with original concurrent jurisdiction, it remains a court of last resort, not a court of first instance.

The OSG next addresses the substantive issues.

The OSG submits that the core argument of petitioners stems from their erroneous premise that there are existing numerical positions in the Sandiganbayan: the 1st being the Presiding Justice, and the succeeding 2nd to the 21st being the Associate Justices. It is the assertion of the OSG that the Sandiganbayan is composed of a Presiding Justice and 20 Associate Justices, without any numerical designations. Presidential Decree No. 1606 and its amendments do not mention vacancies for the positions of "2nd Associate Justice," "3rd Associate Justice," *etc*. There are no such items in the Judiciary because such numerical designations are only used to refer to the seniority or order of precedence of Associate Justices in collegiate courts such as the Supreme Court, Court of Appeals, Court of Tax Appeals, and Sandiganbayan.

The OSG further contends that the power to determine the order of precedence of the Associate Justices of the Sandiganbayan is reposed in the President, as part of his constitutional power to appoint. Citing Section 1, third paragraph of Presidential Decree No. 1606[23] and Rule II, Section 1 of the Revised Internal Rules of the Sandiganbayan,[24] the OSG explains

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[23] Sec. 1. x x x. The Presiding Justice shall be so designated in his commission and the other Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them shall bear the same date, according to the order in which their commissions have been issued by the President.

[24] Sec. 1. *Composition of the Court and Rule on Precedence. —*

(a) Composition — The Sandiganbayan is composed of a Presiding Justice and fourteen (14) Associate Justices appointed by the President of the Philippines.

(b) Rule on Precedence — The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The

that the order of precedence of the Associate Justices of the Sandiganbayan shall be according to the order of their appointments, that is, according to the dates of their respective commissions, or, when two or more commissions bear the same date, according to the order in which their commissions had been issued by the President. It is the averment of the OSG that the constitutional power of the JBC to recommend nominees for appointment to the Judiciary does not include the power to determine their seniority. President Aquino correctly disregarded the order of precedence in the shortlists submitted by the JBC and exercised his statutory power to determine the seniority of the appointed Sandiganbayan Associate Justices.

The OSG interprets Article VIII, Section 9 of the 1987 Constitution differently from petitioners. According to the OSG, said provision neither requires nor allows the JBC to cluster nominees for every vacancy in the Judiciary; it only mandates that for every vacancy, the JBC shall present at least three nominees, among whom the President shall appoint a member of the Judiciary. As a result, if there are six vacancies for Sandiganbayan Associate Justice, the JBC shall present, for the President's consideration, at least 18 nominees for said vacancies. In the case at bar, the JBC submitted 37 nominees for the six vacancies in the Sandiganbayan; and from said pool of 37 nominees, the President appointed the six Sandiganbayan Associate Justices, in faithful compliance with the Constitution.

It is also the position of the OSG that the President has the absolute discretion to determine who is best suited for

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Associate Justices shall have precedence according to the order of their appointments.

(c) The Rule on Precedence shall apply:

1) In the seating arrangement;

2) In the choice of office space, facilities and equipment, transportation and cottages.

(d) The Rule on Precedence shall not be observed:

1) In social and other non-official functions.

2) To justify any variation in the assignment of cases, amount of compensation, allowances or other forms of remuneration.

appointment among all the qualified nominees. The very narrow reading of Article VIII, Section 9 of the 1987 Constitution proposed by petitioners unreasonably restricts the President's choices to only a few nominees even when the JBC recognized 37 nominees qualified for the position of Sandiganbayan Associate Justice. This gives the JBC, apart from its power to recommend qualified nominees, the power to dictate upon the President which among the qualified nominees should be contending for a particular vacancy. By dividing nominees into groups and artificially designating each group a numerical value, the JBC creates a substantive qualification to various judicial posts, which potentially impairs the President's prerogatives in appointing members of the Judiciary.

The OSG additionally points out that the JBC made a categorical finding that respondents Musngi and Econg were "suitably best" for appointment as Sandiganbayan Associate Justice. The functions of the 16th Sandiganbayan Associate Justice are no different from those of the 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice. Since respondents Musngi and Econg were indubitably qualified and obtained sufficient votes, it was the ministerial duty of the JBC to include them as nominees for any of the six vacancies in the Sandiganbayan presented for the President's final consideration.

Furthermore, the OSG alleges that it is highly unjust to remove respondents Musngi and Econg from their current positions on the sole ground that the nominees were divided into six groups. The JBC announced "the opening/reopening, for application or recommendation" of "[s]ix (6) newly-created positions of Associate Justice of the Sandiganbayan." Respondents Musngi and Econg applied for the vacancy of "Associate Justice of the Sandiganbayan." In its announcements for interview, the JBC stated that it would be interviewing applicants for "six (6) newly created positions of Associate Justice of the Sandiganbayan." It was only on October 26, 2015, the date of submission of the shortlists, when the nominees had been clustered into six groups. The OSG notes that there are no JBC rules on the division of nominees in cases where there are several vacancies in a collegiate

court. In this case, the OSG observes that there were no measurable standards or parameters for dividing the 37 nominees into the six groups. The clustering of nominees was not based on the number of votes the nominees had garnered. The nominees were not evenly distributed among the six groups, *i.e.*, there were five nominees for 17th Sandiganbayan Associate Justice; six nominees for 16th, 18th, and 19th Sandiganbayan Associate Justices; and seven nominees for the 20th and 21st Sandiganbayan Associate Justices.

The OSG then refers to several examples demonstrating that the previous practice of the JBC was to submit only one shortlist for several vacancies in a collegiate court.

The other respondents had likewise filed their respective Comments or Manifestations:

1) In respondent Fernandez-Bernardo's Comment,[25] she recognizes the legal, substantial, and paramount significance of the ruling of the Court on the interpretation and application of Article VIII, Section 9 of the 1987 Constitution, which will serve as a judicial precedent for the guidance of the Executive and Legislative Departments, the JBC, the Bench, and the Bar.

2) Respondent Musngi states in his Manifestation[26] that he will no longer file a separate Comment and that he adopts all the averments, issues, arguments, discussions, and reliefs in the Comment of the OSG.

3) In her Comment,[27] respondent Jorge-Wagan maintains that she is not the proper party to assail the validity of the appointment of the 16th Sandiganbayan Associate Justice as she was nominated for the 21st Sandiganbayan Associate Justice; and that she is also not the proper party to seek the nullification of the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices. Not being a proper party-

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[25] *Rollo*, p. 117.

[26] *Id*. at 122-125.

[27] *Id*. at 126-127.

in-interest, respondent Jorge-Wagan argues that she cannot be considered an "unwilling co-plaintiff."

4) Respondent Romero-Maglaya makes the following averments in her Manifestation/Comment[28]: that she should not have been impleaded as a respondent or an unwilling co-plaintiff in the instant Petition because her rights as a nominee for judicial appointment were not violated; that she had no claim of entitlement to the position of Sandiganbayan Associate Justice; and that she had no participation in the alleged violation of the Constitution or exercise of grave abuse of discretion amounting to lack or excess of jurisdiction.

5) Respondent Econg manifests in her Comment[29] that while she is adopting *in toto* the arguments in the Comment of the OSG, she is also making certain factual clarifications and additional procedural and substantive averments.

Respondent Econg clarifies that her real name is Geraldine Faith A. Econg, and not Ma. Geraldine Faith A. Econg.

Respondent Econg believes that the present Petition is really for *quo warranto* because it seeks to declare null and void the respective appointments of respondents Musngi and Econg. Respondent Econg, however, asseverates that petitioners Aguinaldo, *et al.* have no clear, unquestionable franchise to the Office of Associate Justice of the Sandiganbayan simply because they had been included in the shortlist submitted for the President's consideration. Nomination is not equivalent to appointment and the removal of respondents Musngi and Econg will not automatically grant petitioners Aguinaldo, *et al.* the right to the Office of Associate Justice of the Sandiganbayan. Petitioners Aguinaldo, *et al.*, except for petitioner Alhambra, are even uncertain about their right to the position/s of 16th and/or 21st Sandiganbayan Associate Justice/s as they have also applied for the position of Sandiganbayan Associate Justice in lieu of Sandiganbayan Associate Justice Teresita V. Diaz-Baldos,

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[28] *Id.* at 128C-131.

[29] *Id.* at 132-144.

who eventually retired on July 22, 2016. Even assuming for the sake of argument that petitioners' alternative remedy of *certiorari* is proper, respondent Econg contends that petitioners only had 60 days to file such a petition from January 20, 2016, the date she and respondent Musngi were appointed. Petitioners belatedly filed their Petition before the Court on May 17, 2016.

Respondent Econg also raises the concern that if the Court affirms the petitioners' position that there are no valid appointments for the 16th and 21st Sandiganbayan Associate Justices, the seniority or order of precedence among the Sandiganbayan Associate Justices will be adversely affected. Respondent Econg avers that there was only one list of nominees for the six vacant positions of Sandiganbayan Associate Justice, considering that: (a) the announcement of the opening for application/recommendation was for the six newly-created positions of Sandiganbayan Associate Justice; (b) respondent Econg's application was for the six newly-created positions of Sandiganbayan Associate Justice; and (c) the announcement of the public interview of candidates was for the six newly-created positions of Sandiganbayan Associate Justice.

Thus, respondent Econg prays for, among other reliefs, the dismissal of the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit, and the declaration that the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices are valid.

6) In respondent Sandoval's Comment,[30] he avows that he opts not to join the petitioners as he subscribes to the principle that the heart and core of the President's power to appoint is the freedom to choose. The power to appoint rests on the President and the President alone. Respondent Sandoval has already accepted the fact that he was not appointed despite being nominated by the JBC for the position of Sandiganbayan Associate Justice and he is looking forward to another opportunity to apply for a higher position in the Judiciary.

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[30] *Id*. at 177-179.

Respondents Zuraek and Almeda have not filed their comments despite notice and are deemed to have waived their right to do so.

On November 26, 2016, the JBC belatedly filed a Motion for Intervention in the Petition at bar, or more than six months from the filing of the herein Petition on May 17, 2016 and after Chief Justice Sereno, the Chairperson of the JBC herself, administered the oath of office of respondent Econg, whose appointment is now being questioned for having been done in disregard of the clustering of nominees by the JBC.

II
The Ruling of the Court

The Court takes cognizance of the present Petition despite several procedural infirmities given the transcendental importance of the constitutional issue raised herein.

The Petition at bar is for (a) *Quo Warranto* under Rule 66 of the Revised Rules of Court; and (b) *Certiorari* and Prohibition under Rule 65 of the same Rules.

Rule 66 of the Revised Rules of Court particularly identifies who can file a special civil action of *Quo Warranto*, to wit:

RULE 66
Quo Warranto

Sec. 1. *Action by Government against individuals*. – An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

Sec. 2. *When Solicitor General or public prosecutor must commence action*. – The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

Sec. 3. *When Solicitor General or public prosecutor may commence action with permission of court*. – The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought.

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Sec. 5. *When an individual may commence such an action*. – A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.

In *Topacio v. Ong*,[31] the Court pronounced that:

A *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment. It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office, and may be commenced by the Solicitor General or a public prosecutor, as the case may be, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.

Nothing is more settled than the principle, which goes back to the 1905 case of *Acosta v. Flor*, reiterated in the recent 2008 case of *Feliciano v. Villasin*, that **for a *quo warranto* petition to be successful,**

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[31] *Supra* note 22 at 504.

the private person suing must show a clear right to the contested office. In fact, not even a mere preferential right to be appointed thereto can lend a modicum of legal ground to proceed with the action. (Emphasis supplied, citations omitted.)

Petitioners Aguinaldo, *et al.*, as nominees for the 16th Sandiganbayan Associate Justice, did not have a clear right to said position, and therefore not proper parties to a *quo warranto* proceeding. Being included in the list of nominees had given them only the possibility, but not the certainty, of being appointed to the position, given the discretionary power of the President in making judicial appointments. It is for this same reason that respondents Jorge-Wagan, *et al.*, nominees for the 21st Sandiganbayan Associate Justice, may not be impleaded as respondents or unwilling plaintiffs in a *quo warranto* proceeding. Neither can the IBP initiate a *quo warranto* proceeding to oust respondents Musngi and Econg from their current posts as Sandiganbayan Associate Justices for the IBP does not qualify under Rule 66, Section 5 of the Revised Rules of Court as an individual claiming to be entitled to the positions in question.

Nevertheless, the Court takes in consideration the fact that the present Petition is also for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court, which alleges that President Aquino violated Article VIII, Section 9 of the 1987 Constitution and committed grave abuse of discretion amounting to lack or excess of jurisdiction in his appointment of respondents Musngi and Econg as Sandiganbayan Associate Justices.

Article VIII, Section 1 of the 1987 Constitution vests upon the Court the expanded power of judicial review, thus:

Article VIII

Sec. 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.

The Court recognized in *Jardeleza v. Sereno* (*Jardeleza Decision*)[32] that a "petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground 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."

In opposing the instant Petition for *Certiorari* and Prohibition, the OSG cites *Topacio* in which the Court declares that title to a public office may not be contested except directly, by *quo warranto* proceedings; and it cannot be assailed collaterally, such as by *certiorari* and prohibition.[33] However, *Topacio* is not on all fours with the instant case. In *Topacio*, the writs of *certiorari* and prohibition were sought against Sandiganbayan Associate Justice Gregory S. Ong on the ground that he lacked the qualification of Filipino citizenship for said position. In contrast, the present Petition for *Certiorari* and Prohibition puts under scrutiny, not any disqualification on the part of respondents Musngi and Econg, but the act of President Aquino in appointing respondents Musngi and Econg as Sandiganbayan Associate Justices without regard for the clustering of nominees into six separate shortlists by the JBC, which allegedly violated the Constitution and constituted grave abuse of discretion amounting to lack or excess of jurisdiction. This would not be the first time that the Court, in the exercise of its expanded power of judicial review, takes cognizance of a petition for *certiorari* that challenges a presidential appointment for being unconstitutional or for having been done in grave abuse of discretion. As the Court held in *Funa v. Villar*[34]:

> Anent the aforestated posture of the OSG, there is no serious disagreement as to the propriety of the availment of *certiorari* as a medium to inquire on whether the assailed appointment of respondent Villar as COA Chairman infringed the constitution or was infected

[32] G.R. No. 213181, August 19, 2014, 733 SCRA 279, 328.

[33] *Topacio v. Ong*, *supra* note 22 at 503.

[34] 686 Phil. 571, 586-587 (2012).

with grave abuse of discretion. For under the expanded concept of judicial review under the 1987 Constitution, the corrective hand of *certiorari* may be invoked not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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." "Grave abuse of discretion" denotes:

> such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.

We find the remedy of *certiorari* applicable to the instant case in view of the allegation that then President Macapagal-Arroyo exercised her appointing power in a manner constituting grave abuse of discretion. (Citations omitted.)

Even so, the Court finds it proper to drop President Aquino as respondent taking into account that when this Petition was filed on May 17, 2016, he was still then the incumbent President who enjoyed immunity from suit. The presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution.[35] The President is granted the privilege of immunity from suit "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention."[36] It is sufficient that former Executive Secretary Ochoa is named as respondent herein as he was then the head of the OP and was in-charge of releasing presidential appointments, including those to the Judiciary.[37]

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[35] *Lozada, Jr. v. Macapagal-Arroyo*, 686 Phil. 536, 552 (2012).

[36] *Soliven v. Makasiar*, 249 Phil. 394, 400 (1988).

[37] See *Kilosbayan Foundation v. Ermita*, 553 Phil. 331 (2007).

Since the Petition at bar involves a question of constitutionality, the Court must determine the *locus standi* or legal standing of petitioners to file the same. The Court will exercise its power of judicial review only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question. "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged; while "interest" refers to material interest, an interest in issue and to be affected by the decree or act assailed, as distinguished from mere interest in the question involved, or a mere incidental interest. The interest of the plaintiff must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.[38]

In *David v. Macapagal-Arroyo*,[39] the Court acknowledged exceptional circumstances which justified liberality and relaxation of the rules on legal standing:

> The difficulty of determining *locus standi* arises in public suits. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer."
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> Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People*

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[38] *Joya v. Presidential Commission on Good Government*, 296-A Phil. 595, 603 (1993).

[39] 522 Phil. 705, 756-760 (2006).

ex rel Case v. Collins: "In matter of mere public right, however . . . the people are the real parties. . . It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, *Terr v. Jordan* held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."

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However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the 1949 Emergency Powers Cases, *Araneta v. Dinglasan*, where the "transcendental importance" of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*, this Court resolved to pass upon the issues raised due to the "far-reaching implications" of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.

Thus, the Court has adopted a rule that even where the petitioners have failed to show direct injury, they have been allowed to sue under the principle of "transcendental importance." Pertinent are the following cases:

(1) *Chavez v. Public Estates Authority*, where the Court ruled that the enforcement of the constitutional right to information and the equitable diffusion of natural resources are matters of transcendental importance which clothe the petitioner with *locus standi*;

(2) *Bagong Alyansang Makabayan v. Zamora*, wherein the Court held that "given the transcendental importance of the issues involved, the Court may relax the standing requirements and allow the suit to prosper despite the lack of direct injury to the parties seeking judicial review" of the Visiting Forces Agreement;

(3) *Lim v. Executive Secretary*, while the Court noted that the petitioners may not file suit in their capacity as taxpayers

absent a showing that "Balikatan 02-01" involves the exercise of Congress' taxing or spending powers, it reiterated its ruling in *Bagong Alyansang Makabayan v. Zamora*, that in cases of transcendental importance, the cases must be settled promptly and definitely and standing requirements may be relaxed.

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

(1) the cases involve constitutional issues;

(2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

(3) for voters, there must be a showing of obvious interest in the validity of the election law in question;

(4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

(5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

While neither petitioners Aguinaldo, *et al*. nor petitioner IBP have legal standing to file a petition for *quo warranto*, they have legal standing to institute a petition for *certiorari*.

The clustering of nominees by the JBC, which the President, for justifiable reasons, did not follow, could have caused all nominees direct injury, thus, vesting them with personal and substantial interest, as the clustering limited their opportunity to be considered for appointment to only one of the six vacant positions for Sandiganbayan Associate Justice instead of all the six vacant positions to which the JBC found them as qualified for appointment. This is the far-reaching adverse consequence to petitioners Aguinaldo, *et. al*. that they have missed. More importantly, for a complete resolution of this Petition, the Court must inevitably address the issue of the validity of the clustering of nominees by the JBC for simultaneous vacancies in collegiate courts, insofar as it seriously impacts on the constitutional power

of the President to appoint members of the Judiciary, which will be explained below.

One of the fundamental purposes of the IBP is to improve the administration of justice.[40] As the association of all lawyers in the country, petitioner IBP has an interest in ensuring the validity of the appointments to the Judiciary. It is recognized that the administration of justice is primarily a joint responsibility of the judge and the lawyer.[41] Definitely, lawyers cannot effectively discharge their duties if they entertain doubts, or worse, had lost their faith in judges and/or justices. It is clearly imperative for the IBP to prevent that situation from happening by exercising vigilance and ensuring that the judicial appointment process remains transparent and credible.

Given that the constitutional issue in the Petition at bar is of transcendental importance and of public interest, and for the above-mentioned reasons, the Court shall accord petitioners the legal standing to sue.

The instant Petition fundamentally challenges President Aquino's appointment of respondents Musngi and Econg as the 16th and 18th Sandiganbayan Associate Justices. Petitioners contend that only one of them should have been appointed as both of them were included in one cluster of nominees for the 21st Sandiganbayan Associate Justice. The Petition presents for resolution of the Court the issue of whether President Aquino violated Article VIII, Section 9 of the 1987 Constitution and gravely abused his discretionary power to appoint members of the Judiciary when he disregarded the clustering by the JBC of the nominees for each specific vacant position of Sandiganbayan Associate Justice. The issue is of paramount importance for it

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[40] Rules of Court, Rule 139-A.

Sec. 2. *Purposes*. — The fundamental purposes of the Integrated Bar shall be to elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively.

[41] *The Officers and Members of the IBP Baguio-Benguet Chapter v. Pamintuan*, 485 Phil. 473, 496 (2004).

affects the validity of appointments to collegiate courts and, ultimately, the administration of justice, for if there are questions as to the right of the appointee to his position as judge/justice, then doubts shall likewise shadow all his acts as such. This will indubitably undermine the faith of the public in the judicial system. Since at hand is a constitutional issue of first impression, which will likely arise again when there are simultaneous vacancies in collegiate courts, it is imperative for the Court to already resolve the same for the guidance of the Bench and Bar, and the general public as well.

The OSG also prays for the dismissal of this Petition on the additional ground that petitioners, by coming directly before this Court, violated the hierarchy of courts. Relevant to this matter are the following pronouncements of the Court in *Querubin v. Commission on Elections*[42]:

> Notwithstanding the non-exclusivity of the original jurisdiction over applications for the issuance of writs of *certiorari*, however, the doctrine of hierarchy of courts dictates that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. The rationale behind the principle is explained in *Bañez, Jr. v. Concepcion* in the following wise:
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> > 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 shield 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.

Petitioners do not have the absolute and unrestrained freedom of choice of the court to which an application for *certiorari* will be directed. Indeed, referral to the Supreme Court as the court of last resort will simply be empty rhetoric if party-litigants are able to flout

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[42] G.R. No. 218787, December 8, 2015.

judicial hierarchy at will. The Court reserves the direct invocation of its jurisdiction only when there are special and important reasons clearly and especially set out in the petition that would justify the same.

In the leading case of *The Diocese of Bacolod v. Comelec*, the Court enumerated the specific instances when direct resort to this Court is allowed, to wit:

(a) When there are genuine issues of constitutionality that must be addressed at the most immediate time;

(b) When the issues involved are of transcendental importance;

(c) Cases of first impression;

(d) When the constitutional issues raised are best decided by this Court;

(e) When the time element presented in this case cannot be ignored;

(f) When the petition reviews the act of a constitutional organ;

(g) When there is no other plain, speedy, and adequate remedy in the ordinary course of law;

(h) When public welfare and the advancement of public policy so dictates, or when demanded by the broader interest of justice;

(i) When the orders complained of are patent nullities; and

(j) When appeal is considered as clearly an inappropriate remedy. (Citations omitted.)

Inasmuch as the Petition at bar involves a constitutional question of transcendental importance and of first impression and demanded by the broader interest of justice, the Court, in the exercise of its discretion, resolves to exercise primary jurisdiction over the same.

Lastly, respondent Econg opposes the Petition at bar for being filed out of time. According to respondent Econg, the 60-day period for petitioners to file this Petition commenced on January 20, 2016, the date she and her co-respondent Musngi were appointed by President Aquino. Based on respondent Econg's

argument, the 60-day period ended on March 20, 2016, Sunday, so petitioners only had until March 21, 2016, Monday, to timely file the Petition. For their part, petitioners aver that after learning of the appointments of respondents Musngi and Econg as Sandiganbayan Associate Justices from the media, they obtained copies of the shortlists for the vacancies for the 16th to the 21st Sandiganbayan Associate Justices on March 22, 2016. Counting the 60-day period from March 22, 2016, petitioners allege that they had until May 21, 2016 to file their Petition.

Rule 65, Section 4 of the Revised Rules of Court explicitly states that *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed. The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. The question though is when said 60-day period began to run in this case. The Court refers to its ruling in *Velicaria-Garafil v. Office of the President.*[43] In said case, the Court declared that appointment is a process. For an appointment to be valid, complete, and effective, four elements must always concur, to wit: "(1) authority to appoint and evidence of the exercise of authority, (2) transmittal of the appointment paper and evidence of the transmittal, (3) a vacant position at the time of appointment, and (4) receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications." The Court expounded on the importance of the last element as follows:

> Acceptance is indispensable to complete an appointment. Assuming office and taking the oath amount to acceptance of the appointment. An oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office.
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> *Javier v. Reyes* is instructive in showing how acceptance is indispensable to complete an appointment. On 7 November 1967, petitioner Isidro M. Javier (Javier) was appointed by then Mayor

[43] G.R. Nos. 203372, 206290, 209138 & 212030, June 16, 2015, 758 SCRA 414, 450.

Victorino B. Aldaba as the Chief of Police of Malolos, Bulacan. The Municipal Council confirmed and approved Javier's appointment on the same date. Javier took his oath of office on 8 November 1967, and subsequently discharged the rights, prerogatives, and duties of the office. On 3 January 1968, while the approval of Javier's appointment was pending with the CSC, respondent Purificacion C. Reyes (Reyes), as the new mayor of Malolos, sent to the CSC a letter to recall Javier's appointment. Reyes also designated Police Lt. Romualdo F. Clemente as Officer-in-Charge of the police department. The CSC approved Javier's appointment as permanent on 2 May 1968, and even directed Reyes to reinstate Javier. Reyes, on the other hand, pointed to the appointment of Bayani Bernardo as Chief of Police of Malolos, Bulacan on 4 September 1967. This Court ruled that Javier's appointment prevailed over that of Bernardo. It cannot be said that Bernardo accepted his appointment because he never assumed office or took his oath.

Excluding the act of acceptance from the appointment process leads us to the very evil which we seek to avoid (*i.e.*, antedating of appointments). Excluding the act of acceptance will only provide more occasions to honor the Constitutional provision in the breach. The inclusion of acceptance by the appointee as an integral part of the entire appointment process prevents the abuse of the Presidential power to appoint. It is relatively easy to antedate appointment papers and make it appear that they were issued prior to the appointment ban, but it is more difficult to simulate the entire appointment process up until acceptance by the appointee.[44] (Citations omitted.)

The records show that on January 25, 2016, the appointment papers were transmitted to and received by the six newly-appointed Sandiganbayan Associate Justices, including respondents Musngi and Econg, who, on the same day, already took their oaths of office. Therefore, pursuant to *Velicaria-Garafil*, the appointment process became complete and effective on January 25, 2016. If the Court is to count the 60-day reglementary period for filing a petition for *certiorari* from January 25, 2016, it expired on March 25, 2016. The present Petition for *Certiorari* and Prohibition was filed on May 17, 2016.

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[44] *Id*. at 466-467.

Just like any rule, however, there are recognized exceptions to the strict observance of the 60-day period for filing a petition for *certiorari*, *viz.*: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. There should be an effort, though, on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[45]

The peculiar circumstances of this case, plus the importance of the issues involved herein, justify the relaxation of the 60-day period for the filing of this Petition for *Certiorari* and Prohibition. Indeed, the official act assailed by petitioners is the appointment by President Aquino of respondents Musngi and Econg as Sandiganbayan Associate Justices, which was completed on January 25, 2016 when said respondents took their oaths of office. Yet, petitioners could not have sought remedy from the Court at that point. As basis for petitioners' opposition to the said appointments, they needed to see and secure copies of the shortlists for the 16th to the 21st Sandiganbayan Associate Justices. It was only after petitioners obtained copies of all six shortlists on March 22, 2016 that petitioners would have been able to confirm that no one from

[45] *Labao v. Flores*, 649 Phil. 213, 222-223 (2010).

the shortlist for the 16th Sandiganbayan Associate Justice was appointed to any of the six vacancies for Sandiganbayan Associate Justice; and that respondents Musngi and Econg, both in the shortlist for the 21st Sandiganbayan Associate Justice, were appointed as the 16th and 18th Sandiganbayan Associate Justices, respectively. In addition, respondent Econg is not unjustly prejudiced by the delay, but will even benefit from the Court resolving once and for all the questions on her right to the position of Sandiganbayan Associate Justice.

The Court reiterates that there can be no valid objection to its discretion to waive one or some procedural requirements if only to remove any impediment to address and resolve the constitutional question of transcendental importance raised in this Petition, the same having far-reaching implications insofar as the administration of justice is concerned.[46]

President Aquino did not violate the Constitution or commit grave abuse of discretion in disregarding the clustering of nominees into six separate shortlists for the six vacancies for Sandiganbayan Associate Justice.

Article VIII, Section 9 of the 1987 Constitution provides that "[t]he Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy."

The appointment process for the Judiciary seems simple enough if there is only one vacancy to consider at a time. The power of the President to appoint members of the Judiciary is beyond question, subject to the limitation that the President can only appoint from a list of at least three nominees submitted by the JBC for every vacancy. However, the controversy in

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[46] *Social Justice Society (SJS) Officers v. Lim,* G.R. Nos. 187836 & 187916, November 25, 2014, 742 SCRA 1, 73-74.

this case arose because by virtue of Republic Act No. 10660, creating two new divisions of the Sandiganbayan with three members each, there were six simultaneous vacancies for Associate Justice of said collegiate court; and that the JBC submitted six separate shortlists for the vacancies for the 16th to the 21st Sandiganbayan Associate Justices.

On one hand, petitioners assert that President Aquino's power to appoint is limited to each shortlist submitted by the JBC. President Aquino should have appointed the 16th Sandiganbayan Associate Justice from the nominees in the shortlist for the 16th Sandiganbayan Associate Justice, the 17th Sandiganbayan Associate Justice from the nominees in the shortlist for the 17th Sandiganbayan Associate Justice, and so on and so forth. By totally overlooking the nominees for the 16th Sandiganbayan Associate Justice and appointing respondents Musngi and Econg, who were both nominees for the 21st Sandiganbayan Associate Justice, as the 16th and 18th Sandiganbayan Associate Justices, respectively, President Aquino violated the 1987 Constitution and committed grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondents, on the other hand, maintain that President Aquino acted in accordance with the 1987 Constitution and well-within his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees by the JBC into six separate shortlists and collectively considered all 37 nominees named in said shortlists for the six vacancies for Sandiganbayan Associate Justice.

The primordial question then for resolution of the Court is whether President Aquino, under the circumstances, was limited to appoint only from the nominees in the shortlist submitted by the JBC for each specific vacancy.

The Court answers in the negative.

The JBC was created under the 1987 Constitution with the principal function of recommending appointees to the Judiciary.[47] It is a body, representative of all the stakeholders in the judicial appointment process, intended to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities.[48] The extent of the role of the JBC in recommending appointees vis-à-vis the power of the President to appoint members of the Judiciary was discussed during the deliberations of the Constitutional Commission (CONCOM) on July 10, 1986, thus:

MR. RODRIGO: Let me go to another point then.

On page 2, Section 5, there is a novel provision about appointments of members of the Supreme Court and of judges of lower courts. At present it is the President who appoints them. If there is a Commission on Appointments, then it is the President with the confirmation of the Commission on Appointments. In this proposal, we would like to establish a new office, a sort of a board composed of seven members, called the Judicial and Bar Council. And while the President will still appoint the members of the judiciary, he will be limited to the recommendees of this Council.

MR. CONCEPCION: That is correct.

MR. RODRIGO: And the Council will, whenever there is a vacancy, recommend three.

MR. CONCEPCION: At least three for every vacancy.

MR. RODRIGO: And the President cannot appoint anybody outside of the three recommendees.

MR. CONCEPCION: Nomination by the Council would be one of the qualifications for appointment.[49]

It is apparent from the aforequoted CONCOM deliberations that nomination by the JBC shall be a qualification for appointment to the Judiciary, but this only means that the President cannot appoint an individual who is not nominated

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[47] 1987 Constitution, Article VIII, Section 8(5).

[48] *Chavez v. Judicial and Bar Council*, 709 Phil. 478, 485-486 (2013).

[49] Record of the Constitutional Commission, 1986, Volume I, pp. 444-445.

by the JBC. It cannot be disputed herein that respondents Musngi and Econg were indeed nominated by the JBC and, hence, qualified to be appointed as Sandiganbayan Associate Justices.

It should be stressed that the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid. On this score, the Court finds herein that President Aquino was not obliged to appoint one new Sandiganbayan Associate Justice from each of the six shortlists submitted by the JBC, especially when the clustering of nominees into the six shortlists encroached on President Aquino's power to appoint members of the Judiciary from all those whom the JBC had considered to be qualified for the same positions of Sandiganbayan Associate Justice.

Moreover, in the case at bar, there were six simultaneous vacancies for the position of Sandiganbayan Associate Justice, and the JBC cannot, by clustering of the nominees, designate a numerical order of seniority of the prospective appointees. The Sandiganbayan, a collegiate court, is composed of a Presiding Justice and 20 Associate Justices divided into seven divisions, with three members each. The numerical order of the seniority or order of preference of the 20 Associate Justices is determined pursuant to law by the date and order of their commission or appointment by the President.

This is clear under Section 1, paragraph 3 of Presidential Decree No. 1606, which reads:

> Sec. 1. *Sandiganbayan; composition; qualifications; tenure; removal and compensation.* – x x x
>
> x x x x x x x x x
>
> The Presiding Justice shall be so designated in his commission and the other Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them shall bear the same date, according to the order in which their commissions have been issued by the President.

Consistent with the foregoing, Rule II, Section 1(b) of the Revised Internal Rules of the Sandiganbayan similarly provides:

> Sec. 1. *Composition of the Court and Rule on Precedence*.–
>
> x x x x x x x x x
>
> (b) *Rule on Precedence* – The Presiding Justice shall enjoy precedence over the other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.

Apropos herein is the following ruling of the Court in *Re: Seniority Among the Four (4) Most Recent Appointments to the Position of Associate Justices of the Court of Appeals*,[50] which involved the Court of Appeals, another collegiate court:

> For purposes of appointments to the judiciary, therefore, the date the commission has been signed by the President (which is the date appearing on the face of such document) is the date of the appointment. Such date will determine the seniority of the members of the Court of Appeals in connection with Section 3, Chapter I of BP 129, as amended by RA 8246. In other words, **the earlier the date of the commission of an appointee, the more senior he/she is over the other subsequent appointees. It is only when the appointments of two or more appointees bear the same date that the order of issuance of the appointments by the President becomes material**. This provision of statutory law (Section 3, Chapter I of BP 129, as amended by RA 8246) controls over the provisions of the 2009 IRCA which gives premium to the order of appointments as transmitted to this Court. Rules implementing a particular law cannot override but must give way to the law they seek to implement. (Emphasis supplied.)

Evidently, based on law, rules, and jurisprudence, the numerical order of the Sandiganbayan Associate Justices cannot be determined until their actual appointment by the President.

It bears to point out that part of the President's power to appoint members of a collegiate court, such as the Sandiganbayan, is the power to determine the seniority or order of preference of such newly appointed members by controlling the date and

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[50] 646 Phil. 1, 11 (2010).

order of issuance of said members' appointment or commission papers. By already designating the numerical order of the vacancies, the JBC would be establishing the seniority or order of preference of the new Sandiganbayan Associate Justices even before their appointment by the President and, thus, unduly arrogating unto itself a vital part of the President's power of appointment.

There is also a legal ground why the simultaneous vacant positions of Sandiganbayan Associate Justice should not each be assigned a specific number by the JBC. The Sandiganbayan Associate Justice positions were created without any distinction as to rank in seniority or order of preference in the collegiate court. The President appoints his choice nominee to the post of Sandiganbayan Associate Justice, but not to a Sandiganbayan Associate Justice position with an identified rank, which is automatically determined by the order of issuance of appointment by the President. The appointment does not specifically pertain to the 16th, 17th, 18th, 19th, 20th, or 21st Sandiganbayan Associate Justice, because the Sandiganbayan Associate Justice's ranking is temporary and changes every time a vacancy occurs in said collegiate court. In fact, by the end of 2016, there will be two more vacancies for Sandiganbayan Associate Justice.[51] These vacancies will surely cause movement in the ranking within the Sandiganbayan. At the time of his/her appointment, a Sandiganbayan Associate Justice might be ranked 16th, but because of the two vacancies occurring in the court, the same Sandiganbayan Associate Justice may eventually be higher ranked.

Furthermore, the JBC, in sorting the qualified nominees into six clusters, one for every vacancy, could influence the appointment process beyond its constitutional mandate of recommending qualified nominees to the President. Clustering impinges upon the President's power of appointment, as well

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[51] Per JBC Announcement dated July 7, 2016: x x x.

2. Two positions of Sandiganbayan Associate Justice (vice Justice Napoleon E. Inoturan, whose approved optional retirement is effective 1 August 2016, and vice Justice Jose R. Hernandez, who will compulsorily retire on 22 November 2016)[.]

as restricts the chances for appointment of the qualified nominees, because (1) the President's option for every vacancy is limited to the five to seven nominees in the cluster; and (2) once the President has appointed from one cluster, then he is proscribed from considering the other nominees in the same cluster for the other vacancies. The said limitations are utterly without legal basis and in contravention of the President's appointing power.

To recall, the JBC invited applications and recommendations and conducted interviews for the "six newly created positions of Associate Justice of the Sandiganbayan." Applicants, including respondents Musngi and Econg, applied for the vacancy for "Associate Justice of the Sandiganbayan." Throughout the application process before the JBC, the six newly-created positions of Sandiganbayan Associate Justice were not specifically identified and differentiated from one another for the simple reason that there was really no legal justification to do so. The requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the Sandiganbayan Associate Justices. If an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It was only at the end of the process that the JBC precipitously clustered the 37 qualified nominees into six separate shortlists for each of the six vacant positions.

The Court notes that the clustering of nominees is a totally new practice of the JBC. Previously, the JBC submitted only one shortlist for two or more vacancies in a collegiate court. Worth reproducing below are the examples cited by the OSG:

> 77. For instance, in June 2011, there were 2 vacancies for Associate Justice of the Supreme Court. Out of 30 candidates, the JBC submitted to the President only 1 short list of 6 nominees. Based on this short list, President Aquino appointed Associate Justices Bienvenido L. Reyes, and Estela Perlas-Bernabe.
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> 78. In January 2012, there were 3 vacancies for Associate Justice of the CA. Out of sixty-three (63) candidates, the JBC prepared only 1 short list of 13 nominees for these 3 vacancies. Based on this short list, President Aquino appointed Associate Justices Ma. Luisa C. Quijano-Padilla, Renato C. Francisco, and Jhosep Y. Lopez.

79. In June 2012, there were 3 vacancies for Associate Justice of the CA. Out of 53 candidates, the JBC submitted to the President only 1 short list of 14 nominees who obtained the required number of votes. Based on this short list, President Aquino appointed Associate Justices Henri Jean Paul B. Inting, Oscar V. Badelies, and Marie Christine Azcarraga Jacob.[52]

Additionally, in 1995, when Republic Act No. 7975 increased the divisions in the Sandiganbayan from three to five, which similarly created six simultaneous vacant positions of Sandiganbayan Associate Justice, the JBC, with then Supreme Court Chief Justice Andres R. Narvasa as Chairman, submitted a single list of nominees from which former President Fidel V. Ramos subsequently chose his six appointees. Reproduced in full below was the nomination submitted by the JBC on said occasion:

July 17, 1997

HIS EXCELLENCY
PRESIDENT FIDEL V. RAMOS
Malacañan, Manila

Dear Mr. President:

Pursuant to the provisions of Article VIII, Section 9 of the Constitution, the Judicial and Bar Council has the honor to submit the nominations (in alphabetical order) for six (6) positions of Associate Justice of the Sandiganbayan, per the JBC Minutes of July 9 and 16, 1997:

1. Asuncion, Elvi John S.
2. Badoy Jr., Anacleto D.
3. Castañeda Jr., Catalino D.
4. De Castro, Teresita Leonardo
5. Fineza, Antonio J.
6. Flores, Alfredo C.
7. Gustilo, Alfredo J.
8. Hernandez, Jose R.
9. Ilarde, Ricardo M.
10. Laggui, Pedro N.

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[52] *Rollo*, pp. 87-88.

11. Lee Jr., German G.
12. Legaspi, Godofredo L.
13. Makasiar, Ramon P.
14. Mallillin, Hesiquio R.
15. Martinez, Wilfredo C.
16. Mirasol, Teodulo E.
17. Nario, Narciso S.
18. Navarro, Flordelis Ozaeta
19. Ortile, Senecio D.
20. Pineda, Ernesto L.
21. Ponferrada, Bernardo T.
22. Quimsing, Godofredo P.
23. Rivera, Candido V.
24. Rosario Jr., Eriberto U.
25. Salonga, Josefina Guevara
26. Sultan, Justo M.
27. Umali, Mariano M.

Their respective curriculum vitae are hereto attached.

Once more, on November 23, 2009, the JBC, then headed by Supreme Court Chief Justice Reynato S. Puno (Puno), submitted to former President Gloria Macapagal-Arroyo (Macapagal-Arroyo) a single list of nominees for two vacant positions of Supreme Court Associate Justice, from which President Macapagal-Arroyo ultimately appointed Associate Justices Jose P. Perez and Jose C. Mendoza. The letter of nomination of the JBC reads:

November 23, 2009

Her Excellency
President Gloria Macapagal Arroyo
Malacañang Palace
Manila

Your Excellency:

Pursuant to Section 9, Article VIII of the Constitution, the Judicial and Bar Council has the honor to submit nominations for two (2) positions of Associate Justice of the Supreme Court (vice Hon.

Leonardo A. Quisumbing and Hon. Minita V. Chico-Nazario), per the JBC Minutes of even date, to wit:

1. Abdulwahid, Hakim S.	-	6 votes
2. Mendoza, Jose C.	-	6 votes
3. Perez, Jose P.	-	5 votes
4. Villaruz, Francisco, Jr. H.	-	5 votes
5. De Leon, Magdangal M.	-	4 votes
6. Tijam, Noel G.	-	4 votes

Their respective curriculum vitae are hereto attached.

And, as mentioned by the OSG, the JBC, during the Chairmanship of Supreme Court Chief Justice Renato C. Corona, submitted to President Aquino on June 21, 2011 just one list of nominees for two vacant positions of Supreme Court Associate Justice, from which President Aquino eventually appointed Associate Justices Bienvenido L. Reyes and Estela M. Perlas-Bernabe. Such list is fully quoted hereunder:

June 21, 2011

His Excellency
President Benigno Simeon C. Aquino III
Malacañang Palace
Manila

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council has the honor to submit nominations for the two (2) positions of ASSOCIATE JUSTICE of the SUPREME COURT, per the JBC Minutes of even date, as follows:

Reyes, Jose, Jr. C.	- 7 votes
Robles, Rodolfo D.	- 7 votes
De Leon, Magdangal M.	- 6 votes
Reyes, Bienvenido L.	- 6 votes
Bernabe, Estela Perlas	- 5 votes
Dimaampao, Japar B.	- 5 votes

Their respective curriculum vitae are hereto attached.

There is no explanation for the shift in practice by the JBC, which impaired the power of the President to appoint under the 1987 Constitution and his statutory authority to determine seniority in a collegiate court. The clustering by the JBC of the qualified nominees for the six vacancies for Sandiganbayan Associate Justice appears to have been done arbitrarily, there being no clear basis, standards, or guidelines for the same. The number of nominees was not even equally distributed among the clusters.

In view of the foregoing, President Aquino validly exercised his discretionary power to appoint members of the Judiciary when he disregarded the clustering of nominees into six separate shortlists for the vacancies for the 16th, 17th, 18th, 19th, 20th, and 21st Sandiganbayan Associate Justices. President Aquino merely maintained the well-established practice, consistent with the paramount Presidential constitutional prerogative, to appoint the six new Sandiganbayan Associate Justices from the 37 qualified nominees, as if embodied in one JBC list. This does not violate Article VIII, Section 9 of the 1987 Constitution which requires the President to appoint from a list of at least three nominees submitted by the JBC for every vacancy. To meet the minimum requirement under said constitutional provision of three nominees per vacancy, there should at least be 18 nominees from the JBC for the six vacancies for Sandiganbayan Associate Justice; but the minimum requirement was even exceeded herein because the JBC submitted for the President's consideration a total of 37 qualified nominees. All the six newly appointed Sandiganbayan Associate Justices met the requirement of nomination by the JBC under Article VIII, Section 9 of the 1987 Constitution. Hence, the appointments of respondents Musngi and Econg, as well as the other four new Sandiganbayan Associate Justices, are valid and do not suffer from any constitutional infirmity.

The ruling of the Court in this case shall similarly apply to the situation wherein there are closely successive vacancies in a collegiate court, to which the President shall make appointments on the same occasion, regardless of whether the JBC carried

out combined or separate application process/es for the vacancies. The President is not bound by the clustering of nominees by the JBC and may consider as one the separate shortlists of nominees concurrently submitted by the JBC. As the Court already ratiocinated herein, the requirements and qualifications, as well as the power, duties, and responsibilities are the same for all the vacant posts in a collegiate court; and if an individual is found to be qualified for one vacancy, then he/she is also qualified for all the other vacancies. It is worthy of note that the JBC, in previous instances of closely successive vacancies in collegiate courts, such as the Court of Appeals and the Supreme Court, faithfully observed the practice of submitting only a single list of nominees for all the available vacancies, with at least three nominees for every vacancy, from which the President made his appointments on the same occasion. This is in keeping with the constitutional provisions on the President's exclusive power to appoint members of the Judiciary and the mandate of the JBC to recommend qualified nominees for appointment to the Judiciary.

The Court denies the Motion for Intervention of the JBC in this Petition.

In its Motion for Intervention, the JBC echoes the arguments of the OSG in the latter's Comment that the dispute is between the JBC and the OP and it cannot be decided by the Court since the JBC is not a party, much less, a complaining party in this case. The JBC asserts that it has legal interest in the matter of litigation because it will be adversely affected by the judgment or decision in the present case, having submitted the controverted shortlists of nominees to the OP. The JBC likewise claims that its intervention will not unduly delay or prejudice the adjudication of the rights of the original parties in the case. The JBC, thus, prays that it be allowed to intervene in the instant case and to submit its complaint-in-intervention within 30 days from receipt of notice allowing its intervention.

Intervening in a case is not a matter of right but of sound discretion of the Court.[53] The allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. It is not an absolute right. The statutory rules or conditions for the right of intervention must be shown. The procedure to secure the right to intervene is to a great extent fixed by the statute or rule, and intervention can, as a rule, be secured only in accordance with the terms of the applicable provision.[54]

It bears to point out that petitioners did not name the JBC as a respondent in this case because petitioners precisely wanted the shortlists submitted by the JBC upheld; they were on the same side. Petitioners already presented the arguments for the constitutionality of and strict adherence by the President to the separate shortlists submitted by the JBC for the six simultaneous vacancies for Sandiganbayan Associate Justice. Significantly, not one of the parties moved, and not even the Court *motu proprio* ordered, to implead the JBC as an indispensable party herein.

The JBC avers in its Motion for Intervention that it has a legal interest in the Petition at bar and its intervention will not unduly delay or prejudice the adjudication of the rights of the original parties in the case.

The Court is unconvinced.

The instant Petition was filed before this Court on May 17, 2016, yet, the JBC filed its Motion for Intervention only on November 26, 2016, more than six months later, and even praying for an additional 30-day period from notice to submit its complaint-in-intervention. Therefore, allowing the intervention will undoubtedly delay the resolution of the case; and further delay in the resolution of this case will only perpetuate the doubts on the legitimacy of the appointments of respondents

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[53] *Tanjuatco v. Gako, Jr.*, 601 Phil. 193, 207 (2009).

[54] *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537, 549 (2011).

Musngi and Econg as Sandiganbayan Associate Justices, to the detriment of said court, in particular, and the entire justice system, in general. What is more, unless promptly resolved by the Court, the instant case is capable of repetition given the forthcoming vacancies in collegiate courts, particularly, the Supreme Court.

Even if the intervention of the JBC will evidently cause delay in the resolution of this case and prejudice to the original parties herein, are there compelling substantive grounds to still allow the intervention of the JBC? The JBC, through its own fault, did not provide the Court with a way to make such a determination. The Revised Rules of Court explicitly requires that the pleading-in-intervention already be attached to the motion for intervention.[55] The JBC could have already argued the merits of its case in its complaint-in-intervention. However, the JBC not only failed to attach its complaint-in-intervention to its Motion for Intervention, but it also did not provide any explanation for such failure.

The Court can reasonably assume, as well, that the JBC is well-aware of President Aquino's appointment of the six Sandiganbayan Associate Justices, including respondents Musngi and Econg, on January 20, 2015. The six newly-appointed Sandiganbayan Associate Justices all took their oaths of office on January 25, 2016 at the Supreme Court Dignitaries Lounge. Respondent Econg, with Justices Mendoza-Arcega and Trespeses, took their oaths of office before Chief Justice Sereno, who is also the Chairperson of the JBC; while respondent Musngi, with Justices R. Cruz and Miranda, took their oaths of office before Supreme Court Associate Justice Jardeleza on the same occasion and at the same venue. Despite its knowledge of the appointment and assumption of office of respondents Musngi and Econg in January 2016, the JBC did not take any action to challenge the same on the ground that President Aquino appointed

[55] Rule 19, Section 2 of the Revised Rules of Court provides that, "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."

respondents Musngi and Econg in disregard of the clustering of nominees by the JBC through the separate shortlists for the six vacancies for Sandiganbayan Associate Justice. The silence of the JBC all this while, for a period of eleven (11) months, can already be deemed as acquiescence to President Aquino's appointment of respondents Musngi and Econg.

For the foregoing reasons, the Court denies the Motion for Intervention of the JBC.

There are several other new rules and practices adopted by the JBC which the Court takes cognizance of as a separate administrative matter.

The Court takes cognizance of several other matters covered by the new rules and practices adopted by the JBC.

Item No. 1: The Court takes judicial notice of the fact that the JBC promulgated on September 20, 2016 JBC No. 2016-1, "The Revised Rules of the Judicial and Bar Council" (Revised JBC Rules), to take effect on October 24, 2016. Notably, the Revised JBC Rules explicitly states among its Whereas clauses:

> **WHEREAS**, the President of the Philippines may appoint only one from the list of at least three nominees for every vacancy officially transmitted by the Council to the Office of the President[.]

This is an obvious attempt by the JBC to institutionalize through the Revised JBC Rules its newly-introduced practice of clustering nominees for simultaneous vacancies in collegiate courts. The timing likewise is disturbing as the instant case is pending resolution by this Court and with existing and upcoming vacancies in several collegiate courts, *i.e.*, the Sandiganbayan, the Court of Appeals, and even this Court. As the Court has categorically declared herein, the clustering by the JBC of nominees for simultaneous vacancies in collegiate courts constitute undue limitation on and impairment of the power of the President to appoint members of the Judiciary under the 1987 Constitution. It also deprives qualified nominees equal opportunity to be considered for all vacancies, not just a specific

one. Incorporating such Whereas clause into the Revised JBC Rules will not serve to legitimize an unconstitutional and unfair practice. Accordingly, such Whereas clause shall not bind the President pursuant to the pronouncements of the Court in the present Petition.

Item No. 2: The same Revised JBC Rules deleted a significant part of JBC-009, the former JBC Rules, specifically, Rule 8, Section 1, which provided:

> Sec. 1. *Due weight and regard to the recommendees of the Supreme Court*. – In every case involving an appointment to a seat in the Supreme Court, the Council shall give due weight and regard to the recommendees of the Supreme Court. For this purpose, the Council shall submit to the Court a list of candidates for any vacancy in the Court with an executive summary of its evaluation and assessment of each of them, together with all relevant records concerning the candidates from whom the Court may base the selection of its recommendees.

The deletion of this provision will likewise institutionalize the elimination by Chief Justice Sereno of the voting by the Supreme Court Justices on who among the applicants to the Supreme Court they believe are most deserving.

Through Rule 8, Section 1 of JBC-009, the JBC had accorded through the years due weight and regard to the recommendees of the Supreme Court for the vacancies in said Court. The JBC had consistently complied with said rule and furnished the Court in prior years with the list of candidates for vacancies in the Court, together with an executive summary of the evaluation and assessment of each candidate by the JBC and all relevant documents concerning the candidates, for the incumbent Justices' consideration, but stopped doing so ever since Chief Justice Sereno became the Chairperson of the JBC. Although the JBC was not bound by the list of recommendees of the Court, the JBC at least took the list under advisement. The deletion of the foregoing provision from the Revised JBC Rules formally institutionalizes Chief Justice Sereno's unilateral decision to abandon a well-established rule, procedure, and practice observed by the Court, and completely precludes the

incumbent Supreme Court Justices from expressing their views on the qualifications of the applicants to the vacancies in the Supreme Court.

The Court calls attention to the fact that the JBC, in JBC-009 and the Revised JBC Rules, invites the public to give any comment or opposition against the applicants to the Judiciary.

According to Rule 1, Section 9 of JBC-009:

> Sec. 9. *Publication of list of applicants*. – The list of applicants or recommendees which the Council shall consider in a given time shall be published once in a newspaper of general circulation in the Philippines and once in a newspaper of local circulation in the province or city where the vacancy is located. **The publication shall invite the public to inform the Council within the period fixed therein of any complaint or derogatory information against the applicant.** x x x (Emphasis supplied.)

A similar provision can be found in the Revised JBC Rules as Rule 1, Section 8:

> Sec. 8. *Publication of List of Applicants*. – The list of applicants who meet the minimum qualifications and the Council's evaluative criteria prescribed in Sections 2 and 3 of Rule 3 of these Rules, which the Council shall consider in a given time, shall be published once in two newspapers of general circulation in the Philippines.
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> **The publication shall inform the public that any complaint or opposition against applicants may be filed with the secretariat of the Council.** A copy of the list shall likewise be posted in the JBC website. (Emphasis supplied.)

Yet, Chief Justice Sereno, without consulting the Court *en banc*, has done away with the settled practice of seeking the views of the incumbent Justices on the applicants to the vacant positions in the Supreme Court.

To recall, Chief Justice Sereno had previously disregarded Rule 8, Section 1 of JBC-009, during the nomination process for the vacancy of Supreme Court Associate Justice following the retirement of Associate Justice Roberto A. Abad on May

22, 2014. As Associate Justice Arturo D. Brion narrated in his Separate Concurring Opinion in the *Jardeleza Decision*[56]:

> [Of particular note in this regard is this Court's own experience when it failed to vote for its recommendees for the position vacated by retired Associate Justice Roberto A. Abad, because of a letter dated May 29, 2014 from the Chief Justice representing to the Court that "several Justices" requested that the Court do away with the voting for Court recommendees, as provided in Section 1, Rule 8 of JBC-009. When subsequently confronted on who these Justices were, the Chief Justice failed to name anyone. As a result, applicants who could have been recommended by the Court (Jardeleza, among them), missed their chance to be nominees.][57]

The Supreme Court Justices were also not given the opportunity to know the applicants to the succeeding vacant position in the Court (to which Associate Justice Alfredo Benjamin S. Caguioa was eventually appointed) as Rule 8, Section 1 of JBC-009 was again not followed.

Item No. 3: The JBC currently has no incumbent Supreme Court Associate Justice as consultant. By practice, since the creation of the JBC, the two (2) most senior Supreme Court Associate Justices had acted as consultants of the JBC. From 1987 until 2016, the following Associate Justices of this Court, during their incumbency, served as JBC consultants:

Supreme Court Associate Justices as JBC Consultants	**Period**
Pedro L. Yap+	December 10, 1987 to April 13, 1988
Marcelo B. Fernan+	January 5, 1988 to June 29, 1988
Andres R. Narvasa	May 6, 1988 to December 5, 1991
Leo M. Medialdea+	July 21, 1988 to November 4, 1992
Ameurfina M. Herrera	January 16, 1992 to March 30, 1992
Josue N. Bellosillo	December 21, 1993 to November 13, 2003
Jose C. Vitug	November 20, 2003 to July 14, 2004

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[56] *Jardeleza v. Sereno, supra* note 32.

[57] *Id.* at 391.

Artemio V. Panganiban	July 21, 2004 to December 19, 2005
Leonardo A. Quisumbing	January 1, 2006 to November 5, 2009
Consuelo Y. Santiago	December 11, 2006 to October 4, 2009
Renato C. Corona	November 6, 2009 to May 16, 2010
Antonio T. Carpio	October 5, 2009 to May 16, 2010 September 10, 2012 to January 28, 2014
Presbiterio J. Velasco, Jr.	June 4, 2012 to August 23, 2012 September 10, 2012 to [August 2016]
Teresita J. Leonardo-De Castro	June 4, 2012 to August 23, 2012 [February 1, 2014] to [August 2016][58]

Without notice, warning, or explanation to the Supreme Court *En Banc*, Chief Justice Sereno recently unceremoniously relieved Supreme Court Associate Justices Presbiterio J. Velasco, Jr. and Teresita J. Leonardo-De Castro as JBC consultants, and in their stead, the Chief Justice appointed retired Chief Justices Hilario G. Davide, Jr., Artemio V. Panganiban, and Reynato S. Puno as JBC consultants. The experience and wisdom of the three retired Chief Justices are undisputed. However, practicality and prudence also dictate that incumbent Associate Justices of the Court should be retained as JBC consultants since their interest in the Judiciary is real, actual, and direct. Incumbent Associate Justices of the Court are aware of the present state, needs, and concerns of the Judiciary, and consultants from the Court, even if they have no right to vote, have served, from the organization of the JBC, as the only link to the supervisory authority of the Court over the JBC under the 1987 Constitution. Moreover, Hon. Angelina Sandoval-Gutierrez already sits as a regular member of the JBC representing the Retired Supreme Court Justices, pursuant to Article VIII, Section 8(1) of the 1987 Constitution, which expressly describes the composition of the JBC, as follows:

Sec. 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as

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[58] http://jbc.judiciary.gov.ph/index.php/about-the-jbc/jbc-officials, Last visited October 15, 2016.

ex officio Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, **a retired Member of the Supreme Court**, and a representative of the private sector. (Emphasis supplied.)

These changes in settled rules and practices recently adopted by the JBC under Chief Justice Sereno are disconcerting. There appears to be a systematic move by the JBC, under Chief Justice Sereno to arrogate to itself more power and influence than it is actually granted by the Constitution and this Court, and at the same time, to ease out the Court from any legitimate participation in the nomination process for vacancies in the Judiciary, specifically, in the Supreme Court. This behooves the Court, through the exercise of its power of supervision over the JBC, to take a closer look into the new rules and practices of the JBC and ensure that these are in accord with the 1987 Constitution, the pertinent laws, and the governmental policies of transparency and accountability in the nomination process for vacancies in the Judiciary.

Article VIII, Section 8 of the 1987 Constitution gives the JBC the principal function of "recommending appointees to the Judiciary," but it also explicitly states that the JBC shall be "under the supervision of the Court" and that "[i]t may exercise such other functions and duties as the Supreme Court may assign to it."

Book IV, Chapter 7, Section 38(2) of Executive Order No. 292, otherwise known as The Administrative Code of the Philippines, defines supervision as follows:

Sec. 38. *Definition of Administrative Relationship.* – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

x x x x x x x x x

(2) *Administrative Supervision.* – (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the

department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) Such authority shall not, however, extend to: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and (3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.

The Court also provided the following definition of supervision in the *Jardeleza Decision*[59]:

As a meaningful guidepost, jurisprudence provides the definition and scope of supervision. It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but

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[59] *Jardeleza v. Sereno*, *supra* note 32 at 326, citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 142.

only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed. (Citation omitted.)

"Supervision" is differentiated from "control," thus:

> Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act.[60] (Citations omitted.)

The Court had recognized that "[s]upervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective."[61]

In the exercise of its power of supervision over the JBC, the Court shall take up the aforementioned Item Nos. 2 and 3 as a separate administrative matter and direct the JBC to file its comment on the same.

WHEREFORE, premises considered, the Court **DISMISSES** the instant Petition for *Quo Warranto* and *Certiorari* and Prohibition for lack of merit. The Court **DECLARES** the clustering of nominees by the Judicial and Bar Council **UNCONSTITUTIONAL**, and the appointments of respondents Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, together with the four other newly-appointed Associate Justices of the Sandiganbayan, as **VALID**. The Court

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[60] *Bito-onon v. Yap Fernandez*, 403 Phil. 693, 702-703 (2001).

[61] *Planas v. Gil*, 67 Phil. 62, 77 (1939).

further **DENIES** the Motion for Intervention of the Judicial and Bar Council in the present Petition, but **ORDERS** the Clerk of Court *En Banc* to docket as a separate administrative matter the new rules and practices of the Judicial and Bar Council which the Court took cognizance of in the preceding discussion as ***Item No. 2***: the deletion or non-inclusion in JBC No. 2016-1, or the Revised Rules of the Judicial and Bar Council, of Rule 8, Section 1 of JBC-009; and ***Item No. 3***: the removal of incumbent Senior Associate Justices of the Supreme Court as consultants of the Judicial and Bar Council, referred to in pages 35 to 40 of this Decision. The Court finally **DIRECTS** the Judicial and Bar Council to file its comment on said ***Item Nos. 2 and 3*** within thirty (30) days from notice.

SO ORDERED.

Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, and *Jardeleza, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Carpio, Velasco, Jr., Perlas-Bernabe, and *Caguioa, JJ.,* join the separate concurring opinion of *J. Leonen.*

Sereno, C.J., no part.

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result in so far as finding that the respondents did not gravely abuse their discretion in making appointments to the Sandiganbayan, considering that all six vacancies were opened for the first time. I disagree that we make findings as to whether the Judicial and Bar Council gravely abused its discretion considering that they were not impleaded and made party to this case. Even for the Judicial and Bar Council, a modicum of fairness requires that we should have heard them and considered their arguments before we proceed to exercise any degree of supervision as they exercise their constitutionally mandated duties.

I also disagree with the expanded concept of supervision implied by the main opinion. I, thus, welcome that the matters relating to the rules of the Judicial and Bar Council is to be separately docketed so the issues are fully and more precisely ventilated with the participation of all parties concerned.

This is a "Petition for Quo Warranto under Rule 66 and Certiorari and Prohibition under Rule 65 with Application for Issuance of Injunctive Writs."[1] The Petition assails President Aquino's appointment of respondents Hon. Michael Frederick L. Musngi and Hon. Ma. Geraldine Faith A. Econg as Associate Justices of the Sandiganbayan.[2]

Petitioners posit that President Aquino violated Article VIII, Section 9 of the 1987 Constitution in that:

> "(a) He did not appoint anyone from the shortlist submitted by the Judicial and Bar Council for the vacancy for position of the 16th Associate Justice of the Sandiganbayan; and
>
> (b) He appointed Undersecretary Musngi and Judge Econg as Associate Justices of Sandiganbayan to the vacancy for the position of 21st Associate Justice of the Sandiganbayan;
>
> (c) The appointments made were not in accordance with the shortlists submitted by the Judicial and Bar Council for each vacancy, thus affecting the order of seniority of the Associate Justices.[3]

Prior to the existence of the Judicial and Bar Council, the executive and legislative branches of the government had the exclusive prerogative of appointing members of the Judiciary, subject only to confirmation by the Commission on Appointments. However, such an appointment process was highly susceptible to political pressure and partisan activities, prompting the need for a separate, competent, and independent body to recommend nominees to the judiciary to the President.[4]

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[1] *Rollo*, p. 3.

[2] *Id*. at 7.

[3] *Id*.

[4] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 188 (2012) [Per *J*. Mendoza, *En Banc*].

The creation of a Judicial and Bar Council was proposed by former Chief Justice Roberto Concepcion during the deliberations in the drafting of the 1987 Constitution. The Committee on Justice of the Constitutional Commission "felt neither the President nor the Commission on Appointments would have the time to carefully study the qualifications of every candidate, especially with respect to their probity and sense of morality."[5]

Commissioner Rene Sarmiento echoed this sentiment, stressing that "the creation of the Council is a step towards achieving judicial independence."[6] Thus, the Judicial and Bar Council was created under the 1987 Constitution and it was intended to be a fully independent constitutional body functioning as a check on the President's power of appointment. Article VIII, Section 8 of the Constitution provides:

ARTICLE VIII

Judicial Department

. . . . . .

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

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[5] 1 RECORDS, CONSTITUTIONAL COMMISSION, PROCEEDINGS AND DEBATES, JOURNAL NO. 29 (1986).

[6] *Id*.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

The Judicial and Bar Council is mandated to recommend appointees to the judiciary "and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary."[7] In carrying out its main function, the Judicial and Bar Council is given the authority to set standards or criteria in choosing its nominees for every vacancy in the judiciary.[8] Nonetheless, this authority does not give the Judicial and Bar Council unbridled license to act in performing its duties.[9]

I.

This Court exercises the powers of supervision only through judicial review over the Judicial and Bar Council and only when there is grave abuse of discretion.

Nothing in the Constitution diminishes the fully independent character of the Judicial and Bar Council. It is a separate constitutional organ with the same autonomy as the House of Representative Electoral Tribunal and the Senate Electoral Tribunal. *Angara v. Electoral Commission*[10] emphasizes that the Electoral Commission is "a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution."[11]

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[7] *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf> 7 [Per J. Reyes, *En Banc]*.

[8] *Id*.

[9] *Id*.

[10] 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

[11] *Id*. at 175.

The grant of power to the Electoral Commission is intended to be "complete and unimpaired."[12] The rules it promulgates cannot be subject to the review and approval of the legislature because doing so would render ineffective the grant of power to the Electoral Commission:

> The grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly. And this is as effective a restriction upon the legislative power as an express prohibition in the Constitution ... *If we concede the power claimed in behalf of the National Assembly that said body may regulate the proceedings of the Electoral Commission and cut off the power of the commission to lay down the period within which protests should be filed, the grant of power to the commission would be ineffective*. The Electoral Commission in such case would be invested with the power to determine contested cases involving the election, returns and qualifications of the members of the National Assembly but subject at all times to the regulative power of the National Assembly. Not only would the purpose of the framers of our Constitution of totally transferring this authority from the legislative body be frustrated, but a dual authority would be created with the resultant inevitable clash of powers from time to time. A sad spectacle would then be presented of the Electoral Commission retaining the bare authority of taking cognizance of cases referred to, but in reality without the necessary means to render that authority effective whenever and whenever the National Assembly has chosen to act, a situation worse than that intended to be remedied by the framers of our Constitution. The power to regulate on the part of the National Assembly in procedural matters will inevitably lead to the ultimate control by the Assembly of the entire proceedings of the Electoral Commission, and, by indirection, to the entire abrogation of the constitutional grant. It is obvious that this result should not be permitted.[13] (Emphasis supplied)

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[12] *Id*.

[13] *Id*. at 175-176.

Chavez v. Judicial and Bar Council[14] explains that the Judicial and Bar Council was created to address the clamor to rid the process of appointments to the judiciary from political pressure and partisan activities.[15] In our dissent in *Jardeleza v. Sereno*,[16] we emphasized that the Judicial and Bar Council is a fully independent constitutional body, which functions as a check on the President's power of appointment, and called for judicial restraint.

> By constitutional design, this court should wisely resist temptations to participate, directly or indirectly, in the nomination and appointment process of any of its members. In reality, nomination to this court carries with it the political and personal pressures from the supporters of strong contenders. This court is wisely shaded from these stresses. We know that the quality of the rule of law is reduced when any member of this court succumbs to pressure.
>
> The separation of powers inherent in our Constitution is a rational check against abuse and the monopolization of all legal powers. We should not nullify any act of any constitutional organ unless there is grave abuse of discretion. The breach of a constitutional provision should be clearly shown and the necessity for the declaration of nullity should be compelling. Any doubt should trigger judicial restraint, not intervention. Doubts should be resolved in deference to the wisdom and prerogative of co-equal constitutional organs.[17]

Nonetheless, the independent character of the Judicial and Bar Council as a constitutional body does not remove it from the Court's jurisdiction when the assailed acts involve grave abuse of discretion.

Judicial review is the mechanism provided by the Constitution to settle actual controversies and to determine whether there has been grave abuse of discretion on the part of any branch or

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[14] 691 Phil. 173 (2012) [Per *J*. Mendoza, *En Banc*].

[15] *Id*. at 188.

[16] Dissenting Opinion of *J*. Leonen in *Jardeleza v. Serena*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 435-497 [Per *J*. Mendoza, *En Banc*].

[17] *Id*. at 437.

instrumentality of the Government.[18] The expanded power of judicial review gives the court the authority to strike down acts of all government instrumentalities that are contrary to the Constitution. *Angara v Electoral Commission*[19] points out that judicial review is not an assertion of the superiority of the judiciary over other departments, rather, it is the judiciary's promotion of the superiority of the Constitution:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[20]

II

In this case, there was no reason to cluster the applicants for the Sandiganbayan vacancies.

There could be reasons to cluster shortlists. For instance, there are Regional Trial Courts that perform functions different from other trial courts. There are Metropolitan Trial Courts,

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[18] Const., Art. VIII, Sec. 1 states:

> Section 1. The judicial power is 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.

[19] 63 Phil.139 (1936) [Per *J.* Laurel, *En Banc*].

[20] *Id*. at 158.

the dockets of which would be different from other Metropolitan Trial Courts. Also, there can be vacancies that become available before other vacancies in the same appellate court.

However, when the law creates new vacancies at the same time, there can be no reasonable basis to cluster nominees.

The Sandiganbayan, a collegial court, was conceived as an anti-graft court under the 1973 Constitution. Article XIII, Section 5 of the 1973 Constitution provides:

> Section 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

On June 11, 1978, Presidential Decree No. 1486 created the Sandiganbayan. Section 1 of P.D. No 1486 provided that the Sandiganbayan shall be "composed of a Presiding Judge and eight (8) Associate Justices who shall be appointed by the President and shall be subject to the same inhibitions and/or disqualifications as judges of courts of first instance."

On December 10, 1978, Presidential Decree No. 1606[21] elevated the Sandiganbayan to the level of the Court of Appeals.

Presidential Decree No. 1606 then underwent the following amendments: (1) Republic Act No. 7975[22] expanded the Sandiganbayan to five divisions; (2) Republic Act No. 8249[23] provided that the Sandiganbayan shall be composed of "a presiding justice and fourteen associate justices who shall be

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[21] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes (1978).

[22] An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended (1995).

[23] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes (1997).

appointed by the President"[24]; and (3) On April 16, 2016, Republic Act No. 10660[25] expanded the Sandiganbayan from five divisions to "seven (7) divisions of three (3) members each."[26] At present, the Sandiganbayan is composed of one Presiding Justice and twenty Associate Justices.[27]

After screening the applicants for the newly created positions of Associate Justices of the Sandiganbayan, the Judicial and Bar Council submitted six shortlists contained in six separate letters, all dated October 26, 2015, to then-President Aquino. The letters read:

1) For the 16th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the SIXTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. AGUINALDO, PHILIP A.	- 5 votes
2. ALHAMBRA, REYNALDO A.	- 5 votes
3. CRUZ, DANILO S.	- 5 votes
4. POZON, BENJAMIN T.	- 5 votes
5. SANDOVAL, DANILO S.	- 5 votes
6. TIMBANG, SALVADOR JR.	- 5 votes

2) For the 17th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following

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[24] Rep. Act No. 8249, Sec. 1.

[25] An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, As Amended, and Appropriating Funds Therefor (2015).

[26] Rep. Act No. 10660, Sec. 1.

[27] See Sandiganbayan < http://sb.judiciary.gov.ph/about.html> (last visited December 1, 2016).

nominations for the vacancy for the SEVENTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. CORPUS-MAÑALAC, MARYANNE E.	- 6 votes
2. MENDOZA-ARCEGA, MARIA THERESA V.	- 6 votes
3. QUIMBO, RODOLFO NOEL S.	- 6 votes
4. DIZON, MA. ANTONIA EDITA CLARIDADES	- 5 votes
5. SORIANO, ANDRES BARTOLOME	- 5 votes

3) For the 18th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the EIGHTEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. BAGUIO, CELSO O.	- 5 votes
2. DE GUZMAN-ALVAREZ, MA. TERESA E.	- 5 votes
3. FERNANDEZ, BERNELITO R.	- 5 votes
4. PANGANIBAN, ELVIRA DE CASTRO	- 5 votes
5. SAGUN, FERNANDO JR. T.	- 5 votes
6. TRESPESES, ZALDY V.	- 5 votes

4) For the 19th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the NINETEENTH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. GUANZON, FRANCES V.	- 6 votes
2. MACARAIG-GUILLEN, MARISSA	- 6 votes
3. CRUZ, REYNALDO P.	- 5 votes
4. PAUIG, VILMA T.	- 5 votes
5. RAMOS, RENAN E.	- 5 votes
6. ROXAS, RUBEN REYNALDO G.	- 5 votes

5) For the 20th Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTIETH ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1.	MIRANDA, KARL B.	- 6 votes
2.	ATAL-PAÑO, PERPETUA	- 5 votes
3.	BUNYI-MEDINA, THELMA	- 5 votes
4.	CORTEZ, LUISITO G.	- 5 votes
5.	FIEL-MACARAIG, GERALDINE C.	- 5 votes
6.	QUIMPO-SALE, ANGELENE MARY W.	- 5 votes
7.	JACINTO, BAYANI H.	- 4 votes

6) For the 21st Sandiganbayan Associate Justice:

Your Excellency:

Pursuant to Article VIII, Section 9 of the Constitution, the Judicial and Bar Council (JBC) has the honor to submit the following nominations for the vacancy for the TWENTY-FIRST ASSOCIATE JUSTICE of the SANDIGANBAYAN, with their respective votes:

1. JORGE-WAGA, WILHELMINA B.	- 6 votes
2. ECONG, GERALDINE FAITH A.	- 5 votes
3. ROMERO-MAGLAYA, ROSANNA FE	- 5 votes
4. ZURAEK, MERIANTHE PACITA M.	- 5 votes
5. ALAMEDA, ELMO M.	- 4 votes
6. FERNANDEZ-BERNARDO, VICTORIA C.	- 4 votes
7. MUSNGI, MICHAEL FREDERICK L.	- 4 votes[28]

As a collegial court, the members of the Sandiganbayan equally share power and sit in divisions of three members each. The numerical designation of each division only pertains to the seniority or order of precedence based on the date of appointment. The Rule on Precedence is in place primarily for the orderly functioning of the Sandiganbayan, as reflected in Rule II, Section 1 of the Revised Internal Rules of the Sandiganbayan:

Section 1. *Composition of the Court and Rule on Precedence –*

[28] *Ponencia*, pp. 3-4.

(a) Composition – The Sandiganbayan is composed of a Presiding Justice and fourteen (14) Associate Justices appointed by the President of the Philippines.

(b) Rules on Precedence – The Presiding Justice shall enjoy precedence over other members of the Sandiganbayan in all official functions. The Associate Justices shall have precedence according to the order of their appointments.

(c) The Rule on Precedence shall apply:

1) In the seating arrangement;

2) In the choice of office space, facilities and equipment, transportation, and cottages;

(d) The Rule on Precedence shall not be observed:

1) In social and other non-official functions.

2) To justify any variation in the assignment of cases, amount of compensation, allowances or other forms of remuneration.

In single courts like the regional trial courts or municipal trial courts, each branch carries its own station code and acts separately and independently from other co-equal branches. The Sandiganbayan divisions do not possess similar station codes because there is no discernible difference between the divisions, and decisions are made not by one justice alone, but by a majority or all of the members sitting in a division or *en banc*. This reinforces the collegial nature of the Sandiganbayan, which is characterized by the equal sharing of authority among the members.

Additionally, in single courts, applicants may apply per available vacancy, thus, it is common to see the same applicant in several shortlists for vacancies in different single courts. However, applicants in collegial courts apply only once, even if there are multiple vacancies, because there are no substantial differences among divisions in a collegial court that would justify the creation of separate shortlists or clusters per vacancy.

Applicants to a single court are rightly sent to the President in a shortlist, with as many shortlists as there are vacancies in

single courts, as each single court is deemed separate and independent, with a distinct station code to differentiate it from the other single courts. This is not the case with collegial bodies and the different divisions are not given their own station codes.

The Judicial and Bar Council may have acted in excess of its constitutional mandate to recommend nominees to the President when it clustered the Sandiganbayan applicants, in six separate groups, purportedly to account for each newly created division. There seems to be no rational basis in the positioning of the applicants in their respective clusters, with some of the shortlists containing five names, while others having six, and two clusters even containing as many as seven names.

In *Villanueva v. Judicial and Bar Council*,[29] this Court upheld the Judicial and Bar Council's policy of requiring at least five years of experience from judges of first level courts before they can be considered for promotion to second-level courts. This Court ruled that the assailed policy was part of the Judicial and Bar Council's authority to set the standards or criteria in choosing its nominees for every vacancy in the judiciary, making it valid and constitutional:

> That is the situation here. In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence. "To ensure the fulfilment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified."[30]

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[29] *Villanueva v Judicial and Bar Council*, G.R. No. 211833, April 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/211833.pdf> [Per *J.* Reyes, *En Banc*].

[30] *Id.* citing *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 329 [Per *J.* Mendoza, *En Banc*].

However, to the respondents it appeared that the Judicial and Bar Council's act of clustering the applicants to the Sandiganbayan was not part of its authority in setting standards or criteria. Thus, they did not commit grave abuse of discretion when they considered that there was no rational basis to cluster the applicants in light of the collegial nature of the Sandiganbayan. Unlike in *Villanueva,* where the imposition of five years experience as an additional requirement was held to be a relevant way to determine the competence of an applicant, no such relevance or rationality can be attached to the Judicial and Bar Council's act of clustering the Sandiganbayan applicants instead of coming up with a single shortlist, as the Judicial and Bar Council has always done in the past.

President Aquino did not commit grave abuse of discretion in disregarding the shortlists submitted to him by the Judicial and Bar Council and treating all six shortlists as one shortlist from which he can choose the new Sandiganbayan justices.

III.

The Judicial and Bar Council is not mandated to submit its revised internal rules to the Supreme Court for approval. The question as to whether the Judicial and Bar Council must submit its existing rules to the Supreme Court was not raised as an issue in this case.

As a constitutional body, the Judicial and Bar Council is fully independent to discharge its principal function, as shown by Administrative Matter No. 03-11-16-SC or *Resolution Strengthening the Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein.*

The composition of the Judicial and Bar Council is meant to reflect the stakeholders in the judicial appointment process, hence, the Judicial and Bar Council is composed of the Chief Justice as *ex officio* Chair, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired

Member of the Supreme Court, and a representative of the private sector.[31]

The Court goes beyond its constitutional role when its actions border on control. The varied composition of the Judicial and Bar Council shows that it is a unique body with members coming not only from the judiciary, but also from the executive, legislative, academe, and the private sector. There is therefore no basis for this Court to act as if it has the same power of control and supervision over the Secretary of Justice, a representative of Congress, or a member of the private sector, as it does over members of the judiciary.

The exercise of this Court's power of judicial review over the Judicial and Bar Council must always be balanced with the Judicial and Bar Council's independent nature. The Court's authority over the Judicial and Bar Council should, thus, be considered as primarily administrative, with the Chief Justice, as the *ex-officio* Chair, exercising overall administrative authority in the execution of the Judicial and Bar Council's mandate.[32]

Book IV, Chapter 7, Section 38(2) of the Administrative Code, defines administrative supervision as follows:

> Sec. 38. Definition of Administrative Relationships. – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:
>
> . . . . . .
>
> (2) Administrative Supervision.—(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are *managed effectively, efficiently and economically but without interference with day-to-day activities*; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance

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[31] Const., Art. VIII, Sec. 8(1).

[32] Adm. Matter No. 03-11-16-SC, Sec. 4(a).

with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) Such authority shall not, however, extend to: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and (3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph. (Emphasis supplied)

This Court's power of judicial review is only to ensure that rules are followed, but with neither the power to lay down such rules nor the discretion to modify or replace them.[33]

The internal rules of the Judicial and Bar Council are necessary and incidental to the function conferred to it by the Constitution. The Constitution has provided the qualifications of the members of the judiciary, but has given the Judicial and Bar Council the latitude to promulgate its own set of rules and procedures to effectively ensure its mandate. This Court cannot meddle in the Judicial and Bar Council's internal rules and policies precisely because doing so would be an unconstitutional affront to the Judicial and Bar Council's independence.

This Court may exercise its expanded jurisdiction under judicial review, but certain conditions must first be met before this Court can exercise this power:

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[33] *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 326 [Per *J.* Mendoza, *En Banc*].

(1) an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very lis mota of the case.[34]

The rationale for the conditions for the exercise of the power of judicial review is to prevent courts from entangling themselves in abstract disagreements, and for this Court to be satisfied that the case does not present a hypothetical injury or claim contingent upon some event that has not and indeed may never transpire.[35]

Thus, the vetting by this Court of the Judicial and Bar Council's internal rules do not fall under the power of judicial review as there is no justiciable controversy in the absence of clashing legal rights.

Be that as it may, if the majority of this Court insists on ruling that the Judicial and Bar Council committed grave abuse of discretion in revising its internal rules and regulations to effectively ensure its constitutional mandate, then the Judicial and Bar Council MUST be afforded due process and must be either impleaded or be allowed to comment on the petition.

Denying the Judicial and Bar Council the basic courtesy of due process is to seriously fail to guarantee the fundamental tenets of the rule of law and equity to everyone.

ACCORDINGLY, with these qualifications, I vote to **DISMISS** the petition.

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[34] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003) [Per J. Carpio Morales, *En Banc*], citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*].

[35] Separate Opinion of J. Nachura in *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 723-724 (2010) [Per J. Bersamin, *En Banc*] citing *Office of the Governor v. Select Committee of Inquiry*, 271 Conn. 540, 570, 858 A. 2d 709 (2004).

FIRST DIVISION

[A.C. No. 11394. December 1, 2016]

MARIA VICTORIA G. BELO-HENARES, *complainant, vs.* **ATTY. ROBERTO "ARGEE" C. GUEVARRA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; POSTING INAPPROPRIATE AND OBSCENE LANGUAGE IN THE FACEBOOK WITH MALICE TENDING TO INSULT AND TARNISH ONE'S REPUTATION CONSTITUTES VIOLATION OF RULES 7.03, 8.01, AND 19.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— A punctilious scrutiny of the Facebook remarks complained of disclosed that they were ostensibly made with malice tending to insult and tarnish the reputation of complainant and BMGI. Calling complainant a "quack doctor," *"Reyna ng Kaplastikan," "Reyna ng Payola,"* and *"Reyna ng Kapalpakan,"* and insinuating that she has been bribing people to destroy respondent smacks of bad faith and reveals an intention to besmirch the name and reputation of complainant, as well as BMGI. Respondent also ascribed criminal negligence upon complainant and BMGI by posting that complainant disfigured (*"binaboy")* his client Norcio, labeling BMGI a "Frankenstein Factory," and calling out a boycott of BMGI's services — all these despite the pendency of the criminal cases that Norcio had already filed against complainant. He even threatened complainant with conviction for criminal negligence and *estafa* – which is contrary to one's obligation "to act with justice." In view of the foregoing, respondent's inappropriate and obscene language, and his act of publicly insulting and undermining the reputation of complainant through the subject Facebook posts are, therefore, in complete and utter violation of the following provisions in the Code of Professional Responsibility: Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive,

offensive or otherwise improper. Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding. By posting the subject remarks on Facebook directed at complainant and BMGI, respondent disregarded the fact that, as a lawyer, he is bound to observe proper decorum at all times, be it in his public or private life. He overlooked the fact that he must behave in a manner befitting of an officer of the court, that is, respectful, firm, and decent. Instead, he acted inappropriately and rudely; he used words unbecoming of an officer of the law, and conducted himself in an aggressive way by hurling insults and maligning complainant's and BMGI's reputation.

2. **ID.; ID.; ID.; THAT COMPLAINANT IS A PUBLIC FIGURE OR A CELEBRITY WHO IS EXPOSED TO CRITICISM CANNOT JUSTIFY RESPONDENT'S DISRESPECTFUL LANGUAGE.—** That complainant is a public figure and/or a celebrity and therefore, a public personage who is exposed to criticism does not justify respondent's disrespectful language. It is the cardinal condition of all criticism that it shall be *bona fide,* and shall not spill over the walls of decency and propriety. In this case, respondent's remarks against complainant breached the said walls, for which reason the former must be administratively sanctioned.

3. **ID.; ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE (1) YEAR, IMPOSED.—** "Lawyers may be disciplined even for any conduct committed in their private capacity, as long as their misconduct reflects their want of probity or good demeanor, a good character being an essential qualification for the admission to the practice of law and for continuance of such privilege. When the Code of Professional Responsibility or the Rules of Court speaks of conduct or misconduct, the reference is not confined to one's behavior exhibited in connection with the performance of lawyers' professional duties, but also covers any misconduct, which—albeit unrelated to the actual practice of their profession—would show them to be unfit for the office and unworthy of the privileges which their license and the law invest in them." Accordingly, the Court finds that respondent should be suspended from the practice of law for a period of one (1) year, as originally

recommended by the IBP-CBD, with a sterm warning that a repetition of the same or similar act shall be dealt with more severely.

4. ID.; ID.; ID.; IN THE ABSENCE OF EVIDENCE TO PROVE THAT RESPONDENT UTILIZED ANY OF THE PRIVACY TOOLS OR FEATURES OF FACEBOOK AVAILABLE TO HIM TO PROTECT HIS POSTS OR THAT HE RESTRICTED ITS PRIVACY TO A SELECT FEW, INVOCATION OF THE RIGHT TO PRIVACY CANNOT PROSPER.— Facebook is a "voluntary social network to which members subscribe and submit information. x x x It has a worldwide forum enabling friends to share information such as thoughts, links, and photographs, with one another." Users register at this site, create a personal profile or an open book of who they are, add other users as friends, and exchange messages, including automatic notifications when they update their profile. A user can post a statement, a photo, or a video on Facebook, which can be made visible to anyone, depending on the user's privacy settings. To address concerns about privacy, but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile, as well as information uploaded by the user. In *H v. W*, the South Gauteng High Court of Johannesburg, Republic of South Africa recognized this ability of the users to "customize their privacy settings," but with the cautionary advice that although Facebook, as stated in its policies, "makes every effort to protect a user's information, these privacy settings are however not foolproof." Consequently, before one can have an expectation of privacy in his or her online social networking activity — in this case, Facebook — it is first necessary that said user manifests the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. This intention can materialize in cyberspace through the utilization of Facebook's privacy tools. In other words, utilization of these privacy tools is the manifestation, in the cyber world, of the user's invocation of his or her right to informational privacy. The bases of the instant complaint are the Facebook posts maligning and insulting complainant, which posts respondent insists were set to private view. However, the latter has failed to offer evidence that he utilized any of the privacy tools or features of Facebook available

to him to protect his posts, or that he restricted its privacy to a select few. Therefore, without any positive evidence to corroborate his statement that the subject posts, as well as the comments thereto, were visible only to him and his circle of friends, respondent's statement is, at best, self-serving, thus deserving scant consideration.

5. ID.; ID.; ID.; RESTRICTING THE PRIVACY OF ONE'S FACEBOOK POSTS TO "FRIENDS" DOES NOT GUARANTEE ABSOLUTE PROTECTION OF THE DIGITAL CONTENT, HENCE, RESPONDENT'S CLAIM OF VIOLATION OF HIS RIGHT TO PRIVACY IS NEGATED.— [E]ven if the Court were to accept respondent's allegation that his posts were limited to or viewable by his "Friends" only, there is no assurance that the same — or other digital content that he uploads or publishes on his Facebook profile — will be safeguarded as within the confines of privacy, in light of the following: (1) Facebook "allows the world to be more open and connected by giving its users the tools to interact and share in any conceivable way"; (2) A good number of Facebook users "befriend" other users who are total strangers; (3) The sheer number of "Friends" one user has, usually by the hundreds; and (4) A user's Facebook friend can "share" the former's post, or "tag" others who are not Facebook friends with the former, despite its being visible only to his or her own Facebook friends. Thus, restricting the privacy of one's Facebook posts to "Friends" does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends. The user's own Facebook friend can share said content or tag his or her own Facebook friend thereto, regardless of whether the user tagged by the latter is Facebook friends or not with the former. Also, when the post is shared or when a person is tagged, the respective Facebook friends of the person who shared the post or who was tagged can view the post, the privacy setting of which was set at "Friends." Under the circumstances, therefore, respondent's claim of violation of right to privacy is negated.

6. ID.; ID.; ID.; RESPONDENT'S ARGUMENT THAT HIS FACEBOOK REMARKS WERE WRITTEN IN THE EXERCISE OF HIS FREEDOM OF SPEECH AND EXPRESSION IS UNAVAILING.— Neither can the Court accept the argument that the subject remarks were written in

> the exercise of his freedom of speech and expression. Time and again, it has been held that the freedom of speech and of expression, like all constitutional freedoms, is not absolute. While the freedom of expression and the right of speech and of the press are among the most zealously protected rights in the Constitution, every person exercising them, as the Civil Code stresses, is obliged to act with justice, give everyone his due, and observe honesty and good faith. As such, the constitutional right of freedom of expression may not be availed of to broadcast lies or half-truths, insult others, destroy their name or reputation or bring them into disrepute.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from a verified complaint[1] for disbarment filed by complainant Maria Victoria G. Belo-Henares (complainant) against respondent Atty. Roberto "Argee" C. Guevarra (respondent) for alleged violations of Rules 1.01 and 1.02, Canon 1; Rule 7.03, Canon 7; Rule 8.01 of Canon 8; and Rule 19.01, Canon 19 of the Code of Professional Responsibility.

The Facts

Complainant is the Medical Director and principal stockholder of the Belo Medical Group, Inc. (BMGI), a corporation duly organized and existing under Philippine laws[2] and engaged in the specialized field of cosmetic surgery.[3] On the other hand, respondent is the lawyer of a certain Ms. Josefina "Josie" Norcio

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[1] Dated October 25, 2009. *Rollo,* Vol. I, pp. 2-12.

[2] *Id.* at 2.

[3] *Id.* at 3.

(Norcio), who filed criminal cases against complainant for an allegedly botched surgical procedure on her buttocks in 2002 and 2005, purportedly causing infection and making her ill in 2009.[4]

In 2009, respondent wrote a series of posts on his Facebook account, a popular online social networking site, insulting and verbally abusing complainant. His posts include the following excerpts:

> Argee Guevarra **Quack Doctor Becky Belo: I am out to get *Puwitic* Justice here! Kiss My Client's Ass, Belo. Senator Adel Tamano, don't kiss Belo's ass.** Guys and girls, *nagiisip na akong tumakbo sa Hanghalan* 2010 to Kick some ass!!! I will launch a national campaign against Plastic Politicians No guns, No goons, No gold — IN GUTS I TRUST!
>
> Argee Guevarra **Dr. Vicki Belo**, watch out for Josefina Norcio's Big Bang on Friday — **You will go down in Medical History as a QUACK DOCTOR!!!! QUACK QUACK QUACK QUACK.** CNN, FOX NEWS, BLOOMBERG, CHICAGO TRIBUNE, L.A. TIMES c/o my partner in the U.S., Atty. Trixie Cruz-Angeles :) (September 22 at 11:18pm)[5]
>
> Argee Guevarra is amused by a libel case filed by Vicki Belo against me through her office receptionist in Taytay Rizal. ***Haaaaay,* style-*bulok at* style-*duwag talaga. Lalakarin ng Reyna ng Kaplastikan at Reyna ng Payola ang kaso...*** *si* Imelda Marcos *nga* sued me for ₱300 million pesos and ended up apologizing to me, *si* Belo *pa kaya?* (September 15 at 12:08pm)[6]
>
> Argee Guevarra **get vicki belo as your client!!! *may* 'extra-legal' budget *yon. Kaya lang, histado ko na kung sino-sino ang tumatanggap*** *eh, pag nalaman mo, baka bumagsak pa isang ahensya ng gobyerno dito, hahaha* (August 9 at 10:31pm)[7]

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[4] *Id.*

[5] *Id.* at 13; emphases and italics supplied.

[6] *Id.* at 5 and 14; emphasis and italics supplied.

[7] *Id.* at 15; emphasis and italics supplied.

Argee Guevarra ATTENTION *MGA* BATCHMATES *SA* DOJ: ***TIMBREHAN NIYO AKO KUNG MAGKANONG PANGSUHOL NI* BELO *PARA MADIIN AKO HA????*** I just [want] to know how much she hates me, ok? ***Ang* payola budget *daw niya* runs into tens of millions**.... (September 15 at 3:57pm)[8]

Argee Guevarra **thinks aloud how the payola machinery of vicki belo killed the news of a picket demonstration in front of the Belo clinic**. I wonder how television, print[,] and radio programs can kill the story when the next rallies will have the following numbers 100, 200, 500 and 1000. *Kung magkaasaran pa*,10,000 demonstrators will be assembled in front of the Belo Medical Clinic at Tomas Morato on July 27, 2009.*Hahahahaha!* (July 17 at 7:56pm)[9]

Argee Guevarra *Nakakatawa nga, 10milyon pa* budget... [I] didn't know that my reputation is worth that much.*Aba ako kaya magdemanda sa kanila* :) ***Ikot-ikot daw ang mga* P.R. *ni* Belo trying to convince editors to pin me down with something *eh alam ko na wala naman akong* sex video!!! *Adik talaga sa* botox *si Aling* Becky *at may tama na sa utak — eh kung gagastos ka lang ng* 10 *milyon para sa* tirang-pikon *laban sa akin at* to protect your *burak na reputasyon* as a plastic surgeon*, i-donate mo na lang*** *yon sa biktima ni* Ondoy, Pepeng *at* Ramil! *Yung mga* homeboys *ko sa* Pasig *na nilimas [ni]* Ondoy *ang kukubra sa yo!*(October 23 at 5:31pm)[10]

Argee Guevarra is inspired by Jose Norio's courageous act of showing her face on national television to expose the ***Reyna ng Kaplastikan, Reyna ng Kapalpakan.*** Inspired by shock nevertheless by the fact that the much needed partial restoration of her behind would cost a staggering $500,000-$1,000,000 Stanford Medical Hospital and she will still remain permanently disabled for the rest of her life... (July 11 at 2:08am)[11]

Argee Guevarra Just got my internet connection. **WILL EMAIL U THE LURID UNASSAILABLE FACTS ABOUT VICKI BELO'S QUACK DOCTORING.** (October 27, 2009)[12]

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[8] *Id.* at 16; emphases and italics supplied.

[9] *Id.* at 17; emphasis and italics supplied.

[10] *Id.* at 5 and 18; emphases and italics supplied.

[11] *Id.* at 19; emphases and italics supplied.

[12] *Id.* at 6 and 20; emphases and italics supplied.

Argee Guevarra yeah... actually the issue is simple and you will easily see which side you'll be taking — just pay Ms. Josie Norcio a visit at St. Luke's ***at talagang binaboy siya ng Reyna ng Kaplastikan*** (July 10 at 12:08am)[13]

The complaint further alleged that respondent posted remarks on his Facebook account that were intended to destroy and ruin BMGI's medical personnel, as well as the entire medical practice of around 300 employees for no fair or justifiable cause,[14] to wit:

Argee Guevarra yup... [I'll] even throw the kitchen sink at her. Enjoy *nga ito,* **we will paralyze the operations of all her clinic and seek out her patients and customers to boycott her**. [So] far, good response – 70% decrease in her July sales... (August 9 at 10:29pm)[15]

Argee Guevarra Guys, pandemonium has broken loose in [BMGI's] 6 clinics after Ms. Josie Norio's tell-all. With only 2 surgeons of BMGI certified by PAPRAS, there is real-and-present danger that surgeries like liposuction, nose lift, boob jobs which have been performed by [BMGI's] physicians, every patient runs the risk of something going wrong with the procedures they have undergone under [BMGI's] hands:(" (July 12 at 12:21am)[16]

Argee Guevarra [T]hey perform plastic surgery procedures without licensed and trained doctors, they nearly killed a client of mine, medical malpractice, use of banned substances/fillers on patients. just recently, in flawless clinic, a patient who had a simple facial landed in the hospital ... (August 9 at 10:04pm)[17]

Argee Guevarra braces for typhoon Ramil without forgetting to ask comrades and friends in Cebu to greet Vicki Belo with a boycott once she visits there on Oct. 20. Cebu's royal set already knows that

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[13] *Id.* at 21; emphases and italics supplied.

[14] *Id.* at 6.

[15] *Id.* at 22; emphasis and italics supplied.

[16] *Id.* at 23.

[17] *Id.* at 24.

she is not a certified plastic surgeon: Boycott Belo, Flawless Reckless, *Belat* Essentials!!!! (October 18 at 6:23pm)[18]

Argee Guevarra [W]ell, **with all the *kababuyan* of the Belo clinic, its money-making machines, *dapat* convert them into public health clinics!!!** instead of pandering to the vanities of those who want to look like Dra. Belo. (July 11 at 2:16am)[19]

Argee Guevarra darling kellyn, so far, i have 3 other ex-belo patients who will tell all too!!!!! ***Grabe pala ang mga kapalpakan niyan.* So did u leave Belo Clinic because it has become a Frankenstein Factory?** (July 11 at 2:30am)[20]

Argee Guevarra **BOYCOTT BELO! FLAWLESS RECKLESS! BELAT ESSENTIALS!!!** I'll be gone for a week to a place where there will be no facebook so please, add Trixie Cruz-Angeles if you want to find out more about our anti-quack doctor campaign! (September 24 at 3:00pm)[21]

Argee Guevarra Anyone care to sponsor T-shirts bearing this slogan? — **BOYCOTT BELO! FLAWLESS RECKLESS! BELAT ESSENTIALS!** (September 23 at 12:17arn)[22]

Argee Guevarra *Pare, eksena* on Thursday I will go to the hearing with a placard — **BOYCOTT BELO!!! FLAWLESS RECKLESS!!! BELAT ESSENTIALS!!!** I will vote for Adel Tamano (La Salle-Ateneo lower batch *sa akin at mabuti ang pamilya niyan)*... BUT WOULD YOU??? (September 23 at 1:50am)[23]

Argee Guevarra advocates a national patients' boycott of the Belo Medical Group. To all my friends and comrades, **please stay away from Belo's clinics**. I have 2 cousins and 3 friends already who have canceled their lipo from belo. **Please help me shut down the Belo Medical Group until they perform their moral and legal obligation to Ms. Josie Norcio...** (July 17 at 2:12pm)[24]

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[18] *Id.* at 25; emphasis and italic supplied.

[19] *Id.* at 26; emphasis and italics supplied.

[20] *Id.*; emphasis and italics supplied.

[21] *Id.* at 27; emphasis supplied.

[22] *Id.* at 28; emphasis supplied.

[23] *Id.*; emphasis and italics supplied.

[24] *Id.* at 29; emphases supplied.

Moreover, respondent, through his Facebook account, posted remarks that allegedly threatened complainant with criminal conviction, without factual basis and without proof,[25] as follows:

> Argee Guevarra Mr. Jay, by next year — GMA will no longer be president and she will be jailed for plunder; **Vicky Belo will no longer be a doctor and she will be in the middle of a criminal prosecution.** The General Surgeon of France will have a Philippine version. By October and November, some congressmen I have spoken with will be issuing summons to Vicky Belo for a congressional inquiry; the subject — legislation regulating the practice of cosmetic surgery! (September 22 at 11:31pm)[26]

> Argee Guevarra Celso de1os Angeles can still get medical attention in prison — from **Vicky Belo after she gets convicted too for criminal negligence and *estafa*** (July 15 at 10:05am)[27]

> Argee Guevarra is preparing himself for a **campaign against the Belo Medical Group for its criminal negligence which nearly killed Ms. Josie Norcio over a botched butt augmentation procedure.** He found out that the Dr. Belo herself marketed the product to Ms. Norcio, the operation was carried out by her **doctors who were not licensed** by the Philippine Association of Plastic Reconstructive and Aesthetic Surgeons..... (July 9 at 8:54pm)[28]

Complainant likewise averred that some of respondent's Facebook posts were sexist, vulgar, and disrespectful of women,[29] to wit:

> Argee Guevarra but can u help me too with maricar reyes? who's the hottest cebuana chic chick there nowadays? haven't been there for quite some time... *pa-chicks ka naman!!!* I'm sure *marami kang* 25-and-below *naprends diyan* (August 10 at 8:36pm)[30]

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[25] *Id.* at 9.

[26] *Id.* at 30; emphasis supplied.

[27] *Id.* at 31; emphasis and italic supplied.

[28] *Id.* at 32; emphases supplied.

[29] *Id.* at 10.

[30] *Id.* at 33; italics supplied.

Argee Guevarra *hay* joseph!!! how's the gayest lawyer in cebu? our forces will soon picket the belo clinic there, can u tell me where that is? ***balato ko na sayo si* hayden, promise!"** (August 10 at 12:23am)[31]

Argee Guevarra joseph, i can't say i love u too — *baka* belo's team will use all sorts of attacks na against me to thwart them, being the gayest gay in the philippines, can u issue a certification that i am so not like your type?*at yung* preferred *ko lang ay* thin, *thalino* and *thisay?* (September 23 at 12:01am)[32]

Finally, complainant averred that the attacks against her were made with the object to extort money from her, as apparent from the following reply made by respondent on a comment on his Facebook post:[33]

Kellyn Conde Sy *utang mo!* Pay up time:) (July 11 at 2:37am)

Argee Guevarra kellyn, ***sisingilin ko muna si* belo**... *at saka sabi mo naman, maibagsak ko lang ang kaplastikan ni* belo, quits *na tayo* ...(July 11 at 2:38am)[34]

Asserting that the said posts, written in vulgar and obscene language, were designed to inspire public hatred, destroy her reputation, and to close BMGI and all its clinics, as well as to extort the amount of ₱200 Million from her as evident from his demand letter[35] dated August 26, 2009, complainant lodged the instant complaint for disbarment against respondent before the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 09-2551.

In defense,[36] respondent claimed that the complaint was filed in violation of his constitutionally-guaranteed right to privacy,[37]

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[31] *Id.* at 34; emphasis and italics supplied.

[32] *Id.* at 35; italics supplied.

[33] See *id.* at 10-11.

[34] *Id.* at 36; emphasis and italics supplied.

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

[36] See Answer dated January 4, 2010; *id.* at 44-57.

[37] See *id.* at 44.

asserting that the posts quoted by complainant were private remarks on his private account on Facebook, meant to be shared only with his circle of friends of which complainant was not a part.[38] He also averred that he wrote the posts in the exercise of his freedom of speech, and contended that the complaint was filed to derail the criminal cases that his client, Norcio, had filed against complainant.[39] He denied that the remarks were vulgar and obscene, and that he made them in order to inspire public hatred against complainant.[40] He likewise denied that he attempted to extort money from her, explaining that he sent the demand letter as a requirement prior to the filing of the criminal case for *estafa*, as well as the civil case for damages against her.[41] Finally, respondent pointed out that complainant was a public figure who is, therefore, the subject of fair comment.[42]

After the mandatory conference had been terminated,[43] the parties were directed to file their respective position papers.[44] Thereafter, the IBP, through the Commission on Bar Discipline (CBD), set the case for clarificatory hearing.[45] Upon termination thereof, the case was deemed submitted for report/recommendation.[46]

IBP's Report and Recommendation

In its Report and Recommendation[47] dated August 13, 2013, the IBP-CBD recommended that respondent be suspended for

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[38] See *id.* at 45-46.

[39] See *id.* at 55.

[40] *Id.* at 47-48.

[41] See *id.* at 49.

[42] *Id.* at 54.

[43] See Order dated January 28, 2011 issued by Commissioner Hector B. Almeyda; *id.* at 65-66.

[44] See Position Paper for complainant dated February 25, 2011 (*id.* at 67-88) and Respondent's Position Paper dated February 28, 2011 (*id.* at 176-191).

[45] See Order dated April 13, 2011; *id.* at 213-214.

[46] See Order dated September 3, 2012; *id.* at 281.

[47] Signed by Commissioner Atty. Eldrid C. Antiquiera. *Rollo,* Vol. II, pp. 329-331.

a period of one (1) year from the practice of law, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.[48] It held respondent liable for violation of Rule 7.03,[49] Rule 8.01,[50] and Rule 19.01[51] of the Code of Professional Responsibility for having posted the above-quoted remarks on his Facebook account, pointing out that respondent cannot invoke the "private" nature of his posts, considering that he had at least 2,000 "friends" who can read and react thereto. Moreover, the IBP-CBD maintained that the criminal cases he had filed against complainant on behalf of Norcio had been dismissed for insufficient evidence; therefore, he can no longer campaign against complainant whose alleged crimes against Norcio had not been established.[52]

In a Resolution[53] dated September 27, 2014, the IBP Board of Governors resolved to adopt and approve the August 13, 2013 Report and Recommendation of the IBP-CBD.

Respondent moved for reconsideration,[54] arguing that there was no specific act attributed to him that would warrant his suspension from the practice of law. He also averred that the libel cases filed against him by an employee of BMGI had already been dismissed, without prejudice, for lack of jurisdiction.[55]

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[48] *Id.* at 331.

[49] Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

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

[51] Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

[52] *Rollo,* Vol. II, pp. 330-331.

[53] See Notice of Resolution in Resolution No. XXI-2014-637 issued by National Secretary Nasser A. Marohomsalic; *id.* at 328, including dorsal portion.

[54] Dated April 25, 2015. *Id.* at 332-343.

[55] See *id.* at 338-341.

In a Resolution[56] dated October 28, 2015, the IBP Board of Governors partially granted respondent's motion, reducing the penalty from one (1) year to six (6) months suspension.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not respondent should be held administratively liable based on the allegations of the verified complaint.

The Court's Ruling

The Court has examined the records of this case and concurs with the IBP's findings, except as to the penalty imposed on respondent.

At the outset, the Court notes that respondent never denied that he posted the purportedly vulgar and obscene remarks about complainant and BMGI on his Facebook account. In defense, however, he invokes his right to privacy, claiming that they were "private remarks" on his "private account"[57] that can only be viewed by his circle of friends. Thus, when complainant accessed the same, she violated his constitutionally guaranteed right to privacy.

The defense is untenable.

Facebook is currently the most popular social media site, having surpassed one (1) billion registered accounts and with 1.71 billion monthly active users.[58] *Social media* are web-based platforms that enable online interaction and facilitate users to generate and share content. There are various classifications[59]

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[56] See Notice of Resolution in Resolution No. XXII-2015-82 issued by Assistant National Secretary Maria Angela N. Esquivel; *id.* at 366-367.

[57] *Rollo,* Vol. I, p. 44.

[58] Seth Fiegerman, Facebook is unstoppable, CNN Tech, July 27, 2016, available at < money.cnn.com/2016/07/27/technology/facebook-earnings-high-expectations/ > (visited November 10, 2016).

[59] Other classification of social media platforms are (1) blog and microblog sites (Twitter,Tumblr); (2) content communities sites (YouTube, Instagram); (3) collaborative projects (Wikipedia); (4) Virtual social worlds (Farmville);

of social media platforms and one can be classified under the "social networking sites" such as Facebook.[60]

Facebook is a "voluntary social network to which members subscribe and submit information. x x x It has a worldwide forum enabling friends to share information such as thoughts, links, and photographs, with one another."[61] Users register at this site, create a personal profile or an open book of who they are, add other users as friends, and exchange messages, including automatic notifications when they update their profile. A user can post a statement, a photo, or a video on Facebook, which can be made visible to anyone, depending on the user's privacy settings.[62]

To address concerns about privacy, but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile, as well as information uploaded by the user. In *H v. W*,[63] the South Gauteng High Court of Johannesburg, Republic of South Africa recognized this ability of the users to "customize their privacy settings," but with the cautionary advice that although Facebook, as stated in its policies, "makes every effort to protect a user's information, these privacy settings are however not foolproof."[64]

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and (5) Virtual game-world (World of Warcraft). See Government Social Research, Using social media for Social research: An introduction, May 2016, available at < https://www.gov.uk/govemment/uploads/system/uploads/attachment_data/file/524750/GSR_Social_Media_Research_Guidance-Using-social-media-for-social-research.pdf> (visited October 28, 2016).

[60] *Id*.

[61] *H v. W,* Case No. 12/10142, In the South Gauteng High Court, Johannesburg, Republic of South Africa, January 30, 2013. See also< http://www.saflii.org/za!cases/ZAGPJHC/2013/l.html>http:///(visited October 28, 2016).

[62] *Disini, Jr. v. The Secretary of Justice,* 727 Phil. 28, 117 (2014).

[63] *H v. W, supra* note 61,

[64] *Id.*, as cited in *Vivares v. St. Theresa's College,* G.R. No. 202666, September 29, 2014, 737 SCRA 92, 114.

Consequently, before one can have an expectation of privacy in his or her online social networking activity — in this case, Facebook — it is first necessary that said user manifests the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. This intention can materialize in cyberspace through the utilization of Facebook's privacy tools. In other words, utilization of these privacy tools is the manifestation, in the cyber world, of the user's invocation of his or her right to informational privacy.[65]

The bases of the instant complaint are the Facebook posts maligning and insulting complainant, which posts respondent insists were set to private view. However, the latter has failed to offer evidence that he utilized any of the privacy tools or features of Facebook available to him to protect his posts, or that he restricted its privacy to a select few. Therefore, without any positive evidence to corroborate his statement that the subject posts, as well as the comments thereto, were visible only to him and his circle of friends, respondent's statement is, at best, self-serving, thus deserving scant consideration.[66]

Moreover, even if the Court were to accept respondent's allegation that his posts were limited to or viewable by his "Friends" only, there is no assurance that the same — or other digital content that he uploads or publishes on his Facebook profile — will be safeguarded as within the confines of privacy, in light of the following:

(1) Facebook "allows the world to be more open and connected by giving its users the tools to interact and share in any conceivable way";

(2) A good number of Facebook users "befriend" other users who are total strangers;

(3) The sheer number of "Friends" one user has, usually by the hundreds; and

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[65] *Vivares v. St. Theresa's College, id.* at 116.

[66] *Id.* at 118.

(4) A user's Facebook friend can "share" the former's post, or "tag" others who are not Facebook friends with the former, despite its being visible only to his or her own Facebook friends.[67]

Thus, restricting the privacy of one's Facebook posts to "Friends" does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends. The user's own Facebook friend can share said content or tag his or her own Facebook friend thereto, regardless of whether the user tagged by the latter is Facebook friends or not with the former. Also, when the post is shared or when a person is tagged, the respective Facebook friends of the person who shared the post or who was tagged can view the post, the privacy setting of which was set at "Friends."[68] Under the circumstances, therefore, respondent's claim of violation of right to privacy is negated.

Neither can the Court accept the argument that the subject remarks were written in the exercise of his freedom of speech and expression.

Time and again, it has been held that the freedom of speech and of expression, like all constitutional freedoms, is not absolute.[69] While the freedom of expression and the right of speech and of the press are among the most zealously protected rights in the Constitution, every person exercising them, as the Civil Code stresses, is obliged to act with justice, give everyone his due, and observe honesty and good faith.[70] As such, the constitutional right of freedom of expression may not be availed

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[67] *Id.* at 120-121, citations omitted.

[68] See *id.* at 121.

[69] See *In Re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson,* 313 Phil. 119, 163 (1995), citing *Zaldivar v. Gonzalez,* 248 Phil 542, 579 (1988).

[70] Article 19 of the Civil Code provides:

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

of to broadcast lies or half-truths, insult others, destroy their name or reputation or bring them into disrepute.[71]

A punctilious scrutiny of the Facebook remarks complained of disclosed that they were ostensibly made with malice tending to insult and tarnish the reputation of complainant and BMGI. Calling complainant a "quack doctor," *"Reyna ng Kaplastikan," "Reyna ng Payola,"* and *"Reyna ng Kapalpakan,"* and insinuating that she has been bribing people to destroy respondent smacks of bad faith and reveals an intention to besmirch the name and reputation of complainant, as well as BMGI. Respondent also ascribed criminal negligence upon complainant and BMGI by posting that complainant disfigured (*"binaboy")* his client Norcio, labeling BMGI a "Frankenstein Factory," and calling out a boycott of BMGI's services — all these despite the pendency of the criminal cases that Norcio had already filed against complainant. He even threatened complainant with conviction for criminal negligence and *estafa* — which is contrary to one's obligation "to act with justice."

In view of the foregoing, respondent's inappropriate and obscene language, and his act of publicly insulting and undermining the reputation of complainant through the subject Facebook posts are, therefore, in complete and utter violation of the following provisions in the Code of Professional Responsibility:

> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.
>
> Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.
>
> Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

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[71] See *In Re Emil (Emiliano) P. Jurado Ex Rel.: Philippine Long Distance Telephone Company (PLDT), per its First Vice-President, Mr. Vicente R. Samson, supra* note 69, at 165.

By posting the subject remarks on Facebook directed at complainant and BMGI, respondent disregarded the fact that, as a lawyer, he is bound to observe proper decorum at all times, be it in his public or private life. He overlooked the fact that he must behave in a manner befitting of an officer of the court, that is, respectful, firm, and decent. Instead, he acted inappropriately and rudely; he used words unbecoming of an officer of the law, and conducted himself in an aggressive way by hurling insults and maligning complainant's and BMGI's reputation.

That complainant is a public figure and/or a celebrity and therefore, a public personage who is exposed to criticism[72] does not justify respondent's disrespectful language. It is the cardinal condition of all criticism that it shall be *bona fide,* and shall not spill over the walls of decency and propriety.[73] In this case, respondent's remarks against complainant breached the said walls, for which reason the former must be administratively sanctioned.

"Lawyers may be disciplined even for any conduct committed in their private capacity, as long as their misconduct reflects their want of probity or good demeanor, a good character being an essential qualification for the admission to the practice of law and for continuance of such privilege. When the Code of Professional Responsibility or the Rules of Court speaks of conduct or misconduct, the reference is not confined to one's behavior exhibited in connection with the performance of lawyers' professional duties, but also covers any misconduct, which—albeit unrelated to the actual practice of their profession—would show them to be unfit for the office and unworthy of the privileges which their license and the law invest in them."[74] Accordingly, the Court finds that respondent should be suspended from the practice of law for a period of one (1) year, as originally recommended by the IBP-CBD, with a stem warning that a repetition of the same or similar act shall be dealt with more severely.

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[72] See *rollo,* Vol. I, pp. 183-185.

[73] See *Habawel v. CTA*, 672 Phil. 582, 596 (2011), citing *In Re Alamcen v. Yaptinchay,* G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 580.

[74] *Pobre v. Defensor-Santiago,* 613 Phil. 352, 364-365 (2009).

WHEREFORE, respondent Atty. Roberto "Argee" C. Guevarra is found guilty of violation of Rules 7.03, 8.01, and 19.01 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon his receipt of this Decision, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185312. December 1, 2016]

NICANOR MALABANAN, AURORA MANAIG, RONNIE MALABANAN, VICTOR MALABANAN, SEVERINO MALABANAN, EUFROCINIA MALABANAN, EUFROCILA MALABANAN, REYNALDO MALABANAN, AND DONATA MALABANAN, *petitioners, vs.* **HEIRS OF ALFREDO RESTRIVERA, REPRESENTED BY BIENVENIDO RESTRIVERA and REMEDIOS RESTRIVERA-ESPERIDION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; RESPONDENTS HAVE NO LEGAL STANDING TO ASSAIL THE AWARD OF THE SUBJECT LAND TO PETITIONERS; THEY FAILED TO SHOW ANY REAL OR PRESENT SUBSTANTIAL INTEREST THEREIN.— In this case, respondents trace their alleged ownership of the disputed property to OCT No. 0-13. Their claim that the property was illegally acquired by the IRC is unsubstantiated. The CA correctly noted that the issue of whether the acquisition of the property by IRC was lawful or not was still undetermined by the proper tribunal. Without question, however, the last known owner of the land before it was surrendered to the PCGG was the IRC. In fact, the derivative titles under question cancelled the latter's title under TCT No. 28631, instead of OCT NO. 0-13. All things considered, there is yet no sufficient basis to say that Alfredo Restrivera was the previous owner of the land prior to its award to petitioners. Respondents cannot rely solely on their father's title to assert ownership over the subject land. A title is merely evidence of ownership of the particular property described therein. Ownership is not the same as a certificate of title. On the other hand, we cannot just disregard the existence of TCT No. 28631, which is under the name of the IRC. A Torrens certificate is the best evidence of ownership of registered land and serves as evidence of an indefeasible title to the property in favor of the person in whose name it was issued. In the absence of a definitive ruling that TCT No. 28631 was illegally procured, we can only take the titles presented in evidence at their face value. At this point, respondents cannot claim ownership of the land, or any interest therein that could have been the subject of succession. Concomitantly, they have no legal standing to challenge the propriety of its distribution under CARP by virtue of their interest as Alfredo's compulsory heirs. Neither can respondents claim to have any present substantive interest in the disputed property as preferred beneficiaries under paragraph 2 of the MOA between DAR and the PCGG on sequestered lands. x x x The right recognized under the [MOA] is conditioned on possession of title and actual occupation of property. In respondents' case, the most they have established is that the land used to be registered under Alfredo's name. x x x The law, therefore, does not automatically vest preferential rights

upon the children of landowners. To avail themselves of this right, claimants must show that: (1) their parents owned the subject land; and (2) it has been determined in the proper proceeding that the claimants are qualified beneficiaries of the agrarian reform program. Proof of these circumstances, however, are utterly wanting in this case. In sum, respondents failed to show any real or present substantial interest in the subject land. Indeed, procedural rules can be relaxed in the interest of justice, but the present case does not merit such leniency. The requirement that a party must have real interest in the case is not simply procedural; it is essential to the administration of justice.| For these reasons, we set aside the CA's finding that respondents have the legal personality to assail the award of the subject land to petitioners.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); IN THE ABSENCE OF AGRARIAN DISPUTE OR ALLEGATIONS OF TENURIAL RELATIONSHIP BETWEEN THE PARTIES, THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) HAS NO JURISDICTION OVER THE PETITION; ISSUES ON THE PREFERENTIAL RIGHT AS FARMER-BENEFICIARIES AND THE SUITABILITY OF THE LAND FOR CARP COVERAGE ARE WITHIN THE PRIMARY AND EXCLUSIVE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR).— It is settled that for DARAB to have jurisdiction over a case, there must be an agrarian dispute or tenancy relationship existing between the parties. There must be harmony between this settled principle and the rules that apply to the petition for the cancellation of CLOAs filed by respondents. The applicable set of rules is the 2003 DARAB Rules of Procedure, under which Section 1, Rule II, grants DARAB and its adjudicators jurisdiction over cases involving the correction, partition, cancellation, secondary and subsequent issuances of CLOAs and Emancipation Patents (EPs) which are registered with the Land Registration Authority. It is not sufficient that the controversy involves the cancellation of a CLOA already registered with the Land Registration Authority as in this case. For purposes of determining whether DARAB has jurisdiction, the central consideration is the existence of an agrarian dispute. x x x In this case, respondents have not

alleged any tenurial relationship with petitioners. Rather, their petition is centered on their supposed preferential right as farmer-beneficiaries and the suitability of the land for CARP coverage. These are matters falling under the primary and exclusive jurisdiction of DAR, which is supposed to determine and adjudicate all matters involving the implementation of agrarian reform.

APPEARANCES OF COUNSEL

Rowena B. Austria-Generoso for petitioners.

Martinez Alcera Atienza & Benusa (+) Law Offices, collaborating counsel for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on Certiorari assailing the Court of Appeals (CA) Decision[1] in CA-G.R. SP No. 97787, which affirmed the Department of Agrarian Reform Adjudication Board (DARAB) Resolution dated 10 October 2006.[2] The latter reinstated the Decision[3] issued by the Regional Agrarian Reform Adjudication Board (RARAD), Region IV, in the Petition for Cancellation of Certificates of Land Ownership Award (CLOAs), Declaration of Nullity of Sale, Repossession and Reconveyance filed by respondents against petitioners.

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[1] *Rollo*, pp. 13-30. The CA Decision, dated 20 June 2008, was penned by Associate Justice Lucenito N. Tagle, with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro concurring.

[2] CA *rollo* pp. 9-13; the DARAB Resolution was penned by Assistant Secretary Augusto P. Quijano and concurred in by Assistant Secretaries Edgar A. Igano and Delfin B. Samson, as well as acting Assistant Secretary Patricia Rualo-Bello. The other members of the Board, namely, OIC-Secretary Nasser R. Pangandaman, Undersecretary Nestor R. Acosta and OIC-Undersecretary Narciso B. Nieto did not take part in the Resolution.

[3] *Id.* at 62-76. The RARAD Decision, dated 27 August 2003, was penned by Regional Adjudicator Conchita C. Miñas.

RARAD directed the Cavite Provincial Agrarian Reform Officer (PARO), as well as the Register of Deeds (RD), to recall the CLOAs and the Transfer Certificates of Title (TCTs) issued to petitioners over a sequestered agricultural land previously owned by respondents' father. In lieu thereof, RARAD ordered the issuance of new certificates in favor of respondents. Petitioners argue, however, that it had no jurisdiction over the petition.

ANTECEDENT FACTS

The disputed property is an 8.839-hectare agricultural land situated in Potrero, Bancal, Carmona, Cavite. It used to be registered under the name of Alfredo Restrivera, as shown by his Original Certificate of Title (OCT) No. 0-13.[4] In 1968, OCT No. 0-13 was cancelled by TCT No. T-28631 under the name of Independent Realty Corporation (IRC). After the ouster of the Marcos administration, the IRC voluntarily surrendered the land to the Philippine Commission on Good Government (PCGG).[5]

The PCGG then transferred the above property to the Department of Agrarian Reform (DAR) for distribution to qualified farmer-beneficiaries of the Comprehensive Agrarian Reform Program (CARP) by virtue of the Memorandum of Agreement (MOA) on Sequestered Agricultural Lands between the PCGG and the then Ministry of Agrarian Reform (MAR),[6] as well as Executive Order (E.O.) No. 407, Series of 1990.[7]

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[4] DARAB Records, Vol. I, pp. 11-12.

[5] *Id.* at 38; (letter dated 17 October 2002 from then PCGG Chairperson Haidee B. Yorac addressed to Mr. Boy Morales of La Liga Policy Institute). Chairperson Yorac wrote the letter in response to Mr. Morales' request for documents related to the transfer of ownership of the subject property to the IRC. The letter partly states:

> "We regret to inform that records available with Independent Realty Corporation and the Presidential Commission on Good Government (PCGG) do not indicate the previous owners of these surrendered properties and the manner by which they were transferred in favor of IRC."

[6] Dated 23 February 1987; DARAB Records, Vol. II, p. 39.

[7] *Rollo*, p. 38

In February 2002, DAR awarded the land to petitioners. Two collective CLOAs[8] were generated and the RD eventually issued to them derivative TCT Nos. CLOA-2838[9] and CLOA-2839.[10]

Invoking their preferential right as farmer-beneficiaries under Section 22 of Republic Act No. (R.A.) 6657,[11] respondents filed before the Adjudication Board for Region IV a Petition for Cancellation of CLOA, Declaration of Nullity of Sale, Repossession and Reconveyance[12] against petitioners, Charmaine Uy, the PARO of Cavite, and the RD of Cavite in February 2003.

Respondents alleged that (1) Alfredo never transferred his title to the subject land to any entity; (2) petitioners were perpetually disqualified from benefitting from CARP because they had sold the subject land to Charmaine Uy in violation of Section 73(f) of R.A. 6657 and DAR Memorandum Circular No. 19, Series of 1996;[13] (3) prior to the award, petitioners also executed a waiver of their rights to the subject land in favor of other potential farmer-beneficiaries; and (4) the land had a slope of 18% as shown in the DAR regional director's Investigation Report[14] and was, therefore, exempt from CARP coverage.

The Malabanans, the DAR-Legal Assistance Division, and Charmaine Uy filed separate Answers[15] raising these substantially

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[8] CLOA Nos. 00569919 and 00596620.

[9] DARAB Records. Vol. I, pp. 20-22. The named owners were Nicanor Moreno Malabanan, Aurora Malabanan Manaig, Ronnie Moreno Malabanan, and Victorino Moreno Malabanan.

[10] *Id*. at 23-25. The named owners were Severino Sarmiento Malabanan, Raymundo Sarmiento Malabanan, Eufrocinia Sarmiento Malabanan. Eufrocila Malabanan Albuerne, and Donata Caparas Malabanan.

[11] Comprehensive Agrarian Reform Law (CARL).

[12] DARAB Records, Vol. I, pp. 2-10.

[13] Guidelines and Procedures Governing the Monitoring of Violations or Circumventions Committed by the Agrarian Reform Beneficiaries (ARBs), Providing Sanctions Therefor and Filing of Appropriate Administrative, Quasi-Judicial and/or Criminal Actions.

[14] DARAB Records, Vol. I, at 13-16. The Report was dated 15 January 2003.

[15] *Id.* at 85-102, 103-120, 121-126.

similar defenses: (1) no waiver of rights or sale of the subject land had ever occurred; (2) respondents had no legal standing to file the petition, because Restrivera was not the registered owner of the property; and (3) the petition was premature because whether or not the land was exempt from CARP was an Agrarian Law Implementation (ALI)[16] issue that needed to be resolved first by the DAR Secretary.

RULING OF RARAD

RARAD disposed of the petition as follows:

WHEREFORE, premises considered, judgment is hereby issued:

1. Declaring that the generation and the subsequent issuance of CLOA Nos. 00596619 and 00596620 registered under TCT No. CLOA 2838 and TCT 2839, respectively, covering the subject parcel of land were in violation of petitioners' preferential rights as farmer-beneficiaries under Section 22 of RA 6657 and under the Memorandum of Agreement (MOA) between DAR and the PCGG dated February 23, 1987;

2. Declaring further that the afore-cited CLOAs were issued over a property which is excluded/exempted under Section 10 RA 6657 for having more than 18 degrees slope;

3. Declaring finally that the preceding paragraphs 1 and 2 hereof warrant the cancellation of CLOA and the corresponding Transfer Certificate of Title derived therefrom registered in the name of private respondents;

4. Directing the public respondents to recall the afore-cited CLOAs and generate new ones in the name of the petitioners and submit the same to the Register of Deeds for the Province of Cavite;

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[16] In *Sta. Rosa Realty Development Corp. v. Amante*, 493 Phil. 570, 606 (2005), the Court clarified that the jurisdiction of DAR under the Section 50 of R.A. 6657 is two-fold. The first aspect is essentially executive and pertains to the enforcement and administration of the laws. It covers those cases identified as Agrarian Law Implementation or ALI matters falling under the exclusive jurisdiction of the DAR Secretary under DAR Administrative Order No. 3, Series of 2003. The second aspect is quasi-judicial and involves the determination of rights and obligations of the parties in those cases enumerated over which the Agrarian Reform Adjudication Board or the DARAB has the exclusive original jurisdiction.

5. Directing the Register of Deeds for the Province of Cavite to cause the cancellation of CLOAs and the derivative Transfer Certificate of Title above-cited and upon receipt of the newly generated CLOA as directed in paragraph 4 hereof to cause the registration of the same in place of the cancelled TCT/CLOA.[17]

RARAD gave credence to the petitioners' denial of the supposed waiver of their rights and the sale of the subject land. Still, it sustained the claim of respondents as preferred beneficiaries and ruled that they had legal standing to assail the award of the land, since they were Alfredo's compulsory heirs.

Moreover, RARAD dismissed petitioners' theory that there were pending ALI issues that needed to be resolved by the DAR Secretary. Instead, it ruled that the regional director's Investigation Report was a conclusive finding that the land was exempt from CARP coverage; and that the issue of whether or not there was a violation of respondents' preferential right was judicial in nature.

Consequently, DAR's legal counsel[18] filed a Motion for Reconsideration[19] on behalf of the Malabanans, PARO, and the RD. Subsequently, he filed a Withdrawal of Appearance for Private Respondents-Farmer Beneficiaries.[20] The Malabanans, without the assistance of counsel, filed a Notice of Appeal within the reglementary 15-day period.[21]

Because of the pending Motion for Reconsideration, RARAD deferred its action on the Notice of Appeal.[22] In the end, it denied the motion for lack of a new matter or substantial argument supporting a reversal of its Decision.[23]

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[17] CA *rollo*, pp. 75-76.

[18] Atty. Victor B. Baguilat of the Legal Assistance Division, DAR.

[19] DARAB Records. Vol. II, pp. 187-193.

[20] *Id.* at 203.

[21] *Id.* at 206.

[22] *Id.* at 217.

[23] *Id.* at 219-220.

RULINGS OF DARAB

Upon Notice of Appeal[24] filed by DAR's legal counsel, DARAB directed all parties to submit their respective memorandums.[25]

In due course, DARAB rendered a Decision dated 28 April 2006,[26] with the following dispositive portion:

WHEREFORE, the Board resolves to **SET ASIDE** the assailed decision dated August 27, 2003 and immediately **refer** this case to the Honorable Office of the DAR Secretary for its determination on prejudicial issues concerning Agrarian Law Implementation (ALI).[27]

According to DARAB, the issues of whether the subject land was exempt from CARP coverage and whether the respondents were the preferred beneficiaries were ALI issues that had yet to be resolved by the DAR Secretary. It observed that the Investigation Report cited by respondents was not the outcome of an application for exemption or exclusion under the "Rules of Procedure for Agrarian Law Implementation (ALI) Cases." In this light, there was no basis for RARAD's cancellation of the CLOAs and the derivative TCTs on the ground that the awarded land was exempt from land distribution.

DARAB held that the adjudicator should have referred the petition to the DAR Secretary for the determination of those pending prejudicial ALI issues.

Moreover, DARAB dismissed respondents' argument that the appeal was dismissible because both the Malabanans and DAR failed to perfect their appeals. Instead, DARAB allowed the appeal in order to prevent a grave miscarriage of justice.

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[24] *Id.* at 221.

[25] *Id.* at 223-224.

[26] *Rollo*, pp. 106-115; DARAB Records, Vol. III, pp. 64-73. Penned by Assistant Secretary Augusto P. Quijano and concurred in by Assistant Secretaries Edgar A. Igano and Delfin B. Samson, as well as acting Assistant Secretary Patricia Rualo-Bello. The other members of the Board, namely, OIC-Secretary Nasser R. Pangandaman, Undersecretary Nestor R. Acosta and OIC-Undersecretary Narciso B. Nieto did not take part in the Decision.

[27] *Id.* at 115.

Upon Motion for Reconsideration[28] by respondents, however, DARAB issued a Resolution dated 10 October 2006 disposing as follows:

WHEREFORE, premises considered, the decision of the Board dated April 28, 2006 is **SET ASIDE**. A **NEW DECISION** is hereby rendered:

1. **RECALLING** and **REINSTATING** the Decision dated August 27, 2003 rendered by the Honorable Adjudicator a quo; and

2. **DECLARING** the Decision dated August 27, 2003 and the Resolution dated November 18, 2003 rendered by the Honorable Adjudicator a quo final in view of the defective notices of appeal filed by both public and private respondents-appellants.[29]

DARAB noted that the petition filed by respondents stemmed from their letter[30] to the DAR Secretary requesting an inspection of the subject land. In turn, the Secretary issued a Memorandum[31] indorsing their letter to the regional director and directing him to submit a comprehensive report on result of the latter's inspection. DARAB then ruled that the director's report was a determinative finding that the land was exempt from CARP, and that there were no pending ALI questions that needed to be resolved by the DAR Secretary.

It was further held that petitioners were indeed disqualified from benefitting from the agrarian reform program. Their waiver of their rights as farmer-beneficiaries supposedly showed that they did not possess the requisite willingness, aptitude or ability to cultivate the subject land. Therefore, the cancellation of their CLOAs and derivative TCTs was only proper.

DARAB reversed, as well, its earlier pronouncement that there was a compelling reason to relax procedural rules in this

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[28] DARAB Records, Vol. III, pp. 78-90.

[29] CA *rollo*, pp. 12-13.

[30] DARAB Records, Vol. I, p. 39; dated 29 November 2002.

[31] *Id.* at 41; dated 5 December 2002.

case. It ruled that the RARAD Decision had already lapsed into finality because of the failure of both the Malabanans and DAR to perfect their appeals.

RULING OF THE CA

After the DARAB's denial of their Motion for Reconsideration,[32] petitioners filed a Petition for Review under Rule 42 before the CA.[33]

The appellate court, however, found petitioners' appeal unmeritorious. While conceding that the legality of the transfer of the subject land to the IRC had yet to be determined before the proper forum, the CA nonetheless ruled that respondents were entitled to the property, because it was registered under their father's name prior to its transfer to the IRC. For this reason, they had legal personality to assail its award to petitioners.

The CA ruled further that the transfer by petitioners of their rights to the land was an additional ground for the cancellation of their titles. Consequently, the DARAB properly affirmed the RARAD Decision.

Lastly, the CA emphasized that only the last order or resolution completely disposing of the case can be the subject of an appeal. It noted that the subject of petitioners' appeal was only the RARAD Decision; they did not file a new notice of appeal from the Resolution denying their Motion for Reconsideration. The appellate court therefore ruled that the RARAD Decision had long become final because of the failure of petitioners to perfect their appeal.

The dispositive portion of the CA Decision reads:

WHEREFORE, the petition for review is **DENIED**. The Resolution dated October 10, 2006 as well as the Resolution dated January 10, 2007 respectively of DARAB are hereby **AFFIRMED**.[34]

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[32] DARAB Records, Vol. III, pp. 125-135.

[33] CA *rollo*, pp. 20-41.

[34] *Rollo*, p. 29.

On 11 November 2008, the CA denied petitioner's Motion for Reconsideration.[35] Hence, this Petition.

ISSUES

The essential issues to be resolved are as follows: (1) whether petitioners have the legal personality to assail the distribution of the subject land under the agrarian reform program; and (2) whether the agrarian adjudicator has jurisdiction over a petition for cancellation of title and reconveyance of agricultural land sequestered by or surrendered to the PCGG.

COURT RULING

We GRANT the petition.

Before delving into the substantive issues, we first address the procedural issue of whether the RARAD Decision has become final because of the failure of petitioners to perfect their appeal.

True, petitioners did not file a new notice of appeal after RARAD had disposed of DAR's Motion for Reconsideration. Contrary to respondents' claim, however, RARAD did not dismiss the petitioners' notice of appeal for being premature. Its Order[36] states:

> This treats of private respondents' Notice of Appeal from the Decision dated August 27, 2003 which was duly countered by petitioners with an Opposition on the ground that there is a pending motion for reconsideration, hence, the notice of appeal is premature.
>
> Finding that the notice of appeal is too early to be acted upon, the same is **held in abeyance** until the motion for reconsideration shall have been disposed of.[37]

Additionally, while the Motion for Reconsideration was filed on behalf of both the Malabanans and DAR, their common legal

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[35] *Id.* at 10-11. The Motion for Reconsideration was filed on 15 July 2008 (CA *rollo*, pp. 273-288).

[36] Dated 10 November 2003.

[37] DARAB Records, Vol. II, pp. 217-218. Emphasis supplied.

counsel subsequently withdrew his appearance for the Malabanans. His withdrawal was in light of the letter[38] of the Malabanans informing him that they were intending to pursue their appeal separately from DAR. Notably, too, petitioners filed their Notice of Appeal after the Withdrawal of Appearance by their former legal counsel.

Suffice it to say that petitioners filed a timely Notice of Appeal. It did not lose validity merely because RARAD deferred action on it during the pendency of DAR's Motion for Reconsideration.[39] Indeed, DARAB eventually accepted petitioners' appeal. The findings of both DARAB and the CA that petitioners failed to perfect their appeal are, therefore, wrong.

We now resolve the substantive issues.

Respondents have no legal standing to assail the award of the subject land to petitioners.

Fortich v. Corona[40] ordains that farmer-beneficiaries who are not approved awardees of CARP have no legal standing to question the exclusion of an agricultural land from CARP coverage. This pronouncement is anchored on the rule that any person seeking legal relief must have a real or present substantial interest, as opposed to mere expectancy; or a future, contingent, subordinate, or consequential interest in the matter under litigation.[41]

Simply put, the policy under the Constitution is that courts can only resolve actual controversies involving rights that are legally demandable and enforceable; judicial power cannot be

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[38] Dated 30 September 2003.

[39] But see *Ross Rica Sales Center, Inc. v. Spouses Ong*, 504 Phil. 304 (2005), where the Court held that the filing of the Motion for Reconsideration may be deemed as an effective withdrawal of the defective Notice of Appeal.

[40] 352 Phil. 461 (1998)(Decision) and 371 Phil. 672 (1999) (Resolution).

[41] *Garcia v. David,* 67 Phil. 279 (1939).

invoked to settle mere academic issues or to render advisory opinions.[42]

In *Samahang Magsasaka ng 53 Hektarya v. Mosquera*,[43] a farmer's association challenged the exemption from land distribution of a 53-hectare property. On the issue of whether the individual members of the *Samahan* were real parties in interest, we ruled that those farmer-members could not be deemed to possess the legal personality to question the property's exclusion from CARP, unless two requirements are fulfilled: the actual approval by the DAR and the consequent grant of CLOAs and award of the disputed land to those members. The generation of CLOAs under their names was of no consequence; at best, they had a mere expectancy, which was inadequate to vest them with the requisite interest in the subject matter of the litigation.

In this case, respondents trace their alleged ownership of the disputed property to OCT No. 0-13. Their claim that the property was illegally acquired by the IRC is unsubstantiated. The CA correctly noted that the issue of whether the acquisition of the property by IRC was lawful or not was still undetermined by the proper tribunal. Without question, however, the last known owner of the land before it was surrendered to the PCGG was the IRC. In fact, the derivative titles under question cancelled the latter's title under TCT No. 28631, instead of OCT NO. 0-13. All things considered, there is yet no sufficient basis to say that Alfredo Restrivera was the previous owner of the land prior to its award to petitioners.

Respondents cannot rely solely on their father's title to assert ownership over the subject land. A title is merely evidence of ownership of the particular property described therein. Ownership is not the same as a certificate of title.[44]

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[42] CONSTITUTION, Art. VIII. Sec. 1.

[43] 547 Phil. 560 (2007). See also *Sumalo Homeowners Association of Hermosa, Bataan v. Litton*, 532 Phil. 86 (2006).

[44] *Spouses Estacion v. DAR Secretary*, 729 Phil. 143 (2014).

On the other hand, we cannot just disregard the existence of TCT No. 28631, which is under the name of the IRC. A Torrens certificate is the best evidence of ownership of registered land and serves as evidence of an indefeasible title to the property in favor of the person in whose name it was issued.[45] In the absence of a definitive ruling that TCT No. 28631 was illegally procured, we can only take the titles presented in evidence at their face value. At this point, respondents cannot claim ownership of the land, or any interest therein that could have been the subject of succession. Concomitantly, they have no legal standing to challenge the propriety of its distribution under CARP by virtue of their interest as Alfredo's compulsory heirs.

Neither can respondents claim to have any present substantive interest in the disputed property as preferred beneficiaries under paragraph 2 of the MOA between DAR and the PCGG on sequestered lands. The cited paragraph states:

> [2.] The PCGG shall transfer to the Republic of the Philippines the titles to **those agricultural lands defined in paragraph 1 above that have been voluntarily turned over or surrendered to the PCGG and whose titles can now be transferred to the Republic without the need of further adjudication by the Sandiganbayan.** These lands are to be distributed by MAR to qualified applicants/ beneficiaries in accordance with R.A. 3844 and other pertinent law, rules and regulations; provided that the **preferential rights** over these lands of **laborers, farmers, wage earners and employees of Independent Realty Corporation and other registered owners of these lands at the time they were surrendered or turned over voluntarily to PCGG, who have been occupying and/or working on said lands** shall he recognized and respected by all parties concerned.[46] (Emphases supplied)

The right recognized under the above paragraph is conditioned on possession of title and actual occupation of property. In respondents' case, the most they have established is that the land used to be registered under Alfredo's name.

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[45] *Guizano v. Veneracion*, 694 Phil. 658 (2012).

[46] DARAB Records. Vol. II, p. 40.

On the other hand, Section 22 of R.A. 6657 reads:

SECTION 22. *Qualified Beneficiaries.* — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;

(b) regular farmworkers;

(c) seasonal farmworkers;

(d) other farmworkers;

(e) actual tillers or occupants of public lands;

(f) collectives or cooperatives of the above beneficiaries; and

(g) others directly working on the land.

Provided, however, **That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and *Provided, further,* That actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.**

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain. (Emphases supplied)

The law, therefore, does not automatically vest preferential rights upon the children of landowners.[47] To avail themselves of this right, claimants must show that: (1) their parents owned the subject land; and (2) it has been determined in the proper proceeding that the claimants are qualified beneficiaries of the agrarian reform program. Proof of these circumstances, however, are utterly wanting in this case.

In sum, respondents failed to show any real or present substantial interest in the subject land. Indeed, procedural rules can be relaxed in the interest of justice, but the present case does not merit such leniency. The requirement that a party must have real interest in the case is not simply procedural; it is essential to the administration of justice.[48] For these reasons, we set aside the CA's finding that respondents have the legal personality to assail the award of the subject land to petitioners.

DARAB has no jurisdiction over the petition filed by respondents.

It is settled that for DARAB to have jurisdiction over a case, there must be an agrarian dispute or tenancy relationship existing between the parties.[49] There must be harmony between this settled principle and the rules that apply to the petition for the cancellation of CLOAs filed by respondents. The applicable set of rules is the 2003 DARAB Rules of Procedure, under which Section 1,[50] Rule II, grants DARAB and its adjudicators jurisdiction over cases involving the correction, partition,

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[47] See *Samahan ng Magsasaka at Mangingisda ng Sitio Naswe, Inc. (SAMMANA) v. Tomas Tan*, G.R. No. 196028, 18 April 2016.

[48] *Samahang Magsasaka ng 53 Hektarya v. Mosquera*, *supra* note 42.

[49] *Cañas-Manuel v. Egano*, G.R. No. 198751, 19 August 2015, citing *Bumagat v. Arribay*, G.R. No. 194818, 9 June 2014, 725 SCRA 439; *Del Monte Philippines, Inc. Employees Agrarian Reform Beneficiaries Cooperative (DEARBC) v. Jesus Sangunay*, 656 Phil. 97 (2011); *Heirs of Rafael Magpily v. De Jesus*, 511 Phil. 14 (2005).

[50] SECTION 1. *Primary and Exclusive Original Jurisdiction*. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

x x x x x x x x x

cancellation, secondary and subsequent issuances of CLOAs and Emancipation Patents (EPs) which are registered with the Land Registration Authority.

It is not sufficient that the controversy involves the cancellation of a CLOA already registered with the Land Registration Authority as in this case. For purposes of determining whether DARAB has jurisdiction, the central consideration is the existence of an agrarian dispute.[51]

Section 3 (d) of R.A. 6657 defines agrarian dispute as follows:

(d) Agrarian Dispute refers to any controversy relating to **tenurial arrangements**, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of **farm operator and beneficiary, landowner and tenant**, or **lessor and lessee**. (Emphases supplied)

In this case, respondents have not alleged any tenurial relationship with petitioners. Rather, their petition is centered on their supposed preferential right as farmer-beneficiaries and the suitability of the land for CARP coverage. These are matters falling under the primary and exclusive jurisdiction of DAR, which is supposed to determine and adjudicate all matters involving the implementation of agrarian reform.[52]

1.6. Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x

[51] *Sutton v. Lim*, 700 Phil. 67 (2012).

[52] REPUBLIC ACT NO. 6657, Sections 50 and 24 (as amended by Republic Act No. 9700).

Section 2, Rule I of DAR Administrative Order No. 03, series of 2003,[53] defines, by enumeration, ALI cases over which the

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[53] SECTION 2. *ALI cases*. These Rules shall govern all cases arising from or involving:

2.1. Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of Certificate of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), including protests or oppositions thereto and petitions for lifting of such coverage;

2.2. Classification, identification, inclusion, exclusion, qualification, or disqualification of potential/actual farmer-beneficiaries;

2.3. Subdivision surveys of land under Comprehensive Agrarian Reform (CARP);

2.4. Recall, or cancellation of provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall, or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;

2.5. Exercise of the right of retention by landowner;

2.6. Application for exemption from coverage under Section 10 of RA 6657;

2.7. Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);

2.8. Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising;

2.9. Cases of exemption/exclusion of fishpond and prawn farms from the coverage of CARP pursuant to RA 7881;

2.10. Issuance of Certificate of Exemption for land subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes;

2.11. Application for conversion of agricultural land to residential, commercial, industrial, or other non agricultural uses and purposes including protests or oppositions thereto;

2.12. Determination of the rights of agrarian reform beneficiaries to homelots;

2.13. Disposition of excess area of the tenant's/farmer-beneficiary's landholdings;

2.14. Increase in area of tillage of a tenant/farmer-beneficiary;

2.15. Conflict of claims in landed estates administered by DAR and its predecessors; and

2.16. Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

regional director has primary jurisdiction. These cases include, among others, those arising from or involving the classification and identification of landholdings for CARP coverage (including protests of and petitions for lifting that coverage); and the classification, identification, inclusion, exclusion, qualification, or disqualification of potential/actual farmer-beneficiaries.

The proceedings in ALI cases are commenced by the filing of an initiatory pleading or petition either before the DAR Regional Office (DARRO) or the DAR Municipal Office (DARMO), depending on whether or not there has been a notice of CARP coverage.[54] After notice to all parties concerned,

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[54] DAR Administrative Order No. 03, Series of 2003, Rule III, Section 13 provides:

> SECTION 13. *Commencement of an action.*
>
> 13.1. *Without or prior to issuance of notice of CARP coverage* — When the land in question has never been the subject of a notice of coverage, an ALI case involving said land shall commence upon filing of the initiatory pleading or application before the Regional Director or Provincial Agrarian Retorm Officer (PARO).
>
> 13.1.1. *Commencement at the DAR Regional Office (DARRO)* — The DARRO shall docket the case and transmit the case folder to the PARO within five (5) working days from filing, with notice to all parties. Upon receipt, the PARO shall, within five (5) working days and with notice to all parties, transmit the case folder to the MARO who shall conduct the necessary mediation/conciliation proceedings.
>
> 13.1.2. *Commencement at the DAR Provincial Office (DARPO)* — The PARO shall docket the case and submit a case brief to the Regional Director within five (5) working days, with notice to all parties. Within the same five (5) working-day period and with notice to all parties, the PARO shall transmit the case folder to the MARO who shall conduct the necessary mediation/conciliation proceedings.
>
> 13.2. *After issuance of notice of coverage* — Commencement shall be at the DAR Municipal Office (DARMO). When the applicant/petitioner commences the case at any other DAR office, the receiving office shall transmit the case folder to the DARMO or proper DAR office in accordance with the pertinent order and/or circular governing the subject matter. Only the real-party-in-interest may file a protest/opposition or petition to lift CARP coverage and may only do so

investigation and ocular inspection shall be conducted. The investigating officer may require the submission of position papers prior to the issuance of a decision.[55]

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within sixty (60) calendar days from receipt of the notice of coverage; a protesting party who receives the notice of coverage by newspaper publication shall file his protest / opposition / petition within sixty (60) calendar days from publication date; failure to file the same within the period shall merit outright dismissal of the case.

[55] DAR Administrative Order No. 03, Series of 2003, Rule III, Section 18 provides:

SECTION 18. *Procedure.*

18.1.Commencement. Except for applications for land use conversion and exemption/exclusion from CARP coverage which shall follow separate special rules, an ALI case shall commence with the filing of the proper application or initiatory pleading at the DARMO / DARPO / DARRO. In all instances, the MARO shall notify all tenants, leaseholders, farmworkers, and occupants of the subject land of the initiation of the case. Proof of notice to all the persons above-mentioned shall form part of the records of the case.

18.2. After notifying all parties, the MARO and Barangay Agrarian Reform Committee (BARC) shall exert exhaustive efforts at mediation and conciliation to persuade the parties to arrive at an amicable settlement or compromise.

18.3.The issue of whether or not the land is subject to coverage under PD 27 or RA 6657 shall not be the subject of compromise.

18.4. If mediation/conciliation fails, the MARO shall, within five (5) working days from termination thereof, transmit the case folder to the PARO with a written report explaining the reasons for the mediation/ conciliation's failure, furnishing all the parties with a copy of the written report.

18.5. Investigation. The PARO, or any Investigating Officer or Committee which he or the Regional Director may designate, shall conduct investigations and perform whatever is necessary to achieve a just, expeditious, and inexpensive disposition of the case.

18.6. Record of proceedings. The proceedings shall be recorded by a stenographer. In the absence of an available stenographer. the Investigating Officer shall make a written summary of the proceedings, including the substance of the evidence presented which shall be attested to by the parties or their counsel and shall form part of the records of the case. Should any party or counsel refuse to sign, the reason for such refusal shall be noted therein.

18.7. Ocular Inspection.

The question of whether the TCTs issued to petitioners should be cancelled hinges on whether the landholding is exempt from CARP coverage, which remains undetermined up this point.[56] As DARAB correctly pointed out in its Decision dated 28 April 2006, the investigation conducted by the regional director does not measure up to the proceedings and outcome described above. Hence, RARAD should not have acted on the petition. Under Section 5,[57] Rule II of the procedural rules on ALI cases, the

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18.7.1. After giving all parties reasonable notice of the ocular inspection schedule, ocular inspection shall proceed with or without the presence of any party who refuses to cooperate.

18.7.2. The ocular inspection team shall prepare an initial report which all attending parties and BARC representatives shall sign. If anyone refuses to sign, the ocular inspection team shall indicate the reason for such refusal in the initial report.

18.8. Position Papers. The Investigating Officer may require the parties to simultaneously submit their respective position papers and replies thereto. Within thirty (30) days from due date of the last pleading (unless special rules provide for a different period), the Investigating Officer shall sign and submit his recommendation to the appropriate authority.

18.9. Draft Decision. At any time before the ALI case is decided, any party may submit a hard copy of a draft decision together with a diskette containing such draft written in any popular word-processing program, furnishing a copy thereof to all parties.

18.10. Decision. Pursuant to Section 51 of RA 6657, which provides that "any case or controversy before it shall be decided within thirty (30) days after it is submitted for resolution", the appropriate authority shall promulgate its decision within thirty (30) days from receipt of the Investigating Officer's recommendation.

[56] *Valcurza v. Tamparong, Jr.*, G.R. No. 189874, 4 September 2013, 705 SCRA 128.

[57] SECTION 5. *Referral to Office of the Secretary (OSEC).* — In the event that a case filed before the Adjudicator shall necessitate the determination of a prejudicial issue involving an agrarian law implementation case, the Adjudicator shall suspend the case and, for purposes of expediency, refer the same to the Office of the Secretary or his authorized representative in the locality.

Prejudicial issue is defined as one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the jurisdiction over which pertains to the Office of the Secretary.

petition should have been referred to the office of the DAR Secretary for the determination of pending ALI issues; specifically, whether the subject land was exempt from CARP coverage, and whether respondents were qualified and preferred farmer-beneficiaries.

Relevant to this case, too, is DAR Administrative Order No. 09-97[58] as amended. This issuance sets the guidelines for the recovery of lands turned over to DAR pursuant to E.O. 407,[59] but those lands were later found to be outside the coverage of CARP. Under these guidelines, the petition for reconveyance should be filed with the provincial, regional or national offices of DAR.[60] Moreover, the Order of Reconveyance should be issued by the regional director,[61] which can only be appealed to the DAR Secretary.[62]

The prejudicial issue must be determinative of the case before the Board or the Adjudicator but the jurisdiction to try and resolve the question is lodged with the Office of the Secretary.

[58] Revised Rules And Regulations On A.O. No. 3, Series Of 1996. Re: Reconveyance Of Properties Turned-Over To DAR Pursuant To E.O. No. 407, As Amended, And Lands Voluntarily Offered Under Section 19 of R.A. No. 6657 But Found To Be Outside The Coverage of CARP.

[59] ACCELERATING THE ACQUISITION AND DISTRIBUTION OF AGRICULTURAL LANDS, PASTURE LANDS, FISHPONDS, AGRO-FORESTRY LANDS AND OTHER LANDS OF THE PUBLIC DOMAIN SUITABLE FOR AGRICULTURE.

[60] Item IV, No. 1 of the Guidelines states —

1. Any party in interest shall file a petition for reconveyance of a particular landholding, or portions thereof, with either the provincial, regional or national offices of the DAR citing their specific reasons for their request for reconveyance.

[61] Item IV, No. 5 of the Guidelines states —

5. Upon the issuance of the Order or Reconveyance by the RD, the DARPO shall undertake the following:

a. Conduct a segregation survey in case only portions of the land area covered by a title shall be reconveyed.

b. In case EPs and CLOAs have been generated but are not yet registered, cancel these through administrative proceedings. If EPs or CLOAs are already registered, these shall be cancelled through quasi-judicial/judicial proceedings.

Based on the above, we find that the Decision of RARAD was rendered without authority and jurisdiction; hence, it is void.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **GRANTED**. The Court of Appeals Decision dated 20 June 2008 and Resolution dated 11 November 2008 in CA-G.R. SP No. 97787 are **REVERSED** and **SET ASIDE.**

The DARAB Decision dated 28 April 2006 is hereby **AFFIRMED** and **REINSTATED**. Moreover, the Office of the Secretary of the Department of Agrarian Reform is directed to expedite the resolution of this case.

SO ORDERED.

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

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c. Draft the Deed of Reconveyance, the amendment to the Deed of Transfer or the Letter of Rescission, as the case may be, and submit the same, together with all the supporting documents, to the official authorized to sign the reconveyance instrument.

The DAR office which previously signed the Deed of Transfer for the subject land and which is up to the present vested with the said authority, shall be the one authorized to sign the Deed of Reconveyance, amendment to the Deed of Transfer, or Letter of Rescission. In the case of lands under Voluntary Offer to Sell (VOS), the PARO will sign the reconveyance instrument.

[62] Item V of the Guidelines states —

V. FILING/RESOLUTION OF MOTIONS AND APPEALS

Any party in interest who disagrees with a decision on reconveyance may file motions for reconsideration with the RD and an appeal to the Secretary in accordance with Section III of Administrative Order No. 9, Series of 1994 regarding the authority of all RDs to hear and decide all protests involving coverage of land under R.A. No. 6657 or P.D. No. 27 and defining the appeal process from the RDs to the Secretary.

[*] Designated additional member in lieu of *J.* Bersamin, per raffle dated 14 August 2013.

FIRST DIVISION

[G.R. No. 197980. December 1, 2016]

DEUTSCHE KNOWLEDGE SERVICES PTE LTD., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX CREDIT/REFUND OF UNUTILIZED INPUT VALUE ADDED TAX (VAT); APPLICATION OF 120-DAY PERIOD BEFORE FILING A JUDICIAL CLAIM, EXPLAINED.— [I]t is apparent that the assailed July 22, 2011 ruling of the CTA *En Banc*, in dismissing petitioner's appeal before it, relied on Section 112(C) of the 1997 National Internal Revenue Code (NIRC) as well as the doctrine laid down by the First Division of this Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi* case) which states that the 120-day period is crucial in filing an appeal with the CTA. The CTA *En Banc* was correct in so ruling since, at the time the assailed July 22, 2011 ruling was promulgated, the *Aichi* case was still the controlling jurisprudence on the matter. However, subsequent to the *Aichi* ruling and during the pendency of the case at bar, the Supreme Court *En Banc* resolved the consolidated cases involved in *Commissioner of Internal Revenue v. San Roque Power Corporation* (*San Roque* case) and stated that a judicial claim for refund of input VAT which was filed with the CTA before the lapse of the 120-day period under Section 112 of the NIRC is considered to have been timely made, if such filing occurred after the issuance of the Bureau of Internal Revenue (BIR) Ruling No. DA-489-03 dated December 10, 2003 but before the adoption of the *Aichi* doctrine which was promulgated on October 6, 2010. In *San Roque*, we recognized that prior to BIR Ruling No. DA-489-03, which expressly stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," the Commissioner of Internal Revenue (CIR) was correct in considering the 120-day period as mandatory and jurisdictional before a judicial claim can be filed. Nevertheless, we cited two exceptions to this rule: (1) if the CIR, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial

claim with the CTA — that specific ruling is applicable only to such particular taxpayer; and (2) if the CIR, through a general interpretative rule issued under Section 4 of the NIRC, misleads all taxpayers into filing prematurely judicial claims with the CTA — in these cases, the CIR cannot later on be allowed to question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the NIRC. Pursuant to the CIR's power to interpret tax laws under Section 4 of the NIRC, the CIR issued BIR Ruling No. DA-489-03 which we considered in *San Roque* as a general interpretative rule that may be relied upon by taxpayers from the time the rule was issued up to its reversal by the CIR or by this Court, thus, providing a valid claim for equitable estoppel under Section 246 of the NIRC[.]

2. ID.; ID.; ID.; WHEN THE JUDICIAL CLAIM WAS FILED LESS THAN A MONTH FROM THE FILING OF THE ADMINISTRATIVE CLAIM AND SAID DATE OF FILING FALLS WITHIN THE PERIOD FOLLOWING THE ISSUANCE OF BIR RULING NO. DA-489-03 ON DECEMBER 10, 2003 BUT BEFORE THE PROMULGATION OF THE *AICHI CASE* ON OCTOBER 6, 2010, PETITIONER'S JUDICIAL CLAIM IS CONSIDERED TIMELY FILED.— In the present case, the records indicate that petitioner filed its administrative claim for tax credit/refund of its allegedly excess and unutilized input VAT for the 1st quarter of the calendar year 2007 in the amount of ₱12,549,446.30 with respondent on March 31, 2009. Subsequently, petitioner filed its judicial claim on the same matter through a petition for review with the CTA on April 17, 2009. It is undisputed that the aforementioned date of filing falls within the period following the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before the promulgation of the *Aichi* case on October 6, 2010. In accordance with the doctrine laid down in *San Roque*, we rule that petitioner's judicial claim had been timely filed and should be given due course and consideration by the CTA.

APPEARANCES OF COUNSEL

Salvador and Associates for petitioner.
BIR Legal Division for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] dated July 22, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. Case No. 596, entitled *"Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue."* The aforementioned judgment affirmed with modification the Resolution dated October 28, 2009 as well as the Resolution dated February 8, 2010 of the CTA (Former Second Division) in CTA Case No. 7921. Both resolutions disposed of the petition for review and the subsequent motion for reconsideration filed by petitioner Deutsche Knowledge Services Pte. Ltd. before the CTA's former Second Division with regard to the alleged inaction of respondent Commissioner of Internal Revenue on the former's application for tax credit/refund of alleged excess and unutilized input Value-Added Tax (VAT).

The factual and procedural antecedents of this case were narrated in the July 22, 2011 Decision of the CTA *En Banc* in this wise:

> Petitioner avers that on March 31, 2009, it filed an application for Tax Credit/Refund of its allegedly excess and unutilized input VAT for the 1st quarter of the calendar year 2007 in the amount of ₱12,549,446.30 with respondent Commissioner of Internal Revenue (empowered to act upon and approve claims for refund or tax credit as provided by law) through its BIR Revenue District No. 47.
>
> Citing inaction on the part of respondent, petitioner on April 17, 2009 filed a Petition for Review or [s]eventeen (17) days after petitioner filed an application for tax credit/refund with respondent based on Section 112 and 229 of the National Internal Revenue Code of 1997, as amended.

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[1] *Rollo*, pp. 105 132; penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista (with Separate Opinion), Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez concurring. Associate Justice Esperanza R. Fabon-Victorino gave a dissenting opinion to which Presiding Justice Ernesto D. Acosta concurred. Associate Justice Amelia R. Cotangco-Manalastas was on leave and, thus, took no part.

However, on June 8, 2009, instead of an Answer respondent filed a Motion to Dismiss on ground of prescription. Citing the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (Mirant Case), respondent alleged that the Petition for Review was filed out of time on the ground of having been filed beyond the two-year prescriptive period.

A day after or on June 9, 2009, respondent filed an Answer again citing the same grounds in the Motion to Dismiss in her Special and Affirmative defenses.

After hearing and the filing of Comment/Opposition on the Motion to Dismiss, the former Second Division of this Court resolved to grant said motion on October 28, 2009. Petitioner filed a motion for reconsideration thereon on November 16, 2009.

However, in an Order dated January 11, 2010, the case was ordered to be transferred to the Third Division of this Court pursuant to CTA Administrative Circular No. 01-2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals."

Notwithstanding, on February 8, 2010, the former Second Division of this Court promulgated a Resolution which denied petitioner's Motion for Reconsideration.[2]

Petitioner then filed a petition for review with the CTA *En Banc*. However, the said tribunal merely affirmed with modification the assailed resolutions and dismissed petitioner's suit for having been prematurely filed prior to the expiration of the 120-day period granted to respondent to resolve the tax claim. The dispositive portion of the assailed July 22, 2011 Decision of the CTA *En Banc* reads:

WHEREFORE, premises considered, the Resolution of the former Second Division of this Court in CTA Case No. 7921, dated October 28, 2009 and its Resolution, dated February 8, 2010, are hereby **AFFIRMED with MODIFICATION.** Accordingly, CTA Case No. 7921 is hereby **DISMISSED** for having been prematurely filed pursuant to the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* No pronouncement as to costs.[3]

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

[3] *Id.* at 118-119.

Hence, petitioner resorted to the present appeal, by way of a petition for review under Rule 45, wherein it cited the following errors allegedly committed by the CTA *En Banc:*

ASSIGNMENT OF ERRORS

THE CTA *EN BANC* DECISION IS NOT IN ACCORD WITH LAW AND WITH THE RELEVANT DECISIONS OF THE SUPREME COURT, AND CONSTITUTE A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF THIS HONORABLE COURT'S SUPERVISION, AS FOLLOWS:

A.

THE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN AFFIRMING THAT THE CTA'S FORMER SECOND DIVISION COULD STILL RESOLVE PETITIONER'S MOTION FOR RECONSIDERATION AFTER IT HAD LOST JURISDICTION OVER THE CASE UPON ITS TRANSFER TO THE THIRD DIVISION.

B.

THE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT THE CTA'S FORMER SECOND DIVISION SHOULD HAVE ORDERED THE PRE-TRIAL CONFERENCE TO PROCEED:

B.1 THE CTA'S FORMER SECOND DIVISION FAILED TO ADDRESS VITAL PROCEDUREAL ISSUES WHICH, IF CONSIDERED, WOULD HAVE BEEN SUFFICIENT TO RENDER RESPONDENT'S MOTION TO DISMISS MOOT AND ACADEMIC.

B.2 RESPONDENT DEFIED THE CTA'S FORMER SECOND DIVISION'S ORDER. THE SECOND DIVISION INTENDED TO HEAR THE CASE IN ITS ENTIRETY WHEN IT ORDERED RESPONDENT TO FILE AN ANSWER INSTEAD OF A MOTION TO DISMISS, IN LINE WITH THE INTEGRATED BAR

OF THE PHILIPPINES-OFFICE OF THE COURT ADMINISTRATOR MEMORANDUM ON POLICY GUIDELINES DATED MARCH 12, 2002 ("IBP-COA MEMORANDUM").

B.3 RESPONDENT LOST HER RIGHT TO ASSAIL THE FORMER SECOND DIVISION'S JURISDICTION WHEN SHE SOUGHT RELIEF FROM THE COURT BY FILING A MOTION FOR EXTENSION OF TIME TO FILE ANSWER.

B.4 THE ISSUES OF THE CASE HAVE BEEN JOINED UPON RESPONDENT'S FILING OF THE ANSWER, AND THUS, PRE-TRIAL AND TRIAL SHOULD HAVE PROCEEDED AS A MATTER OF PROCEDURE; AND

C.

THE CTA *EN BANC* ERRED IN NOT FINDING THAT PETITIONER'S JUDICIAL CLAIM FOR REFUND WAS TIMELY FILED IN ACCORDANCE WITH SECTION 112(C), TAX CODE IN RELATION TO THE TWO-YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER SECTION 229, TAX CODE. THE LETTER AND THE INTENT [OF THE] LAW AS WELL AS EXISTING JURISPRUDENCE ALL POINT TO THE PRIMORDIAL SIGNIFICANCE OF THE TWO-YEAR PRESCRIPTIVE PERIOD:

C.1 THE TWO-YEAR PRESCRIPTIVE PERIOD FOR THE FILING OF CLAIMS FOR REFUND SHOULD BE RECKONED FROM THE DATE OF FILING OF THE QUARTERLY VAT RETURN AS SETTLED IN ATLAS.

C.2 THE CTA *EN BANC* ERRED IN FINDING THAT AICHI PREVAILS OVER AND/OR OVERTURNED THE DOCTRINE IN ATLAS, WHICH UPHELD THE PRIMACY OF THE TWO-YEAR PERIOD UNDER SECTION 229, 1997 TAX CODE. THE LAW AND JURISPRUDENCE HAVE LONG ESTABLISHED THE DOCTRINE THAT THE TAXPAYER IS DUTY-BOUND TO OBSERVE THE TWO-YEAR PERIOD UNDER SECTION 229, 1997 TAX CODE WHEN

FILING ITS CLAIM FOR REFUND OF EXCESS AND UNUTILIZED VAT.

C.3 THE CTA *EN BANC* ERRED IN NOT HOLDING THAT RESPONDENT IS PRECLUDED FROM QUESTIONING THE JURISDICTION OF THE CTA-DIVISION BASED ON HER PRONOUNCEMENTS RECOGNIZING THAT THE 120-DAY PERIOD IS NOT JURISDICTIONAL VIS-A-VIS HER FAILURE TO RAISE THE ISSUE OF PREMATURITY IN HER ANSWER AND IN HER MOTION TO DISMISS.

C.4 THE CTA *EN BANC* ERRED IN FINDING THAT AICHI CAN BE APPLIED INVARIABLY TO TAXPAYERS WHO, IN GOOD FAITH, FILED AND LITIGATED THEIR CLAIMS FOR REFUND OF INPUT VAT RELYING UPON ESTABLISHED DECLARATIONS AND PRONOUNCEMENTS OF THIS HONORABLE COURT AND THE CTA. ASSUMING AICHI IS MADE TO APPLY, THE PROSPECTIVE APPLICATION THEREOF IS LEGALLY AND EQUITABLY IMPERATIVE.[4]

In deciding the substantive aspect of petitioner's suit before it, the CTA *En Banc* ratiocinated that:

[T]he substance of petitioner's argument is the alleged applicability of the Decision of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas* Case) promulgated on June 8, 2007 and the non-applicability of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (Mirant Case), promulgated on September 12, 2008.

In applying the *Mirant* Case in relation to Section 112, the former Second Division held that the administrative claim was filed on time while the Petition for Review before this Court's Division was filed out of time or beyond the two-year prescriptive period, the close of the taxable first quarter of the calendar year 2007 or March 31, 2007 as the reckoning period, it appearing that the application for tax credit/

[4] *Id.* at 23-25.

refund was filed with the respondent on March 31, 2009 and the petition for review was filed on April 17, 2009.

However, in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, reiterating the "*Mirant* Case," the Supreme Court categorically ruled that unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made and that the 120-day period is crucial in filing an appeal with this Court. The pertinent portion of which reads as follows:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes." x x x.
>
> x x x x x x x x x
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unuti1ized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
>
> x x x x x x x x x
>
> Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections** (A) and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

In the instant case, the administrative claim or application for tax credit/refund of its allegedly excess and unutilized input VAT for the first quarter of taxable year 2007 was filed on March 31, 2009 or within the two-year prescriptive period. Respondent had 120 days or until July 29, 2009 to determine the validity of the claim. However, petitioner filed an appeal by way of a petition for review on April 17, 2009 or 17 days after the filing of the administrative claim. Apparently, petitioner did not wait for the decision of the CIR or the lapse of the 120-day period and this is in clear contravention of Section 112(D) [now Section 112(C)] of the 1997 NIRC, as amended, and of the doctrine laid down in the Aichi case.

Accordingly, we find the filing of an appeal by way of a petition for review before this Court's former Second Division is strikingly similar with that of the facts in the *Aichi* Case. In both cases, the taxpayer (petitioner in the instant case) did not wait for the decision of the CIR or the lapse of the 120-day period before the filing of an appeal by way of a petition for review before this Court.

Pertinently, our disquisitions in the case of *Marubeni Philippines Corporation v. Commissioner of Internal Revenue* of the applicability of Section 112 of the 1997 NIRC and *Aichi* Case in the instant case are hereby adopted, as follows:

> "A careful analysis of the above-mentioned cases *Atlas, Mirant* and *Aichi* clearly shows that the *Atlas* Case was an interpretation by the Supreme Court of the 1977 NIRC, prior to its amendment by R.A. 7716; while the *Mirant* and *Aichi* cases was an interpretation of the 1997 NIRC or the application and interpretation of the amendatory provisions of the Tax Reform Act of 1997.
>
> Significantly, it is emphasized that the premise of the Supreme Court's ruling in the *Atlas* Case was anchored on the need to harmonize the provisions on Refund or Tax Credits of Input Tax under Section 106 (now Section 112) with the two-year prescriptive period for instituting a suit or proceeding for the Recovery of Tax Erroneously or Illegaly paid under Section 230 (now Section 229) of the Tax Code of 1977, as amended, citing the cases of *ACCRA Investments Corporation v. Court*

of Appeals and Commissioner of Internal Revenue v. TMX Sales, Inc. x x x.

It was the advent of R.A. No. 7716 and R.A. 8424 when the legislature specifically provided for a judicial recourse with the Court of Tax Appeals in claiming unutilized input VAT refund/credit under Section 106(D) of the NIRC of 1977 (now Section 112 of the NIRC of 1997) within which the period of thirty (30) days reckoned from the receipt of the decision of the CIR denying the claim or after the expiration of a given period (now 120 days).

Accordingly, petitioner cannot blindly invoke the doctrine enunciated in *Atlas* case in the instant case. As discussed above, the need to harmonize the provisions of Section 106 and Section 230 of the Tax Code of 1977 is no longer necessary nor applicable due to the clear legislative intent embodied in the provisions of R.A. No. 7716 and R.A. 8424, which delineated specific amendatory provision for the prescriptive period in claiming [administrative] and judicial claims for unutilized input VAT refund/credit."

In fine, we find that the *Aichi* Case is the prevailing doctrine in so far as the mandatory observance of the 120-30 day period under Section 112 of the NIRC of 1997 before filing an appeal with the Court of Tax Appeals and that the *Atlas* Case and Section 229 of the 1997 NIRC are not applicable in the instant case.[5]

From the foregoing, it is apparent that the assailed July 22, 2011 ruling of the CTA *En Banc*, in dismissing petitioner's appeal before it, relied on Section 112(C)[6] of the 1997 National

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[5] *Id.* at 113-118.

[6] SEC. 112. **Refunds or Tax Credits of Input Tax.**–

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application

Internal Revenue Code (NIRC) as well as the doctrine laid down by the First Division of this Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[7] *(Aichi* case) which states that the 120-day period is crucial in filing an appeal with the CTA. The CTA *En Banc* was correct in so ruling since, at the time the assailed July 22, 2011 ruling was promulgated, the *Aichi* case was still the controlling jurisprudence on the matter.

However, subsequent to the *Aichi* ruling and during the pendency of the case at bar, the Supreme Court *En Banc* resolved the consolidated cases involved in *Commissioner of Internal Revenue v. San Roque Power Corporation*[8] (*San Roque* case) and stated that a judicial claim for refund of input VAT which was filed with the CTA before the lapse of the 120-day period under Section 112 of the NIRC is considered to have been timely made, if such filing occurred after the issuance of the Bureau of Internal Revenue (BIR) Ruling No. DA-489-03 dated December 10, 2003 but before the adoption of the *Aichi*doctrine which was promulgated on October 6, 2010.

In *San Roque,* we recognized that prior to BIR Ruling No. DA-489- 03, which expressly stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," the Commissioner of Internal Revenue (CIR) was correct in considering the 120-day period as mandatory and jurisdictional before a judicial claim can be filed. Nevertheless, we cited two exceptions to this rule: (1) if the CIR, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA — that specific ruling is applicable only to such particular taxpayer; and (2) if the CIR, through a general

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within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[7] 646 Phil. 710 (2010).

[8] 703 Phil. 311 (2013).

interpretative rule issued under Section 4 of the NIRC, misleads all taxpayers into filing prematurely judicial claims with the CTA — in these cases, the CIR cannot later on be allowed to question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the NIRC.[9]

Pursuant to the CIR's power to interpret tax laws under Section 4[10] of the NIRC, the CIR issued BIR Ruling No. DA-489-03 which we considered in *San Roque* as a general interpretative rule that may be relied upon by taxpayers from the time the rule was issued up to its reversal by the CIR or by this Court, thus, providing a valid claim for equitable estoppel under Section 246 of the NIRC, to wit:

> SEC. 246. **Non-Retroactivity of Rulings.** — Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers,** except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphases supplied.)

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[9] *Id.* at 372-373.

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

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

We likewise held that Section 246 of the NIRC is not limited to a reversal only by the CIR because the same expressly states "[a]ny revocation, modification or reversal" without specifying who made the revocation, modification or reversal; hence, a reversal by this Court is covered under the said tax provision.[11]

Thus, we elaborated in *San Roque* that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal and that taxpayers should not be prejudiced by an erroneous interpretation by the CIR, particularly on a difficult question of law. We quote the relevant portion of *San Roque* here:

> Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the*Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Atlas* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. x x x.[12]

In the present case, the records indicate that petitioner filed its administrative claim for tax credit/refund of its allegedly excess and unutilized input VAT for the 1st quarter of the calendar year 2007 in the amount of ₱12,549,446.30 with respondent on March 31, 2009. Subsequently, petitioner filed its judicial claim on the same matter through a petition for review with the CTA on April 17, 2009. It is undisputed that the aforementioned date of filing falls within the period following the issuance of BIR Ruling No. DA-489-03 on December 10,

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[11] *Commissioner of Internal Revenue vs. San Roque Power Corporation, supra* note 8 at 374.

[12] *Id.* at 374-375.

2003 but before the promulgation of the *Aichi* case on October 6, 2010. In accordance with the doctrine laid down in *San Roque,* we rule that petitioner's judicial claim had been timely filed and should be given due course and consideration by the CTA.

In light of the foregoing, we find it unnecessary to pass upon the other issues raised in the petition.

WHEREFORE, the petition is **GRANTED.** The Decision dated July 22, 2011 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 596 is **REVERSED** and **SET ASIDE.** The Court of Tax Appeals is hereby **ORDERED** to proceed with the hearing and resolution of CTA Case No. 7921. **SO ORDERED.**

Sereno, C.J. (*Chairperson*), *Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 201917. December 1, 2016]

ZENAIDA P. MAAMO and JULIET O. SILOR, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION OF PUBLIC/OFFICIAL DOCUMENT; ELEMENTS.— [T]o be found guilty of Malversation, the Prosecution has the burden to prove the following essential elements: (a) The offender is a public officer; (b) The offender has custody or control of funds or property by reason of the duties of his office; (c) The funds or property involved are public funds or property for

which the offender is accountable; and (d) The offender has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property. In sum, what is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so.

2. ID.; ID.; ID.; THE PROSECUTION FAILED TO PRESENT EVIDENCE CLEARLY EVINCING MISAPPROPRIATION OF PUBLIC FUNDS IN CASE AT BAR.— [W]hile the records support the presence of the first three (3) elements, we find that the Prosecution was unable to satisfactorily prove the fourth element. x x x In criminal cases, it is the duty of the Prosecution to discharge the heavy burden of overcoming the presumption of innocence of the accused and that the weakness of the defense put up by the accused is inconsequential in the proceedings. x x x [I]t appears that the Prosecution relied **only** on the following facts to hold the Petitioners liable: (i) that there were blanks next to the signatures in the Time Books and Payrolls, and (ii) that there was no road directly connecting Barangay San Isidro and Barangay Gud-an. To the Court, the evidence is severely insufficient and inconclusive to establish the guilt of the Petitioners beyond reasonable doubt for the crime charged. Outside of the foregoing facts, the SB resorted to only surmises to arrive at its conclusions. In the first place, as correctly argued by the Petitioners, nowhere was the fact of demand shown in any of the documentary exhibits or testimonies of the witnesses of the Prosecution. Such failure is underscored by the fact that the Prosecution itself admitted in its Comment dated January 17, 2013 that no demand for the alleged malversed funds had been made[.] x x x Thus, considering that the Prosecution never established such material fact, the burden of evidence was never shifted to the Petitioners to prove their innocence, there being no *prima facie* presumption of misappropriation under the facts obtaining. Thus, following *Estino*, the Prosecution had the additional burden to prove Malversation by direct evidence, which, as stated at the outset, it had failed to do.

3. REMEDIAL LAW; EVIDENCE; CONSPIRACY, NOT ESTABLISHED; NO CLEAR NEXUS EXISTS TO PROVE A UNITY OF ACTION AND PURPOSE BETWEEN

PETITIONERS TO COMMIT MALVERSATION.— [W]e hold that the Prosecution miserably failed to prove the existence of conspiracy between the Petitioners. In countless decided cases, this Court has consistently held that conspiracy must be established not by conjectures, but by positive and conclusive evidence and that the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, that is, proof beyond reasonable doubt. In *Sabiniano v. Court of Appeals*, it was ruled that a mere signature appearing on a voucher or check is not enough to sustain a finding of conspiracy among public officials charged with defraudation of the government[.] x x x It can readily be seen that the disbursement of funds at the municipal level involves a successive process of review and clearing that requires the participation of different public officers, each with different roles and duties. Hence, in order to establish conspiracy between the Petitioners, the Prosecution must present evidence **other than the mere fact that the Petitioners are at the opposite ends of the chain in the disbursement process**. To sustain a conviction based on such fact alone would necessarily require the aid of conjecture and assumptions in order to establish conspiracy. From the evidence adduced by the Prosecution, no clear nexus exists to prove a unity of action and purpose between the Petitioners to falsify the Time Books and Payrolls in order to commit Malversation against the government.

APPEARANCES OF COUNSEL

Alvin A. Quintanilla for petitioners.

D E C I S I O N

CAGUIOA, *J.*:

The constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt, that is, that degree of proof that produces conviction in an unprejudiced mind. Hence, where the court entertains a reasonable doubt as to the guilt of the accused, it is not only

the right of the accused to be freed; it is the court's constitutional duty to acquit them.[1]

The Case

Before the Court is an Appeal by *Certiorari*[2] under Rule 45 of the Rules of Court (Petition) of the Decision dated June 16, 2011[3] (questioned Decision) rendered by the Sandiganbayan-Second Division (SB). The questioned Decision stems from nine (9) criminal cases initiated by the Office of the Ombudsman (OMB) against petitioner Zenaida P. Maamo (Maamo), former Mayor of the Municipality of Lilo-an, Southern Leyte and petitioner Juliet O. Silor (Silor), then Assistant Municipal Treasurer (collectively, Petitioners) for "Malversation thru Falsification of Public/Official Document" under Article 217, in relation to Article 171 of the Revised Penal Code.[4]

The common issue in the consolidated cases is the alleged falsification of public documents consisting of Time Books and Payrolls representing different time periods. Allegedly, fictitious laborers were made to appear as laborers in the said documents, which enabled the Petitioners to collect sums of money and misappropriate them for their personal use.

The Facts

Petitioners herein were accused of Malversation through Falsification of Public Documents in a Letter-Complaint dated April 10, 2001[5] (Complaint) filed with the OMB detailing a series of acts allegedly committed by them. Petitioner Maamo filed a Counter-Affidavit dated July 9, 2001,[6] denying the

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[1] *People v. Baulite*, 419 Phil. 191, 198-199 (2001).

[2] *Rollo*, pp. 74-105.

[3] *Id.* at 9-62. Penned by Presiding Justice Edilberto G. Sandoval, with Associate Justices Teresita V. Diaz-Baldos and Samuel R. Martires, concurring.

[4] *Id.* at 204-208; 230-246.

[5] *Id.* at 195-197.

[6] *Id.* at 198-203.

allegations contained in the Complaint for being "false, imaginary, capricious, baseless, and politically motivated."[7] Petitioner Maamo claimed that based on the evidence presented, her alleged involvement in the disputed transactions was not sufficiently proven.[8] Petitioner Silor likewise denied the accusations in the Complaint on the ground that the questioned disbursements were done regularly and that the payees actually received their wages for services rendered.[9]

Proceedings before the OMB

In its Resolution dated September 26, 2001,[10] the OMB found probable cause against the Petitioners for Malversation through Falsification of Public Documents and recommended the filing of the necessary informations against them with the SB. The OMB disposed in the following wise:

> Appreciating all the documentary evidences (*sic*) presented by both parties[,] this Investigator finds sufficient legal basis to hold respondents liable for Malversation through Falsification of Public Documents.
>
> As shown by the record, there were names of contracted laborers appearing on the payroll(s) purportedly working on the Ring Weeding of the Tree Park and Orchard Project of the municipality. However, two of these persons were found to have been dead on January 29, 1997 and on January 1, 1998. While, a certain Monico Marqueda, Jr. claiming to be the son of Monico Marqueda, who died on January 29, 1997, executed an affidavit on July 9, 2001 that it was he and not his father who had worked on the project, as after the death of his father, he applied as a municipal worker and was fortunately hired sometime in the middle of 1997 until the later part of 1998, and claiming further that he called the attention of the payroll maker regarding the correction of his name which should have been Monico Marqueda, Jr., however, this inadvertence was never acted upon maybe because the payroll maker thought that the mistake was only a minor

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[7] *Id.* at 198.

[8] *Id.* at 202-203.

[9] *Id.* at 206.

[10] *Id.* at 204-208.

thing[.] [T]his, however, could not be given credence as a comparison of the signatures appearing on the payroll(s) and the signature on the affidavit disclosed remarkable difference. With regards (*sic*) to the other questioned name appearing on the payroll, of Agaton Pastira Goltia who allegedly died on January 1, 1998, respondent Zenaida Pil Maamo defended herself by claiming that she had no knowledge about his death and that she trusted and relied so much of the people working for her as it would be impractical and impossible to keep tract (*sic*) of their lives as long as the papers were in order, and besides all the supporting documents were already prepared when presented to her for signature. This defense could not erase the fact that she certified that this person worked in their project and received payment. This Investigator took notice of the evidence of complainant denominated as Exh. "F" "Claim for Insurance Benefit of Agaton Pastira Goltia" (p. 15, record).

Anent respondent Maamo's defense that her signature appearing above the printed word "Foreman or Timekeeper" was within her capacity as the Mayor since the funds used for the projects were municipal funds allotted for barangay projects, this Investigator finds it unusual for respondent to act as one. Why of all people, will she act as foreman? A timekeeper or a foreman is supposedly in the field supervising the workers. For respondent, to act as such and, not perform its job is indeed a (*sic*) gross negligence.

Lastly, and the most important thing is that, this Investigator is fully convinced that there never was any Municipal Tree Park Project. The pictures presented by respondent Mayor clearly showed that it was a reforestation project or a mini forest in the municipality. Convincingly, the Certifications issued by the CENR Officer of San Juan, Southern Leyte and the DENR Officer in Maasin City, refuted the claim of respondent Mayor of any existing Mini-Forest or Tree Park registered in their respective offices in the municipality of Liloan, Southern Leyte. As between respondent Maamo's allegations and that of the CENR and DENR Officers, Certifications, the latter are given more credence.[11]

Accordingly, nine (9) separate informations were filed before the SB, which are summarized below:[12]

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[11] *Id.* at 206-207.

[12] *Id.* at 9-15.

Criminal Case No.	*Period Covered*	*Description*	*Person Paid*
27117	July 1-15, 1997	₱880.00 for labor, clearing, and vegetation control at highway	No name on the Time Book and Payroll but with signature
27118	September 16-30, 1997	₱1,760.00 for labor, ring weeding of Municipal Tree Park & Orchard	Unnamed person and Monico Marqueda (alleged to have died on January 29, 1997) and reflected in Nos. 8 and 1 of the Time Book and Payroll
27119	November 17-28, 1997	₱3,520.00 for labor for the maintenance of the Municipal Tree Park	No names on the Payroll but with signatures (several laborers as reflected in Nos. 1, 2, 3, & 4, of the Time Book and Payroll)
27120	January 2-15, 1998	₱800.00 for labor for the maintenance of the Municipal Tree Park	Monico Marqueda (alleged to have died on January 29, 1997)
27121	January 16-31, 1998	₱800.00 for labor for the maintenance of the Municipal Tree Park	Monico Marqueda (alleged to have died on January 29, 1997)
27122	February 1-15, 1998	₱800.00 for labor, for the maintenance of the Municipal Tree Park	Monico Marqueda (alleged to have died on January 29, 1997)
27123	February 16-27, 1998	₱800.00 for labor for the maintenance of Municipal Tree Park	Monico Marqueda (alleged to have died on January 29, 1997)

27124	February 16-28, 1998	₱1,600.00 for labor for the maintenance of Gud-an to Cagbungalon Road and San Isidro to Gud-an	Agaton Pastira Goltea (alleged to have died on January 1, 1998)
27125	March 1-13, 1998	₱800.00 for labor for maintenance of Municipal Tree Park	Monico Marqueda (alleged to have died on January 29, 1997)

Aggrieved, Petitioners filed an Urgent Motion for Leave to Pursue Motion for Reconsideration Before the Office of the Ombudsman and to Defer Arraignment of Accused dated March 11, 2002,[13] which was granted by the OMB in a Resolution dated June 25, 2002.[14]

After conducting a reinvestigation, the OMB merely reaffirmed its Resolution dated September 26, 2001,[15] as follows:

> CONCLUDING, the undersigned confirms the sufficiency of evidence to warrant the finding that herein accused are probably guilty of the crime of Malversation thru falsification of public documents.
>
> WHEREFORE, finding no ground to reverse, modify or alter the previous resolution which found probable cause against herein accused for the commission of nine (9) counts of the crime of Malversation thru falsification of public document, it is recommended that all the instant nine (9) criminal cases be sustained, affirmed and prosecuted.[16]

Proceedings before the SB

The prosecution of the nine (9) criminal cases thereafter ensued. The evidence for both parties, as summarized by the SB in the questioned Decision,[17] are as follows:

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[13] *Id.* at 209-221.

[14] *Id.* at 227.

[15] *Id.* at 204-208.

[16] *Id.* at 245.

[17] *Supra* note 3.

I. EVIDENCE FOR THE PROSECUTION

The first witness to testify for the Prosecution was ***Oscar D. Balompo***. His testimony is offered as proof that the *Municipal Tree Park* claimed to be maintained by the Municipality of Lilo-an does not exist. He avowed that:

> He was still the Senior Management Officer of the Department of Environment and Natural Resources DENR, Provincial Office based in Maasin, Southern Leyte.
>
> x x x x x x x x x
>
> After a reforestation project is completed, the supervision over the area is turned over to the DENR, at which point the DENR assesses the survival rate of the trees planted. The rate of survival should be at 80% minimum.
>
> Technically, the Local Government Unit has no more participation after the turn over.
>
> Based on record the Project in the Municipality of Lilo-an was completed in June 1993. He remembers that during the turn over the trees were at an average height of 2.27 meters with an 84% survival rate. The conclusion therefore is it would not be necessary to call for the maintenance of the area.
>
> He last visited the area in 1993 and he had not seen this Municipal Tree Park alleged to have been converted from a reforestation project.
>
> On 25 May 2001, he was designated as Officer-in-Charge of the Community Environment and Natural Resources (CENRO) under the DENR. In such capacity he issued a Certification to the effect that there exists no Municipal Tree Park or Mini-Park on record with their office, in the Municipality of Lilo-an.
>
> During his cross-examination he clarified that after the completion of a reforestation project the DENR takes over and the Local Government surrenders all its functions on the area, that all contracts of any sort of activity concerning the area should be recorded with the DENR.
>
> He denied having any knowledge of the existence of any contract on record that would support the claim that the DENR

has shared the maintenance of the area allegedly converted by the Municipality of Lilo-an into a Municipal Tree Park or Mini Orchard. However, he confirms the possibility that the Municipality may have coordinated with some officers of the DENR regarding the maintenance of the area.

The second witness of the Prosecution was ***Rodolfo M. Jaca*** who testified on the procedure necessary to establish a Municipal Tree Park and to validate that no Municipal Tree Park exists in the Municipality of Lilo-an. He professed that:

> In 1994 he began to serve as the Provincial Environment and Natural Resources Officer of the DENR stationed at Maasin, Southern Leyte, having jurisdiction over the Municipality of Lilo-an. As such he is tasked to administer, supervise and manage the effective implementation of the projects, plans and programs of the DENR.
>
> x x x x x x x x x
>
> On cross-examination, he confirmed that the Municipality of Lilo-an undertook a reforestation project. That after its completion in 1993 it was turned over to the DENR for its maintenance and protection. At the time of turn over, the trees were approximately 7 feet with a survival rate of 84%.
>
> Hence, he declares that the maintenance of the project was under the responsibility of the DENR alone. However, at present, the DENR has contracted the services of a certain fellow named Cagayunan to maintain the area. Although, this is the case, there is no law that prohibits the Local Government from exerting any effort to maintain the area.
>
> He is not aware of any Certification issued by an evaluation team called the "Kagawad Pangulo Kapaligiran" of which his Community Development Officer, Servando Acedo is a member. The team has certified that they have seen a Municipal Tree Park in Lilo-an.
>
> During re-direct examination, he verified that he has seen the area of the reforestation project in Lilo-an which, according to "them" is called the Municipal Tree Park.

The third witness was ***Conrado E. Encio***. A resident of Barangay Gud-an Lilo-an, Sothem (*sic*) Leyte since the year 1985. His testimony

will serve to prove that there exists no "Barangay Road" between Barangay Gud-an and Barangay San Isidro. He testified that:

> He was elected Barangay Captain of Gud-an in 1998 (and was still Barangay Captain when he testified on 6 November 2003).
>
> Barangay Gud-an is bounded by Barangay Calian on the north, Barangay San Isidro on the East, Barangay Cagbungalon on the South and the sea on the West as borne out on a sketch that he presented.
>
> There is no existing road directly connecting Barangay Gud-an and Barangay San Isidro. In order for one to reach San Isidro from Gud-an, one must pass through Barangay Calian which covers the shortest distance of approximately three kilometers, or the longer route, through Barangay Cadbungalon which covers the distance of approximately four kilometers.
>
> As Barangay Captain, he passed Resolution No. 26 to seek financial assistance for the construction of a road directly linking Barangay Gud-an to Barangay San Isidro, from the District's Representative, Congressman Aniceto G. Saludo, Jr.
>
> According to procedure, whenever an infrastructure project is implemented by the government, Barangay Captains are informed and oriented of it. Since, there is no road that exists between Gud-an and San Isidro, he resultantly did not receive any information or orientation about it.
>
> On cross-examination, he confirmed that there exists a feeder road between Barangay Calian and San Isidro.

The fourth witness of the Prosecution was ***Terencio V. Dipay***. He was the Agriculture Technologist of the National Government since the year 1978 to 1998, and was designated Municipal Agriculturist since September 2001. He attested that:

x x x x x x x x x

The fifth witness of the Prosecution was ***Engineer Alberto S. Causing***. He is a resident and the Municipal Engineer of Lilo-an. His testimony was offered to prove that there exists no road directly linking Barangay Gud-an and Barangay San Isidro. He testified that:

He assumed the position of Municipal Engineer of Lilo-an in July of 1996. Amongst his functions as engineer are the supervision of infrastructure projects and the maintenance of municipal facilities. When he supervises an infrastructure project he monitors its implementation and maintenance.

There is no existing road directly linking Barangay Gud-an and San Isidro and the way to get to San Isidro is by passing through Barangay Calian or Cadbungalon. If there exists such a road his office would have been informed and he would have known about it because the maintenance of a barangay road is the responsibility of either the Municpal (*sic*) Engineer or the Barangay Captain.

On cross-examination, he agreed that there exists a barangay road from San Isidro to Barangay Calian and it may be maintained with financial help from the municipality.

The sixth witness of the Prosecution was ***Ma. Theresa M. Timhang***. She is the Municipal Budget Officer of Lilo-an and a resident of Barangay Anilao. Her testimony was offered as proof of the disbursement of public funds concerning the allegations in the Informations and the authentication of various public documents. She declared that:

As the designated Municipal Accountant from the year 1997 to 1998, she was responsible for making sure that a project or program is actually being implemented and the supporting documents for the disbursement of funds are all in order and complete. She keeps financial records of deposits and journals of checks issued and all cash disbursements.

A typical accounting process concerning cash advances for labor expenses in a municipal project would require the following steps: First, a Request is submitted by the Mayor to the Municipal Treasurer's Office with the Time Sheets and Emergency Employment Contracts as supporting documents; Second, the Payroll Clerk prepares a Payroll, listing the workers enumerated on the Time Sheets; Third, the Municipal Budget Officer will certify the availability of funds; Fourth, the Municipal Accountant will review the supporting documents, whether it is all complete and in order with respect to computations and the signatories; Fifth, the Municipal treasurer will prepare the cash advance on the basis of the verifications made by the Municipal

> Accountant; Sixth, the Municipal Accountant will certify if there is available cash advance with the Disbursing Officer; and Lastly, the Municipal Treasurer will issue checks for encashment. After the payroll has been paid out, the original is filed in the Municipal Accounting Office for recording and a photocopy is sent to the COA.
>
> With respect to this case she has verified that the signature of accused Maamo on the Time Book and Payrolls as Time Keeper is in order because she believed that accused had the capacity to enter as such and she attested that the Emergency Employment Contracts of the laborers were on file in the LGU.
>
> On cross-examination, she declared that the Time Book and Payrolls corresponded to projects of the municipality, which according to her verification existed.
>
> On re-direct, she mentioned that she has seen the Municipality's Tree Park.

The seventh witness of the Prosecution was ***Ricardo T. Anahao*** whose name appeared as a laborer in one of the Payrolls for the maintenance of the disputed Municipal Tree Park of Lilo-an. He enunciated that:

> The person referred to as Ricardo Anahao on the Payroll for the maintenance of the Municipal Tree Park dated 1 March 1998, who worked for a period of 10 days, earning ₱8.00 a day is not him because he was never hired nor did he work for the Municipality.
>
> On cross-examination, he maintained that he did not work as a laborer for the maintenance of Lilo-an's Municipal Tree Park although he knew some of the persons named on the Payroll. In particular, he knew a certain Monico Marqueda. He confirmed that this Marqueda died in the year 1997.

The last witness of the Prosecution was ***Engineer Raul Marqueda***. His testimony was offered to prove that he is not the same person appearing on the Payrolls and to disclaim that the signatures appearing on it are his. He stated that:

> He is the Raul Marqueda pertained to in two Payrolls covering the dates of January 16-31, 1998 (Exhibit "F") and February

1-15, 1998 (Exhibit "G") wherein it was reflected that he worked as laborer for a total of 21 days, earning a total of ₱1,680.00.

However, he never worked as a laborer because he is an engineer by profession. He does not know of any person in the Municipality having the same name as his therefore, he concludes that there is no other person referred to as Raul Marqueda other than him. He lived in the Municipality of Lilo-an since birth and only transferred to Cebu City in 1993 when he got married.

On cross-examination, he explained that after leaving Lilo-an to transfer residency, he would visit the place on holidays or other occasions to see his parents and he is absolutely sure that there is no other person with the same name as his in the municipality.

x x x x x x x x x

II. EVIDENCE FOR THE DEFENSE

The first witness for the defense was the Municipal Accountant of Lilo-an, ***Geraldine A. Juaton*** who assumed office on 1 February 2000. Her testimony is offered to attest on Exhibits "A" to "J" of the Prosecution which consists of various Time Book and Payrolls. She narrated that:

As the Municipal Accountant she is also an Internal Auditor charged with the verification of the completeness and regularity of supporting documents of requisitions, and she is the custodian of records in the Municipal Treasury.

She is familiar with the Payrolls (Exhibits "A" to "J" for the Prosecution) presented to her. There were Certificates of Settlement and Balances (Exhibits "13" to "18" for the Defense) filed with the Office coming from the Provincial Auditor's Office reflecting no findings of irregularity as regards the Payrolls.

On cross-examination she maintained that the various Payrolls presented by the Prosecution are officially under her custody and she has examined all of it. She is aware that accused Maamo has signed these Payrolls as Mayor, Time Keeper or Foreman and finds nothing wrong with it as it only suggests that the Mayor is "knowledgeable" of all persons working in the project.

On re-direct examination, she declared that there is no law prohibiting a Mayor from personally supervising all Municipal Projects financed by it.

On re-cross examination, she confirmed that it is common practice that a Mayor acts as Time Keeper or Foreman in municipal projects, acting as supervisor in the field.

The second witness of the Defense was Lilo-an's Municipal Local Government Operations Officer of the Department of Interior and Local Government ***Danilo A. Bacus***. He professed that:

His function as Municipal Local Government Operations Officer entailed being the representative of the DILG in making sure that all memoranda, circulars, orders and issuances are implemented.

In this particular case, the issuances affected the operations of the "Gawad Pangulo sa Kap[a]lig[i]ran" of the municipality in connection with its program on clean and green. He was one of the judges and he attests to the fact that the municipality was ranked No. 2 in an award given by them, recognizing Lilo-an as the second cleanest and greenest municipality in the province of Southern Leyte.

He issued a Certification on 18 January 2002 as regards a reforestation project contracted by the DENR with the municipality of Lilo-an. He declared that in 1995 when he visited the municipality he, together with the other judges evaluated an area considered as the "Municipal Tree Park," as an entry in the program on clean and green.

Pablo C. Ugario was the third witness to take the witness stand. He was the Municipal Planning and Development Coordinator of Lilo-an from 1999 to 2002. He stated that:

He was tasked to prepare the development plan for the municipality and he issued a Ce[r]tification on 15 January 2002 to the effect that after the completion of the reforestation project the municipality undertook its maintenance.

On cross-examination he said that he participated in the development plans of the Municipality even before assuming his position as Municipal Planning and Development Coordinator of Lilo-an.

The fourth witness called by the defense to occupy the witness box was ***Gaudencio P. Goltea*** the Barangay Captain of San Isidro, Lilo-an, Southern Leyte from the year 1986 until the year 1992. His testimony serves to prove that the Municipality of Lilo-an undertook the cementing of barangay roads and during the project he hired laborers and worked as laborer himself. He testified that:

> In the year 1997, he asked for the assistance of then Mayor, accused Maamo to help in the cementing of the barangay road. When the project began in February 1998 he recommended laborers amongst whom are: Leon Onsoy, Felix Dipa, Teodoro Dipa, Dominador Nolleora, Erwin Nolleora, Julie Tinogan and Agaton Goltea.
>
> However, Agaton Golte[a] was not able to work on the project because of his demise sometime in January of 1998 so he was replaced by Arturo Goltea.
>
> On cross-examination he stated that Barangay San Isidro has set aside money for the maintenance of the barangay road.
>
> He agreed that Time Sheets or Time Books are records made by a Timekeeper listing the name of workers on a project, the number of hours worked and the number of days worked. These were in turn submitted to the Treasurer who, will make the Payroll and pay the laborers.
>
> He admitted that he was the Timekeeper of the project while admitting that it was accused Maamo's signature that appeared on the Payroll dated February 16-28, 1998 as Timekeeper.
>
> On redirect, he confirmed that the Prosecution's Exhibits "B", "E", "F", "G", "H", and "J" (which are Time Sheets) are the same Time Sheets which have been submitted to the Treasurer as bases for Payrolls.

The fifth witness of the defense was in the person of ***Monico J. Marqueda, Jr.***

> He has been a resident of Barangay Cagbungalon, Lilo-an, Southern Leyte since birth. His father is the deceased Monico Marqueda. He admitted executing two affidavits in connection with this case.
>
> He works as a farmer-laborer for the municipality, assigned to the "Municipal Tree Park" to cut, trim and protect the trees. He received his salary as reflected on the Payrolls[.]

He knows two persons by the same name of Raul Marqueda. He stated that one is his cousin who is an engineer based in Cebu and the other is a farmer based in Davao was the person who worked with him as laborer for the municipality.

On cross-examination he admitted that it was his signature appearing on the affidavits and the payrolls signifying that he received payment for the work he rendered.

He confirmed that accused Maamo was the Timekeeper and most of the time did not show up in the field and that there was no Foreman overseeing their progress.

He worked for a total of 62 days within the period of September 1997 until March 1, 1998.

The sixth witness for the defense, ***Remedios S. Magalona***, State Auditor II at the Office of the Provincial Auditor in Southern Leyte assigned to audit the funds of the Municipality of Lilo-an. Her testimony was elicited to substantiate the findings she made during her audit investigation in the years of 1997 and 1998 particularly, the Time Book and Payrolls offered as Exhibits "A", "B", "D" to "J" by the Prosecution. She declared that:

She denies knowledge of having audited the Time Book and Payrolls presented to her however she could recall that the vouchers referring to the Payrolls lacked supporting documents, more specifically, the Emergency Employment Contracts which are proofs of the legality of hiring the laborers named in the payrolls. Therefore, she informed the Municipal Accountant regarding the missing documents who in turn, supplied the same and so, the Time Book and Payrolls were passed in audit.

On cross-examination, she admitted that the vouchers on the bases of the Time Books and Payrolls were paid out despite the absence of the Emergency Employment Contracts. However, she categorically stated that this irregularity is legalized by the subsequent submission of the contracts.

Moreover, she confirmed that it was common practice to see a Mayor signing as Timekeeper and Foreman on Time Books or Time Sheets though, the same may be improper it is however, not illegal.

Further, she explained that the word "by" (and then signed by a different person) representing the signatories on the payroll on the column which would signify receipt of salary by the corresponding laborer was not allowed but as accused Silor has explained, she was verbally informed to act as representative of the concerned laborer to collect their salaries on their behalf. However, supposedly there must be a written authority.

On re-direct examination, she reiterated that the subsequent submission of supporting documents legalizes the approval of vouchers even if at that time these papers were missing.

On re-cross examination, she mentioned that she included in her audit report her finding that vouchers were approved without complete supporting documents.

The testimony of the seventh witness of the defense ***Felipe Anajao*** was offered to show that: x x x

He worked as laborer for the Municipality and earned Eighty Pesos (₱80.00) daily wage. He worked with Monico Marqueda, Raul Marqueda, Alfie Anajao, Alfred Anajao and Erlinda Florino.

On cross-examination, he narrated that he signed Payrolls but most of the time it was his wife Neria, whom he authorized to receive his wages, who signed the Payroll for him.

He denied being familiar with his wife's signature despite stating that the signature appearing on the Payrolls is the signature ofhis wife Neria.

He mentioned that their Timekeeper was accused Maamo who would arrive at around ten in the morning to record their time in and who would come back after five in the afternoon to record their time out

On re-direct, he declared that no one was present to oversee their work whenever accused Maamo was not around.

The eighth to take the witness stand, ***Dominador B. Cadayuna, Sr.*** the incumbent Barangay Captain of Anilao, Lilo-an, Southern Leyte from the year 1994 to 1997 and later on became a Kagawad testified to prove that there was a Reforestation Project in Barangay Anilao and the Municipality of Lilo-an undertook its maintenance after its completion. He avowed that:

> The laborers who worked in maintaining the Municipal Tree Park were Felipe Anajao, Monico Marqueda, Jr., Alpie Anajao, Alfred Anajao and Erlinda Floreno.
>
> On cross-examination, he affirmed that he knew the laborers who worked on the maintenance of the tree park because he was then, Barangay Captain and that he has seen accused Maamo on site, recording the comings and goings of the laborers. He knew her (Maamo) to be the Timekeeper and the Foreman of the Project.

The last witness presented by the Defense was [petitioner] ***Juliet O. Silor***. She was the Municipal Assistant Treasurer and designated Disbursing Officer between the years 1997 and 1998 in Lilo-an Southern Leyte. She attested that:

> She was the one who paid out the wages to the laborers named in the Payrolls. And, she allowed persons for and on behalf of the laborer to sign the payroll when she is familiar with the person.
>
> On cross-examination she stated that she signed the questioned Payrolls to signify that she disbursed the money in connection with it That she knows the wife of Felipe Anajao, Neria. That in some instances Mayor Maamo claimed the salaries of laborer for them because these people have no time to go to her office and Mayor Maamo delivered the same to them. She did not ask for Special Powers of Attorneys because they are costly and the amount in consideration is measly.
>
> As regards Payrolls that reflect no names of the laborers, she explained that what were presented are third original carbon copies on which the carbon paper did not work to copy those names listed on the first page.[18]

In addition to the foregoing testimonies, both parties adduced various documentary exhibits, which included, among others, the disputed Time Books and Payrolls.[19]

Weighing the evidence presented by the adverse parties, the SB ruled in the following manner:

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[18] *Id.* at 21-28, 35-40.

[19] *Id.* at 28-34; 40-42.

I. Criminal Case No. 27117

x x x x x x x x x

According to the Information the two (2) accused worked in conspiracy when they falsified the Time Book and Payroll dated July 1-15, 1997 by: (1) Making false statements in a narration of facts; (2) Making alteration in a genuine document which changed its meaning; and (3) Counterfeiting and feigning signature.

x x x x x x x x x

Firstly, Counterfeiting and Feigning signature. To counterfeit means to copy an original handwriting or signature that would pass for that of the original. Perceptibly, counterfeiting is not possible in this instance because accused are alleged to have listed a fictitious person on the assailed Time Book and Payroll which means that there was no attempt to copy another person[']s signature. More likely, accused conspired to feign a signature.

Feigning in this regard is the simulation of a signature, which does not in fact exist. A simple examination of the Time Book and Payroll would yield the only logical conclusion that the signature appearing on column 8, row 6 representing receipt by a non-existent person of the wages earned for eleven days of work is the result of imagination. The only explanation offered by the defense to rebut this is the testimony of accused Silor that the copy presented to Us was the third original carbon copy, on which the carbon used did not imprint the name of the worker, she declared:

x x x x x x x x x

> The payroll was prepared by my staff in three (3) copies. The second copy and the third copy are in carbon, but the payroll that I signed "paid", were all with names. That's why all the findings of the COA, there is no such that there was a payroll being paid with no names.

x x x x x x x x x

When We scrutinized the Payroll We discerned the oddness that all other particulars on it were clearly reproduced with the only exception of the name of the laborer on number 6 of the Time Book and Payroll. In fact, the names, signatures, Resident Certificate particulars appears to have been consciously written on it in ink unlike

the time roll, number of days worked, rate per day and total amounts which were an obvious imprint from carbon paper.

x x x x x x x x x

With the foregoing inferences We are led to the fact that there has been a scheme between the accused to perpetrate the crime of Malversation through Falsification of a document.

On the Payroll both accused either certified that the laborers listed on the roll have rendered work, have worked on a certain date and time, or that they have been paid in person. It is next to impossible for them not to see the obvious before they affixed their signatures.

x x x x x x x x x

By taking advantage of their positions they have managed to manipulate the accounting procedures, each condoning very important steps before signing the certifications on the Time Books and Payroll. Clearly there was falsification by feigning the signature of a non-existent laborer.

Importantly, the amount of Eight Hundred Eighty Pesos could not have been paid out to someone who did not exist. And, in the crime of Malversation there is a presumption that public funds have been embezzled if upon demand the public officer cannot account for it in the absence of evidence to the contrary. x x x

xxx xxx xxx

II. Criminal Case Numbers 27118, 27119, 27120, 27121, 27122, 27123, 27125

x x x x x x x x x

The acts imputed against accused are the falsification of the Payrolls by making it appear that a certain Monico Marqueda, confirmed to have died on January 27, 1998, worked on the Municipal Tree Park of Lilo-an, and by certifying the Payrolls where non-existent laborers are paid their wages. x x x

x x x x x x x x x

It was explained by the defense that it was Monico Marqueda, Jr. who worked as laborer and he has acknowledge (*sic*) such fact. Hence, We cannot say that there is falsification by counterfeiting because there is obviously no attempt to copy Monico Marqueda, Jr.'s handwriting.

On the other hand, as We have discussed earlier feigning a handwriting is the simulation of a handwriting that does not exist.

The signatures appearing along side no. 8 and nos. 1, 2, 3, 4 of Exhibits "B" and "D" which are the Time Books and Payrolls in Crim[i]nal Case Numbers 27118 and 27119 covering the periods September 16-30, 1997 and November 17-28, 1997, respectively, appear to belong to no body. There were no names specified in these numbers yet, there were signatures corresponding to each column signifying that the wages earned by unidentified laborers were received by somebody.

Similarly, as with Criminal Case No. 27117 the only contradictory evidence presented by the defense is the testimony of accused Silor that the copy presented to Us was the third original carbon copies on which the carbon used did not imprint the name of the worker, she declared:

x x x x x x x x x

But, what makes this defense rather unconvincing is the fact that some of the names on these copies were written with ballpoint ink. The only logical explanation is that the signatures on the Payrolls were falsified.

As corollary, there is no justification for the release of the wages corresponding to laborer no. 1 in Criminal Case No. 27118 amounting to ₱880.00, and to laborers no. 1, 2, 3 and 4 in Criminal Case No. 27119 in the total amount of ₱3,200.00.

x x x x x x x x x

II. Criminal Case No. 27124

According to the Prosecution the acts of accused which spell out the crime of Malversation through Falsification is that they made it appear on the Time Book and Payroll that: (1) The Municipality of Lilo-an is maintaining a Barangay Road existing between Barangays San Isidro and Gud-an but there really is no Barangay Road which exist (*sic*); and (2) Arturo Goltea, one of the laborers who supposedly worked to help maintain the Barangay Road is a ghost employee because he died on January 1, 1998 or more than a month before work on the road began.

x x x x x x x x x

Further, We agree with the Prosecution's averment that there was no Barangay Road, which exists, directly linking Barangays San Isidro and Gud-an. We subscribe to the Testimony of Gud-an's Barangay Captain Conrado E. Encio, who attested to such fact and that in his capacity as Barangay Captain he sought the help of the District's Representative, Han. Aniceto G. Saluda for the construction of a road, which would directly link Gud-an to San Isidro, to wit:

x x x x x x x x x

Moreover, a scrutiny of the evidence presented by the Defense would yield that there really exists no such Bar[a]ngay Road, the only Exhibits that it presented in this connection are Exhibits "16" to "16-D" which is a sketch of the Barangay Roads of San Isidro and nothing on it shows a road directly connecting Gud-an and San Isidro. In fact, the Sketch confirms that to get to San Isidro from Gud-an or vice versa one must pass through Barangay Cagbungalon or Barangay Calian.

Having been established by the People's evidence that there is no Barangay Road to maintain, it necessarily follows that the entire payroll is a sham, which cannot be justified by the fact that it has passed in audit the first time. Another examination should be put in order. This calls for an explanation on the part of [the] accused about the whereabouts of the amounts expended as payment for the wages of the laborers. Hence, the issue about the existence of Arturo Goltea has become moot, because in the first place no payroll should have been in existence at all[.]

By falsifying the Payroll, they were able to malverse sums of money. x x x[20]

In the questioned Decision, the SB **convicted** the Petitioners for the crime of Malversation through Falsification of Public/ Official Document under Criminal Case Nos. 27117, 27118, 27119 and 27124, and at the same time **acquitted** the Petitioners in Criminal Case Nos. 27120, 27121, 27122, 27123 and 27125 for failure of the Prosecution to establish the culpability of the Petitioners. The dispositive portion of the questioned Decision stated:

WHEREFORE, accused ZENAIDA P. MAAMO and JULIET O. SILOR are hereby found guilty of Malversation through Falsification,

[20] *Id.* at 43-58.

and applying the Indeterminate Sentence law, are hereby meted the prison term of six (6) years and one (1) month as Minimum to twelve (12) years as Maximum with all the accessory penalties, and to pay a Fine of Five Thousand Pesos (₱5,000.00).

They are also directed to reimburse the Government the amount of Four Thousand Two Hundred Twenty Pesos (₱4,220.00) with the legal rate of interest from the filing of the Information up to the date of payment.

Criminal Case Nos. 27118, 27119, 27120, 27121, 27122, 27123, 27124 and 27125 are hereby ordered dismissed.

SO ORDERED.[21]

Notably, the SB also concluded that only one (1) crime was technically committed by the Petitioners under the principle of *delito continuado*, there being a plurality of acts performed during a period of time and unity of intent and penal provision violated.[22]

Petitioners thereafter filed a Motion for Reconsideration dated June 29, 2011[23] arguing that, *inter alia*, the absence of a name did not conclusively prove beyond reasonable doubt that there was a ghost employee in the roll and that since the Time Books and Payrolls passed audit, it followed that they were in order. The said Motion was denied by the SB in a Resolution dated May 4, 2012.[24]

Thus, on July 5, 2012,[25] Petitioners filed the instant Petition.[26]

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[21] *Id.* at 61.

[22] *Id.* at 58-61.

[23] *Id.* at 170-187.

[24] *Id.* at 64-71.

[25] On May 24, 2012, Petitioners, through counsel, received the Resolution dated May 3, 2012 denying their Motion for Reconsideration dated June 29, 2011. Petitioners therefore had until June 8, 2012 to seek a review with the Court under Rule 45 of the Rules of Court. On June 6, 2012, Petitioners filed a Motion for Extension of Time to File Petition For Review, praying for an extension of thirty (30) days from June 8, 2012 or until July 8, 2012, within which to file their Petition for Review on *Certiorari*, which was granted by the Court in a Resolution dated August 13, 2012.

[26] *Supra* note 2.

On March 8, 2013, after a series of extensions,[27] the Office of the Special Prosecutor filed its Comment dated January 17, 2013.[28] Thereafter, on November 28, 2013, Petitioners filed their Reply dated November 27, 2013.[29] Subsequently, a Supplemental Reply was filed by petitioner Maamo alone on November 21, 2014.[30]

Issue

Whether or not the SB erred in finding Petitioners guilty of the crime of Malversation through Falsification by feigning a signature.

The Court's Ruling

This Court has repeatedly adhered to the policy that when the guilt of the accused is not proven with moral certainty, the presumption of innocence must be favored, and exoneration must be granted as a matter of right.[31]

In the Petition before us, Petitioners argue that the evidence adduced against them do not conclusively prove the crime of Malversation through Falsification. Simply put, the central issue for our resolution therefore is whether the prosecution was able to prove the culpability of the Petitioners beyond reasonable doubt.

We grant the Petition.

In previous occasions, we have held that criminal cases elevated to this Court by public officials from the Sandiganbayan deserve the same thorough treatment as criminal cases brought up by ordinary citizens, simply because the constitutional presumption of innocence must be overcome by proof beyond reasonable doubt in both instances:[32]

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[27] *Id.* at 260-263; 264-266; 268-270; 276-278; 279-281; 282-284.

[28] *Id.* at 286-294.

[29] *Id.* at 304-306.

[30] *Id.* at 310-321.

[31] *Arriola v. Sandiganbayan*, 526 Phil. 822, 835-836 (2006).

[32] *Monteverde v. People*, 435 Phil. 906, 922 (2002).

The principle has been dinned into the ears of the bench and the bar that in this jurisdiction, accusation is not synonymous with guilt. The accused is protected by the constitutional presumption of innocence which the prosecution must overcome with contrary proof beyond reasonable doubt. This Court has repeatedly declared that even if the defense is weak, the case against the accused must fail if the prosecution is even weaker, for the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. **Indeed, if the prosecution has not sufficiently established the guilt of the accused, he has a right to be acquitted and released even if he presents naught a shred of evidence.**[33] x x x (Italics omitted; emphasis supplied)

As a rule, findings of fact by the OMB, being an administrative agency, are deemed conclusive and binding when supported by the records and based on substantial evidence.[34] In the same manner, findings of fact of the SB as trial court are accorded great weight and respect.[35] However, in cases where there is a misappreciation of facts, the Court will not hesitate to reverse the conclusions reached by the trial court.[36] At all times, the Court must be satisfied that in convicting the accused, the factual findings and conclusions of the trial court meet the exacting standard of proof beyond reasonable doubt.[37]

Thus, proceeding now from the factual findings of the OMB and the SB, we are left with the question of whether such facts tend to prove the guilt of the Petitioners with the required quantum of evidence. Stated differently — do the facts conclusively point toward the commission of the crime of Malversation through Falsification with moral certainty?[38]

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[33] *Sps. Balmadrid v. Sandiganbayan*, 285 Phil. 520, 529 (1992).

[34] See *Barcelona v. Lim*, 734 Phil. 766, 792-793 (2014).

[35] *Id.* at 790; See also *Mangahas v. Court of Appeals*, 588 Phil. 61, 77 (2008).

[36] *Bahilidad v. People*, 629 Phil. 567, 573 (2010).

[37] *Id.* at 574.

[38] RULES OF COURT, Rule 133, Sec. 2.

After judicious examination of the records and the submissions of the parties, the Court rules in the negative.

The crime of Malversation of Public Funds is punished under Article 217 of the Revised Penal Code:

> Article 217. *Malversation of public funds or property— Presumption of malversation*. - **Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate** or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:
>
> x x x x x x x x x
>
> **The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.** (Emphasis supplied)

Meanwhile, Falsification by a public officer is punished under Article 171 of the same law:

> Article 171. *Falsification by public officer, employee or notary or ecclesiastic 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**:
>
> 1. **Counterfeiting or imitating any handwriting, signature or rubric;**
>
> x x x x x x x x x x (Emphasis supplied)

Thus, to be found guilty of Malversation, the Prosecution has the burden to prove the following essential elements:

(a) The offender is a public officer;

(b) The offender has custody or control of funds or property by reason of the duties of his office;

(c) The funds or property involved are public funds or property for which the offender is accountable; and

(d) The offender has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.[39]

In sum, what is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so.[40]

Notably, Article 217 of the RPC provides that the failure of a public officer to have duly forthcoming any public funds with which he is chargeable upon demand by any duly authorized officer gives rise to the presumption that he has put such missing funds to personal use. As this Court clarified in *Estino v. People*,[41] while demand is not an element of Malversation, it is a requisite for the application of the presumption. Hence, absent such presumption, the accused may still be proven guilty, albeit based on direct evidence of Malversation.[42] Otherwise stated, to support a conviction for the crime, the Prosecution must nonetheless present evidence clearly evincing misappropriation of public funds.

Here, while the records support the presence of the first three (3) elements, we find that the Prosecution was unable to satisfactorily prove the fourth element.

The Court explains.

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[39] *People v. Ochoa*, 511 Phil. 682, 690-691 (2005).

[40] *Zoleta v. Sandiganbayan (Fourth Division)*, G.R. No. 185224, July 29, 2015, 764 SCRA 110, 129.

[41] 602 Phil. 671, 698 (2009).

[42] *Id.* at 698-699.

In criminal cases, it is the duty of the Prosecution to discharge the heavy burden of overcoming the presumption of innocence of the accused and that the weakness of the defense put up by the accused is inconsequential in the proceedings. As succinctly held by this Court in *People v. Mendoza*:[43]

> x x x in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, **the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused**. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. **Conversely, as to his innocence, the accused has no burden of proof**, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. **In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.**[44]

To recall, the SB already **acquitted** the Petitioners under Criminal Case Nos. 27120, 27121, 27122, 27123 and 27125 "for failure of the Prosecution to establish the culpability of the accused."[45] Hence, we dispense with any further discussion on the evidence and findings of the SB in connection with the said cases. Accordingly, as a result of their acquittal, Petitioners were found liable only in the following cases:[46]

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[43] 736 Phil. 749 (2014).

[44] *Id.* at 768-769.

[45] *Rollo*, p. 55.

[46] *Id.* at 61.

Criminal Case No.	*Period Covered*	*Description*	*Person Paid*
27117	July 1-15, 1997	₱880.00 for labor, clearing, and vegetation control at highway	No name on the Time Book and Payroll but with signature
27118	September 16-30, 1997	₱1,760.00 for labor, ring weeding of Municipal Tree Park & Orchard	Unnamed person and Monico Marqueda (alleged to have died on January 29, 1997) and reflected in Nos. 8 and 1 of the Time Book and Payroll
27119	November 17-28, 1997	₱3,520.00 for labor for the maintenance of the Municipal Tree Park	No names on the Payroll but with signatures (several laborers as reflected in Nos. 1, 2, 3, & 4, of the Time Book and Payroll)
27124	February 16-28, 1998	₱1,600.00 for labor for the maintenance of Gud-an to Cagbungalon Road and San Isidro to Gud-an	Agaton Pastira Goltea (alleged to have died on January 1, 1998)

Evidently, the common denominator between the above cases is the mere absence of the name of a payee-laborer, as shown by the blanks in the Time Book and Payroll corresponding to the signatures, with the exception of Criminal Case No. 27124, wherein the SB relied on the purported non-existence of a barangay road to support its finding of falsification.[47] The SB, in the questioned Decision, convicted the Petitioners in the following wise:

I. Criminal Case No. 27117

x x x x x x x x x

[47] *Id.* at 58.

x x x A simple examination of the Time Book and Payroll would yield the only logical conclusion that the signature appearing on column 8, row 6 representing receipt by a non-existent person of the wages earned for eleven days of work is the result of imagination. The only explanation offered by the defense to rebut this is the testimony of accused Silor that the copy presented to Us was the third original carbon copy, on which the carbon used did not imprint the name of the worker, she declared:

x x x x x x x x x

A. The payroll was prepared by my staff in three (3) copies. The second copy and the third copy are in carbon, but the payroll I signed "paid", were all with names. That's why all the findings of the COA, there is no such that there was a payroll being paid with no names.

x x x x x x x x x

When We scrutinized the Payroll We discerned the oddness that all other particulars on it were clearly reproduced with the only exception of the name of the laborer on number 6 of the Time Book and Payroll. In fact, the names, signatures, Resident Certificate particulars appears to have been consciously written on it in ink unlike the time roll, number of days worked, rate per day and total amounts which were an obvious imprint from carbon paper.

x x x x x x x x x

With the foregoing inferences We are led to the fact that there has been a scheme between the accused to perpetrate the crime of Malversation through Falsification of a document.

On the Payroll both accused either certified that the laborers listed on the roll have rendered work, have worked on a certain date and time, or that they have been paid in person. It is next to impossible for them not to see the obvious before they affixed their signatures.

x x x x x x x x x

II. Criminal Case Numbers 27118, 27119, 27120, 27121, 27122, 27123, 27125

x x x x x x x x x

The signatures appearing along side no. 8 and nos. 1, 2, 3, 4 of Exhibits "B" and "D" which are the Time Books and Payrolls in

Crim[i]nal Case Numbers 27118 and 27119 covering the periods September 16-30, 1997 and November 17-28, 1997, respectively, appear to belong to no body. There were no names specified in these numbers yet, there were signatures corresponding to each column signifying that the wages earned by unidentified laborers were received by somebody.

Similarly, as with Criminal Case No. 27117 the only contradictory evidence presented by the defense is the testimony of accused Silor that the copy presented to Us was the third original carbon copies on which the carbon used did not imprint the name of the worker, she declared:

x x x x x x x x x

But, what makes this defense rather unconvincing is the fact that some of the names on these copies were written with ballpoint ink. **The only logical explanation is that the signatures on the Payrolls were falsified.**

x x x x x x x x x

II. Criminal Case No. 27124

x x x x x x x x x

x x x We agree with the Prosecution's averment that there was no Barangay Road, which exists, directly linking Barangays San Isidro and Gud-an. We subscribe to the Testimony of Gud-an's Barangay Captain Conrado E. Encio, who attested to such fact and that in his capacity as Barangay Captain he sought the help of the District's Representative, Hon. Aniceto G. Saludo for the construction of a road, which would directly link Gud-an to San Isidro, to wit:

xxx xxx xxx

Moreover, a scrutiny of the evidence presented by the Defense would yield that there really exists no such Bar[a]ngay Road, the only Exhibits that it presented in this connection are Exhibits "16" to "16-D" which is a sketch of the Barangay Roads of San Isidro and nothing on it shows a road directly connecting Gud-an and San Isidro. In fact, the Sketch confirms that to get to San Isidro from Gud-an or vice versa one must pass through Barangay Cagbungalon or Barangay Calian.

Having been established by the People's evidence that there is no Barangay Road to maintain, it necessarily follows that the entire payroll is a sham, which cannot be justified by the fact that it has passed in audit the first time. x x x[48] (Emphasis supplied)

Meanwhile, with respect to the workers alleged to have been deceased during the implementation of the projects, the SB made the following remarks:

II. Criminal Case Numbers 27118, 27119, 27120, 27121, 27122, 27123, 27125

x x x x x x x x x

We cannot consider the act of accused as one which translates to the making of untruthful statements in a narration of facts when they certified that Monico Marqueda was one of the laborers who worked on the Municipal Tree Park for the reason that Monico Marqueda, Jr., son of the deceased Monico Marqueda has acknowledged that it was he who was being referred to in the Payrolls, x x x[.]

x x x x x x x x x

Adding to that, Exhibit "2" of the Defense which is the Affidavit of Monico Marqueda, Jr. would tell us that he was the one who received the wages on the Payroll as his signature on it appears to be similar with the signatures on the Payrolls.

x x x x x x x x x

II. Criminal Case No. 27124

x x x x x x x x x

x x x the issue about the existence of Arturo Goltea has become moot, because in the first place no payroll should have been in existence at all.[49]

Notably, with respect to the existence of Arturo Goltea, the Petitioners were able to present supporting evidence through the testimony of Gaudencio P. Goltea, one of the laborers employed in the road project, who testified that Arturo Goltea

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[48] *Id.* at 44-58.

[49] *Id.* at 48-58.

replaced Agaton Goltea after the latter's demise sometime in January of 1998.[50]

Thus, based on the foregoing disquisitions, it appears that the Prosecution relied **only** on the following facts to hold the Petitioners liable: (i) that there were blanks next to the signatures in the Time Books and Payrolls, and (ii) that there was no road directly connecting Barangay San Isidro and Barangay Gud-an.

To the Court, the evidence is severely insufficient and inconclusive to establish the guilt of the Petitioners beyond reasonable doubt for the crime charged. Outside of the foregoing facts, the SB resorted to only surmises to arrive at its conclusions.

In the first place, as correctly argued by the Petitioners,[51] nowhere was the fact of demand shown in any of the documentary exhibits[52] or testimonies of the witnesses of the Prosecution.[53] Such failure is underscored by the fact that the Prosecution itself admitted in its Comment dated January 17, 2013 that no demand for the alleged malversed funds had been made:

> Petitioners argue that no demand was made in relation to the funds disbursed by the Municipality of Lilo-an, Southern, Leyte in connection with the July 1-15, 1997 Time Book and Payroll. **Indeed, there was no demand made by the Commission on Audit** because the Vegetation Control at Highways was not audited by the Commission on Audit. Hence, there being no audit, no Notice of Suspension was issued, much less disallowance.[54] (Emphasis supplied)

Thus, considering that the Prosecution never established such material fact, the burden of evidence was never shifted to the Petitioners to prove their innocence, there being no *prima facie* presumption of misappropriation under the facts obtaining. Thus, following *Estino*, the Prosecution had the additional burden to

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

[51] *Id.* at 89-91.

[52] *Id.* at 126-132.

[53] *Id.* at 119-126.

[54] *Id.* at 290.

prove Malversation by direct evidence, which, as stated at the outset, it had failed to do.

Moreover, as argued by the Petitioners,[55] the mere absence of a name in the Time Book and Payroll does not automatically translate to the non-existence of the alleged worker. Contrary to the conclusions of the SB, there are other "logical explanation[s]" for such omission, one of which is the explanation proffered by the Petitioners, *i.e.*, that what was presented during trial were the third original carbon copies on which the carbon paper did not work to copy those names listed on the first page. Indeed, it is also entirely possible that the person responsible simply forgot to write down the name of the payee-laborer even as he secured their signatures.

Certainly, the allegation that Petitioners hired "ghost employees" must be weighed against the fact that Time Book and Payrolls were found to be in order. In the testimony of Ma. Theresa M. Timbang, a witness for the Prosecution, the SB noted:

> As the designated Municipal Accountant from the year 1997 to 1998, she was responsible for making sure that a project or program is actually being implemented and the supporting documents for the disbursement of funds are all in order and complete. She keeps financial records of deposits and journals of checks issued and all cash disbursements.
>
> x x x x x x x x x
>
> **With respect to this case she has verified that the signature of accused Maamo on the Time Book and Payrolls as Time Keeper is in order** because she believed that the accused had the capacity to enter as such and she attested that the Emergency Employment Contracts of the laborers were on file in the LGU.
>
> **On cross-examination, she declared that the Time Book and Payrolls corresponded to projects of the municipality, which according to her verification existed.**[56] (Emphasis supplied)

Meanwhile, defense witness Geraldine A. Juaton, who was also charged with the verification of the completeness and

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[55] *Id.* at 304.

[56] *Id.* at 27.

regularity of the Payrolls, testified that there were no findings of irregularity regarding the same:

> As the Municipal Accountant she is also an Internal Auditor charged with the verification of the completeness and regularity of supporting documents of requisitions, and she is the custodian of records in the Municipal Treasury.
>
> **She is familiar with the Payrolls (Exhibit "A" to "J" for the Prosecution) presented to her. There were Certificates of Settlement and Balances (Exhibits "13" to "18" for the Defense) filed with the Office coming from the Provincial Auditor's Office reflecting no findings of irregularity as regards the Payrolls.**
>
> **On cross-examination she maintained that the various Payrolls presented by the Prosecution are officially under her custody and she has examined all of it.** She is aware that accused Maamo has signed these Payrolls as Mayor, Time Keeper or Foreman and finds nothing wrong with it as it only suggests that the Mayor is "knowledgable" of all the persons working in the project.[57] (Emphasis supplied)

In addition, the fact that the July 1-15, 1997 Time Book and Payroll was able to pass audit[58] and that no Notice of Suspension was issued by the Commission on Audit (COA)[59] was an indication that said documents were in order. Indeed, if it were true that there were blanks next to the signatures of the unnamed employees, such glaring deficiency surely would not have gone unnoticed by the COA.

As to the finding on the non-existence of a road directly connecting Barangay San Isidro and Barangay Gud-an, the Court notes the following explanation supplied by petitioner Maamo in her Supplemental Reply dated November 21, 2014:

> The Prosecution again endeavored to further paint a bad image of petitioner Maamo by misleading the Honorable Sandiganbayan that the road referred to in the road maintenance project from Barangay Guid-an (*sic*) to Barangay San Isidro is non-existent because there

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[57] *Id.* at 35.

[58] *Id.* at 305.

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

is no road directly connecting Barangay San Isidro and Barangay Gud-an. It then made a conclusion that such is a ghost project. In truth the highway or road under road maintenance project was the whole stretch of the existing highway or road from Barangay San Isidro to Barangay Gud-an passing thru Barangay Calian, as shown by the sketch (Exhibits "16" to "16-D"). The road traversing Barangay Gud-an to Barangay San Isidro passing thru Barangay Calian was under the road maintenance project and the same is not a ghost project. In fact, this project passed audit.[60]

Notably, the fact that the road from Barangay Gud-an to Barangay San Isidro traverses through Barangay Calian was confirmed by Conrado E. Encio[61] and Engr. Alberto S. Causing,[62] both witnesses for the Prosecution. Moreover, the Petitioners presented Gaudencio P. Goltea, the Barangay Captain, who testified that the Municipality of Lilo-an indeed undertook the maintenance of barangay roads.[63]

In any case, assuming without conceding that the defenses raised by the Petitioners were not credible, such fact did not lessen the burden of the Prosecution to prove Malversation through Falsification through competent and conclusive evidence. As already discussed above, the conviction of the Petitioners must not rest on the weakness of the defense but on the strength of the prosecution.[64] Mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused.[65]

All told, we cannot subscribe to the conclusion of the SB that the blanks next to the signatures are, by themselves alone, enough to prove that Petitioners committed Malversation through Falsification by feigning the said signatures. This Court is not

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[60] *Id.* at 316.

[61] *Id.* at 25.

[62] *Id.* at 26.

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

[64] See *Sps. Balmadrid v. Sandiganbayan*, *supra* note 33.

[65] *Fajardo v. People*, 654 Phil. 184, 204 (2011); *Rait v. People*, 582 Phil. 747, 754 (2008).

prepared to deprive Petitioners of their liberty with finality simply on the basis of a superficial deficiency in Time Books and Payrolls.

Further, we hold that the Prosecution miserably failed to prove the existence of conspiracy between the Petitioners.

In countless decided cases, this Court has consistently held that conspiracy must be established not by conjectures, but by positive and conclusive evidence and that the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy,[66] that is, proof beyond reasonable doubt. In *Sabiniano v. Court of Appeals*,[67] it was ruled that a mere signature appearing on a voucher or check is not enough to sustain a finding of conspiracy among public officials charged with defraudation of the government:

> Apart from petitioner's signature on the treasury warrant, nothing else of real substance was submitted to show petitioner's alleged complicity in the crime. **A mere signature or approval appearing on a voucher, check or warrant is not enough to sustain a finding of conspiracy among public officials and employees charged with defraudation.** Proof, not mere conjectures or assumptions, should be proffered to indicate that the accused had taken part in, to use this Court's words in *Arias vs. Sandiganbayan*, the "planning, preparation and perpetration of the alleged conspiracy to defraud the government" for, otherwise, any "careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds" really responsible for that irregularity. In the recent case of *Magsuci v. Sandiganbayan*, involving an accusation for estafa through falsification of public documents, where the accused not only co-signed a check but also noted an accomplishment report and signed the disbursement voucher with the usual certification on the lawful incurrence of the expenses to be paid, the Court held:
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> > Fairly evident, however, is the fact that the actions taken by Magsuci involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all that he had foreknowledge of any irregularity

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[66] *Balmadrid v. Sandiganbayan, supra* note 33, at 527.

[67] 319 Phil. 92 (1995).

committed by either or both Engr. Enriquez and Ancla.**Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense.** Conspiracy is not the product of negligence but of intentionality on the part of cohorts. x x x[68] (Italics omitted; emphasis supplied)

Applying the foregoing to the instant case, the Court notes the testimony given by Ma. Theresa M. Timbang, one of the witnesses of the Prosecution, concerning the procedure involved in the disbursement of funds:

A typical accounting process concerning cash advances for labor expenses in a municipal project would require the following steps: **First, a Request is submitted by the Mayor to the Municipal Treasurer's Office with the Time Sheets and Emergency Employment Contracts as supporting documents**; Second, the **Payroll Clerk** prepares a Payroll, listing the workers enumerated on the Time Sheets; Third, the **Municipal Budget Officer** will certify the availability of funds; Fourth, the **Municipal Accountant** will review the supporting documents, whether it is all complete and in order with respect to computations and the signatories; Fifth, the Municipal treasurer will prepare the cash advance on the basis of the verifications made by the Municipal Accountant; Sixth, the Municipal Accountant will certify if there is available cash advance with the Disbursing Officer; and **lastly, the Municipal Treasurer will issue checks for encashment**. After the payroll has been paid out, the original is filed in the Municipal Accounting Office for recording and a photocopy is sent to the COA. (Emphasis supplied)

It can readily be seen that the disbursement of funds at the municipal level involves a successive process of review and clearing that requires the participation of different public officers, each with different roles and duties. Hence, in order to establish conspiracy between the Petitioners, the Prosecution must present evidence **other than the mere fact that the Petitioners are**

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[68] *Id.* at 98-99.

at the opposite ends of the chain in the disbursement process. To sustain a conviction based on such fact alone would necessarily require the aid of conjecture and assumptions in order to establish conspiracy. From the evidence adduced by the Prosecution, no clear nexus exists to prove a unity of action and purpose between the Petitioners to falsify the Time Books and Payrolls in order to commit Malversation against the government.

As a final note, the Court takes this occasion to reiterate that the overriding consideration in criminal cases is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt — if there exists even one iota of doubt, this Court is "under a long standing legal injunction" to resolve the doubt in favor of the accused.[69] Hence, if the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, the accused must be acquitted.[70]

For the reasons above-stated, the instant Petition should be granted.

WHEREFORE, premises considered, finding the evidence insufficient to establish guilt beyond reasonable doubt, Petitioners are hereby **ACQUITTED**. The Decision dated June 16, 2011 of the Sandiganbayan in Criminal Case Nos. 27117, 27118, 27119 and 27124, and the Resolution dated May 4, 2012, finding Petitioners guilty of "Malversation thru Falsification of Public/ Official Document" under Article 217 in relation to Article 171 of the Revised Penal Code, is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

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[69] *Yadao v. People*, 534 Phil. 619, 640 (2006).

[70] *Id.*

FIRST DIVISION

[G.R. No. 218454. December 1, 2016]

PENINSULA EMPLOYEES UNION (PEU), [*] *petitioner, vs.* **MICHAEL B. ESQUIVEL, DOMINGO G. MABUTAS, RANDELL V. AFAN, LOISELLE S. AGUNOD, GEMELO L. ANSELMO, GERYMY ANCHETA, JOYLY V. ASUNCION, CRESENCIA A. BERMEJO, JOSHUA S. BERSAMINA, LITO S. CALINISAN, RANULFO C. CASTILLO, ENRICO C. CASTRO, GERARDO R. CASTRO, GLICERIA H. CELIZ, MARIA POLA F. CORDERO, JORGE MARIO C. CORONADO, DOMINGA C. CRUZ, JUSTINE CRUZ, RONALD S. DADIA, ARCHIMEDES S. DALISAY, JOSEF PATRICK P. DE VERA, SERGIO B. DIANE, NONITA M. DOMINGO, JOSELITO E. EDANG, KRISTINE ANNE A. ENGRACIAL, CARLO GILJOSEF A. FORNIER, ELIAS S. GACAD, MEL GARRIDO, PHILLIP MICHAEL C. GAUDINEZ, SILVERIA B. GRAN, RODOR D. HEMEDES, BENIGNO A. HONGCO, LEONARD N. LAMBOT, MELECIO D. LAURENTE III, GRACE MILLISCEN L. LIM, MARIA ALICIA GEZZA D. LLAVE, EULALIA B. LOBATON, WILFREDO G. LOPEZ, GENLIE D. LUCERNA, DOMINGO C. MABUTAS III, CARMELITA A. MALIG, NICANOR T. MANGUIAT, HERVE STEVE A. MARTIN, RODELIO N. MARZO, FLORENCIO A. MASA, JR., EDINA H. MORALES, SYLVIA M. MORALES, ROBERT H. NACINO, ANGELO F. ONA, JEFFERSON O. ONG, DENNIS O. RAMOS, DENNIS S. REMBULAT, BENJIE B. REYES, VICTOR EMMANUEL I. REYES, ANTONIO R. RIOVEROS, MARCELO S. RIPA III, ALLAN T. ROXAS, MARIA B. RUANTO II, RONALD A. SALMON, ARMANDO P. SANTUYO, BRYAN S. SUN, MARYGRACE F. TAMAYO, LORENZVI IRENE U.**

[*] Peninsula Employees Union-NUWHRAIN in some parts of the records.

TAN, MILAGROS O. TELOSA, HERMILO R. TUMBAGA, GINA S. UY, and VENICE T. VILLAPONDO, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR UNION; UNION DUES; REQUISITES TO JUSTIFY A VALID INCREASE IN UNION DUES.— Case law interpreting Article 250 (n) and (o) (formerly Article 241) of the Labor Code, as amended, mandates the submission of three (3) documentary requisites in order to justify a valid levy of increased union dues. These are: *(a)* an authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; *(b)* the secretary's record of the minutes of the meeting, which shall include the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees; and *(c)* individual written authorizations for check-off duly signed by the employees concerned.

2. ID.; ID.; ID.; ID.; ID.; WHEN THERE WAS NO SUFFICIENT SHOWING THAT THE PROPOSED INCREASE IN UNION DUES HAD BEEN DULY DELIBERATED AND APPROVED BY THE MEMBERS, NO INDIVIDUAL CHECK-OFF AUTHORIZATIONS CAN PROCEED THEREFROM.— It is evident from the foregoing that while the matter of implementing the two percent (2%) union dues was taken up during the PEU-NUWHRAIN's 8th General Membership Meeting on October 28, 2008, *there was no sufficient showing that the same had been duly deliberated and approved*. The minutes of the Assembly itself belie PEU-NUWHRAIN's claim that the increase in union dues and the corresponding check-off were duly approved since it merely stated that "the [two percent (2%)] Union dues will have to be implemented," meaning, it would still require the submission of such matter to the Assembly for deliberation and approval. Such conclusion is bolstered by the silence of the October 28, 2008 GMR on the matter of two percent (2%) union dues, *in contrast* to the payment of 10% attorney's fees from the CBA

backwages which was clearly spelled out as having been "discussed and approved." Thus, as aptly pointed out by the CA: "[i]f indeed majority of the members of [PEU-NUWHRAIN] approved the increase in union dues, the same should have been mentioned in the [October 28, 2008 minutes], and reflected in the GMR of the same date." Having failed to establish due deliberation and approval of the increase in union dues from one percent (1%) to two percent (2%), as well as the deduction of the two percent (2%) union dues during PEU-NUWHRAIN's 8th General Membership Meeting on October 28, 2008, there was nothing to confirm, affirm, or ratify through the July 1, 2010 GMR. Contrary to the ruling of the OSEC in its March 6, 2012 Order, the July 1, 2010 GMR, by itself, cannot justify the collection of two percent (2%) agency fees from the non-PEU members beginning July 2010. The Assembly was not called for the purpose of approving the proposed increase in union dues and the corresponding check-off, but merely to "confirm and affirm" a purported prior action which PEU-NUWHRAIN, however, failed to establish. Corollarily, no individual check-off authorizations can proceed therefrom, and the submission of the November 2008 check-off authorizations becomes inconsequential. Jurisprudence states that the express consent of the employee to any deduction in his compensation is required to be obtained in accordance with the steps outlined by the law, **which must be followed to the letter;** however, PEU-NUWHRAIN failed to comply. Thus, the CA correctly ruled that there is no legal basis to impose union dues and agency fees more than that allowed in the expired CBA, *i.e.*, at one percent (1%) of the employee's monthly basic salary.

APPEARANCES OF COUNSEL

Levy Edwin C. Ang for petitioner.
Rogelio B. De Guzman for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated February 9, 2015 and the Resolution[3] dated May 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 124566, which annulled and set aside the Order[4] dated March 6, 2012 (March 6, 2012 Order) of the Office of the Secretary (OSEC) of the Department of Labor and Employment (DOLE) in OS-AJ-0024-07 declaring petitioner Peninsula Employees Union (PEU) — National Union of Workers in Hotel Restaurants and Allied Industries (NUWHRAIN)[5] entitled to collect the amount of two percent (2%) agency fees from The Peninsula Manila Hotel Labor Union (TPMHLU), the former collective bargaining agent,[6] and the non-affiliated employees (NAE;[7] collectively, non-PEU members), herein represented by respondents Michael B. Esquivel, Domingo G. Mabutas, Randell V. Afan, *et al.* (respondents), retroactively from July 2010.

The Facts

On December 13, 2007, PEU's Board of Directors passed Local Board Resolution No. 12, series of 2007[8] authorizing *(a)*the affiliation of PEU with NUWHRAIN, and the direct membership of its individual members thereto; *(b)* the compliance

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[1] Dated June 18, 2015. *Rollo,* pp. 3-9.

[2] *Id.* at 16-28. Penned by Associate Justice Florito S. Macalino with Associate Justices Elihu A. Ybañez and Zenaida T. Galapate-Laguilles concurring.

[3] *Id.* at 29-32.

[4] *Id.* at 181-188. Penned by DOLE Secretary Rosalinda Dimapilis-Baldoz.

[5] The sole and exclusive bargaining agent of the rank and file employees of The Peninsula Manila Hotel (Hotel); *id.* at 18.

[6] *Id.*

[7] Rank and file employees who are neither members of PEU-NUWHRAIN nor TPMHLU; see *id.* at 123.

[8] *Id.* at 94.

with all the requirements therefor; and (*c*) the Local President to sign the affiliation agreement with NUWHRAIN upon acceptance of such affiliation.[9] On the same day, the said act was submitted to the general membership, and was duly ratified by 223 PEU members.[10]

Beginning January 1, 2009, PEU-NUWHRAIN sought to increase the union dues/agency fees from one percent (1%) to two percent (2%) of the rank and file employees' monthly salaries, brought about by PEU's affiliation with NUWHRAIN, which supposedly requires its affiliates to remit to it two percent (2%) of their monthly salaries.[11]

Meanwhile, in a Decision[12] dated October 10, 2008 (October 10, 2008 Decision), the OSEC resolved the collective bargaining deadlock between PEU-NUWHRAIN and The Peninsula Manila Hotel (Hotel), ordering the parties to execute a collective bargaining agreement (CBA) incorporating the dispositions therein (arbitral award).[13] The parties have yet to actually sign a CBA but have, for the most part, implemented the arbitral award.[14]

In March 2009, PEU-NUWHRAIN requested[15] the OSEC for Administrative Intervention for Dispute Avoidance[16] (AIDA) pursuant to DOLE Circular No. 1, series of 2006[17] in relation

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[9] *Id.*

[10] See "A General Membership Resolution Ratifying Affiliation of the Peninsula Employees Union (PEU) with the National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN); *id.* at 84-92.

[11] *Id.* at 18-19.

[12] DOLE records, pp. 1-40. Signed by DOLE Undersecretary Romeo C. Lagman by Authority of the Secretary.

[13] See *id.* at 1.

[14] See *rollo*, pp. 18 and 123.

[15] See Letter Re: Request for Intervention dated February 27, 2009 received by the OSEC on March 2, 2009; DOLE records, pp. 41-42.

[16] "Alternative Intervention for Dispute Avoidance" in the Letter Re: Request for Intervention of PEU-NUWHRAIN; *id.* at 42.

[17] Dated August 11, 2006.

to the issue, among others, of its entitlement to collect increased agency fees from the non-PEU members,[18] which was docketed as OSEC-AIDA-03-001-09.[19]

The non-PEU members objected to the assessment of increased agency fees arguing that: *(a)* the new CBA is unenforceable since no written CBA has been formally signed and executed by PEU-NUWHRAIN and the Hotel; *(b)* the 2% agency fee is exorbitant and unreasonable; and *(c)* PEU-NUWHRAIN failed to comply with the mandatory requirements for such increase.[20]

The OSEC's Ruling

In a Decision[21] dated June 2, 2010 (June 2, 2010 Decision), the OSEC upheld PEU-NUWHRAIN's right to collect agency fees from the non-PEU members in accordance with Article 4, Section 2 of the expired CBA, which was declared to be in full force and effect pursuant to the October 10, 2008 Decision, but only at the rate of one percent (1%),[22] and denied its bid to increase the agency fees to two percent (2%) for failure to show that its general membership approved the same, noting that: *(a)* the October 28, 2008 General Membership Resolution[23] (GMR) submitted in support of the claimed increase dealt with the approval of the payment of attorney's fees from the CBA backwages, without reference to any approval of the increase in union dues; and *(b)* the minutes[24] of its October 28, 2008 general membership meeting (October 28, 2008 minutes) merely stated that there was a need to update the individual check-off authorization to implement the two percent (2%) union dues, but was silent as to any deliberation and formal approval

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[18] See DOLE records at 41-42. See also *rollo*, p. 19.

[19] See *id.* at 120.

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

[21] *Id.* at 120-141. Penned by Secretary Marianito D. Roque.

[22] See *id.* at 129-130 and 140.

[23] *Id.* at 101-107.

[24] *Id.* at 109-110.

thereof.[25] The OSEC pointed out that the only direct proof presented for the claimed increase in union dues was the PEU President's application for union membership with PEU-NUWHRAIN[26] dated October 29, 2008, together with his Individual Check-Off Authorization[27] purportedly dated May 11, 2008, which precedes such application and, thus, cannot be given credence.[28]

Dissatisfied, PEU-NUWHRAIN moved for reconsideration,[29] attaching thereto copies of: *(a)* the July 1, 2010 GMR[30] confirming and affirming the alleged approval of the deduction of two percent (2%) union dues from the members' monthly basic salaries; *(b)* the individual check-off authorizations[31] dated November 26 and 27, 2008 from three (3) members authorizing the deduction of two percent (2%) union dues from their monthly basic salaries; and *(c)* payslips[32] of some PEU-NUWHRAIN members purportedly showing the deduction of two percent (2%) union dues from their monthly basic pay beginning January 2009.

On March 6, 2012, the OSEC issued an Order[33] partially granting PEU-NUWHRAIN's motion for reconsideration, and declaring it entitled to collect two percent (2%) agency fees from the non-PEU members beginning July 2010 since the GMR showing approval for the increase of the union dues from one percent (1%) to two percent (2%) was only procured at that time.[34]

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[25] *Id.* at 131-134 and 140.

[26] See Application for Union Membership and Authorization for Bargaining Representative; *id.* at 98.

[27] *Id.* at 99. Actually dated November 11, 2008.

[28] See *id.* at 132-133.

[29] See motion for reconsideration dated July 2, 2010; *id.* at 142-150.

[30] *Id.* at 151-173.

[31] *Id.* at 175-177.

[32] *Id.* at 178-179.

[33] *Id.* at 181-188.

[34] See *id.* at 186-188.

Unperturbed, respondents filed a petition for *certiorari*[35] with the CA, docketed as CA-GR. SP No. 124566, alleging that the OSEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in allowing PEU-NUWHRAIN to collection increased agency fees despite non-compliance with the legal requirements therefor.[36]

The CA Ruling

In a Decision[37] dated February 9, 2015, the CA set aside the OSEC's March 6, 2012 Order, and reinstated the June 2, 2010 Decision.[38] It ruled that PEU-NUWHRAIN failed to prove compliance with the requisites for a valid check-off since the October 28, 2008 minutes do not show that the increase in union dues was duly approved by its general membership. It also found the July 1, 2010 GMR suspicious considering that it surfaced only after PEU received the OSEC's June 2, 2010 Decision disallowing the collection of increased agency fees.[39]

PEU-NUWHRAIN moved for reconsideration,[40] which was, however, denied in a Resolution[41] dated May 21, 2015; hence, the present petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in ruling that PEU-NUWHRAIN had no right to collect the increased agency fees.

The Court's Ruling

The petition lacks merit.

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[35] Dated April 20, 2012; *id.* at 189-214.

[36] *Id.* at 199.

[37] *Id.* at 16-28.

[38] *Id.* at 28.

[39] See *id.* at 27.

[40] Not attached to the *rollo*.

[41] *Id.* at 29-31.

The recognized collective bargaining union which successfully negotiated the CBA with the employer is given the right to collect a reasonable fee called "agency fee" from non-union members who are employees of the appropriate bargaining unit, in an amount equivalent to the dues and other fees paid by union members, in case they accept the benefits under the CBA.[42] While the collection of agency fees is recognized by Article 259[43] (formerly Article 248) of the Labor Code, as amended, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.[44]

In the present case, PEU-NUWHRAIN's right to collect agency fees is not disputed. However, the rate of agency fees it seeks to collect from the non-PEU members is contested, considering its failure to comply with the requirements for a valid increase of union dues, rendering the collection of increased agency fees unjustified.

Case law interpreting Article 250 (n) and (o)[45] (formerly Article 241) of the Labor Code, as amended, mandates the submission

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[42] See Article 259 (e) (formerly Article 248 [e]), as renumbered by DOLE Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[43] Article 259 (e) (formerly Article 248 [e]) of the Labor Code, as amended, pertinently provides:

> (e) x x x. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a **reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent**, if such non-union members **accept the benefits under the collective bargaining agreement**: *Provided,* That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of recognized collective bargaining agent;
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> x x x (Emphasis supplied)

[44] *Holy Cross of Davao College, Inc. v. Joaquin*, 331 Phil. 680, 692 (1996).

[45] Article 250. Rights and Conditions of Membership in a Labor Organization. — The following are the rights and conditions of membership in a labor organization:

of three (3) documentary requisites in order to justify a valid levy of increased union dues. These are: *(a)* an authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; *(b)* the secretary's record of the minutes of the meeting, which shall include the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees;[46] and *(c)*individual written authorizations for check-off duly signed by the employees concerned.[47]

In the present case, however, PEU-NUWHRAIN failed to show compliance with the foregoing requirements. It attempted to remedy the "inadvertent omission" of the matter of the approval of the deduction of two percent (2%) union dues from the monthly basic salary of each union member through the July 1, 2010 GMR,[48] entitled "A GENERAL MEMBERSHIP RESOLUTION AUTHORIZING THE DEDUCTION OF TWO PERCENT (2%) UNION DUES FROM THE MONTHLY BASIC SALARY OF EACH UNION MEMBER," which stated, among others, that:

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x x x x x x x x x

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members in a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president;

(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; x x x

x x x x x x x x x

[46] See *id.*

[47] *ABS-CBN Union Members v. ABS-CBN Corp.*, 364 Phil. 133, 144 (1999). See also *San Miguel Corp. Employees Union v. Noriel,* G.R. No. 53918, February 24, 1991, 103 SCRA 185, 195.

[48] *Rollo,* p. 151.

1. the General Membership Assembly (Assembly) "approved the deduction of two percent (2%) union dues from the monthly basic salary of each union member" during its 8th General Membership Meeting, as shown in the October 28, 2008 minutes;

2. "through inadvertence, the [October 28, 2008 GMR] failed to include the Assembly's approval of the two percent (2%) deduction of union dues;"

3. the July 1, 2010 GMR is being issued "to confirm and affirm what was agreed upon during the 8th General Membership Meeting dated October 28, 2008."[49]

On the other hand, the adverted October 28, 2008 minutes[50] stated, *inter alia*, that:

1. "the [two percent (2%)] Union dues will have to be implemented since PEU was already affiliated with NUWHRAIN [in] 2007";[51]

2. "it was discussed, deliberated and approved by the majority of members the (sic) 10% of total CBA back wages through [the Assembly] resolution authorizing the payment of attorney's fees."[52]

It is evident from the foregoing that while the matter of implementing the two percent (2%) union dues was taken up during the PEU-NUWHRAIN's 8th General Membership Meeting on October 28, 2008, *there was no sufficient showing that the same had been duly deliberated and approved.* The minutes of the Assembly itself belie PEU-NUWHRAIN's claim that the increase in union dues and the corresponding check-off were duly approved since it merely stated that "the [two percent (2%)] Union dues will have to be implemented,"[53] meaning, it would

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[49] *Id.*

[50] *Id.* at 109-110.

[51] *Id.* at 109.

[52] *Id.*

[53] *Id.*

still require the submission of such matter to the Assembly for deliberation and approval. Such conclusion is bolstered by the silence of the October 28, 2008 GMR on the matter of two percent (2%) union dues, *in contrast* to the payment of 10% attorney's fees from the CBA backwages which was clearly spelled out as having been "discussed and approved."[54] Thus, as aptly pointed out by the CA: "[i]f indeed majority of the members of [PEU-NUWHRAIN] approved the increase in union dues, the same should have been mentioned in the [October 28, 2008 minutes], and reflected in the GMR of the same date."[55]

Having failed to establish due deliberation and approval of the increase in union dues from one percent (1%) to two percent (2%), as well as the deduction of the two percent (2%) union dues during PEU-NUWHRAIN's 8th General Membership Meeting on October 28, 2008, there was nothing to confirm, affirm, or ratify through the July 1, 2010 GMR. Contrary to the ruling of the OSEC in its March 6, 2012 Order, the July 1, 2010 GMR, by itself, cannot justify the collection of two percent (2%) agency fees from the non-PEU members beginning July 2010. The Assembly was not called for the purpose of approving the proposed increase in union dues and the corresponding check-off, but merely to "confirm and affirm" a purported prior action which PEU-NUWHRAIN, however, failed to establish.

Corollarily, no individual check-off authorizations can proceed therefrom, and the submission of the November 2008 check-

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[54] *Id.* at 101.

[55] *Id.* at 27. Noteworthy is the following observation in the OSEC's June 2, 2010 Decision, which was reinstated by the CA:

> The [October 28, 2008 minutes] coming one day before the execution by the PEU president of his membership application, speak merely of the need to update the individual check-off authorization specifically the [two percent (2%)] union dues [which] will [still] have to be implemented. **Verily, the minutes in itself shows that as of that date, there was still no formal approval of the [two percent (2%)] union dues increase.**
>
> In light of the foregoing, there is thus in fine, no direct, independent and credible proof as to the fact that the PEU membership have indeed approved the increase in union dues. x x x. (*Id.* at 133-134; emphasis supplied.)

off authorizations[56] becomes inconsequential. Jurisprudence states that the express consent of the employee to any deduction in his compensation is required to be obtained in accordance with the steps outlined by the law, **which must be followed to the letter;**[57] however, PEU-NUWHRAIN failed to comply. Thus, the CA correctly ruled that there is no legal basis to impose union dues and agency fees more than that allowed in the expired CBA, *i.e.,* at one percent (1%) of the employee's monthly basic salary.

In fine, the Court finds no reversible error on the part of the CA in granting petitioner's *certiorari* petition, and finding that the OSEC gravely abused its discretion in declaring PEU-NUWHRAIN's entitlement to collect two percent (2%) agency fees from the non-PEU members beginning July 2010. The OSEC's March 6, 2012 Order is patently contrary to law, hence, imbued with grave abuse of discretion correctible through *certiorari.*[58]

WHEREFORE, the petition is **DENIED.** The Decision dated February 9, 2015 and the Resolution dated May 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 124566 are hereby **AFFIRMED.**

SO ORDERED.

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

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[56] *Id.* at 175-177.

[57] *Gabriel v. Secretary of Labor and Employment,* 384 Phil. 797, 805-806 (2000).

[58] See *Baron v. EPE Transport, Inc.*, G.R. No. 202645, August 5, 2015, 765 SCRA 345, 354.

FIRST DIVISION

[G.R. No. 223254. December 1, 2016]

ROSALIE SY AYSON, *petitioner, vs.* **FIL-ESTATE PROPERTIES, INC., and FAIRWAYS AND BLUEWATER RESORT AND COUNTRY CLUB, INC.,** *respondents.*

[G.R. No. 223269. December 1, 2016]

FIL-ESTATE PROPERTIES, INC., and FAIRWAYS & BLUEWATER RESORT & COUNTRY CLUB, INC., *petitioners, vs.* **ROSALIE SY AYSON,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; REDUCTION OF THE AWARD OF MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES, PROPER.— [T]he CA correctly reduced the awards for moral damages, exemplary damages, and attorney's fees to ₱500,000.00, ₱300,000.00, and ₱200,000.00, respectively, in light of the evidence adduced as well as the prevailing circumstances of the instant case. It must be stressed that "[m]oral damages are not meant to be punitive but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person." Similarly, exemplary damages are imposed "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages" and are awarded "only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner." Lastly, attorney's fees should be reasonable in all cases where an award thereof is warranted under the circumstances.

2. ID.; SALES; WHEN THERE WAS NO EVIDENCE THAT WOULD PROVIDE A COMPETENT VALUATION OF THE SUBJECT LAND, THE COURT FINDS IT PRUDENT TO REMAND THE CASE BACK TO THE TRIAL COURT FOR THE DETERMINATION OF THE CURRENT MARKET VALUE OF THE LAND.— After a judicious perusal of the records, the Court views such valuations as

grounded entirely on speculation, surmises, or conjectures as there was no evidence presented by the parties supporting the same. In fact, even the CA acknowledged the absence of any piece of evidence that would provide a competent valuation of the subject land. Undoubtedly, such valuations, including the amount of monthly rentals that Fil-Estate and Fairways must pay Ayson for the use of the subject land, must be struck down. In the same vein, the Court likewise finds untenable Fil-Estate and Fairways' assertion that the valuation of the subject land is only ₱100,000.00, as stated in the Deed of Sale executed by Ayson and Villanueva in 1996. At the most, the value stated in said Deed would only reflect the market value of the subject land at the time of its execution and is in no way indicative of the current market value of the said land, which is the amount that Fil-Estate and Fairways should pay Ayson. In view of the foregoing circumstances, the Court finds it prudent to remand the case back to the RTC for the determination of the current market value of the subject land, as well as the reasonable amount of monthly rental. Once the current market value as well as the reasonable rent has been reasonably ascertained, the same shall be subjected to the appropriate interest rates.

APPEARANCES OF COUNSEL

Tanjuatco & Partners Law Office for petitioner in G.R. No. 223254 and respondent in G.R. No. 223269.

Poblador Bautista & Reyes for respondents in G.R. No. 223254 and petitioners in G.R. No. 223269.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated petitions for review on *certiorari*[1] are the Decision[2] dated March 1, 2013 and the

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[1] *Rollo* (G.R. No. 223254), pp. 8-47. *Rollo* (G.R. No. 223269), pp. 16-59.

[2] *Rollo* (G.R. No. 223269), pp. 61-78. Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Edgardo L. Delos Santos and Maria Elisa Sempio Diy concurring.

Resolution[3] dated February 22, 2016 of the Court of Appeals (CA) in CA-G.R. CV. No. 03010, which affirmed with modification the Decision[4] dated March 1, 2004 and the Order[5] dated February 6, 2009 of the Regional Trial Court of Kalibo, Aklan, Branch 9 (RTC) in Civil Case No. 5627 and, accordingly, ordered Fil-Estate Properties, Inc. (Fil-Estate) and Fairways & Bluewater Resort & Country Club, Inc. (Fairways) to pay Rosalie Sy Ayson (Ayson), *inter alia*, the amount of US$40,000.00 or its Philippine Peso equivalent, representing the value of the land subject of litigation.

The Facts

The instant case arose from a Complaint[6] for recovery of possession and damages filed by Ayson against Fil-Estate and Fairways before the RTC, alleging that she is the registered owner of a 1,000-square meter parcel of land, more or less, located in Yapak, Malay, Aklan, *i.e.*, the northwestern area of Boracay Island, denominated as Lot No. 14-S and covered by Transfer Certificate of Title (TCT) No. T-24562[7] (subject land). Sometime in June 1997, she discovered that Fil-Estate and Fairways illegally entered into the subject land and included it in the construction of its golf course without her prior consent and authorization. Despite receipt of a Notice to Cease and Desist[8] from Ayson, Fil-Estate and Fairways continued their encroachment and development of the subject land making it now a part of the entire golf course. Thus, she was constrained to file the instant complaint.[9]

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[3] *Id.* at 81-83. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig concurring.

[4] *Id.* at 185-195. Penned by Presiding Judge Dean R. Telan.

[5] *Id.* at 228-229. Penned by Acting Presiding Judge Ledelia P. Aragona-Biliran.

[6] Dated October 20, 1998. *Id.* at 170-174.

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

[8] Not attached to the *rollo*.

[9] See *rollo* (G.R. No. 223269), pp. 170-173. See also *id.* at 63-64.

In their defense,[10] Fil-Estate and Fairways maintain that the subject land was formerly owned by one Divina Marte Villanueva (Villanueva), with whom they entered into a Joint Venture Agreement (JVA) for the development of the Fairways and Bluewater Resort Golf and Country Club. Fil-Estate and Fairways explained that prior to the JVA, Villanueva sold portions of her property to various buyers, including Ayson, with the caveat that such portions may be used in a development project. In this light, Villanueva allegedly convinced her buyers to agree to a land swap should such development push through. When the project commenced, the other buyers readily agreed to said land swaps. Unfortunately, talks with Ayson stalled, prompting Fil-Estate and Fairways to "exclude" development work on the subject land. Nevertheless, Fil-Estate and Fairways commenced construction on the subject land, allegedly relying in good faith upon Villanueva's assurance that her other former buyers, *e.g.*, Ayson, would eventually agree with the land swap agreements. According to Fil-Estate and Fairways, Ayson only signified her objection to the inclusion of the subject land in the development project when construction was almost finished. Fit-Estate and Fairways further averred that they tried to remedy the situation by negotiating with Ayson, but to no avail.[11]

The RTC Ruling

In a Decision[12] dated March 1, 2004, the RTC ruled in Ayson's favor and, accordingly, ordered Fil-Estate and Fairways to pay her the following amounts: *(a)* US$100,000.00 or its Philippine Peso equivalent, representing the value of the subject land, plus ₱50,000.00 monthly rentals for the use and occupancy of said land starting December 1997 until the aforesaid value has been fully paid; *(b)* ₱900,000.00 as actual damages; *(c)* ₱1,000,000.00 as moral damages; *(d)* ₱1,000,000.00 as exemplary damages;

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[10] See Answer (to the Complaint dated 20 October 1998) dated April 28, 1999; *id.* at 176-184.

[11] See *id.* at 64-69 and 177-182.

[12] *Id.* at 185-195.

(e) ₱300,000.00 as attorney's fees and other litigation expenses; and *(j)* the costs of suit.[13]

The RTC found that contrary to Fil-Estate and Fairways' assertions, Ayson never agreed to any future land swapping arrangement with Villanueva, considering that Ayson already paid Villanueva the amount of US$20,000.00 representing the purchase price of the subject land way back April 1994 (albeit the Deed of Sale[14] was only executed on April 15, 1996), while the construction of the golf course was only conceptualized sometime in early 1995. As such, it was error for Fil-Estate and Fairways to merely rely on Villanueva's assurance that she will be able to convince her buyers to enter into a land swapping arrangement, especially considering that the title to the same was already in Ayson's name. In this regard, the RTC opined that Fil-Estate and Fairways should have first secured permission from Ayson to enter into the subject land before proceeding with the construction of the golf course. Thus, the RTC concluded that Fil-Estate and Fairways did not exercise the ordinary diligence of a good father of a family before entering into the subject land, which caused damage to Ayson for which they should be liable. The foregoing notwithstanding, the RTC no longer ordered the return of the subject land to Ayson, ratiocinating that its exclusion from Fil-Estate and Fairways' development project at this late stage would lead to major re-planning, re-routing, and relocation works, which in turn, would massively prejudice the Fil-Estate and Fairways' economic position, and affect its integrity and reputation. Instead, the RTC ordered Fil-Estate and Fairways to pay Ayson the purported value of the subject land, which it pegged at US$100,000.00, or her acquisition cost multiplied by five, in view of the rapid increase of real estate properties in Boracay Island for the past few years.[15]

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[13] See *id.* at 194-195.

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

[15] See *id.* at 187-194.

Fil-Estate and Fairways moved for reconsideration,[16] which was, however, denied in an Order[17] dated February 6, 2009. Aggrieved, they appealed[18] to the CA.

The CA Ruling

In a Decision[19] dated March 1, 2013, the CA affirmed the RTC ruling with modification reducing the award of damages as follows: *(a)* US$40,000.00 or its Philippine Peso equivalent, representing the value of the subject land, plus ₱1,000.00 monthly rentals for the use and occupancy of said land starting December 1997 until the aforesaid value has been fully paid; *(b)* ₱52,666.00 plus US$4,316.06 or its Philippine Peso equivalent as actual damages; (c) ₱500,000.00 as moral damages; *(d)* ₱300,000.00 as exemplary damages; and *(e)* ₱200,000.00 as attorney's fees and other litigation expenses.[20]

The CA held that despite recognizing Ayson as the registered owner of the subject land, Fil-Estate and Fairways still entered into the same and included it in its golf course development project without the former's prior knowledge and consent. In this regard, it held that Fil-Estate and Fairways should not have relied on Villanueva's assurances that she would secure Ayson's acquiescence to a land swap arrangement, but instead, exercised due diligence and prudence in taking steps to ensure that Ayson indeed agreed to the inclusion of her property in the golf course development project. Further, the CA agreed with the RTC that the subject land should no longer be returned to Ayson, and that Fil-Estate and Fairways should pay her its value instead. However, absent any competent evidence on the valuation of the subject land, the CA fixed its value at US$40,000.00, or the amount double its acquisition cost, and likewise reduced

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[16] See motion for reconsideration dated April 27, 2004; *id.* at 196-227.

[17] *Id.* at 228-229.

[18] See Brief for Defendant-Appellants dated January 6, 2010; *id.* at 230-289.

[19] *Id.* at 61-78.

[20] See *id.* at 77.

the rent to ₱1,000.00 per month. In the same vein, the CA found it appropriate to reduce the other awards of damages to Ayson in keeping with the evidence adduced in the case as well as the prevailing circumstances.[21]

Dissatisfied, both parties separately moved for reconsideration[22] assailing the valuation of the subject land as well as the other monetary awards. Fil-Estate and Fairways likewise assailed the CA's failure to expressly state in its Decision that upon full payment of the value of the subject land, Ayson should surrender her title over the same and that a new title be issued in their names.[23]

In a Resolution[24] dated February 22, 2016, the CA denied the parties' respective motions, holding that: *(a)* in pegging the value of the subject land, it took judicial notice of the rapid increase and appreciation of the value of the real estate properties in Boracay Island for the past years; *(b)* the amounts fixed representing the awards for damages are correct, fair, and reasonable under the circumstances; and (c) there is no more necessity to expressly declare that upon Fil-Estate and Fairways' payment of the value of the subject land, Ayson should surrender her title over the same and a new title must be issued in their names, as such is a necessary consequence of its Decision.[25]

Hence, these consolidated petitions.

The Issues Before the Court

At the outset, the Court notes that the issues raised in the instant petition largely pertain only to the propriety of the awards of moral damages, exemplary damages, and attorney's fees in

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[21] See *id.* at 70-76.

[22] See Fil-Estate and Fairways' Motion for Partial Reconsideration (of the 1 March 2013 Decision) dated April 4, 2013 (*id.* at 84-91); and Ayson's motion for reconsideration dated March 26, 2013 (*id.* at 102-105).

[23] See *id.* at 31.

[24] *Id.* at 81-83.

[25] *Id.* at 82-83.

Ayson's favor and the corresponding amounts thereof, as well as the correctness of the valuation of the subject land at US$40,000.00 and the monthly rental therefor. As such, the Court shall limit its discussion on the foregoing and shall no longer delve on other matters not raised before it.

Essentially, Fil-Estate and Fairways contend that there is no basis to award moral damages, exemplary damages, and attorney's fees to Ayson as they were in good faith in relying on Villanueva's assurances that Ayson will agree on the land swap arrangement before they proceeded with the golf course development project. They likewise contend that Ayson never objected to the construction on the subject land until after the golf course had been completed.[26] As to the valuation of the subject land, Fil-Estate and Fairways argue that the CA's appraisal of the same at US$40,000.00 (or even that of the RTC at US$100,000.00) does not have any basis as no competent evidence on record supports such estimation. In this regard, Fil-Estate and Fairways insist that the value of the subject land is only ₱100,000.00, as stated in the Deed of Sale[27] executed by Ayson and Villanueva.[28]

On the other hand, Ayson disputes the reduction of the amounts of moral damages, exemplary damages, and attorney's fees awarded to her, justifying the RTC's higher awards as just, proper, and equitable in light of Fil-Estate's gross and utter bad faith in entering into her property and making it a part of its golf course without her knowledge and consent.[29] In the same vein, Ayson assails CA's reduced valuation of the subject land as well as the monthly rent therefor, maintaining that the RTC correctly took judicial notice of the rapid valuation of properties in Boracay Island.[30]

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[26] See *id.* at 38-45.

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

[28] See *id.* at 33-37.

[29] See *rollo* (G.R. No. 223254), pp. 19-40.

[30] See *id.* at 17-19.

The Court's Ruling

The petition is partly meritorious.

I.

To recapitulate, both the RTC and the CA found that Ayson is the undisputed owner of the subject land, as evidenced by TCT No. T-24562. Despite such knowledge, Fil-Estate and Fairways nevertheless chose to rely on Villanueva's empty assurances that she will be able to convince Ayson to agree on a land swap arrangement; and thereafter, proceeded to enter the subject land and introduce improvements thereon. The courts *a quo* further found that since such acts were without Ayson's knowledge and consent, she, thus: *(a)* suffered sleepless nights and mental anguish knowing that the property she and her husband had invested for their future retirement had been utilized by Fil-Estate and Fairways for their own sake; and *(b)* had to seek legal remedies to vindicate her rights. Thus, both lower courts concluded that Fil-Estate and Fairways' acts were done in bad faith and resulted in injury to Ayson; hence, they are liable for, *inter alia*, moral damages, exemplary damages, and attorney's fees.

Verily, the finding of Fil-Estate and Fairways' bad faith[31] as well as their liability for moral damages,[32] exemplary

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[31] "[T]he existence of bad faith is a question of fact and is evidentiary; x x x it requires that the reviewing court look into the evidence to find if indeed there is proof that is substantial enough to show such bad faith." *(Meyr Enterprises Corporation v. Cordero,* G.R. No. 197336, September 3, 2014, 734 SCRA 253, 265, citing *Tabangao Shell Refinery Employees Association v. Pilipinas Shell Petroleum Corporation,* G.R. No. 170007, April 7, 2014, 720 SCRA 631, 649.)

[32] "While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendants acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. x x x." *(Mahinay v. Velasquez, Jr.,* 464 Phil. 146, 149-150 [2004], citing *Keirulf v. CA,* 336 Phil. 414, 431-432 [1997].)

damages,[33] and attorney's fees,[34] are all factual matters which are not within the ambit of the instant petition for review on *certiorari* under Rule 45 of the Rules of Court. In this regard, it has long been settled that factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal,[35] save for certain exceptions,[36] which Fil-Estate and Fairways failed to show in this case — at least regarding this issue.

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[33] "Our jurisprudence sets certain conditions when exemplary damages may be awarded: First, they may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. Second, the claimant must first establish his right to moral, temperate, liquidated or compensatory damages. Third, the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner." *(Mendoza v. Spouses Gomez,* 736 Phil. 460, 482 [2014].)

[34] "We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof."*(Philippine National Construction Corporation v. APAC Marketing Corporation,* 710 Phil. 389, 396 [2013].)

[35] See *Bacalso v. Aca-ac,* G.R. No. 172919, January 13, 2016, citing *Spouses Pascual v. Spouses Coronel,* 554 Phil. 351, 360 (2007).

[36] As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. In many instances, however, this Court has laid down exceptions to this general rule, as follows: (1) when the factual findings of the CA and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3)when the inference made by the CA from its findings of fact is manifestly mistaken, absurd or impossible; (4)when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA is premised on misapprehension of facts; (7) when the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record. *(Treñas v. People,* 680 Phil. 368, 378 [2012].)

Relatedly, the CA correctly reduced the awards for moral damages, exemplary damages, and attorney's fees to ₱500,000.00, ₱300,000.00, and ₱200,000.00, respectively, in light of the evidence adduced as well as the prevailing circumstances of the instant case. It must be stressed that "[m]oral damages are not meant to be punitive but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person."[37] Similarly, exemplary damages are imposed "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages" and are awarded "only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner."[38] Lastly, attorney's fees should be reasonable in all cases where an award thereof is warranted under the circumstances.[39]

In sum, Fil-Estate and Fairways' liability for moral damages, exemplary damages, and attorney's fees, as well as the amounts thereof, must be upheld in light of the surrounding circumstances of this case. In addition, a legal interest at the rate of six percent (6%) per annum should be imposed on all monetary awards to Ayson from the time of the finality of this Decision until fully paid.[40]

II.

Anent the valuation of the subject land, the RTC deemed the amount of US$100,000.00 or its Philippine Peso equivalent as its reasonable value "considering the rapid increase or appreciation of the value of real estate properties in Boracay Island for the past 10 years."[41] On the other hand, the CA pegged its value at US$40,000.00, or the amount double the purchase

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[37] *Mendoza v. Spouses Gomez, supra* note 33, at 480.

[38] *The Metropolitan Bank and Trust Company v. Rosales,* 724 Phil. 66, 79 (2014); citations omitted.

[39] See Article 2208 of the Civil Code.

[40] See *Nacar v. Gallery Frames,* 716 Phil. 267, 278-283 (2013).

[41] *Rollo* (G.R. No. 223269), p. 194.

price, "in consideration and after proper adjustment of the [RTC's] valuation which took judicial notice of the rapid increase and appreciation of the value of real estate properties in Boracay Island for the past years and considering further that the property is located in the prime tourist destination."[42]

After a judicious perusal of the records, the Court views such valuations as grounded entirely on speculation, surmises, or conjectures as there was no evidence presented by the parties supporting the same. In fact, even the CA acknowledged the absence of any piece of evidence that would provide a competent valuation of the subject land.[43] Undoubtedly, such valuations, including the amount of monthly rentals that Fil-Estate and Fairways must pay Ayson for the use of the subject land, must be struck down.

In the same vein, the Court likewise finds untenable Fil-Estate and Fairways' assertion that the valuation of the subject land is only ₱100,000.00, as stated in the Deed of Sale[44] executed by Ayson and Villanueva in 1996.[45] At the most, the value stated in said Deed would only reflect the market value of the subject land at the time of its execution and is in no way indicative of the current market value of the said land, which is the amount that Fil-Estate and Fairways should pay Ayson.[46]

In view of the foregoing circumstances, the Court finds it prudent to remand the case back to the RTC for the determination of the current market value of the subject land, as well as the reasonable amount of monthly rental. Once the current market value as well as the reasonable rent has been reasonably ascertained, the same shall be subjected to the appropriate interest rates.[47]

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[42] *Id.* at 82.

[43] See *id.* at 73.

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

[45] See *id.* at 33-37.

[46] See *Communities Cagayan, Inc. v. Spouses Nanol*, 698 Phil. 648, 656-667 (2012).

[47] See *International Container Terminal Services, Inc. v FGU Insurance Corporation*, 604 Phil. 380, 381-382 (2009). See also *Rivera v. Spouses Chua*, G.R. No. 184458, January 14, 2015, 746 SCRA 1, 23-28.

Moreover, once the value of the subject land, monthly rentals, and applicable interests have been fully paid, Ayson should execute the necessary documents to effectuate the transfer of the property to Fil-Estate and Fairways.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated March 1, 2013 and the Resolution dated February 22, 2016 of the Court of Appeals in CA-G.R. CV. No. 03010 are hereby **AFFIRMED** with **MODIFICATION** as follows:

(a) petitioners Fil-Estate Properties, Inc. and Fairways & Bluewater Resort & Country Club, Inc. are **ORDERED** to jointly and solidarily pay Rosalie Sy Ayson the amounts of ₱52,666.00 and US$4,316.06 or its Philippine Peso equivalent as actual damages, ₱500,000.00 as moral damages, ₱300,000.00 as exemplary damages, and ₱200,000.00 as attorney's fees and litigation expenses, with legal interest at the rate of six percent (6%) per annum on all amounts due from finality of judgment until fully paid;

(b) the issue of the proper valuation of Lot No. 14-S covered by Transfer Certificate of Title No. T-24562 is **REMANDED** to the Regional Trial Court of Kalibo, Aklan, Branch 9 to determine its current market value, reasonable monthly rental, and the applicable interest rate thereon to be paid by Fil-Estate Properties, Inc. and Fairways & Bluewater Resort & Country Club, Inc.; and

(c) upon full payment of the ascertained current market value, monthly rental, and interests, Rosalie Sy Ayson shall execute the necessary documents to effectuate the transfer of Lot No. 14-S covered by Transfer Certificate of Title No. T-24562 to Fil-Estate Properties, Inc. and Fairways & Bluewater Resort & Country Club, Inc.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[A.C. No. 10671. December 5, 2016]

JOSEPH C. CHUA, *complainant, vs.* **ATTY. ARTURO M. DE CASTRO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DELAY IN THE DISPOSITION OF THE CASE WAS NOT SOLELY ATTRIBUTABLE TO RESPONDENT; PETITIONER FAILED TO PRESENT SUFFICIENT EVIDENCE OF THE OVERT ACTS COMMITTED BY RESPONDENT THAT DEMONSTRATED HIS INTENTION TO DO WRONG OR CAUSE DAMAGE TO PETITIONER OR HIS BUSINESS.— Upon careful consideration of the circumstances, the Court finds that the delay in the disposition of Civil Case No. 7939 was not solely attributable to Atty. De Castro. The trial court itself, either at its own initiative or at the instance of Chua's counsel, allowed the delays. Consequently, if not all of such delays were attributable to Atty. De Castro's doing, it would be unfair to hold him solely responsible for the delays caused in the case. Moreover, it appears that the trial court granted Atty. De Castro's several motions for resetting of the trial; and that at no time did the trial court sanction or cite him for contempt of court for abuse on account of such motions. Verily, if his explanations for whatever delays he might have caused were accepted by the trial court without any reservations or conditions, there would be no legitimate grievance to be justly raised against him on the matter. x x x While Atty. De Castro's repeated requests for resetting and postponement of the trial of the case may be considered as contemptuous if there was a showing of abuse on his part, the Court, however, finds that Chua failed to show that Atty. De Castro was indeed moved to cause delays by malice, or dishonesty, or deceit, or grave misconduct as to warrant a finding of administrative liability against him. The operative phrase for causing delay in any suit or proceeding under Rule 1.03 is "*for any corrupt motive or interest*." Considering that this matter concerned Atty. De Castro's state of mind, it absolutely behooved Chua to present sufficient evidence of the

overt acts committed by Atty. De Castro that demonstrated his having deliberately intended thereby to do wrong or to cause damage to him and his business. That demonstration, however, was not made by Chua.

2. ID.; ID.; ID.; WHEN THE DELAYS CAUSED IN THE CASE DID NOT FALL EXCLUSIVELY ON RESPONDENT, THREE (3) MONTHS SUSPENSION FROM THE PRACTICE OF LAW WOULD BE DISPROPORTIONATE TO THE ACTS IMPUTABLE TO HIM; ADMONISHMENT, IMPOSED.—Notwithstanding the absence of malice, dishonesty, or ill motive, it is good to remind Atty. De Castro that as a member of the Bar, he is expected to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice and to be more circumspect whenever seeking the postponements of cases. x x x Considering the Court's earlier discussion that the responsibility for the delays caused in the case did not fall exclusively on the shoulders of Atty. De Castro, punishing him with suspension from the practice of law for three (3) months would be disproportionate to the acts imputable to him. More so, the Court notes that the trial court itself did not consider his responsibility for the delays sanctionable as contempt of court. Thus, after a careful consideration of Atty. De Castro's MR, the Court finds it proper for a modification of the assailed Resolution. x x x Atty. Arturo M. De Castro is **ADMONISHED** to exercise the necessary prudence required in the practice of his legal profession in his representation of the defendant in Civil Case No. 7939 in the Regional Trial Court of Batangas City.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a Motion for Reconsideration[1] (MR) filed by respondent Atty. Arturo M. De Castro (Atty. De Castro) of the Court's Resolution[2] dated November 25, 2015 which found him liable for violation of the Code of Professional Responsibility

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[1] *Rollo*, Vol. II, pp. 608-622.

[2] *Id.* at 603-607.

(CPR) and was meted out the penalty of suspension from the practice of law for a period of three (3) months.

The Court recalls the antecedents that brought the instant case to the fore as follows:

> Chua alleged that his company, Nemar Computer Resources Corp. (NCRC) filed a collection case against Dr. Concepcion Aguila Memorial College, represented by its counsel, Atty. De Castro.
>
> According to Chua, since the filing of the collection case on June 15, 2006, it took more than five (5) years to present one witness of NCRC due to Atty. De Castro's propensity to seek postponements of agreed hearing dates for unmeritorious excuses. Atty. De Castro's flimsy excuses would vary from simple absence without notice, to claims of alleged ailment unbacked by any medical certificates, to claims of not being ready despite sufficient time given to prepare, to the sending of a representative lawyer who would profess non-knowledge of the case to seek continuance, to a plea for the postponement without providing any reason therefore.
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> x x x x x x x x x
>
> For his defense, Atty. De Castro countered that his pleas for continuance and resetting were based on valid grounds. Also, he pointed out that most of the resetting were [sic] without the objection of the counsel for NCRC, and that, certain resettings were even at the instance of the latter.
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> On April 10, 2013, the CBD submitted its Report and Recommendation addressing the charge against Atty. De Castro. The CBD found Atty. De Castro to have violated Canons 10, 11, 12 and 13 of the [CPR] when he deterred the speedy and efficient administration of justice by deliberately employing delaying tactics in Civil Case No. 7939. The CBD recommended that he be suspended from the practice of law for a period of six (6) months from notice, with a warning that a similar lapse in the future may warrant more severe sanctions.
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> On April 16, 2013, the IBP Board of Governors issued a Resolution adopting and approving with modification the Report and Recommendation of the CBD. The Board of Governors modified the penalty meted out to [Atty. De Castro] [by] reducing the period of suspension from six (6) months to three (3) months. Both Chua and Atty. De Castro filed their respective motions for reconsideration

dated August 28, 2013 and August 23, 2013 but the same were denied in a Resolution dated May 3, 2014.[3] (Citations omitted)

On November 25, 2015, the Court affirmed the recommendation of the Integrated Bar of the Philippines (IBP) Board of Governors. The Court held that Atty. De Castro violated his oath of office in his handling of the collection case filed against his client.

Undaunted with the Court's ruling, Atty. De Castro filed the present motion for reconsideration alleging that the findings of malice, bad faith, and deliberate intent on his part were merely based on the Summary of Hearings and Reports of the Court, a self-serving and misleading evidence submitted by the complainant, Joseph C. Chua (Chua). He argues that it is not an official document, but merely a narration of the accusations of Chua. He strongly disputes the allegations of Chua averring that the long delay in the disposition of the collection case before the Regional Trial Court (RTC) was due to the several postponements which were found meritorious by the RTC. In fact, some postponements were at the motions and at the instance of Chua's counsel.[4]

Moreover, Atty. De Castro asseverates that he will soon be a septuagenarian. He has been active in the academe, teaching law subjects and preparing bar candidates for the Bar examinations. His record as a lawyer is untarnished. He states that if indeed he has committed professional lapses in his schedules, these were not deliberate, dishonest, malicious and with no ill motives.[5]

On June 1, 2016, the Court issued a Resolution[6] directing Chua to comment on the motion within 10 days from receipt thereof.

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[3] *Id.* at 604-605.

[4] *Id.* at 614.

[5] *Id.* at 610.

[6] *Id.* at 641.

In his Comment,[7] Chua states that the motion for reconsideration is just a rehash of Atty. De Castro's previous answers and motion to the Commission on Bar Discipline of the IBP, and is awash with lies. He insists that Atty. De Castro's unethical practice of law calls for his disbarment permanently.[8]

Ruling of the Court

After a second hard look at the facts of the case, relevant laws, and jurisprudence, the Court finds merit in the motion for reconsideration.

There is no debate that lawyers are instruments of the Court in the administration of justice throughout the country. Accordingly, they are expected to maintain not only legal proficiency but also a high standard of ethics, honesty, integrity and fair dealing. Only in this way will the people's faith and confidence in the judicial system be ensured.[9]

A lawyer indubitably owes fidelity to the cause of his clients, and is thus expected to serve the client with competence and utmost diligence. He is enabled to utilize every honorable means to defend the cause of his client and secure what is due the latter. Under the CPR, every lawyer is required to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Yet, this obligation is not without limitations. There are professional rules that define the limits of a lawyer's zeal for the client's benefit. The CPR obliges him to employ only fair and honest means to attain the lawful objectives of the client.[10] The lawyer must then strike an even balance between his fidelity to the Court and the legal profession on one hand, and his commitment to the cause of his client, on the other.

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[7] *Id.* at 646-662.

[8] *Id.* at 661.

[9] *Lao v. Atty. Medel*, 453 Phil. 115, 120 (2003).

[10] *Avida Land Corporation (Formerly Laguna Properties Holdings, Inc.) v. Atty. Al C. Argosino*, A.C. No. 7437, August 17, 2016.

The Court has the authority to impose the proper disciplinary sanctions on any member of the Bar found culpable for misconduct. In line with its authority, however, the Court has the responsibility to protect the reputation of any member of the Bar who is wrongfully or improperly charged. Towards this end, the burden of proving unethical conduct in every case of disbarment or other administrative sanction rests on the complainant, who is then bound to establish the charge by clear, convincing and satisfactory evidence before the Court wields its disciplinary power.

Here, Atty. De Castro professed only good intentions from the very moment he accepted to defend, allegedly *pro bono*, the Dr. Concepcion Aguila Memorial College of Batangas City, his *alma mater*, in Civil Case No. 7939. He initially moved for and obtained the dismissal of the complaint, but such dismissal was eventually reversed on motion of the plaintiff. Thereafter, according to Chua, Atty. De Castro caused various postponements and delays resulting in taking more than five (5) years to present one witness of Nemar Computer Resources Corporation.[11]

Upon careful consideration of the circumstances, the Court finds that the delay in the disposition of Civil Case No. 7939 was not solely attributable to Atty. De Castro. The trial court itself, either at its own initiative or at the instance of Chua's counsel, allowed the delays. Consequently, if not all of such delays were attributable to Atty. De Castro's doing, it would be unfair to hold him solely responsible for the delays caused in the case. Moreover, it appears that the trial court granted Atty. De Castro's several motions for resetting of the trial; and that at no time did the trial court sanction or cite him for contempt of court for abuse on account of such motions. Verily, if his explanations for whatever delays he might have caused were accepted by the trial court without any reservations or conditions, there would be no legitimate grievance to be justly raised against him on the matter.

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[11] *Rollo*, Vol. I, p. 15.

Initially, the IBP and the Court similarly found Atty. De Castro guilty of professional misconduct. The basis for the finding was Rule 1.03 and Rule 10.3 of the CPR, to wit:

> Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.
>
> Rule 10.3 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

While Atty. De Castro's repeated requests for resetting and postponement of the trial of the case may be considered as contemptuous if there was a showing of abuse on his part, the Court, however, finds that Chua failed to show that Atty. De Castro was indeed moved to cause delays by malice, or dishonesty, or deceit, or grave misconduct as to warrant a finding of administrative liability against him. The operative phrase for causing delay in any suit or proceeding under Rule 1.03 is "*for any corrupt motive or interest*." Considering that this matter concerned Atty. De Castro's state of mind, it absolutely behooved Chua to present sufficient evidence of the overt acts committed by Atty. De Castro that demonstrated his having deliberately intended thereby to do wrong or to cause damage to him and his business. That demonstration, however, was not made by Chua.

On the contrary, there was a clear indication that the postponements of the hearing at Atty. De Castro's instance were mostly sanctioned by the trial court, which negated or foreclosed malice, or dishonesty, or deceit, or grave misconduct. The motions to re-set were based on grounds such as the possibility for an amicable settlement,[12] trips abroad for an emergency medical treatment,[13] and to attend a son's graduation from the University of California,[14] which are not flimsy excuses.

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[12] *Id.* at 35.

[13] *Id.* at 85.

[14] *Id.* at 88.

There was a delay in the disposition of the case caused by the issue of jurisdiction raised by Atty. De Castro in the lower court wherein he filed a Motion to Dismiss on the ground that the principal amount claimed is only ₱271,000.00 which falls within the jurisdiction of the Municipal Trial Court.[15] Initially, the RTC dismissed the case[16] which apparently, came only after a turnover of three judges.[17] On MR, however, the RTC reversed the dismissal after considering accumulated interest. This matter is still the subject of MR.[18] Although the same contributed to the delay, the same was exercised by Atty. De Castro in good faith and in keeping with his duty to represent his client with zeal within the bounds of the law.[19] Clearly, Atty. De Castro was merely advocating for his client's interest.

Notwithstanding the absence of malice, dishonesty, or ill motive, it is good to remind Atty. De Castro that as a member of the Bar, he is expected to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice and to be more circumspect whenever seeking the postponements of cases.[20] The Court reiterates what was stated in *Miwa v. Atty. Medina*,[21] that members of the Bar are exhorted:

> [T]o handle only as many cases as they can efficiently handle. For it is not enough that a practitioner is qualified to handle a legal matter, he is also required to prepare adequately and give the appropriate attention to his legal work. A lawyer owes entire devotion to the cause of his client, warmth and zeal in the defense and maintenance of his rights, and the exertion of his learning and utmost ability that nothing can be taken or withheld from his client except in accordance with law. x x x.[22] (Citation omitted)

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[15] *Rollo*, Vol. II, p. 610.

[16] Resolution dated August 27, 2015; *id.* at 624-628.

[17] *Id.* at 610.

[18] *Id.*

[19] CPR, Canon 19.

[20] CPR, Canon 12.

[21] 458 Phil. 920 (2003).

[22] *Id.* at 928.

Violations of the Rules cannot be countenanced. Also, the Court will not hesitate to refrain from imposing the appropriate penalties in the presence of mitigating factors, such as the respondent's length of service as a member of the Bar, acknowledgment of his infraction, voluntary offer of conciliation to the complainant, unblemished career, humanitarian and equitable considerations, and respondents advanced age, among other things, which have varying significance in the Court's determination of the imposable penalty. It, may likewise be stated that the power to discipline should be exercised on the preservative and not on the vindictive principle.[23]

Considering the Court's earlier discussion that the responsibility for the delays caused in the case did not fall exclusively on the shoulders of Atty. De Castro, punishing him with suspension from the practice of law for three (3) months would be disproportionate to the acts imputable to him. More so, the Court notes that the trial court itself did not consider his responsibility for the delays sanctionable as contempt of court. Thus, after a careful consideration of Atty. De Castro's MR, the Court finds it proper for a modification of the assailed Resolution.

WHEREFORE, premises considered, the Motion for Reconsideration filed by respondent Atty. Arturo M. De Castro is hereby **GRANTED**. The Court's Resolution dated November 25, 2015 is **SET ASIDE**. Atty. Arturo M. De Castro is **ADMONISHED** to exercise the necessary prudence required in the practice of his legal profession in his representation of the defendant in Civil Case No. 7939 in the Regional Trial Court of Batangas City.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin*,[*] and *Perez, JJ.*, concur.

Peralta, J., on official leave.

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[23] *Villavicencio v. Lukban*, 39 Phil. 778, 798 (1919).

[*] Designated Acting Member per Special Order No. 2289 dated November 16, 2015 *vice* Associate Justice Francis H. Jardeleza.

FIRST DIVISION

[A.C. No. 10757. December 5, 2016]

LOUISITO N. CHUA, *complainant, vs.* **ATTY. OSCAR A. PASCUA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; MUST BE DISMISSED IN THE ABSENCE OF A CLEAR SHOWING OF THE FACTUAL CIRCUMSTANCES SUPPORTING THE CHARGES AGAINST RESPONDENT.— Words and phrases like *duped, to take advantage of the innocence of, his ignorance and abusive manner, foolishness*, and *bungling* (even if the latter referred to the act of the trial judge) are of common usage in our daily life. They should be understood by what they ordinarily convey. Admittedly, they can *at times* be considered as off-color or even as abrasive, but their being so considered depends on the specific context or situation in which they are used or uttered. That they have synonyms or alternatives that are *more* or *less* expressive does not warrant characterizing them as excessive, intemperate or offensive. To depreciatingly generalize about them, as the Investigating Commissioner obviously did, is to unwarrantedly relegate them to a negative light. Doing so herein would be uncalled for because the Investigating Commissioner did not render any justification for his negative conclusion about them. His omission has effectively deprived the Court of the factual basis for reviewing and affirming his conclusion. Atty. Pascua's alleged usage of a wrong MCLE compliance certificate number, or of that pertaining to another lawyer, if established, could really constitute a violation of Rule 10.01 of Canon 10 of the *Code of Professional Responsibility* which directs that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." But for the Court to find against him in this respect will be unwarranted considering the absence from the Investigating Commissioner's report and recommendation of any factual finding thereon. Neither did his report and recommendation advert to any evidence

> sufficiently showing Atty. Pascua to have abused legal processes and procedure. We presume that the silence of the report and recommendation on the foregoing matters was by virtue of the absence of a clear showing by the complainant of the factual circumstances supporting the charges against Atty. Pascua. Otherwise, the Investigating Commissioner would have easily stated his factual findings thereon because it was his duty to do so under Section 12, Rule 139-B of the *Rules of Court*, x x x[.] [T]he Court is given no alternative but to dismiss the charges against Atty. Pascua.

D E C I S I O N

BERSAMIN, *J.*:

The administrative complaint herein was brought by Dr. Louisito N. Chua (Dr. Chua) before the Integrated Bar of the Philippines (IBP)[1] accusing respondent Atty. Oscar A. Pascua of violating several provisions of the *Code of Professional Responsibility*.[2]

Atty. Pascua was the co-plaintiff in the ejectment suit filed against the complainant and his mother in the Metropolitan Trial Court of Manila (MeTC).[3] After the MeTC dismissed the ejectment suit, Atty. Pascua and his co-plaintiff appealed. Although the RTC initially dismissed the appeal.[4] it reversed itself and rendered judgment in favor of Atty. Pascua and his co- plaintiff upon their motion for reconsideration.[5] According to Dr. Chua, Atty. Pascua, in filing the motion for reconsideration, did not furnish a copy of the motion to Dr. Chua and his mother, thereby employing a fraudulent scheme designed to prevent him and his mother from having their day in court. Dr. Chua further stated that only Atty. Pascua appeared at the hearing of

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

[2] *Id.* at 6.

[3] *Id.*at 2.

[4] *Id.* at 3.

[5] *Id.*

the motion for reconsideration at which he made his oral arguments. Thereby, Atty. Pascua allegedly "obtained a favorable decision without [their] knowledge."[6]

Following the rendition of the adverse judgment, Dr. Chua and his mother moved for reconsideration. In respect to their motion for reconsideration, Atty. Pascua submitted a comment/opposition in which he used foul language and insulting words.[7]

Alleging that Atty. Pascua had used foul language and insulting words in his other written submissions to the RTC, Dr. Chua declared in his complaint against Atty. Pascua that:

x x x x x x x x x

12. We filed our Motion for Reconsideration for having been deprived of our day in Court. However, in his Comment/Opposition to Motion for Reconsideration and Omnibus Motion for the Correction of the Order dated July 16, 2010 and to make Entry of Judgment filed on September 17, 2010 he stated the following scurrilous words and sentences to damage of (sic) my name and reputation as a professional doctor and a respectable councilor, and I quote:

Par. 9 — Appellee Chua using undue influence and taking advantage of his being looked upon as a councilor ***duped*** *Ms. Yolanda Salindognd (sic) cause her t[o] make statement dated August 17, 2010 marked as Annex "A" of their motion for reconsideration.*

Par. 9.1 The act of Appellant Chua ***to take advantage of the innocence*** *of Ms. Salindog as well as the trust and confidence given to him as a Councilor. Chua was able to cajole Ms. Salindog to state that she was the one who received the Order dated July 20, 2009 and was to show the copy to Chua only in February 2010:*

11. However, **his ignorance and abusive manner** led him to say: "Panalo kami sa kaso, paano ako tatlunin (sic) ni Pascua eh isa lang fiscal at ako konsehal na nagbibigay ng allowance sa knila (sic) pati mga judges". (He put put those

[6] *Id.*

[7] *Id.*

words into my mouth to make me appear as arrogant and bad to my constituents who elected me for three consecutive terms as councilor when he in fact lost his candidacy).

13.1 ***Yet, the foolishness of the statement of the Honorable Councilor of the 4th District of Manila*** *is that it is very clear in the 2nd page of the Order that copies were sent only to counsels;*

13. **Atty. Pascua even accused the Judge of Branch 36 of bungling with (sic) the case and used foul language** in the Court taking advantage of his experience as a veteran lawyer since 1971. In fact, the Honorable Presiding Judge of RTC Branch 36, Emma S. Young voluntarily inhibited from hearing the case and in her order she stated the following, to wit:

"It caught the ire of counsel for plaintiff-appellee, hence, the foul language in its pleading that the undersigned bungled with (sic) *the case."*

x x x x x x x x x[8]

Dr. Chua further declared that Atty. Pascua had abused court procedures to his advantage, to wit:

16. Respondent Atty. Pascua also played (sic) a mockery of the Court to our prejudice when he alleged that he sent a demand letter to vacate dated April 5, 2006 which was allegedly mailed to me on April 20, 2006 when in truth and in fact it is not April 5, 2006 but April 5, 2005 because it was just superimposed to make it appear as April 5, 2006 and he intentionally did not send said demand letter to me as in fact, he cant (sic) show proof of receipt and/or certification from the post office that he indeed mailed said letter.

17. Similar to this mockery of Atty. Pascua was his act of attaching a different Registry Receipt to his Motion for Reconsideration filed on July 31, 2008. The proof of mailing which the registry receipt attached to the motion filed in Court and the Affidavit of Service attesting to said mailing pertains to two different registry receipts. x x x;

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

18. Noticeably, the **Registry Receipt with Number 139883** pertaining to the mail sent to counsel for the plaintiff, Atty. Edgardo Abad and the Registry Receipt Number 922640 for MTC Branch 3, although both were mailed at the same time (July 31, 2008) and place (Central Post Office) bore different Registry Numbers. Normally, Registry Receipts for mails (sic) mailed at the same time or simultaneously with each other at the same post office would bear a successive number which is more or less consecutive in character. Respondent is obviously using fraudulent scheme of the prevailing parties which prevented the plaintiff from having his day in court.

19. During the hearing on September 26, 2008, respondent took advantage of the non-appearance of our counsel and despite the objection of the Honorable Judge insisted in having an ex parte presentation of his exhibits which were all photocopies. x x x[9]

Dr. Chua pointed to the different dates appearing in Atty. Pascua's pleadings indicating the supposed date of issuance of his MCLE certificate.[10] Dr. Chua mentioned that there were instances when Atty. Pascua did not indicate his MCLE compliance certificate number, or when Atty. Pascua used another lawyer's MCLE compliance certificate number.[11] Finally, Dr. Chua charged Atty. Pascua with fomenting suits that "would require his clients to execute Deed of Sale of Rights as his payment for Attorney's fees and would make himself as co-plaintiff."[12]

In his answer to Dr. Chua's complaint, Atty. Pascua focused on the untruthful statements Dr. Chua had supposedly made regarding the ownership of the property subject of the litigation between them.[13] Anent the issue of his acquiring rights over the property from the client, he asserted that such was a personal

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

[10] *Id.* at 5.

[11] *Id.*

[12] *Id.*

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

matter between him and his client.[14] He denied using foul language, insisting that "these are part of the pleadings filed by complainant without malice but in good faith taking into consideration the facts under the circumstances."[15] He claimed that the errors made in indicating the date of issuance of his MCLE compliance certificate number were merely typographical, not intentional.[16]

After investigation, the Investigating Commissioner of the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP) rendered a report with the following recommendation, to wit:

> WHEREFORE, it is recommended that for encouraging suit, using intemperate, offensive and foul language in his pleadings, for misusing the legal processes to the ends of justice, for using another lawyers[']s MCLE in his pleading and for attributing to a judge motive not supported by the records, RESPONDENT be suspended from the practice of law of six (6) months effective from notice.[17]

On June 21, 2013, the IBP Board of Governors issued a resolution adopting and approving the report and recommendation of the Investigating Commissioner of the CBD-IBP, *viz.*:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and for encouraging suit, using intemperate, offensive and foul language in his pleading, for misusing the legal processes to defeat the ends of justice, for using another lawyers[']s MCLE number in his pleading and for attributing to a Judge a motive not supported by the records, Atty. Oscar Pascua is hereby ***SUSPENDED from the practice of law for six (6) months***.[18]

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[14] *Id.* at 40.

[15] *Id.* at 42.

[16] *Id.* at 43.

[17] *Id.* at 197.

[18] *Id.* at 190.

In a subsequent resolution, the IBP Board of Governors denied Atty. Pascua's motion for reconsideration.[19]

Ruling of the Court

The Court reverses the IBP Board of Governors' resolutions adopting and upholding the findings and recommendation and imposing the penalty of suspension from the practice of law for six months.

Every lawyer is required to act with courtesy at all times, even towards the adverse parties. This duty is clearly imposed by the *Rules of Court* which mandates lawyers to "abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged."[20] Rule 8.01 of Canon 8 of the *Code of Professional Responsibility* reiterates this duty by commanding that "[a] lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper."

The adversarial nature of our legal system does not sanction an attorney's use of foul or intemperate language, whether spoken or in pleadings. In *Sanchez v. Aguilos*,[21] we pointedly observed:

> The Court recognizes the adversarial nature of our legal system which has necessitated lawyers to use strong language in the advancement of the interest of their clients. **However, as members of a noble profession, lawyers are always impressed with the duty to represent their clients' cause, or, as in this case, to represent a personal matter in court, with courage and zeal but that should not be used as license for the use of offensive and abusive language. In maintaining the integrity and dignity of the legal profession, a lawyer's language — spoken or in his pleadings — must be dignified.** (Emphasis supplied)

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[19] *Id.* at 207.

[20] Section 20 (f), Rule 138 of the *Rules of Court.*

[21] A.C. No. 10543, March 16, 2016.

At issue is whether or not Atty. Pascua's use of words and phrases like *duped, to take advantage of the innocence of, his ignorance and abusive manner, foolishness* in reference to Dr. Chua as one of the adverse parties, and *bungling* in reference to the trial judge, was offensive and abusive as to violate the aforecited command to every lawyer not to use abusive, offensive or otherwise improper language in his professional dealings.

It is notable that the Investigating Commissioner, in his report and recommendation, concluded that Atty. Pascua had "*on several instances filed pleadings with the Court, using offensive and intemperate language against the parties as well as the court, even if the same is not material to the case*."[22] However, the Investigating Commissioner did not explain or justify his conclusion against Atty. Pascua, particularly to disclose why he considered the words and phrases of Atty. Pascua adverted to as offensive and intemperate.

We declare that the report and recommendation of the Investigating Commissioner were bereft of factual basis.

Words and phrases like *duped, to take advantage of the innocence of, his ignorance and abusive manner, foolishness*, and *bungling* (even if the latter referred to the act of the trial judge) are of common usage in our daily life. They should be understood by what they ordinarily convey. Admittedly, they can *at times* be considered as off-color or even as abrasive, but their being so considered depends on the specific context or situation in which they are used or uttered. That they have synonyms or alternatives that are *more* or *less* expressive does not warrant characterizing them as excessive, intemperate or offensive. To depreciatingly generalize about them, as the Investigating Commissioner obviously did, is to unwarrantedly relegate them to a negative light. Doing so herein would be uncalled for because the Investigating Commissioner did not render any justification for his negative conclusion about them. His omission has effectively deprived the Court of the factual basis for reviewing and affirming his conclusion.

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[22] *Rollo*, p. 214.

Atty. Pascua's alleged usage of a wrong MCLE compliance certificate number, or of that pertaining to another lawyer, if established, could really constitute a violation of Rule 10.01 of Canon 10 of the *Code of Professional Responsibility* which directs that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." But for the Court to find against him in this respect will be unwarranted considering the absence from the Investigating Commissioner's report and recommendation of any factual finding thereon. Neither did his report and recommendation advert to any evidence sufficiently showing Atty. Pascua to have abused legal processes and procedure.

We presume that the silence of the report and recommendation on the foregoing matters was by virtue of the absence of a clear showing by the complainant of the factual circumstances supporting the charges against Atty. Pascua. Otherwise, the Investigating Commissioner would have easily stated his factual findings thereon because it was his duty to do so under Section 12, Rule 139-B of the *Rules of Court*, which expressly provides:

> Section 12. *Review and decision by the Board of Governors.* – (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. **The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based.** It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's Report.
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> (b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, **it shall issue a resolution setting forth its findings and recommendations** which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.
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> x x x x x x x x x. (Emphasis supplied)

In view of the foregoing, the Court is given no alternative but to dismiss the charges against Atty. Pascua.

WHEREFORE, the Court **ABSOLVES** respondent **ATTY. OSCAR A. PASCUA** of the administrative complaint against him; and **DECLARES** this administrative case **CLOSED** and **TERMINATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184466. December 5, 2016]

LUZ ANATOLIA E. CRISPINO, CARIDAD O. ECHAVES REESE and ZENAIDA ECHAVES represented by their Attorney-in-fact, REUBEN CAPILI ECHAVES, *petitioners, vs.* **ANATOLIA TANSAY as substituted by LILIAN YAP,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ORDER; FINAL ORDER AND INTERLOCUTORY ORDER, DISTINGUISHED; REMEDIES AVAILABLE TO AGGRIEVED PARTIES AGAINST AN INTERLOCUTORY ORDER; APPLICATION.— A final judgment or order, from which an appeal may be taken, is one that finally disposes of the case and leaves nothing more to be done by the court (e.g. an adjudication on the merits of the case on the basis of the evidence). In contrast, an interlocutory order is one that merely resolves incidental matters and does not finally dispose of the case. When an interlocutory order is issued, the court is still tasked with adjudicating on the merits of the case. The remedy against an interlocutory order is not

appeal but a special civil action for certiorari under Rule 65 of the Rules of Court. The reason for the prohibition is to prevent multiple appeals in a single action that would unnecessarily cause delay during trial. x x x Faced with an interlocutory order, parties may instantly avail of the special civil action of certiorari. This would entail compliance with the strict requirements under Rule 65 of the Rules of Court. Aggrieved parties would have to prove that the order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. This notwithstanding, a special civil action for certiorari is not the only remedy that aggrieved parties may take against an interlocutory order, since an interlocutory order may be appealed in an appeal of the judgment itself. x x x The Court of Appeals' Resolution dated July 25, 2006, which denied petitioners' motion to remand, was an interlocutory order. It did not finally dispose of the case because the appellate court still had to determine whether the deeds of sale executed by Anatolia were valid. Rather than availing of the extraordinary remedy of certiorari under Rule 65, petitioners opted to wait for the Court of Appeals to render its decision before challenging the July 25, 2006 Resolution. Petitioners did not commit any procedural infirmity in assailing the interlocutory order in an appeal of the Court of Appeals' decision. Though petitioners could have filed a petition for certiorari, they would have been burdened to prove that the Court of Appeals committed grave abuse of discretion in denying their motion to remand. Moreover, petitioners still had the option to assail the July 25, 2006 Resolution in an appeal of the Court of Appeals' final decision.

2. ID.; BATAS PAMBANSA BLG. 129 AS AMENDED BY REPUBLIC ACT NO. 7902; THE COURT OF APPEALS (CA) IS EMPOWERED TO RECEIVE EVIDENCE TO RESOLVE FACTUAL ISSUES RAISED IN CASES FALLING WITHIN ITS ORIGINAL AND APPELLATE JURISDICTION; INSTANCES WHEN THE CA MAY RECEIVE EVIDENCE.— [T]he Court of Appeals, pursuant to its expanded jurisdiction under Section 9 or Batas Pambansa Blg. 129, as amended, is empowered to receive evidence to resolve factual issues raised in cases falling within its original and appellate jurisdiction. However, Section 9 of Batas Pambansa Blg. 129, as amended, should be read and construed together

with the Court of Appeals' internal rules. x x x The Internal Rules of the Court of Appeals enumerates instances when the Court of Appeals may receive evidence depending on the nature of the case filed. In a special civil action for certiorari, which is an action falling within the Court of Appeals' original jurisdiction, the Court of Appeals has "ample authority to make its own factual determination" and may receive evidence for this purpose. x x x Thus, the 2009 Internal Rules of the Court of Appeals provide: SECTION 3. *Power of the Court to Receive Evidence*. – ***The Court may receive evidence in the following cases:*** (a) ***In actions falling within its original jurisdiction, such as: (1) certiorari, prohibition and mandamus under Rules 46 and 65 of the Rules of Court****;* (2) annulment of judgment or final order; (3) *quo warranto;* (4) *habeas corpus*; (5) *amparo;* (6) *habeas data;* (7) *anti-money laundering* and (8*) application for judicial authorization under the Human Security Act of 2007*.

3. **ID.; ID.; ID.; THE CA MAY ONLY RECEIVE EVIDENCE WHEN IT GRANTS A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE; CRITERIA FOR EVIDENCE TO BE CONSIDERED NEWLY DISCOVERED.—** Although the Court of Appeals has the power to receive evidence pursuant to its expanded powers under Section 9 of Batas Pambansa Blg. 129, this power is not without limit. The Court of Appeals cannot simply accept additional evidence from the parties. If the interpretation were otherwise, then there would be no end to litigation. Hence, in appeals in civil cases, the Court of Appeals may only receive evidence when it grants a new trial based on newly discovered evidence. x x x Newly discovered evidence has a specific meaning under the law. Under Rule 53 of the Rules of Court, the following criteria must be satisfied for evidence to be considered newly discovered: (a) the evidence could not have been discovered prior to the trial in the court below by exercise of due diligence; and (2) it is of such character as would probably change the result.

4. **ID.; ID.; ID.; ID.; ID.; THE CONFIRMATION OF PREVIOUS SALES WHICH PETITIONERS SEEK TO PRESENT, DOES NOT FALL UNDER THE CONCEPT OF NEWLY DISCOVERED EVIDENCE.—** The document denominated as Confirmation of Previous Sales was allegedly executed on January 15, 1998, three years after the Regional Trial Court rendered its decision. Hence, it could not have been discovered

by petitioners prior to trial by the exercise of due diligence. However, the document is not of such character that would probably change the lower court's judgment. The nature of the deeds of sale executed would not have been affected even if the Confirmation of Previous Sales was admitted in evidence since the validity of a contract is determined by law and not by the stipulation of the parties. Furthermore, the Court of Appeals can determine whether the deeds of sale were valid independent of said document.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Mercado Cordero Baelacuña & Sepulveda for respondent.

D E C I S I O N

LEONEN, *J.*:

The Court of Appeals' power to receive evidence to resolve factual issues in cases falling within its original and appellate jurisdiction is qualified by its internal rules. In an ordinary appeal, the Court of Appeals may receive evidence when a motion for new trial is granted based on newly discovered evidence.

This resolves the Petition for Review on Certiorari[1] assailing the Court of Appeals' Decision[2] dated January 24, 2007 and Resolution[3] dated August 28, 2008 in CA-G.R. CV No. 54832.

This case originated from Civil Case No. CEB-14547 filed by respondent Anatolia Tansay against petitioners Luz Anatolia

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[1] *Rollo,* pp. 3-19.

[2] *Id.* at 27-36. The Decision was penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Isaias P. Dicdican and Francisco P. Acosta of the Nineteenth Division, Court of Appeals Cebu.

[3] *Id.* at 42-43. The Resolution was penned by Associate Justice Franciso P. Acosta and concurred in by Associate Justices Amy C. Lazaro-Javier and Edgardo L. Delos Santos of the Twentieth Division, Court of Appeals Cebu.

E. Crispino, Caridad O. Echaves, and Zenaida Echaves before the Regional Trial Court of Cebu City, for Revocation of Trust, Declaration of Nullity of Transfer and Cancellation of Titles.[4]

Respondent Anatolia Tansay, now deceased, was twice widowed.[5] In 1947, Anatolia established her residence in Oroquieta, Misamis Occidental.[6] There, she met 20-year old Zenaida Capili who was then single.[7] Anatolia took in Zenaida and treated her as her own child.[8]

Subsequently, Anatolia and Zenaida moved to Cebu City,[9] where Anatolia acquired a 3,107 sq. m. parcel of land (Lot No. 1048)[10] known as the Tansay Compound.[11] Anatolia subdivided the compound into three lots: (1) Lot No. 1048-A-1 with an area of 617 sq. m., (2) Lot No. 1048-A-2 with an area of 555 sq. m., and (3) Lot No. 1048-A-3 with an area of 1,845 sq. m.[12] In 1957, Anatolia constructed her abode over a portion of Lot No. 1048-A-3.[13]

Zenaida eventually got married to Ben Ricaredo Echaves and had several children, among whom are petitioners Luz Anatolia E. Crispino and Caridad C. Echaves.[14] Zenaida and her family lived in Anatolia's house.[15] Anatolia had a close relationship with the Echaves family.[16] She was affectionately

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[4] *Id.* at 113.

[5] *Id.* at 27.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 27-28.

[10] *Id.* at 9.

[11] *Id.* at 29.

[12] *Id.* at 9.

[13] *Id.* at 28.

[14] *Id.* at 27-28.

[15] *Id.* at 28.

[16] *Id.*

called "honey" by Zenaida and "nanay" by Zenaida's children.[17] Through Anatolia's efforts and connections, Zenaida's husband was able to find employment.[18] She also paid or the education of Zenaida's children.[19]

By virtue of two deeds of sale, Anatolia allegedly sold Lot No. 1048- A-1 in favor of Zenaida on July 6, 1981 and Lot. No. 1048-A-3 in favor of Luz Anatolia and Caridad on July 11, 1989.[20]

In 1991, Zenaida returned from abroad and discovered that the titles of the lots were missing from her room where she had left them.[21] Hence, she filed a petition before the Regional Trial Court of Cebu City for reconstitution of the certificates of title, which was granted.[22]

Meanwhile, Anatolia filed Civil Case No. CEB-14547 entitled Revocation of Trust, Declaration of Nullity of Transfer, and Cancellation of Title before the Regional Trial Court of Cebu City.[23]

Zenaida alleged that Anatolia sold Lot No. 1048-A-1 in her favor for ₱6,170.00.[24] One of Zenaida's daughters, Lourdes Echaves de Leon, testified that since 1975, her sisters, Luz Anatolia and Caridad, deposited sums of money in Anatolia's bank account for the purchase of Lot No. 1048- A-3.[25] However, Anatolia merely turned over the sums she received to Zenaida since she was not in need of money.[26]

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 99-100, Petitioner's Memorandum.

[21] *Id.* at 31.

[22] *Id.*

[23] *Id.* at 27.

[24] *Id.* at 29.

[25] *Id.* at 31.

[26] *Id.* at 28.

Based on the evidence on record, the trial court found that Zenaida, Luz Anatolia, and Caridad did not pay any monetary or other valuable consideration for the transfer of the properties in their names.[27] Hence, the deeds of sale could not have been valid. In addition, the trial court found that Anatolia never intended to sell the lots despite executing the deeds of sale. Rather, she merely constituted Zenaida, Luz Anatolia, and Caridad as trustees of the properties.[28] The trial court also questioned the validity of Zenaida's Petition for Reconstitution of Titles considering that Anatolia presented the Original Certificates of Title of the properties in court.[29]

On February 16, 1996, the Regional Trial Court rendered its Decision. The dispositive portion reads:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered:
>
> (1) Declaring plaintiff Anatolia Tansay as the lawful and rightful owner of Lot No. 1048-A-1 covered by TCT No. 81406, and Lot No. 1048-A-3 covered by TCT No. 101693; and,
>
> (2) Ordering the Register of Deeds of Ceb[u] City to cancel said TCT No. 1048-A-1 issued to defendant Zenaida Echave[s], and TCT No. 10963, issued to the defendants Luz Anatolia Crispino and Caridad Echave[s], and to reinstate plaintiff Anatolia Tansay's title to said lots.
>
> Cost against the defendants.[30]

Zenaida, Luz Anatolia, and Caridad appealed the Decision before the Court of Appeals.[31]

During the pendency of the appeal, Anatolia died on August 11, 2001 and was substituted by her only known legal heir, Lilian Tan Yap.[32]

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[27] *Id.* at 114.

[28] *Id.* at 114-116, Respondent's Memorandum.

[29] *Id.* at 116.

[30] *Id.* at 118.

[31] *Id.*

[32] *Id.* at 25, Court of Appeals Resolution dated October 18, 2001.

On August 16, 2001, Zenaida, Luz Anatolia, and Caridad filed an Urgent Motion to Remand Records of the Case for the Re-Opening of Trial.[33] They anchored their motion on an Affidavit allegedly executed by Anatolia after the Regional Trial Court had rendered its Decision,[34] which reads:

CONFIRMATION OF PREVIOUS SALES

That I, ANATOLIA TANSAY, Filipino, of legal age, widow and a resident of Cebu City, hereby declare and manifest, as follows:

1. That on July 6, 1981, I executed a deed of sale over Lot No. 1048-A-1 covered by TCT No. 17556 of the Register of Deeds of Cebu City in favor of Zenaida Echave[s];

2. That on July 11, 1989, I executed a deed of sale over Lot No. 1048-A-3 covered by TCT No. 81605 of [the] Register of Deeds of Cebu City in favor of Luz Anatolia E. Crispino and Caridad C. Echave[s];

3. That by virtue of said sales, I paid the capital gains tax and other taxes due on the said sales so that the titles could be transferred to the vendees in said sales;

4. That later on I filed in the Regional Trial Court of Cebu an action for revocation of trust, declaration of nullity of transfer and for cancellation of titles against Zenaida Echave[s], Luz Anatolia Crispino: and Caridad C. Echave[s];

5. That after proper reflection, I now realize that the filing of said case was a mistake and that I hereby confirm and affirm the validity of said sales.

IN WITNESS WHEREOF, I have hereunto set my signature this 15th day of January, 1998 in Cebu City, Philippines.

ANATOLIA TANSAY[35]

In their Urgent Motion to Remand Records of the Case for the Re- Opening of Trial, Zenaida, Luz Anatolia, and Caridad alleged:

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[33] *Id.* at 47, Court of Appeals Resolution dated July 25, 2006.

[34] *Id.* at 4.

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

1. That during the pendency of the appeal, the plaintiff-appellee, Anatolia Tansay died on August 11, 2001;

2. That it was discovered that on January 15, 1998, she executed a document denominated as confirmation of previous sales...

3. That in view of the discovery of this document confirming the previous sales of Lot Nos. 1048-A-1 and 1048-A-3 to defendants-appellants Zenaida C. Echave[s], Luz Anatolia E. Crispino and Caridad C. Echave[s], it is necessary in the interest of substantial justice to remand the records of the case to the trial court and re-open the trial of this case in order to enable the herein defendants to present said document in evidence in order to avoid a grave miscarriage of justice.

WHEREFORE, in view of all the foregoing, it is most respectfully prayed that the records of this case be remanded to the lower court and that the trial of this case be ordered re-opened.[36]

The Court of Appeals, in a Resolution[37] dated July 25, 2006 denied the Urgent Motion to Remand Records of the Case for the Re-Opening of Trial. The appellate court considered the same as a motion for new trial based on newly discovered evidence under Rule 53 of the Rules of Court[38] and ruled that the Confirmation of Previous Sales was "not the kind of newly discovered evidence contemplated by the Rules that would warrant a [n]ew [t]rial."[39] The appellate court also noted that the petitioners-appellants failed to attach an affidavit of merit as required by the rules and that the Confirmation of Previous Sales attached to the motion was merely a photocopy.[40]

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[36] *Id.* at 44, Urgent Motion to Remand Records of the Case for Re-Opening of Trial.

[37] *Id.* at 47-49. The Resolution was penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Isaias P. Dicdican and Apolinarion D. Bruselas, Jr., of the Nineteenth Division of the Court of Appeals of Cebu City.

[38] *Id.* at 48.

[39] *Id.*

[40] *Id.* at 49.

On January 24, 2007, the Court of Appeals rendered a Decision, which affirmed the Regional Trial Court's Decision *in toto*.[41] Zenaida, Luz Anatolia, and Caridad moved for reconsideration.[42] They assailed, among others, the propriety of the Court of Appeals' Resolution in treating their motion to remand as a motion for new trial. Their Motion for Reconsideration was denied in a Resolution[43] dated August 28, 2008.

Petitioners Zenaida, Luz Anatolia, and Caridad come to this Court through a Petition for Review on Certiorari seeking a ruling on the power of the Court of Appeals to receive evidence under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902.[44]

Respondent Anatolia, as substituted by Lilian Yap, filed her Comment[45] on December 2, 2008. Petitioners filed their Reply[46] on March 19, 2009. On June 3, 2009, this Court gave due course to the Petition and required the parties to submit their Memoranda.[47]

Petitioners argue that the Court of Appeals should have considered their Urgent Motion to Remand Records of the Case for Re-Opening of Trial as a motion to receive further evidence under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902.[48] According to the petitioners, the Court of Appeals has the authority and power to "receive all kinds of evidence to resolve factual issues within its original and appellate jurisdiction."[49] However, the appellate court inadvertently treated their motion to remand as a motion for new trial under Rule 53

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[41] *Id.* at 27-36.

[42] *Id.* at 37-40.

[43] *Id.* at 42-43.

[44] *Id.* at 5.

[45] *Id.* at 52-62.

[46] *Id.* at 93.

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

[48] *Id.* at 13.

[49] *Id.* at 14.

of the Rules of Court.[50] Assuming that the Court of Appeals was correct, petitioners contend that the Court of Appeals' power to conduct new trials is not limited to new trials based on newly discovered evidence.[51]

Petitioners pray that the Court of Appeals' Decision dated January 24, 2007 be vacated and that the Court of Appeals be ordered to receive in evidence the affidavit denominated as Confirmation of Previous Sales and render a new decision.[52]

Respondent alleges that it was unlikely for Anatolia to execute the affidavit because she requested the early resolution of the appeal through two letters addressed to the appellate court.[53] The first letter was dated March 27, 2001, while the second letter was dated July 20, 2001, a month before Anatolia died.[54] Respondent suspects the timing of petitioner's motion to remand since it was filed just a few days after Anatolia's death.[55]

Respondent argues that the Petition for Review is not the proper remedy considering that petitioners are not disputing the factual findings or the *ratio decidendi* of the Court of Appeals' Decision dated January 24, 2007.[56] According to respondent, petitioners' arguments are directed against the Court of Appeals' Resolution dated July 25, 2006, which denied the motion to remand, which was an interlocutory order.[57] Respondent adds that since the Resolution was not challenged through an appeal or a motion for reconsideration, the same had already become final and could no longer be assailed on appeal.[58]

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[50] *Id.* at 13.

[51] *Id.*

[52] *Id.* at 16.

[53] *Id.* at 53, Comment.

[54] *Id.*

[55] *Id.*

[56] *Id.* at 129-130, Respondent's Memorandum.

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

[58] *Id.*

This case presents the following substantive issues: (1) whether the Court of Appeals erred in treating petitioners' motion to remand as a motion for new trial under Rule 53 of the Rules of Court; and (2) whether the Court of Appeals' power to grant new trials is limited to motions based on newly discovered evidence.[59]

On the other hand, respondent raises the procedural issue of whether an interlocutory order may be assailed in an appeal of the appellate court's Decision.[60]

I

In determining the correct procedural remedy, aggrieved parties must first ascertain the nature of the decision, order, or resolution they intend to challenge.[61]

A final judgment or order, from which an appeal may be taken, is one that finally disposes of the case and leaves nothing more to be done by the court (e.g. an adjudication on the merits of the case on the basis of the evidence).[62] In contrast, an interlocutory order is one that merely resolves incidental matters[63] and does not finally dispose of the case.[64] When an interlocutory order is issued, the court is still tasked with adjudicating on the merits of the case.[65]

The remedy against an interlocutory order is not appeal but a special civil action for certiorari under Rule 65 of the Rules

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[59] *Id.* at 60.

[60] *Id.* at 130.

[61] *Republic of the Philippines v. Sandiganbayan*, 678 Phil. 358, 387 (2011) [Per *J.* Brion, *En Banc*].

[62] *Investments, Inc. v. Court of Appeals*, 231 Phil. 302, 306-309 (1987) [Per *J.* Narvasa, First Division].

[63] *Calderon v. Roxas*, 701 Phil. 301, 310 (2013) [Per *J.* Villarama, Jr., First Division].

[64] *Investments, Inc. v. Court of Appeals*, 231 Phil. 302, 306-309 (1987) [Per *J.* Narvasa, First Division].

[65] *Id.*

of Court.[66] The reason for the prohibition is to prevent multiple appeals in a single action that would unnecessarily cause delay during trial.[67] In *Rudecon v. Singson*:[68]

> The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.[69]

Faced with an interlocutory order, parties may instantly avail of the special civil action of certiorari. This would entail compliance with the strict requirements under Rule 65 of the Rules of Court. Aggrieved parties would have to prove that the order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[70]

This notwithstanding, a special civil action for certiorari is not the only remedy that aggrieved parties may take against an interlocutory order, since an interlocutory order may be appealed in an appeal of the judgment itself.[71] In *Investments, Inc. v. Court of Appeals*[72] it was held:

> Unlike a "final" judgment or order, which is appealable, as above pointed out, **an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be**

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[66] RULES OF COURT, Rule 41, Sec. 1 (c).

[67] *Pahila-Garrido v. Tortogo,* 671 Phil. 320, 334-335 (2011) [Per *J.* Bersamin, First Division].

[68] 494 Phil. 581 (2005) [Per *J.* Callejo, Second Division].

[69] *Id.* at 596.

[70] RULES OF COURT, Rule 65, Sec. 1.

[71] *Pahila-Garrido v. Tortogo,* 671 Phil. 320, 334-335 (2011) [Per *J.* Bersamin, First Division].

[72] *Investments, Inc. v. Court of Appeals,* 231 Phil. 302 (1987) [Per *J.* Narvasa, First Division].

taken from the final judgment rendered in the case.[73] (Emphasis supplied)

The Court of Appeals' Resolution dated July 25, 2006, which denied petitioners' motion to remand, was an interlocutory order. It did not finally dispose of the case because the appellate court still had to determine whether the deeds of sale executed by Anatolia were *valid*. Rather than availing of the extraordinary remedy of certiorari under Rule 65, petitioners opted to wait for the Court of Appeals to render its decision before challenging the July 25, 2006 Resolution.

Petitioners did not commit any procedural infirmity in assailing the interlocutory order in an appeal of the Court of Appeals' decision. Though petitioners could have filed a petition for certiorari, they would have been burdened to prove that the Court of Appeals committed grave abuse of discretion in denying their motion to remand. Moreover, petitioners still had the option to assail the July 25, 2006 Resolution in an appeal of the Court of Appeals' final decision.

II

As regards the first substantive issue raised, this Court finds that the Court of Appeals correctly treated petitioners' motion to remand as a motion for new trial under Rule 53 of the Rules of Court.

Essentially, petitioners sought the introduction of evidence pursuant to the Court of Appeals' expanded power under Section 9 of Batas Pambansa Blg. 129, as amended.

Originally, Section 9, of Batas Pambansa Blg. 129, otherwise known as Judiciary Reorganization Act, provides:

SECTION 9. *Jurisdiction.* — The Intermediate Appellate Court shall exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*,

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[73] *Id.* at 308.

and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

(2) Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards, or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Intermediate Appellate Court shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including 'the power to grant and conduct new trials or further proceedings.

These provisions shall not apply to decisions and interlocutory orders issued under the Labor Code of the Philippines and by the Central Board of Assessment Appeals. (Emphasis supplied)

Subsequently, Republic Act No. 7902[74] amended Section 9 of Batas Pambansa Blg. 129:

Sec. 9. *Jurisdiction.* — The Court of Appeals shall exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

(2) Exclusive original jurisdiction over actions for annulment of judgment of Regional Trial Courts; and

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial

[74] An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129, As Amended, Known as the Judiciary Reorganization Act of 1980 (1995).

> Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice. (Emphasis supplied)

Clearly, the Court of Appeals, pursuant to its expanded jurisdiction under Section 9 or Batas Pambansa Blg. 129, as amended, is empowered to receive evidence to resolve factual issues raised in cases falling within its original and appellate jurisdiction. However, Section 9 of Batas Pambansa Blg. 129, as amended, should be read and construed together with the Court of Appeals' internal rules.[75]

Thus, in *Republic v. Mupas*,[76] the Court held that the power of the Court of Appeals to receive evidence is qualified by its internal rules:

Under Section 3, Rule 6 of the Internal Rules of the CA, the CA may receive evidence in the following cases:

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[75] *Republic v. Mupas*, G.R. No. 181892, September 8, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/181892.pdf > 93 [Per *J.* Brion, *En Banc*].

[76] G.R. No. 181892, September 8, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/181892.pdf > [Per *J.* Brion, *En Banc*].

(a) In actions falling within its original jurisdiction, such as (1) *certiorari*, prohibition and *mandamus*, (2) annulment of judgment or final order, (3) quo warranto, (4) *habeas corpus*, (5) amparo, (6) habeas data, (7) anti money laundering, and (8) application for judicial authorization under the Human Security Act of 2007;

(b) ***In appeals in civil cases where the Court grants a new trial on the ground of newly discovered evidence, pursuant to Sec. 12, Rule 53 of the Rules of Court;***

(c) In appeals in criminal cases where the Court grants a new trial on the ground of newly discovered evidence, pursuant to Sec. 12, Rule 124 of the rules of Court; and

(d) In appeals involving claims for damages arising from provisional remedies. (Emphasis supplied)

This provision qualifies the CA's power to receive evidence in the exercise of its original and appellate jurisdiction under Section 9 of BP 129, as amended:

Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

. . . . . .

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence, and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice.

Since Takenaka and Asahikosan filed an ordinary appeal pursuant to Rule 41 in relation to Rule 44 of the Rules of Court, the CA could only have admitted newly discovered evidence. Contrary to Takenaka and Asahikosan's claim, the attachments to the motions are not newly discovered evidence. Newly discovered evidence is evidence that could not, with reasonable diligence, have been discovered and produced at the trial, and which, if presented, would probably alter the result.[77] (Emphasis in the original, citations omitted).

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[77] *Id.* at 93.

The Internal Rules of the Court of Appeals enumerates instances when the Court of Appeals may receive evidence depending on the nature of the case filed.

In a special civil action for certiorari, which is an action falling within the Court of Appeals' original jurisdiction, the Court of Appeals has "ample authority to make its own factual determination"[78] and may receive evidence for this purpose. In *Maralit v. Philippine National Bank:*[79]

> In a special civil action for certiorari, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues. Section 9 of Batas Pambansa Blg. 129, as amended, states that, "The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings."[80] (Emphasis omitted)

Thus, the 2009 Internal Rules of the Court of Appeals[81] provide:

> SECTION 3. *Power of the Court to Receive Evidence.* – ***The Court may receive evidence in the following cases:***
>
> (a) ***In actions falling within its original jurisdiction, such as: (1) certiorari, prohibition and mandamus under Rules 46 and 65 of the Rules of Court;*** (2) annulment of judgment or final order; (3) quo *warranto;* (4) *habeas corpus;* (5) *amparo;* (6) *habeas data;* (7) *anti-money laundering* and (8) *application for judicial authorization under the Human Security Act of 2007.* (Emphasis supplied)

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[78] *Plastimer Industrial Corp. v. Gopo,* 658 Phil. 627, 632-633 (2011) [Per *J.* Carpio, Second Division].

[79] *Maralit v. Philippine National Bank,* 613 Phil. 270 (2009) [Per *J.* Carpio, First Division].

[80] *Id.* at 287-289. Also cited in *Sps. Marcelo v. LBC Bank,* 633 Phil. 67, 71-72 (2011) [Per *J.* Carpio, Second Division].

[81] Adm. Matter No. 09-11-11-CA (2009).

As may be gleaned from above, in actions falling within the original jurisdiction of the Court of Appeals, such as a special civil action for certiorari, the Court of Appeals' power to receive evidence is unqualified. This does not hold true with respect to appeals in civil cases, criminal cases, as well as appeals involving claims for damages.

In this case, petitioners filed an ordinary appeal from the Regional Trial Court's Decision dated February 16, 1996. At the time the Court of Appeals ruled on petitioners' motion to remand,[82] the 2002 Internal Rules of the Court of Appeals[83] was in effect:

SECTION 3. *Power of the Court to Receive Evidence.* – The Court may receive evidence in the following cases:

(a) In actions falling within its original jurisdiction, such as: (1) *certiorari*, *prohibition* and *mandamus* under Rules 46 and 65 of the Rules of Court; (2) action for annulment of judgment or final order under Rule 46 of the Rules of Court; (3) quo *warranto* under Rule 66 of the Rules of Court; (4) *habeas corpus* under Sections 2 and 12, Rule 102 of the Rules of Court;

(b) ***In appeals in civil cases where the court grants a new trial on the ground of newly discovered evidence pursuant to Sec. 3, Rule 53 of the Rules of Court;***

(c) In appeals in criminal cases where the court grants a new trial on the ground of newly discovered evidence pursuant to Section 12, Rule 124 of the Rules of Court; and

(d) In appeals involving claims for damages arising from provisional remedies. (Emphasis supplied)

Although the Court of Appeals has the power to receive evidence pursuant to its expanded powers under Section 9 of Batas Pambansa Blg. 129, this power is not without limit. The Court of Appeals cannot simply accept additional evidence from

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[82] *Rollo*, pp. 47-49, Court of Appeals' Resolution dated July 25, 2006.

[83] Adm. Matter No. 02-6-13-CA (2002).

the parties. If the interpretation were otherwise, then there would be no end to litigation.

Hence, in appeals in civil cases, the Court of Appeals may only receive evidence when it grants a new trial based on newly discovered evidence.

This notwithstanding, the Court of Appeals cannot accept any kind of evidence in a motion for new trial. A motion for new trial under Rule 53 is limited to newly discovered evidence:

> SECTION 1. *Period for filing; ground.* – At any time after the appeal from the lower court has been perfected and before the Court of Appeals loses jurisdiction over the case, a party may file a motion for new trial ***on the ground of newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and which is of such character as would probably change the result.*** The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence. (Emphasis supplied)

The document petitioners seek to present before the appellate court does not fall under the concept of newly discovered evidence.

Newly discovered evidence has a specific meaning under the law. Under Rule 53 of the Rules of Court, the following criteria must be satisfied for evidence to be considered newly discovered: (a) the evidence could not have been discovered prior to the trial in the court below by exercise of due diligence; and (2) it is of such character as would probably change the result.

The document denominated as Confirmation of Previous Sales was allegedly executed on January 15, 1998, three years after the Regional Trial Court rendered its decision.[84] Hence, it could not have been discovered by petitioners prior to trial by the exercise of due diligence.

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[84] *Rollo,* pp. 4-5.

However, the document is not of such character that would probably change the lower court's judgment. The nature of the deeds of sale executed would not have been affected even if the Confirmation of Previous Sales was admitted in evidence since the validity of a contract is determined by law and not by the stipulation of the parties. Furthermore, the Court of Appeals can determine whether the deeds of sale were valid independent of said document. Thus, the Court of Appeals correctly denied petitioners' motion to have the Confirmation of Previous Sales admitted in evidence.

WHEREFORE, the petition is **DENIED**. This Court hereby **AFFIRMS** the January 24, 2007 Decision and August 28, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 54832.

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

SECOND DIVISION

[G.R. No. 187291. December 5, 2016]

PRESIDENTIAL DECREE NO. 1271 COMMITTEE, THE SECRETARY OF JUSTICE, IN HIS CAPACITY AS CHAIR OF THE COMMITTEE, THE SOLICITOR GENERAL, IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE, and BENEDICTO ULEP, IN HIS CAPACITY AS THE ADMINISTRATOR OF THE LAND REGISTRATION AUTHORITY, *petitioners, vs.* **GLORIA RODRIGUEZ DE GUZMAN, REPRESENTED BY HER ATTORNEY-IN-FACT, LORENZO MA. G. AGUILAR,** *respondent.*

[G.R. No. 187334. December 5, 2016]

GLORIA RODRIGUEZ DE GUZMAN, REPRESENTED BY HER ATTORNEY-IN-FACT, LORENZO MA. G. AGUILAR, *petitioner, vs.* **PRESIDENTIAL DECREE NO. 1271 COMMITTEE, RAUL M. GONZALES, IN HIS CAPACITY AS SECRETARY OF JUSTICE, ANTONIO B. NACHURA, IN HIS CAPACITY AS SOLICITOR GENERAL, BENEDICTO B. ULEP, IN HIS CAPACITY AS ADMINISTRATOR OF THE LAND REGISTRATION AUTHORITY, and JUANITO K. AMPAGUEY, IN HIS CAPACITY AS REGISTRAR OF DEEDS OF BAGUIO CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULE 45 PETITION; SHOULD RAISE ONLY QUESTIONS OF LAW; APPLICATION.—** As both Petitions are petitions for review filed under Rule 45 of the Rules of Court, this Court will no longer disturb the factual findings of the Court of Appeals. A Rule 45 petition should raise only questions of law. This Court is not a trier of facts. x x x Thus, this Court will no longer discuss the ruling of the Court of Appeals on Transfer Certificates of Title Nos. T-12824 and T-12825 as the Court of Appeals found that Rodriguez did not file before the Baguio Validation Committee applications [for] validation covering these properties. This finding of fact was not questioned by any of the parties.

2. **ID.; JUDGMENTS; DOCTRINE OF "LAW OF THE CASE"; CONCEPT**.— The doctrine of the "law of the case" provides that questions of law previously determined by a court will generally govern a case through all its subsequent stages where "the determination has already been made on a prior appeal to a court of law resort." In *People v. Olarte:* x x x 'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated

continue to be the facts of the case before the court. x x x If an appellate court has determined a legal issue and has remanded it to the lower court for further proceedings, another appeal in that same case should no longer differently determine the legal issue previously passed upon. Similar to *res judicata*, it is a refusal to reopen what has already been decided.

3. ID.; ID.; ID.; DOCTRINE OF "LAW OF THE CASE" DOES NOT APPLY TO BAR ANY RULING ON THE ASSAILED TRANSFER CERTIFICATES OF TITLES; REASONS.— The law of the case does not apply to bar any ruling on Transfer Certificates of Title Nos. T-12826 and T-12827. First, there is no attempt to change any legal finding with regard to Transfer Certificates of Title Nos. T-12824 and T-12825 that would warrant the calling for its application. Second, the ruling of the Court of Appeals on Transfer Certificates of Title Nos. T-12824 and T-12825 is not a ruling that can bind or limit this Court on another matter. The Supreme Court is the final arbiter of all legal questions brought before it. This Court's decision constitutes the final disposition of the case. This Court's judgment, when final, binds lower courts, not the other way around. It is the lower courts that are bound by, and cannot alter or modify, doctrine. Third, the facts that constitute the controversy pertaining to Transfer Certificates of Title Nos. T-12824 and T-12825 are different from those involving Transfer Certificates of Title Nos. T-12826 and T-12827. The ruling accorded to the former cannot apply to the latter.

4. ID.; ID.; *RES JUDICATA*, EXPLAINED; TWO CONCEPTS AND ELEMENTS.— *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." x x x *Res judicata* is premised on the principle that a party is barred from presenting evidence on a fact or issue already judicially tried and decided. x x x At some point, judgments need to become both final and conclusive. Beyond that point, parties cannot be allowed to continue raising issues already resolved. Otherwise, there will be no end to litigation. There are two concepts of *res judicata:* (i) *res judicata* by bar by prior judgment; and (ii) *res judicata* by conclusiveness of judgment. *Res judicata* by bar by prior judgment is provided under Rule 39, Section 47(a) and (b), while *res judicata* by conclusiveness of judgment is found in Rule 39, Section 47(c). *Res Judicata* by bar by prior judgment precludes the filing of

a second case when it has the same parties, same subject, and same cause of action, or otherwise prays for the same relief as the first case. On the other hand, *res judicata* by conclusiveness of judgment precludes the questioning of a fact or issue in a second case if the fact or issue has already been judicially determined in the first case between the same parties[.] x x x The elements of *res judicata are:* (1) the first judgment must be final; (2) the first judgment was rendered by a court that has jurisdiction over the subject and the parties; (3) the disposition must be a judgment on the merits; and (4) the parties, subject, and cause of action in the first judgment are identical to that of the second case. If, in the first judgment and in the second case, the causes of action are different such that only the parties and the issues are the same, there is *res judicata* by conclusiveness of judgment.

5. ID.; ID.; ID.; ID.; *RES JUDICATA* BY CONCLUSIVENESS OF JUDGMENT CANNOT APPLY IN CASE AT BAR; WHEN THERE WAS NO JUDICIAL DETERMINATION OF FRAUD RELATING TO THE ISSUANCE OF THE SUBJECT TRANSFER CERTIFICATES OF TITLE IN THE PRIOR CASE, SAID TITLES MAY STILL BE QUESTIONED IN A DIRECT ACTION SEEKING ITS NULLIFICATION.— The Regional Trial Court's denial of the Office of the Solicitor General's opposition on the ground that it is a collateral attack on the Transfer Certificates of Title is not a judgment on the validity of the Transfer Certificate of Titles. ***It made no finding on the validity of the titles based on Republic v. Marcos. It did not consider any evidence of fraud.*** What the trial court found was that there was a *presumption* that the Commissioner of Land Registration regularly performed his duties and was competent in approving the resurvey plan, such that Rodriguez must have shown proof that she owned the properties. This presumption could not have been overturned or proved otherwise in the same case as the trial court would again delve into questioning the validity of the Transfer Certificates of Title. Thus, the Office of the Solicitor General's filing of an appeal questioning this presumption would have been a fruitless exercise. It would just be deemed a collateral attack on the titles and would not have been considered in the first place. Since there is no judicial determination of fraud, *res judicata* by conclusiveness of judgment cannot apply. The ruling in LRC Case No. 445-R cannot bar the issue of whether

there was a fraudulent expansion of the property covered by Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832. These Transfer Certificates of Title may still be questioned in a direct action seeking its nullification. It is, thus, of no moment that the judgment in LRC Case No. 445-R became final and executory and has been executed. What may no longer be questioned is the correction of the caption of the resurvey plan and the technical descriptions on the Transfer Certificates of Title, not the validity of those Transfer Certificates of Title.

6. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1271; TRANSFER CERTIFICATE OF TITLE (TCT) OBTAINED THROUGH FRAUD CANNOT BE VALIDATED; EXPANDED AREAS ACQUIRED ONLY THROUGH A RESURVEY OF THE PROPERTIES IS A VALID GROUND TO DISALLOW VALIDATION OF THE TCT.— [S]ince Transfer Certificate of Title No. T-12828 was issued on account of Resurvey Plan (LRC) No. RS-288-D, which expanded the property covered by Transfer Certificate Title No. T-11946, Transfer Certificate of Title No. T-12828 was acquired through fraud. Thus, it cannot be validated. As regards Transfer Certificates of Title Nos. T-12826, T-12827, T-12829, T-12830, T-12831, and T-12832, we rule that as found by the Baguio Validation Committee and the Court of Appeals, the statement made in Rodriguez's applications that the properties were acquired by purchase is false. The expanded areas were acquired only through a resurvey of the properties. This is a valid ground to disallow the validation of the Transfer Certificates of Title. x x x Expanded areas of the lots allegedly covered by Rodriguez's titles, which were only included with the titles as a result of the subdivision of the lots covered by the mother titles, cannot be validated. Transfer Certificates of Title Nos. T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832 must, thus, be denied validation.

APPEARANCES OF COUNSEL

Benjamin C. Santos and Ray Montri Santos Law Offices for Gloria Rodriguez de Guzman.

Office of the Solicitor General for the Secretary of Justice, *et al.*

D E C I S I O N

LEONEN, *J.*:

Land registration cases that only resolve the propriety of the results of a resurvey of Baguio City properties do not bar a subsequent declaration of the nullity of the titles on account of *Republic v. Marcos*[1] and Presidential Decree No. 1271.

These consolidated cases concern the validation of certain properties under Presidential Decree No. 1271, which declared null and void all orders and decisions decreeing lands within the Baguio Townsite Reservation in favor of private parties by virtue of the reopening of Civil Reservation Case No. 1, G.L.R.O. Rec. No. 211.

These Petitions for Review assail the Amended Decision[2] dated March 26, 2009 of the Court of Appeals, which validated several transfer certificates of title that had been disallowed validation by the Baguio Validation Committee.

The Baguio Validation Committee, the Secretary of Justice (in his capacity as Chair of the Committee), the Solicitor General (in his capacity as a member of the Committee), and Benedicto Ulep (in his capacity as the Administrator of the Land Registration Authority) jointly filed the first Petition docketed as G.R. No. 187291.[3] Gloria Rodriguez de Guzman filed the second Petition, which was docketed as G.R. No. 187334.[4]

On February 11, 1903, Act No. 636[5] was enacted to provide for the allotment of property as a government reservation in Baguio, Benguet:

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[1] 152 Phil. 204 (1973) [Per *J.* Fernando, *En Banc*].

[2] *Rollo* (G.R. No. 187334), pp. 74-94.

[3] *Rollo* (G.R. No. 187291), p. 10.

[4] *Rollo* (G.R. No. 187334), p. 13.

[5] An Act Creating a Government Reservation at Baguio, in the Province of Benguet (1903).

SECTION 1. Pending the plotting of a town site at Baguio and the setting aside of a tract of land as a military reservation, the following described tract of land shall be reserved for Government purposes, exempt from settlement and claim: That parcel or tract of land in the form of a circle with its center in the house occupied by Mateo Cariño at Baguio, and with a radius of one kilometer; and also a strip of land one and one-half kilometers wide on the easterly side, and one kilometer wide on the westerly side of the Government road as now located, beginning at a point 'on the Government road due east of the civil sanitarium, and extending southeasterly along said road for a distance of four kilometers: *Provided,* That nothing in this section shall apply to private lands held under lawful title within the above-described area.

The Governor of the Province of Benguet was tasked to prevent any person from settling on public lands within the allotted area until they are opened up for sale and settlement by later legislation.[6] However, the reservation did not apply to private lands held under lawful title within the allotted area.[7]

On April 12, 1912 the Director of Lands filed a case before the Court of First Instance of Benguet for the settlement and adjudication of claims to private lands in the Baguio Townsite Reservation. The case was docketed as Civil Reservation Case No. 1, G.L.R.O. Rec. No. 211.[8]

On November 13, 1922, the Court of First Instance of Benguet decreed as public properties all lands, buildings, and real rights within the Baguio Townsite Reservation, with the exception of areas inside established reservations and lands adjudicated to private claimants named in these reservations.[9] All other private claims not pursued in the Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 were barred forever.[10]

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[6] Act No. 636, Sec. 2.

[7] Act No. 636, Sec. 1.

[8] Pres. Decree No. 1271.

[9] Pres. Decree No. 1271.

[10] Pres. Decree No. 1271.

Later, several interested parties filed a Petition before the Court of First Instance of Baguio and Benguet to reopen Civil Reservation Case No. 1, G.L.R.O Rec. No. 211. These parties invoked Republic Act No. 931, which authorized the reopening of cadastral cases up to December 31, 1968 involving lands previously declared public by the court.[11]

The Court of First Instance of Baguio and Benguet granted the Petition to reopen Civil Reservation Case No. 1, G.L.R.O Rec. No. 211. Parcels of land located within the Baguio Townsite Reservation were then awarded to private parties.[12] These parcels of land were transferred to third parties who had since secured titles to the lands.[13]

The Republic of the Philippines questioned the reopening of Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 in court. On July 31, 1973, this Court in *Republic v. Marcos* [14] held that all titles issued as a result of the reopening of Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 were null and void.[15] This Court found that Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 was not a cadastral proceeding as contemplated under Republic Act No. 931, and the lands in question could not be registered, as they were part of a duly established military camp or reservation.[16]

As several parcels of land had already been transferred to third parties, Former President Ferdinand Marcos issued Presidential Decree No. 1271 on December 22, 1977 to provide for those who acted in good faith, mistakenly relied on the indefeasibility of Torrens certificates of titles, and introduced

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[11] Pres. Decree No. 1271.

[12] Pres. Decree No. 1271. *Rollo* (G.R. No. 187291), p. 83.

[13] Pres. Decree No. 1271. *Rollo* (G.R. No. 187291), p. 83.

[14] 152 Phil. 204 (1973) [Per *J*. Fernando, *En Banc*].

[15] Pres. Decree No. 1271.

[16] *Republic v. Marcos*, 152 Phil. 204, 209 (1973) [Per *J*. Fernando, *En Banc*].

substantial improvements on the lands covered by the certificates.[17]

Presidential Decree No. 1271 reiterated the nullity of the titles issued in relation to the reopening of the Civil Reservation Case No. 1, G.L.R.O Rec. No. 211. However, it provided that innocent third parties could have their properties validated upon compliance with the following conditions:

> Section 1. All orders and decisions issued by the Court of First Instance of Baguio and Benguet in connection with the proceedings for the reopening of Civil Reservation Case No. 1, GLRO Record No. 211, covering lands within the Baguio Townsite Reservation, and decreeing such lands in favor of private individuals or entities, are hereby declared null and void and without force and effect; PROVIDED, HOWEVER, that all certificates of titles issued on or before July 31, 1973 shall be considered valid and the lands covered by them shall be deemed to have been conveyed in fee simple to the registered owners upon a showing of, and compliance with, the following conditions:
>
> a. The lands covered by the titles are not within any government, public or quasi-public reservation, forest, military or otherwise, as certified by appropriating government agencies;
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> b. Payment by the present title holder to the Republic of the Philippines of an amount equivalent to fifteen per centum (15%) of the assessed value of the land whose title is voided as of revision period 1973 (P.D. 76), the amount payable as follows: Within ninety (90) days of the effectivity of this Decree, the holders of the titles affected shall manifest their desire, to avail of the benefits of this provision and shall pay ten per centum (10%) of the above amount and the balance in two equal installments, the first installment to be paid within the first year of the effectivity of this Decree and the second installment within a year thereafter.

The governing body tasked to implement the provisions of Presidential Decree No. 1271 is the Presidential Decree No. 1271 Committee (Baguio Validation Committee). It is composed

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[17] Pres. Decree No. 1271.

of the Secretary of Justice as Chair and the Solicitor General and the Director of the Land Management Bureau as members.[18]

Among the titles issued under Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 were Original Certificates of Title Nos. 123 and 128.[19]

In December 1967, before this Court's ruling in *Marcos,* Gloria Rodriguez De Guzman (Rodriguez) acquired the properties derived from Original Certificates of Title Nos. 123 and 128. The Register of Deeds of Baguio issued a total of nine (9) Transfer Certificates of Title to Rodriguez, as follows:

(a) Transfer Certificates of Title Nos. T-12826 and T-12827, for the properties covered by Original Certificate of Title No. 123;[20]

(b) Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832, for the properties covered by Original Certificate of Title No. 128;[21] and

(c) Transfer Certificates of Title Nos. T-12824 and T-12825.[22]

Original Certificates of Title Nos. 123 and 128, being among the titles issued under the reopening of Civil Reservation Case No. 1, G.L.R.O Rec. No. 211, was declared null and void in *Marcos* and by Presidential Decree No. 1271.[23]

Consequently, on February 5, 1987, Rodriguez filed separate applications for validation for seven (7) of her titles: T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832.[24] The applications for validation were docketed thus:

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[18] *Rollo* (G.R. No. 187334), p. 47.

[19] *Id.* at 48.

[20] *Id.* at 47-48.

[21] *Id.* at 47-48.

[22] *Id.* at 47.

[23] *Id.* at 48.

[24] *Id.* at 49.

Original Certificate of Title	Transfer Certificate of Title in Rodriguez's name	Application for Validation
OCT No. 123	T-12826	VA(B) No. 6590
	T-12827	VA(B) No. 6591
OCT No. 128	T-12828	VA(B) No. 6592
	T-12829	VA(B) No. 4758
	T-12830	VA(B) No. 6593
	T-12831	VA(B) No. 6594
	T-12832	VA(B) No. 6595[25]

On September 24, 1991, pending her applications for validation, Rodriguez filed before the Regional Trial Court of Baguio City a Petition seeking to correct the caption of Resurvey Subdivision Plan (LRC) No. RS-288-D and the technical descriptions of TCT Nos. T-12828, T-12829, T-12830, T-12831, and T-12832 to conform to the resurvey plan.[26] This was docketed as **LRC Case No. 445-R**.[27]

The Office of the Solicitor General opposed the Petition and alleged that there was an increase in the area of the subdivided lots covered by the Transfer Certificates of Title.[28] On July 23, 1996, the Regional Trial Court granted

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[25] *Id.*

[26] *Id.* at 51.

[27] *Id.* at 51-52. The case was entitled *Re: Correction of the Caption in Resurvey Subdivision Plan (LRC) RS-288-D; Approved on August 30, 1967; Correction of Technical Descriptions of Lots 3-A-1, 3-A-2, 3-A-3, 3-A-4 and 3-A-5 Under TCT Nos. 12828, 12829, 12830, 12831, and 12832.*

[28] *Id.* at 52.

Rodriguez's Petition on the basis of Sections 48[29] and 108[30] of Presidential Decree No. 1529, otherwise known as the Property Registration Decree:

The opposition filed by the Office of the Solicitor General challenging the validity of the subject titles is in effect an attempt to reopen the decree of registration which Section 108 of PD 1529 categorically disallows. Moreover, the opposition of the Solicitor General is a

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[29] Pres. Decree No. 1529, Sec. 48 provides:

Section 48. *Certificate Not Subject to Collateral Attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[30] Pres. Decree No. 1529, Sec. 108 provides:

Section 108. *Amendment and Alteration of Certificates.* — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions. requiring security or bond if necessary, as it may consider proper; *Provided, however,* That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

collateral attack against a certificate of title which is also disallowed under Section 48 of P.D. 1529, which provides:

> "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."

Thus, in Magay vs. Estiandanan, 69 SCRA 456, the Supreme Court held:

> "It is well-settled that a Torrens title cannot be collaterally attacked. The issue on the validity of the title can only be raised in an action expressly instituted for that purpose." (citing Legarda and Prieto vs. Saleeby, 31 Phil. 590; Director of Lands vs. Gan Tan, 89 Phil. 184; Hederson vs. Garrido, 90 Phil. 624; Samonte, et al., vs. Sambilon, et al., 107 Phil. 189).

Moreover, petitioner should be accorded presumption that the Commissioner of Land Registration had complied with his official duties in accordance with law. The competence of the Commissioner of Land Registration to approve and disapprove survey plans, including consolidation and subdivision surveys has not been refuted and challenged. Before a consolidation or subdivision survey is conducted by geodetic engineer or before the survey is approved by competent authority, there must be proof that the party in whose behalf the survey is to be conducted is the owner of the property or has valid authority to grant permission for the survey. In the instant case, it is presumed that before the Commissioner of Land Registration approved the consolidation and subdivision survey as plan (LRC) RS-288-D, there was sufficient and existing proof submitted by petitioner of her ownership of the land.[31]

On January 10, 2002, a certain Corazon Delizo and Consuelo Delizo requested the Land Registration Authority to investigate Rodriguez's Transfer Certificates of Title Nos. T-12826 and T-12827 for being issued irregularly.[32] The Land Registration

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[31] *Rollo* (G.R. No. 187291), p. 134.

[32] *Rollo* (G.R. No. 187334), p. 50.

Authority docketed the request as Task Force *Titulong Malinis* (TM) No. 02-001.[33]

On September 26, 2002, Rodriguez's applications for validation of Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832 were forwarded to the Baguio Validation Committee by the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources.[34]

On September 27, 2002, the Land Registration Authority Task Force *Titulong Malinis* found that there was an expansion of the land area covered by Rodriguez's Transfer Certificates of Title Nos. T-12826 and T-12827.[35] It likewise discovered that the mother title was cancelled through a letter from Rodriguez seeking the issuance of new Transfer Certificates of Title under subdivision plan (LRC) Ps-281-D.[36]

In May 2003, the Office of the Solicitor General received a copy of the opposition filed by Corazon Delizo and the Heirs of Dr. Federico Q. Delizo.[37]

On March 3, 2004, the Legal Services of the Department of Environment and Natural Resources recommended to the Baguio Validation Committee the validation of Rodriguez's Transfer Certificates of Title Nos. T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832.[38] The Land Management Bureau of the Department, as member of the Baguio Validation Committee, adopted this endorsement and recommended the approval of Transfer Certificates of Title Nos.

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[33] *Id.* The request was entitled *Re: Alleged expansion of the land area covered by TCT Nos. T-12826 and T-12827 registered in the name of Gloria De Guzman.*

[34] *Id*

[35] *Id.* at 50-51.

[36] *Id.*

[37] *Id.* at 51.

[38] *Id.* at 52.

T-12828 to T-12832.[39] In the letter dated May 25, 2004, the Land Management Bureau endorsed the five (5) applications and resolutions covering Transfer Certificates of Title Nos. T-12828 to T-12832 to the remaining members of the Baguio Validation Committee: the Office of the Solicitor General and the Department of Justice.[40]

On September 7, 2004, the Register of Deeds of Baguio wrote the Office of the Solicitor General stating that Rodriguez's nine (9) titles, Transfer Certificates of Title Nos. T-12824 to T-12832, ought to be cancelled and denied validation.[41] The letter reads:

> The following documents militate against the approval of Ms. De Guzman's application:
>
> a) LRC Consulta No. 1889 – which held that plan (LRC) RS-281, though admittedly approved by the Land Registration. Authority on August 30, 1967 is nonetheless a plan with increased or expanded area and therefore the approval thereof is unwarranted and irregular (Republic vs. Heirs of Abrille, 71 SCRA 57);
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> b) Report of Deputy Public Land Inspector Teofilo M. Olimpo that TCT Nos. T-12826 and T[-]12827, when plotted on the projection or control map of the DENR disclosed that 4.9 hectares, more or less, falls within the Municipality of Bogon, Benguet and 10 hectares, more or less, falls within Baguio City. They also overlap [with] TSA-5192-D of Cesar U. Lorenzo, TSI-V-1895 of A.G. de los Santos and TSI-V-5183 of Alberto Selga;
>
> c) LRC Circular No. 167 dated February 19, 1968 directing the registration of any instrument affecting or involving lands covered by plans with expanded or increased areas be withheld or suspended;
>
> d) LRC Task Force Titulong Malinis Report No. 02-001 dated September 27, 2002 which stated that plan (LRC) R[S]-281-D is non-existent and not among the records on file in LRA; (LRC) RS-281-D refers to the survey plan of T-12827;

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[39] *Id.* at 51-52.

[40] *Id.* at 52.

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

e) Undated Report of Atty. Adelina A. Tabangin which shows that T-12824 to T-12832 have expanded in areas;

f) Order of Cancellation dated January 23, 2004 canceling Psd-Car-010458 covered by TCT No. T-12828;

g) Order dated July 17, 2002 in Regional Trial Court, Branch 60, First Judicial Region, Baguio City, LRC Case No. 445-R denying the execution of a decision issued on July 23, 1996 in the aforecited cases;

h) Order dated October 24, 2002 and February 6, 2003, Regional Trial Court, Branch 3, First Judicial Region, Baguio City, Civil Case No. 5312-R, dismissing the petition filed by Ms. Gloria de Guzman for the confirmation of her title and ownership covering TCT No. 12827;

i) City [C]ouncil Resolution Numbered 091, Series of 2001 – directing the City Legal Officer to course the filing of appropriate proceedings for the cancellation and/or nullification of falsified, fake or spurious certificates of title; and

j) False Statement or Misrepresentation in her application when she stated that she acquired the lots by "purchase" the truth of the matter is that only T-9463 with an area of 1,000 square meters, T-12067 with an area of 501 square meters and T-11946 with an area of 10,300 square meters were purchased by Ms. De Guzman from the original owners, the expanded area totaling 660,563 square meters was not included in the aforementioned purchase, it was acquired by virtue of re-survey plan which is non-existent and whose approval is unwarranted and irregular as per LRA report (par. D) and Consulta (par. A); this is a ground for her denial of her application for validation as per paragraph 10 of her application;

In view of the foregoing, and in order to maintain the integrity of the Torrens system, may we respectfully urge your Honor to please initiate immediately the filing of a petition to cancel TCT Nos. T-12824, T-12825, T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832, all in the name of Gloria de Guzman and/or Alfonso V. Dacanay.[42]

On February 10, 2006, the Office of the Solicitor General transmitted Rodriguez's applications for validation to the

[42] *Id.* at 53-54.

Secretary of Justice as Chair of the Baguio Validation Committee. He recommended that all nine (9) titles be denied validation because of the false statement that the excess area of 660,554 square meters included in the Transfer Certificates of Title after the subdivision of the mother titles were purchased when, in fact, the excess area was acquired only through a resurvey of the subdivision plan.[43]

On August 31, 2006, the Baguio Validation Committee disapproved Rodriguez's applications for validation on account of the expanded areas above the original size covered by the mother titles:[44]

Title/s Subject of Applications for Validation	Mother Title	Original Area of the Lot Covered By the Mother Title	Resulting Area After Subdivision of the Mother Title	Excess Area
TCT Nos. T-12824 and T-12825	T-9463	1,000 sq.m.	4,482 sq.m.	3,482 sq.m.
TCT Nos. T-12826 and T-12827	T-12067	510 sq.m.	156,296 sq.m.	155,786 sq.m
TCT Nos. T-12828 to T-12832	T-1946	10,300 sq.m.	511,586 sq.m.	501,286 sq.m
TOTAL		11,810 sq.m.	672,364 sq.m.	660,554 sq.m.[45]

The Secretary of Justice, thus, referred the Baguio Validation Committee's Resolution to the Land Registration Authority Administrator.[46]

On September 11, 2006, the Land Registration Authority Administrator directed the cancellation and the expunging of the invalidated titles.[47] It referred the Baguio Validation

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[43] *Id.* at 54.

[44] *Id.* at 56.

[45] *Id.* at 57.

[46] *Id.*

[47] *Id.*

Committee's Resolution to the Office of the Solicitor General for guidance as to the proper steps to be taken for the cancellation of the titles.[48]

Rodriguez filed before the Court of Appeals a Petition for Certiorari with application for a temporary restraining order and preliminary injunction to question the Baguio Validation Committee's Resolution.[49]

In the Decision[50] dated October 18, 2007, the Court of Appeals dismissed Rodriguez's Petition for Certiorari. It found that the Baguio Validation Committee did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying Rodriguez's applications for validation of Transfer Certificates of Title Nos. T-12826 to T-12832.[51] However, on Transfer Certificates of Title Nos. T-12824 and T-12825, it found that Rodriguez did not apply for the validation of these properties and, thus, the Baguio Validation Committee could not have acted on these properties.[52]

On the applications for validation of Transfer Certificates of Title Nos. T-12826 to T-12832, the Court of Appeals premised its ruling on the false statement made in Rodriguez's application that the properties were acquired by purchase, when actually, the expanded areas were acquired through a resurvey of the properties.[53] A false statement in an application for validation is a valid ground for the disapproval of an application under the Implementing Rules and Regulations of Presidential Decree No. 1271. This is also a stipulation in Rodriguez' own applications, which were signed under oath.[54]

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[48] *Id.*

[49] *Id.* at 46-47.

[50] *Id.* at 46-72.

[51] *Id.* at 60.

[52] *Id.*

[53] *Id.* at 63.

[54] *Id.* at 62-63.

Likewise, the Court of Appeals held that contrary to Rodriguez's claims, the Baguio Validation Committee's jurisdiction is not limited to determining whether the conditions provided for under Presidential Decree No. 1271 are met. Rather, its jurisdiction extends to ascertaining whether statements in the application are truthful and reliable.[55] The Court of Appeals also accorded weight to the argument of the Office of the Solicitor General that the provisions of Presidential Decree No. 1271 extend only to lands originally and judicially decreed in favor of applicants in Civil Reservation Case No. 1, G.L.R.O Rec. No. 211.[56] Thus, expanded areas of the lots covered by Rodriguez's titles, which were only included within the title as a result of the subdivision of the lots covered by the mother titles, cannot be validated.[57]

The Court of Appeals found that the Baguio Validation Committee is not precluded from taking into consideration the letter of the Register of Deeds, contrary to the claims of Rodriguez. The letter deserved evidentiary weight, given that it complied with the Baguio Validation Committee's request premised on its power to call upon any agency of government for assistance in the performance of its tasks.[58] In any case, the Court of Appeals found that the Baguio Validation Committee's Resolution was likewise based on: (1) the Land Registration Authority's Report dated September 27, 2002, prepared by Task Force *Titulong Malinis;* (2) the request of the Chief Legal Officer of the Cordillera Administrative Region to the Office of the Solicitor General for the reversion or the cancellation of Rodriguez's titles on the ground of its expansion from the mother titles; and (3) the Office of the Solicitor General's opposition to the Petition in LRC Case No. 445-R before the Regional Trial Court of Baguio for the correction of the resurvey subdivision plan and the correction of technical descriptions.[59]

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[55] *Id.* at 64.

[56] *Id.* at 65.

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

[58] *Id.* at 67.

[59] *Id.* at 68-69.

Moreover, the Court of Appeals held that Rodriguez's Transfer Certificates of Title are not indefeasible since Presidential Decree No. 1271 explicitly declared Rodriguez's Transfer Certificates of Title as null and void.[60]

The Court of Appeals held that there is no conclusiveness of judgment in LRC Case No. 455-R as the Regional Trial Court did not determine if there was a fraudulent expansion of the lands covered by Rodriguez's Transfer Certificates of Title, as opposed to their applications for validation.[61]

The Court of Appeals likewise did not consider Rodriguez's contention that her applications for Transfer Certificates of Title Nos. T-12826 and T-12827 were not transmitted from the Land Management Bureau to the Office of the Solicitor General, unlike that of Transfer Certificates of Title Nos. T-12828 to T-12832.[62] The Court of Appeals ruled that Rodriguez' submission of her application already started the process for determining whether it should be granted or denied.[63] Since the Office of the Solicitor General vehemently opposed its validation after consideration of the evidence, the Baguio Validation Committee did not gravely abuse its discretion in denying Rodriguez's applications.[64]

The dispositive portion of the October 18, 2007 Decision of the Court of Appeals reads:

WHEREFORE, the petition is partly **GRANTED**. The assailed resolution dated August 31, 2006 issued by the Presidential Decree No. 1271 Committee is **AFFIRMED** with **MODIFICATION** that the disapproval of validation of petitioner's TCT Nos. T-12824 and T-12825 is **SET ASIDE** for lack of merit. The writ of preliminary injunction issued by this Court on January 5, 2007 is accordingly **DISSOLVED**.

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[60] *Id.* at 69.

[61] *Id.* at 70.

[62] *Id.* at 71.

[63] *Id.*

[64] *Id.*

SO ORDERED.[65] (Emphasis in the original)

Rodriguez filed a Motion for Partial Reconsideration and a Supplemental Motion for Partial Reconsideration praying for the reversal of the Decision insofar as it found that no grave abuse of discretion was committed by the Baguio Validation Committee when it denied her applications for validation for Transfer Certificates of Title Nos. T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832.[66]

On June 26, 2008, Rodriguez filed an Omnibus Motion for Leave of Court to Present Additional Evidence and to Set Case for Oral Arguments.[67] The Baguio Validation Committee filed an Opposition.[68] After a hearing, the parties filed their respective memoranda.[69]

In the Amended Decision[70] dated March 26, 2009 the Court of Appeals partially granted Rodriguez's Motion for Partial Reconsideration. It still disallowed the validation of Rodriguez's applications for Transfer Certificates of Title Nos. T-12826 and T-12827, but allowed the validation of Rodriguez's applications for Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832.[71]

The Court of Appeals found that Transfer Certificate of Title No. T-12828 was acquired in a legitimate manner as it retained its original area of 10,300 square meters.[72] It noted that Transfer Certificate of Title No. 12828 was originally covered by Transfer Certificate of Title No. T-10121, which then became Transfer

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[65] *Id.* at 71-72.

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

[67] *Id.* at 76.

[68] *Id.* at 78.

[69] *Id.*

[70] *Id.* at 74-94.

[71] *Id.* at 92-93.

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

Certificate of Title No. T-11946 when it was issued to Rodriguez.[73] When Rodriguez obtained five (5) untitled parcels of land adjacent to Transfer Certificate of Title No. T-11946, Resurvey Subdivision Plan (LRC) No. RS-288-D described the entire property as Lot 3-A, and the five (5) properties as Lots 3-A-1, 3-A-2, 3-A-3, 3-A-4, 3-A-5.[74] Transfer Certificate of Title No. T-11946 became Lot 3-A-1 covered by Transfer Certificate of Title No. T-12828, which retained its original area of 10,300 square meters even after the correction of the technical descriptions in LRC Case No. 445-R.[75]

Moreover, the Court of Appeals changed its position as to the applicability of *res judicata* by conclusiveness of judgment to the validation of Transfer Certificates of Title Nos. T-12828 to T-12832.[76] It found that LRC Case No. 445-R had the same parties, subject, and issue as the proceedings before the Baguio Validation Committee for the validation of Rodriguez's Transfer Certificates of Title.[77] It held that the Regional Trial Court did resolve the issue of whether there was a fraudulent expansion of the areas covered by the Transfer Certificates of Title.[78] The judgment of the Regional Trial Court in LRC Case No. 445-R was a judgment on the merits that became final and executory and has, in fact, been executed.[79]

The Court of Appeals likewise held that *Republic v. Heirs of Abrille*[80] did not apply as there was no allegation or proof that the government agencies concerned were not provided notice of the proceedings for the approval of Resurvey Subdivision

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[73] *Id.* at 79.

[74] *Id.*

[75] *Id.*

[76] *Id.* at 81.

[77] *Id.* at 82.

[78] *Id.*

[79] *Id.* at 83.

[80] 162 Phil. 913 (1976) [Per *J.* Esguerra, First Division].

Plan (LRC) No. RS-288-D.[81] The Court of Appeals found that what properly applies is *Republic v. Court of Appeals*,[82] where the prolonged inaction by the Republic caused it to be barred by laches.[83] The Court of Appeals faulted the Office of the Solicitor General for its failure to appeal the Decision in LRC Case No. 445-R, or otherwise file a separate suit for the cancellation of the Transfer Certificates of Title.[84]

However, as LRC Case No. 445-R does not cover Transfer Certificates of Title Nos. T-12826 and T-12827, the Court of Appeals found that the doctrine of conclusiveness of judgment and estoppel by laches cannot apply to it.[85] The presumption of validity cannot apply to these titles since Presidential Decree No. 1271 declared all properties acquired under Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 as null and void, and the mother title of these Transfer Certificates of Title—Original Certificate of Title No. 123—was one of these properties.[86]

The dispositive portion of the Court of Appeals' March 26, 2009 Amended Decision reads:

WHEREFORE, the instant *Motion for Partial Reconsideration* and *Supplemental Motion for Partial Reconsideration* are **PARTLY GRANTED**. The Decision of this Court dated October 18, 2007, affirming respondent Committee's disapproval of [Rodriguez's] application for validation of TCT Nos. T-12826 and T-12827, and setting aside the disapproval by respondent Committee of [Rodriguez]'s applications for validation of TCT Nos. T-12824 and T-12825 is **REITERATED**. The assailed Resolution dated August 31, 2006 issued by the Presidential Decree No. 1271 Committee, insofar as it disapproved petitioner's applications for validation of TCT Nos. T-12828, T-12829, T-12831, and T-12832 is **REVERSED** and **SET ASIDE** for lack of

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[81] *Rollo* (G.R. No. 187334), p. 84.

[82] 361 Phil. 319 (1999) [Per *J.* Panganiban, Third Division].

[83] *Rollo* (G.R. No. 187334), p. 85.

[84] *Id.*

[85] *Id.* at 87.

[86] *Id.* at 89.

merit. In lieu thereof, a new judgment is hereby rendered approving or granting the subject applications for validation of TCT Nos. T-12828, T-12829, T-12830, T-12831, and T-12832.

Accordingly, the writ of preliminary injunction issued by this Court on January 5, 2007 is hereby made permanent insofar as TCT Nos. T-12824, T-12825, T-12828 T-12829, T-12830, T-12831, and T-12832 are concerned.

SO ORDERED.[87] (Emphasis in the original)

On May 15, 2009, the Baguio Validation Committee filed a Petition for Review on Certiorari[88] seeking to reverse the ruling of the Court of Appeals. This was docketed as G.R. No. 187291.

The Baguio Validation Committee argues that the only properties allowed to be validated under Presidential Decree No. 1271 are titles originally decreed in favor of the applicants in the Civil Reservation Case No. 1, G.L.R.O Rec. No. 211.[89] As the expanded portions of the lots covered by Rodriguez's titles were not secured through a judicial decree in the Civil Reservation Case No. 1, G.L.R.O Rec. No. 211 but through the subdivision of the lots covered by their mother titles, they cannot be validated under Presidential Decree No. 1271.[90] It further claims that to allow the validation of the titles will allow the perpetuation of fraud.[91] It emphasizes that Section 11, paragraph 2 of the Rules and Regulations to Implement the Provisions of Presidential Decree No. 1271 provides that a false statement or representation in the application or document is a ground for its disapproval.[92] Since Rodriguez's application contained false statements when it declared that the expanded

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[87] *Id.* at 92-93.

[88] *Rollo,* (G.R. No. 187291), pp. 10-58. The Petition was filed under Rule 45 of the Rules of Court.

[89] *Id.* at 37.

[90] *Id.* at 39.

[91] *Id.*

[92] *Id.*

areas were obtained through purchase instead of subdivision, it posits that her applications must be disapproved.[93]

The Baguio Validation Committee likewise argues that the principle of conclusiveness of judgment is inapplicable in this case as there is no identity of issues in the case before the Baguio Validation Committee and LRC Case No. 445-R.[94] It asserts that the issue before the Baguio Validation Committee was whether the titles should be validated under the provisions of Presidential Decree No. 1271,[95] while the issue in LRC Case No. 445-R was whether Rodriguez is entitled to the correction of the caption in the resurvey plan and the technical descriptions in the Transfer Certificates of Title.[96] It claims that LRC Case No. 445-R did not rule on whether there was a fraudulent expansion of the areas covered by the titles as the Regional Trial Court found that the Office of the Solicitor General's opposition was a collateral attack against a Transfer Certificate of Title, which was not allowed under Section 48 of Presidential Decree No. 1529.[97] Furthermore, it insists that the Transfer Certificates of Title, which were derived only from Resurvey Subdivision Plan (LRC) No. RS-288-D, are null and void as they were not registered and titled through a proceeding for a registration of land title under the Land Registration Law.[98] As such, the notices to the concerned agencies in the resurvey proceedings were irrelevant.[99]

Rodriguez filed a Comment[100] to the Petition. She argues that the Court of Appeals did not err in validating Transfer

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[93] *Id.* at 40.

[94] *Id.* at 42.

[95] *Id.*

[96] *Id.* at 43-44.

[97] *Id.* at 44.

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

[99] *Id.* at 47.

[100] *Id.* at 375-389.

Certificates of Title Nos. T-12828 to T-12832 as the validity of these titles was an issue already determined in LRC Case No. 445-R.[101] Since the Regional Trial Court found that there is a presumption that the Commissioner of Land Registration complied with his official duties and since his competence is not refuted, the Commissioner's approval of the subdivision survey plan showed that there was sufficient and existing proof that Rodriguez owned the land.[102] Rodriguez contends that this finding of fact was not questioned by the Baguio Validation Committee. Since LRC Case No. 445-R already attained finality and its judgment has been executed, *res judicata* by conclusiveness of judgment applies.[103]

Rodriguez further claims that LRC Case No. 445-R tackled the issue of fraudulent expansion.[104] The Regional Trial Court found that Rodriguez showed compliance with all jurisdictional requirements, consisting of notices to the Office of the Solicitor General, the Director of Lands, the Administrator of the Land Registration Authority, the Public Prosecutor of Baguio City, and the public.[105] Likewise, she argues that *Heirs of Abrille*, as cited by the Baguio Validation Committee, does not apply since, unlike this case, the notices in all concerned agencies were not given there.[106] Additionally, *Heirs of Abrille* involves property that is not alienable and disposable. On the other hand, Rodriguez claims that her properties are not within government, public, or quasi-public reservation, forest, or military land.[107]

Rodriguez claims that what properly applies is *Republic v. Court of Appeals*,[108] where this Court held that the Republic

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[101] *Id.* at 376-377.

[102] *Id.* at 378.

[103] *Id.* at 379-380.

[104] *Id.* at 380.

[105] *Id.* at 382.

[106] *Id.* at 384.

[107] *Id.* at 387.

[108] 361 Phil. 319 (1999) [Per *J.* Panganiban, Third Division].

cannot correct and recover the alleged increase in the party's parcel of land as it is barred by laches.[109] In this case, LRC Case No. 445-R was resolved by the Regional Trial Court on July 23, 1996. The Office of the Solicitor General did not file any appeal or separate suit for the annulment or cancellation of the titles.[110] Only after 10 years did it indirectly question the validity of the titles by rejecting Rodriguez's applications for validation.[111] Rodriguez claims that the Republic should be estopped and barred by laches, especially since it was given notice and actively participated in LRC Case No. 445-R.[112]

The Baguio Validation Committee filed a Reply.[113] Thereafter, the parties filed their memoranda.[114]

Meanwhile, on May 15, 2009, Rodriguez filed before this Court her Petition for Review on Certiorari[115] questioning the Court of Appeals' disapproval of her application for validation for Transfer Certificates of Title Nos. T-12826 and T-12827. The Petition was docketed as G.R. No. 187334.

Rodriguez emphasizes that the applications for Transfer Certificates of Title Nos. T-12826 and T-12827 were not transmitted by the Land Management Bureau to the Office of the Solicitor General and the Secretary of Justice.[116] It is as if there was no application, which the Baguio Validation Committee can consider for approval.[117] Rodriguez asserts that since the

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[109] *Rollo* (G.R. No. 187291), p. 385.

[110] *Id.*

[111] *Id.*

[112] *Id.* at 385-386.

[113] *Id.* at 406-420.

[114] *Id.* at 431-459, Memorandum of Baguio Validation Committee; 478-502, Memorandum of Rodriguez.

[115] *Rollo* (G.R. No. 187334), pp. 13-44. The Petition was filed under Rule 45 of the Rules of Court.

[116] *Id.* at 29.

[117] *Id.* at 34.

applications for Transfer Certificates of Title Nos. T-12826 and T-12827 present an identical situation as that of Transfer Certificates of Title Nos. T-12824 and T-12825 (which was ruled to have had no applications for validation), and applying the doctrine of the law of the case, it must be decided in the same manner as the decision in the latter.[118]

In its Comment, the Baguio Validation Committee argues that Transfer Certificates of Title Nos. T-12826 and T-12827 and Transfer Certificates of Title Nos. T-12824 and T-12825 are not similarly situated. It contends that Transfer Certificates of Title Nos. T-12824 and T-12825 had no applications for validation to begin with. This is in contrast to Transfer Certificates of Title Nos. T-12826 and T-12827, which had applications for validation docketed as VA(B) Nos. 6590 and 6591.[119] The Baguio Validation Committee denied Rodriguez's claim that it had no jurisdiction to act on these applications as all of Rodriguez's applications were transmitted.[120] In any case, the filing of the applications before the Land Management Bureau already started the process of determining whether the properties could be validated, given that the Director of the Land Management Bureau was a member of the Baguio Validation Committee.[121]

In her Reply, she reiterates that as the applications for validation for Transfer Certificates of Title Nos. 12826 and T-12827 were not transmitted, the Baguio Validation Committee had no opportunity to review it. Thus, they stand in the same footing as Transfer Certificates of Title Nos. 12824 and T-12825, which was found by the Court of Appeals as improperly denied validation by the Baguio Validation Committee.[122]

Thus, the issues for resolution are:

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[118] *Id.* at 34-35.

[119] *Id.* at 603, Comment.

[120] *Id.*

[121] *Id.* at 604.

[122] *Id.* at 855-866.

First, on Transfer Certificates of Title Nos. T-12826 and T-12827, whether the doctrine of law of the case applies;

Second, as to Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832, whether these Transfer Certificates of Title must be validated based on *res judicata* by conclusiveness of judgment; and

Lastly, in all these instances, whether Rodriguez complied with all the requirements for validation of nullified titles as provided by Presidential Decree No. 1271 and its Internal Rules and Regulations.

All these titles have not been properly validated. The Court of Appeals' Amended Decision dated March 26, 2009 is only partially affirmed. The Petition docketed as G.R. No. 187291 is granted, while the Petition docketed as G.R. No. 187334 is denied.

I

As both Petitions are petitions for review filed under Rule 45 of the Rules of Court, this Court will no longer disturb the factual findings of the Court of Appeals. A Rule 45 petition should raise only questions of law. This Court is not a trier of facts. In *Fuji Television Network, Inc. v. Espiritu:*[123]

> When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission:*
>
> > This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of

[123] G.R. Nos. 204944-45, December 3, 2014, 744 SCRA 31, 63-65 [Per *J.* Leonen, Second Division].

> quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[124]

Thus, this Court will no longer discuss the ruling of the Court of Appeals on Transfer Certificates of Title Nos. T-12824 and T-12825 as the Court of Appeals found that Rodriguez did not file before the Baguio Validation Committee applications of validation covering these properties.[125] This finding of fact was not questioned by any of the parties. Likewise, there is no showing of any such applications in the pleadings and supporting documents filed before this Court. The Court of Appeals' ruling on Transfer Certificates of Title Nos. T-12824 and T-12825 is, therefore, affirmed.

However, the decision in this case is without prejudice to the application of *Marcos* and Presidential Decree No. 1271 to these titles. Nothing in this decision, therefore, should be construed as either an express or implied validation of these titles. All that we pronounce is that these are not the valid subject of these actions, as it appears that no application for validation has been filed.

Likewise, the findings of fact of the Court of Appeals on the expansion of the areas of Transfer Certificates of Title Nos. T-12826, T-12827, T-12829, T-12830, T-12831, and T-12832 will no longer be disturbed.

The factual findings are supported by the evidence on record. These factual findings are thus conclusive upon the parties and binding on this Court. This Court will thus determine only the questions of law raised in the petitions.

II

Rodriguez claims that the Land Management Bureau did not transmit the applications for Transfer Certificates of Title Nos.

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[124] *Id.* at 18, citing *Meralco Industrial v. National Labor Relations Commission,* 572 Phil. 94, 117 (2008) [Per *J.* Chico-Nazario, Third Division].

[125] *Rollo* (G.R. No. 187334), p. 60.

T-12826 and T-12827 to the Office of the Solicitor General and the Secretary of Justice.[126] She contends that Transfer Certificates of Title Nos. T-12826 and T-12827 present an identical situation as that of Transfer Certificates of Title Nos. T-12824 and T-12825, which were found not to correspond to any application for validation that may be considered by the Baguio Validation Committee. She insists that applying the law of the case, Transfer Certificates of Title Nos. T-12826 and T-12827 must then be ruled in the same manner.[127]

This contention is without merit.

The doctrine of the "law of the case" provides that questions of law previously determined by a court will generally govern a case through all its subsequent stages where "the determination has already been made on a prior appeal to a court of law resort."[128] In *People v. Olarte:*[129]

> Suffice it to say that our ruling in Case L-13027, rendered on the first appeal, constitutes the *law of the case,* and, even if erroneous, it may no longer be disturbed or modified since it has become final long ago. A subsequent reinterpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined.
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> 'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
>
> As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party being to seek a rehearing.
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> . . . . . .

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[126] *Id.* at 29.

[127] *Id.* at 34-35.

[128] *Villa v. Sandiganbayan,* 284 Phil. 410, 426 (1992) [Per J. Cruz, *En Banc*].

[129] 125 Phil. 895 (1967) [Per J. J.B.L. Reyes, *En Banc*].

It is thus clear that posterior changes in the doctrine of this Court can not retroactively be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had, whether the case should be civil or criminal in nature.[130]

If an appellate court has determined a legal issue and has remanded it to the lower court for further proceedings, another appeal in that same case should no longer differently determine the legal issue previously passed upon.[131] Similar to *res judicata,* it is a refusal to reopen what has already been decided.[132]

The law of the case does not apply to bar any ruling on Transfer Certificates of Title Nos. T-12826 and T-12827.

First, there is no attempt to change any legal finding with regard to Transfer Certificates of Title Nos. T-12824 and T-12825 that would warrant the calling for its application.

Second, the ruling of the Court of Appeals on Transfer Certificates of Title Nos. T-12824 and T-12825 is not a ruling that can bind or limit this Court on another matter. The Supreme Court is the final arbiter of all legal questions brought before it. This Court's decision constitutes the final disposition of the case. This Court's judgment, when final, binds lower courts, not the other way around. It is the lower courts that are bound by, and cannot alter or modify, doctrine.[133]

Third, the facts that constitute the controversy pertaining to Transfer Certificates of Title Nos. T-12824 and T-12825 are different from those involving Transfer Certificates of Title Nos. T-12826 and T-12827. The ruling accorded to the former cannot apply to the latter.

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[130] *Id.* at 899-901, citing *People v. Pinuila,* 103 Phil. 992 (1958) [Per *J.* Montemayor, *En Banc*].

[131] *Tan v. Nitafan,* 301 Phil. 134, 147 (1994) [*J.* Bellosillo, *En Banc*].

[132] *Id.* at 148.

[133] *People v. Olarte,* 125 Phil. 895, 900 (1967) [Per *J.* J.B.L. Reyes, *En Banc*], *citing Kabigting v. Acting Director of Prisons,* 116 Phil. 589 (1962) [Per *J.* Makalintal, *En Banc*].

Rodriguez did not file any application for the validation of the properties covered by Transfer Certificates of Title Nos. T-12824 and T-12825 before the Baguio Validation Committee. Hence, if these titles are governed by *Marcos* and the requirement of validation under Presidential Decree No. 1271, these titles are void and are of no effect unless validated.

This is not the case for Transfer Certificates of Title Nos. T-12826 and T-12827. These titles were given application numbers VA(B) No. 6590 and VA(B) No. 6591, respectively. Rodriguez submitted applications for Transfer Certificates of Title Nos. T-12826 and T-12827 to the Baguio Validation Committee for its evaluation and decision.

Rodriguez claims that the findings of fact of the Court of Appeals did not explicitly state that the Land Management Bureau transmitted the applications to the other members of the Baguio Validation Committee. Besides this statement, she presents no other evidence to support the claim that the files pertaining to her applications were not before the Baguio Validation Committee. However, her act of submitting the applications to the Baguio Validation Committee is already an acknowledgment of the Committee's jurisdiction to decide on the matter. In effect, Rodriguez placed her applications within the Committee's power.

Thus, the ruling on Transfer Certificates of Title Nos. T-12824 and T-12825 cannot apply to Transfer Certificates of Title Nos. T-12826 and T-12827.

III

Transfer Certificates of Title Nos. T-12828 to T-12832 cannot be validated based on *res judicata* by conclusiveness of judgment.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[134] Rule 39, Section 47 of the Rules of Court provides:

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[134] *Oropeza Marketing Corp. v. Allied Banking Corp.*, 441 Phil. 551, 563 (2002) [Per J. Quisimbing, Second Division] citing *Black's Law Dictionary* (Rev. 4th ed. 1968) 1470.

SECTION 47. *Effect of Judgments or Final Orders.* — The effect of a judgment or final order rendered by a court or of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Res judicata is premised on the principle that a party is barred from presenting evidence on a fact or issue already judicially tried and decided.[135] In *Philippine National Bank v. Barreto:*[136]

It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence *aliunde* would be sufficient to overcome it; and therefore it would be useless for a party against whom it can be properly applied to adduce any

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[135] *Philippine National Bank v. Barreto*, 52 Phil. 818, 824 (1929) [Per *J.* Villamor, *En Banc*].

[136] 52 Phil. 818 (1929) [Per *J.* Villamor, *En Banc*].

such evidence, and accordingly he is estopped or precluded by law from doing so.[137]

At some point, judgments need to become both final and conclusive. Beyond that point, parties cannot be allowed to continue raising issues already resolved. Otherwise, there will be no end to litigation.[138]

There are two concepts of *res judicata:* (i) *res judicata* by bar by prior judgment; and (ii) *res judicata* by conclusiveness of judgment. *Res judicata* by bar by prior judgment is provided under Rule 39, Section 47(a) and (b), while *res judicata* by conclusiveness of judgment is found in Rule 39, Section 47(c).[139]

Res judicata by bar by prior judgment precludes the filing of a second case when it has the same parties, same subject, and same cause of action, or otherwise prays for the same relief as the first case. On the other hand, *res judicata* by conclusiveness of judgment precludes the questioning of a fact or issue in a second case if the fact or issue has already been judicially determined in the first case between the same parties:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.
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> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is

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[137] *Id.*

[138] *Id.*

[139] *Oropeza Marketing Corp. v. Allied Banking Corp.*, 441 Phil. 551, 563 (2002) [Per *J.* Quisumbing, Second Division].

the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[140] (Citations omitted)

The elements of *res judicata are:* (1) the first judgment must be final; (2) the first judgment was rendered by a court that has jurisdiction over the subject and the parties; (3) the disposition must be a judgment on the merits; and (4) the parties, subject, and cause of action in the first judgment are identical to that of the second case.[141] If, in the first judgment and in the second case, the causes of action are different such that only the parties and the issues are the same, there is *res judicata* by conclusiveness of judgment.[142]

Nabus v. Court of Appeals[143] discusses *res judicata* by conclusiveness of judgment:

The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel, in contrast to the judgment as a bar, are identity of parties and identity of issues.

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical.

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[140] *Id.* at 564.

[141] *Id.*

[142] *Id.* at 565.

If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action.[144] (Citations omitted)

Therefore, the parties and issues in the two cases must be the same for *res judicata* by conclusiveness of judgment to apply.

The parties in the two cases are considered the same even when they are not identical if they share substantially the same interest.[145] It is enough that there is privity between the party in the first case and in the second case, as when a successor-in-interest or an heir participates in the second case.[146]

There is identity of issues when a competent court has adjudicated the fact, matter, or right, or when the fact, matter, or right was "necessarily involved in the determination of the action[.]"[147] To determine whether an issue has been resolved in the first case, it must be ascertained that the evidence needed to resolve the second case "would have authorized a judgment for the same party in the first action."[148] Thus, if the fact or

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[143] 271 Phil. 768 (1991) [Per *J*. Regalado, Second Division].

[144] *Id.* at 784-785.

[145] *Heirs of Miguel v. Heirs of Miguel*, 730 Phil. 79, 95 (2014) [Per *J*. Leonardo-De Castro, First Division].

[146] *Id*.

[147] *Id.* at 97. Citation omitted.

[148] *Nabus v. Court of Appeals*, 271 Phil. 768, 785 (1991) [Per *J*. Regalado,

matter litigated in the first case is re-litigated in the second case, it is barred by *res judicata* by conclusiveness of judgment.

In LRC Case No. 445-R, the Regional Trial Court granted Rodriguez's Petition to correct the caption of Resurvey Subdivision Plan (LRC) No. RS-288-D and the technical descriptions of the properties in the Transfer Certificates of Title based on Section 108 of Presidential Decree No. 1529.[149] The trial court provided the following rationale:

The opposition filed by the Office of the Solicitor General challenging the validity of the subject titles is in effect an attempt to reopen the decree of registration which Section 108 of PD 1529

Second Division].

[149] Pres. Decree No. 1529, Sec. 108 provides:

Section 108. *Amendment and Alteration of Certificates.* — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; *Provided, however,* That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate

categorically disallows. Moreover, the opposition of the Solicitor General is a collateral attack against a certificate of title which is also disallowed under Section 48 of P.D. 1529, which provides:

> 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.

Thus, in Magay vs. Estiandanan, 69 SCRA 456, the Supreme Court held:

> It is well-settled that a Torrens title cannot be collaterally attacked. The issue on the validity of the title can only be raised in an action expressly instituted for that purpose. (citing Legarda and Prieto vs. Saleeby, 31 Phil. 590; Director of Lands vs. Gan Tan, 89 Phil. 184; Hederson vs. Garrido, 90 Phil. 624; Samonte, et al., vs. Sambilon, et al., 107 Phil. 189).

Moreover, petitioner should be accorded presumption that the Commissioner of Land Registration had complied with his official duties in accordance with law. The competence of the Commissioner of Land Registration to approve and disapprove survey plans, including consolidation and subdivision surveys has not been refuted and challenged. Before a consolidation or subdivision survey is conducted by geodetic engineer or before the survey is approved by competent authority, there must be proof that the party in whose behalf the survey is to be conducted is the owner of the property or has valid authority to grant permission for the survey. In the instant case, it is presumed that before the Commissioner of Land Registration approved the consolidation and subdivision survey as plan (LRC) RS-288-D, there was sufficient and existing proof submitted by petitioner of her ownership of the land.[150]

The Court of Appeals, acting on the Motion for Reconsideration and eventually reversing its ruling, applied *res judicata* by conclusiveness of judgment. It declared the Baguio Validation Committee barred from determining whether there was a fraudulent expansion of the areas covered by the

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certificate is not presented, a similar petition may be filed as provided in

Transfer Certificates of Title.[151] The Court of Appeal found that the issue of whether there was a fraudulent expansion had already been resolved; thus, the applications for validation 'may no longer dispute this finding.[152]

The Court of Appeals committed an error too obvious for this Court to neglect. Its conclusions are not only contrary to the facts; they are also not in accord with existing doctrine.

The Regional Trial Court did not determine whether there was a fraudulent expansion of the properties covered by the Transfer Certificates of Title. What the trial court stated was that no collateral attack can be made on the Transfer Certificates of Title.[153]

Rather than substantially rule on the validity of the titles, the Regional Trial Court in LRC Case No. 445-R held that the procedure could not accommodate the objections of the Solicitor General.[154]

An attack is considered collateral when it incidentally questions the validity of the transfer certificate of title in an action seeking a different relief.[155] This is opposed to a direct attack through an action that seeks to annul or set aside the transfer certificate of title itself.[156]

Certainly, a collateral attack cannot be made on a transfer certificate of title to maintain the "integrity and guaranteed legal indefeasibility of a Torrens title."[157] Nonetheless, the issuance of a transfer certificate of title does not mean it can

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the preceding section.

[150] *Rollo* (G.R. No. 187291), p. 134.

[151] *Rollo* (G.R. No. 187334), pp. 81-83.

[152] *Id.* at 82.

[153] *Rollo* (G.R. No. 187291), p. 134.

[154] *Id.* at 134.

[155] *Madrid, et al. v. Spouses Mapoy and Martinez*, 612 Phil. 920, 932 (2009) [Per *J.* Brion, Second Division].

no longer be questioned when it has been acquired through fraud. The validity of a transfer certificate of title may still be put to issue, provided it must be directly done through a court action seeking to annul or set it aside.

The Regional Trial Court's denial of the Office of the Solicitor General's opposition on the ground that it is a collateral attack on the Transfer Certificates of Title is not a judgment on the validity of the Transfer Certificate of Titles. ***It made no finding on the validity of the titles based on Republic v. Marcos. It did not consider any evidence of fraud.***

What the trial court found was that there was a *presumption* that the Commissioner of Land Registration regularly performed his duties and was competent in approving the resurvey plan, such that Rodriguez must have shown proof that she owned the properties. This presumption could not have been overturned or proved otherwise in the same case as the trial court would again delve into questioning the validity of the Transfer Certificates of Title. Thus, the Office of the Solicitor General's filing of an appeal questioning this presumption would have been a fruitless exercise. It would just be deemed a collateral attack on the titles and would not have been considered in the first place.

Since there is no judicial determination of fraud, *res judicata* by conclusiveness of judgment cannot apply. The ruling in LRC Case No. 445-R cannot bar the issue of whether there was a fraudulent expansion of the property covered by Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832. These Transfer Certificates of Title may still be questioned in a direct action seeking its nullification.

It is, thus, of no moment that the judgment in LRC Case No. 445-R became final and executory and has been executed. What may no longer be questioned is the correction of the caption of the resurvey plan and the technical descriptions on the Transfer Certificates of Title, not the validity of those Transfer Certificates of Title. The Office of the Solicitor General cannot be faulted for no longer appealing the ruling of the Regional Trial Court.

It is erroneous to declare that the government is already barred by estoppel by laches in failing to appeal the case.

Filing a case to cancel these titles is no longer necessary in light of *Marcos* and Presidential Decree No. 1271. Section 1 of Presidential Decree No. 1271 provides:

> Section 1. All orders and decisions issued by the Court of First Instance of Baguio and Benguet in connection with the proceedings for the reopening of Civil Reservation Case No. 1, GLRO Record No. 211, covering lands within the Baguio Townsite Reservation, and 1 decreeing such lands in favor of private individuals or entities, are hereby declared null and void and without force and effect; PROVIDED, HOWEVER, that all certificates of titles issued on or before July 31, 1973 shall be considered valid and the lands covered by them shall be deemed to have been conveyed in fee simple to the registered owners upon a showing of, and compliance with, the following conditions:
>
> a. The lands covered by the titles are not within any government, public or quasi-public reservation, forest, military or otherwise, as certified by appropriating government agencies;
>
> b. Payment by the present title holder to the Republic of the Philippines of an amount equivalent to fifteen per centum (15%) of the assessed value of the land whose title is voided as of revision period 1973 (P.D. 76), the amount payable as follows: Within ninety (90) days of the effectivity of this Decree, the holders of the titles affected shall manifest their desire to avail of the benefits of this provision and shall pay ten per centum (10%) of the above amount and the balance in two equal installments, the first installment to be paid within the first year of the effectivity of this Decree and the second installment within a year thereafter.

Contrary to the rationalization of the Regional Trial Court in LRC Case No. 445-R, Section 1 of Presidential Decree No. 1271 already declared null and void all certificates of titles issued on or before July 31, 1973; this was in connection with the reopening of Civil Reservation Case No. 1, G.L.R.O. Rec. No. 211. Thus, the Transfer Certificates of Title do not enjoy the presumption of regularity accorded to all transfer certificates

of titles. By law, they are considered invalid unless validated by the Baguio Validation Committee.

Our courts should be more aware of the machinations used by unscrupulous parties to acquire and title lands in Baguio City. As in this case, parties obtained more land through a resuryey of property. They filed an action or proceeding to "correct" the technical descriptions or the supporting survey plans. Trial courts become participants in this scheme by denying the intervention or opposition of the Solicitor General and, as in LRC Case No. 445-R, make very loose observations regarding the presumptions of validity of obviously defective titles already declared null and void by *Marcos* and confirmed as such by Presidential Decree No. 1271. Thereafter, in subsequent cases, as in these cases, the party who gains through a simple resurvey of its property erroneously raises *res judicata* as a defense; thus the party secures its spurious titles against any further legal questions.

These machinations brought about by the clearly erroneous application of doctrine should stop. Otherwise, genuine property owners in Baguio City will forever be unsure of possible land grabbing.

IV

We determine whether Rodriguez complied with all the requirements for validation as provided by Presidential Decree No. 1271 and its Internal Rules and Regulations.

Transfer Certificates of Title Nos. T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832 must be denied validation.

The Court of Appeals found that Transfer Certificate of Title No. T-12828 was acquired in a legitimate manner as it retained its original area of 10,300 square meters.[158] The findings in the Office of the Solicitor General's letter dated February 10, 2006 to the Secretary of Justice are as follows:

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[156] *Id.*

C. T-12828, T-123829 [sic], T-12830, T-12831 and T-12832

o) Original certificate of title No.: 0-128 (Annex "S") in the name of Sapia Manis with an area of 45,005 sq. m. was subdivided into three (3) lots and sold on August 2, 1965:

1- Lot 3-A with an area of 10,200 was sold to Moises Esteban; TCT No. T-9331 (Annex "T") was issued to buyer;

2- Lot 3-B with an area of 30,705 was sold to Polito Licanio and TCT No. 93321 was issued to him;

3- Lot 3-C with an area of 4,000 was sold to Daniel Zarate with TCT No. T-9333 being issued to him;

p) TCT No. T-9331 (Annex "T") with an area of 10,200 sq. m. was sold to Antonio Polito Licanio on November 10, 1965; consequently, TCT No. T-10121 (Annex "U") was issued to Mr. Licanio;

q) *TCT No. T-10121 (Annex "U") with an area of 10,300 sq. m. was sold to Gloria de Guzman and Alfonso V. Dacanay on May 4, 1967;* consequently TCT No. T-11946 (Annex "V") was issued to the buyers;

r) *TCT NO. T-11946 (Annex "V") with an area of 10,300 sq.m. was subdivided into five (5) lots by virtue of a Letter-Request from Gloria de Guzman (Annex "W") and 1st Indorsement (Annex "X") and Reply-Letter (Annex "I") of LRC Commissioner Antonio H. Noblejas based [on] Resurvey Plan No. (LRC) RS-288-D;*

1- Lot 3-A-1 with an area of 10,300 sq. m. covered by TCT No. T-12828; (Annex "Y")

2- Lot 3-A-2 with an area of 140,856 sq. m. covered by TCT No. T-12829; (Annex "C")

3- Lot 3-A-3 with an area of 108,766 sq. m. covered by TCT No. T-12830; (Annex "AA")

4- Lot 3-A-4 with an area of 137,106 sq.m. covered by TCT No. 12831; (Annex "BB")

5- Lot 3-A-5 with an area of 114,558 sq.m. covered by TCT No. 12832; (Annex "CC")

NOTE: From the original area of 10,300 sq. m. T-11946, Annex "V") the area expanded to 511,586 sq. m. (T-12828 to T-12832,

Annexes "Y") to "CC". <u>The excess area of 501,286 sq. m. was not purchased by Gloria de Guzman or Alfonso V. Dacanay from Polito Licanio nor from the City Government of Baguio.</u> This is contrary to Ms. De Guzman's statement in paragraph 4 of her application for validation of certificate of title wherein she stated that the titles were issued by virtue of "PURCHASED". This false statement or misrepresentation is a ground for denial for application for validation as per paragraph 10 of the same.[159] (Emphasis in the original)

Transfer Certificate of Title No. 12828, just like Transfer Certificates of Title Nos. T-12826, T-12827, T-12829, T-12830, and T-12831, was originally covered by Transfer Certificate of Title No. T-11946. Transfer Certificate of Title No. T-11946 was issued to Rodriguez when she acquired Transfer Certificate of Title No. T-10121.[160] When Rodriguez had the property subdivided, Transfer Certificate of Title No. T-11946 was subdivided into five (5) properties, one of which became Lot 3-A-1, covered by Transfer Certificate of Title No. T-12828.[161] This property retained its original area of 10,300 square meters.[162]

However, the technical description of Transfer Certificate of Title No. T-12828 is different from that of Transfer Certificate of Title No. T-11946.[163]

Moreover, since Transfer Certificate of Title No. T-12828 was issued on account of Resurvey Plan (LRC) No. RS-288-D, which expanded the property covered by Transfer Certificate Title No. T-11946, Transfer Certificate of Title No. T-12828 was acquired through fraud. Thus, it cannot be validated.

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[157] *Id.*

[158] *Rollo* (G.R. No. 187334), pp. 79-80.

[159] *Rollo* (G.R. No. 187291), pp. 173-175.

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

[161] *Id.* at 79.

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

[163] *Id.* at 645-646.

As regards Transfer Certificates of Title Nos. T-12826, T-12827, T-12829, T-12830, T-12831, and T-12832, we rule that as found by the Baguio Validation Committee and the Court of Appeals, the statement made in Rodriguez's applications that the properties were acquired by purchase is false. The expanded areas were acquired only through a resurvey of the properties. This is a valid ground to disallow the validation of the Transfer Certificates of Title.

Under the Implementing Rules and Regulations of Presidential Decree No. 1271:

> Section 11. Approval or disapproval of the application. –
>
> . . . .
>
> Any false statement or representation made by the applicant or in any document filed in connection therewith shall also be a ground for the disapproval of the application.

In her application, Rodriguez made a stipulation under oath that any false statement is a ground for denying her application, thus:

> I understand that any false statement or misrepresentation made by me in the application or in any matter required under the Decree of (sic) its implementing rules and regulations shall be a ground for the denial of this application and shall subject me to the penalty of imprisonment for not less than six (6) months but not more than six (6) years.[164]

The provisions of Presidential Decree No. 1271 extend only to lands originally and judicially decreed to applicants on account of the reopening of Civil Reservation Case No. 1, G.L.R.O Rec. No. 211:

> Section 1. *All orders and decisions* issued by the Court of First Instance of Baguio and Benguet in connection with the proceedings for the reopening of Civil Reservation Case No. 1, GLRO Record No. 211, *covering lands within the Baguio Townsite Reservation, and decreeing such lands in favor of private individuals or entities,*

[164] *Id.* at 63.

are hereby declared null and void and without force and effect; PROVIDED, HOWEVER, that *all certificates of titles issued on or before July 31, 1973* shall be considered valid and the lands covered by them shall be deemed to have been conveyed in fee simple to the registered owners upon a showing of, and compliance with, the following conditions[.] (Emphasis supplied)

Expanded areas of the lots allegedly covered by Rodriguez's titles, which were only included with the titles as a result of the subdivision of the lots covered by the mother titles, cannot be validated. Transfer Certificates of Title Nos. T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832 must, thus, be denied validation.

WHEREFORE, this Court **AFFIRMS** with **MODIFICATION** the Amended Decision dated March 26, 2009 of the Court of Appeals in CA-G.R. SP No. 96704. The ruling of the Court of Appeals as to Transfer Certificates of Title Nos. T-12824, T-12825, T-12826, and T-12827 is **AFFIRMED,** and the ruling as to Transfer Certificates of Title Nos. T-12828, T-12829, T-12830, T-12831, and T-12832 is **REVERSED.**

The Petition docketed as G.R. No. 187334 is **DENIED** for having raised no reversible error warranting the reversal of the ruling of the Court of Appeals as to Transfer Certificates of Title Nos. T-12824 and T-12825.

The Petition docketed as G.R. 187291 is **GRANTED** in that Transfer Certificates of Title Nos. T-12826, T-12827, T-12828, T-12829, T-12830, T-12831, and T-12832 are denied validation.

Let a copy of this Decision be furnished to the Office of the Court Administrator and all branches of the Regional Trial Courts in Baguio City.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192318. December 5, 2016]

REYNO C. DIMSON, *petitioner, vs.* **GERRY T. CHUA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2005 REVISED RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); THE LABOR ARBITER (LA) CANNOT ACQUIRE JURISDICTION OVER THE PERSON OF THE RESPONDENT WHO WAS NEITHER SERVED WITH SUMMONS NOR VOLUNTARILY APPEARED BEFORE THE LA.— Following the explicit language of the NLRC Rules, notices or summons shall be served on the parties to the case personally. The same rule allows under special circumstances, that service of summons may be effected in accordance with the provisions of the Rules of Court. The service of summons in cases before the LAs shall be served on the parties personally or by registered mail, provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court. Supplementary or applied by analogy to these provisions are the provisions and prevailing jurisprudence in Civil Procedure. Where there is then no service of summons on or a voluntary general appearance by the defendant, the court acquires no jurisdiction to pronounce a judgment in the case. It is basic that the LA cannot acquire jurisdiction over the person of the respondent without the latter being served with summons. However, if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. In this case, since the respondent is one of the officers of SEASUMCO, service of summons must be made to him personally or by registered mail. However, as borne by the records, it is evident that no service of summons and notices were served on the respondent and he was not impleaded in NLRC RAB Case No. 12-01-00005-03. x x x The petitioner in fact does not even dispute the

respondent's claim that no summons or notices were ever issued and served on him either personally or through registered mail. True to his claim, the respondent, indeed, was never summoned by the LA. Besides, even assuming that the respondent has knowledge of a labor case against SEASUMCO, this will not serve the same purpose as summons to him. More so, the respondent did not voluntarily appear before the LA as to submit himself to its jurisdiction. Contrary to the petitioner's position, the validity of a judgment or order of a court or quasi-judicial tribunal which has become final and executory may be attacked when the records show that it lacked jurisdiction to render the judgment.

2. **ID.; ID.; ID.; JUDGMENT AGAINST RESPONDENT IN THIS CASE WHERE JURISDICTION OVER HIS PERSON WAS NOT ACQUIRED IS VOID; UTTER LACK OF JURISDICTION VOIDS ANY LIABILITY OF THE RESPONDENT FOR ANY MONETARY AWARD OR JUDGMENT IN FAVOR OF THE PETITIONER.—** [A] judgment rendered against one in a case where jurisdiction over his person was not acquired is void, and a void judgment maybe assailed or impugned at any time either directly or collaterally by means of a petition filed in the same or separate case, or by resisting such judgment in any action or proceeding wherein it is invoked. Guided by the foregoing norms, the CA properly concluded that the proceedings before the LA deprived the respondent of due process. Considering that the respondent was never impleaded as a party respondent and was never validly served with summons, the LA never acquired jurisdiction over his person. Perforce, the proceedings conducted and the decision rendered are nugatory and without effect. This utter lack of jurisdiction voids any liability of the respondent for any monetary award or judgment in favor of the petitioner.

3. **COMMERCIAL LAW; CORPORATION CODE; AN OFFICER OF THE CORPORATION MAY NOT BE HELD PERSONALLY LIABLE FOR THE CORPORATION'S LABOR OBLIGATIONS UNLESS HE ACTED WITH MALICE OR BAD FAITH; TWO REQUISITES THAT MUST CONCUR TO HOLD AN OFFICER PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS.—** "A corporation is a juridical entity with

a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he acted with evident malice and/or bad faith in dismissing an employee." Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation. To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.

4. ID.; ID.; ID.; ID.; THE TWIN REQUISITES ARE LACKING IN CASE AT BAR.— Based on the records, the petitioner and the private respondents in the NLRC case failed to specifically allege either in their complaint or position paper that the respondent, as an officer of SEASUMCO, willfully and knowingly assented to the corporations' patently unlawful act of closing the corporation, or that the respondent had been guilty of gross negligence or bad faith in directing the affairs of the corporation. In fact, there was no evidence at all to show the respondent's participation in the petitioner's illegal dismissal. Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold the respondent personally liable for the monetary awards to the petitioner, are lacking. The respondent is merely one of the officers of SEASUMCO and to single him out and require him to personally answer for the liabilities of SEASUMCO are without basis. In the absence of a finding that he acted with malice or bad faith, it was error for the labor tribunals to hold him responsible.

APPEARANCES OF COUNSEL

Francis U. Ku for petitioner.
Tanada Vivo & Tan for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] assailing the Decision[2] dated August 13, 2009 and Resolution[3] dated April 14, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 02575-MIN. The appellate court nullified and set aside the Resolutions dated January 11, 2008[4] and July 31, 2008[5] of the National Labor Relations Commission (NLRC) in NLRC MAC-10-009909-2007, which affirmed the Order[6] dated August 16, 2007 of the Labor Arbiter (LA) in NLRC RAB Case No. 12-01-00005-03, granting Reyno C. Dimson's (petitioner) motion for the issuance of an amended alias writ of execution[7] to include Gerry T. Chua (respondent), as well as the other corporate officers of South East Asia Sugar Mill Corporation (SEASUMCO) and Mindanao, Azucarera Corporation (MAC), to be held solidarily liable with the said corporations for the money claims of the employees of SEASUMCO.

The Facts

The instant case filed by the petitioner, representing the other 14 complainants, against the respondent, is an offshoot of the labor case entitled "*Reyno Dimson, et al. v. SEASUMCO, MAC, United Coconut Planters Bank (UPCB), and Cotabato Sugar Central Co., Inc. (COSUCECO).*"

On September 22, 2003, the said labor case for illegal dismissal with monetary claims was decided in favor of the complainants.[8]

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[1] *Rollo,* pp. 3-28.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Elihu A. Ybañez and Ruben C. Ayson concurring; *id*. at 232-249.

[3] *Id*. at 277-278.

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

[5] *Id*. at 63-65.

[6] Rendered by Executive Labor Arbiter Tomas B. Bautista, Jr.; *id*. at 66.

[7] *Id*. at 96.

[8] *Id*. at 176-190.

Hence, SEASUMCO and MAC, as well as the members of their board of directors, were ordered to pay jointly and severally the sum of Three Million Eight Hundred Twenty-Seven Thousand Four Hundred Seventy Pesos and Fifty-One Centavos (₱3,827,470.51). The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> A) Declaring that the Complainants were illegally separated from their employment, and consequently, they are entitled to payment of separation pay equivalent to one month pay per year of service and to payment of backwages reckoned from June 2000 until the finality of this decision and to payment of Service Incentive Leave Pay and 13th month pay.
>
> b) Declaring Respondents SEASUMCO and x x x MAC, including their respective presidents and board of directors jointly and severally liable to all the monetary entitlements of all Complainants as above granted.
>
> c) Dismissing the complaints/claims against Respondents UCPB and COSUCECO for lack of employer-employee relationship; and
>
> d) Ordering Respondents SEASUMCO and MAC, its respective presidents and members of the board of directors to pay jointly and severally the Complainants the amount of **THREE MILLION EIGHT HUNDRED TWENTY[-]SEVEN THOUSAND FOUR HUNDRED SEVENTY & 51/100 (₱3,827,470.51)** covering the entitlements representing partial computations of the complainants' entitlement herein.
>
> All other claims are dismissed for lack of legal and factual basis.
>
> SO ORDERED.[9]

The LA's decision became final and executory but the judgment remained unsatisfied. Consequently, the petitioner filed an*Ex-parte* Motion[10] for the issuance of an amended alias writ of execution asking for the inclusion of the board of directors and corporate officers of SEASUMCO and MAC to hold them liable for satisfaction of the said decision.

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[9] *Id*. at 189-190.

[10] *Id*. at 103-104.

In an Order[11] dated August 16, 2007, the LA granted the motion; hence, an amended alias writ of execution[12] was issued which now included the respondent.

Aggrieved, the respondent elevated the matter to the NLRC by filing a Memorandum of Appeal[13] arguing that he was denied due process.

In a Resolution[14] dated January 11, 2008, the NLRC dismissed the appeal for lack of merit and sustained the findings of the LA.

The respondent filed a Motion for Reconsideration,[15] but the NLRC Resolution[16] dated July 31, 2008 denied his motion. Hence, he filed a petition for *certiorari* with application for temporary restraining order (TRO)/preliminary injunction[17] before the CA. He maintained that the labor tribunals violated his right to due process when the LA authorized the issuance of the amended alias writ of execution against him for the corporation's judgment debt, although he has never been a party to the underlying suit.

Meanwhile, upon the petitioner's motion, a Second Alias Writ of Execution[18] was issued on November 3, 2008, since the previous writ dated August 17, 2007 has already expired. Pursuant to this, on December 2, 2008, a Certificate of Sale/Award[19] was issued to the petitioner upon the levy on execution that was made over the shares of stocks belonging to the respondent at New Frontier Sugar Corporation (NFSC) totaling 105,344 shares with the total amount of ₱10,534,400.00.

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[11] *Id*. at 66.

[12] *Id*. at 96.

[13] *Id*. at 67-77.

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

[15] *Id*. at 108-122.

[16] *Id*. at 63-65.

[17] *Id*. at 29-56.

[18] *Id*. at 219.

[19] *Id*. at 223-225.

On January 30, 2009, the CA denied the respondent's application for a TRO and set the case for hearing on the propriety of the issuance of a writ of preliminary injunction (WPI).[20]

In the Resolution[21] dated April 16, 2009, the CA issued a WPI enjoining the NLRC, its sheriff and any person acting for and its behalf from transferring in the names of the petitioner and other private respondents in the NLRC case, the respondent shares of stocks with NFSC pending resolution of the petition.

On August 13, 2009, the CA rendered the assailed judgment, which nullified and set aside the rulings of the NLRC, and made the WPI permanent.[22] The CA held that the respondent was indeed denied due process based on the following ratiocination:

> In the case at bar, the records clearly show that [the respondent] was never served summons with respect to NLRC RAB Case No. 12-01- 00005-03. He, thus, cannot be made liable for any findings of the LA respecting private respondents' monetary claims. Moreover, as can likewise be gleaned from the records, private respondents monetary claims are claims against the corporation of which [the respondent] is merely an officer.[23]

In overturning the NLRC's decision, the CA emphasized that the LA cannot acquire jurisdiction over the person of the respondent without the latter being served with summons, and in the absence of service of summons or a valid waiver thereof, the hearings and judgment' rendered by the LA are null and void. The CA emphasized the rule that a corporation is clothed with a personality distinct from that of its officers and the petitioner has not shown any ground that would necessitate the piercing of the corporate veil and disregarding SEASUMCO's corporate fiction. Furthermore, the CA also noted with curiosity the respondent's claim that Agosto Sia (Sia), a co-respondent

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[20] *Id*. at 238.

[21] *Id*. at 229-231.

[22] *Id*. at 232-249.

[23] *Id*. at 243.

and likewise similarly situated as him, allegedly appealed the Order dated August 16, 2007 of the LA to the NLRC[24] and yet the latter granted Sia's appeal.[25]

Upset by the foregoing disquisition, the petitioner moved for reconsideration[26] but it was denied by the CA.[27] Hence, the present petition for review on *certiorari*.

The Issue

The main issue in this case is whether the respondent can be held solidarily liable with the corporation, of which he was an officer and a stockholder, when he was not served with summons and was never impleaded as a party to the case.

Ruling of the Court

The petition has no merit.

The issue of whether the respondent is personally liable for the monetary awards granted in favor of the petitioner, arising from the complainants' alleged illegal termination, while basically a question of law pertinent for a Rule 45 review, nevertheless, hinges for its resolution on a factual issue, the question of whether there had been improper service of summons upon the respondent which renders the judgment by the LA against him null and void. Moreover, the inconsistent rulings of the LA and the NLRC, on the one hand, and of the CA, on the other, in the present petition, make this case fall within the ambit of this Court's review.

Despite that, the issue posited in this case is not novel since a catena of cases involving the question of denial of due process and the propriety of a corporate officers' solidary liability with the corporation has already come before this Court.

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[24] *Id*. at 194-206.

[25] *Id*. at 208-210.

[26] *Id*. at 250-267.

[27] *Id*. at 277-278.

In the main, the crux of the petitioner's argument focuses only on the liberal application of the rules of procedure and evidence before the NLRC. The petitioner contends that lack of summons is not indicative of lack of due process. Although expressly admitting that the respondent was not named as party in the illegal dismissal case before the LA, the petitioner argues that it does not mean that the respondent was denied due process since the latter was given the opportunity to express his defenses before the labor tribunals.

On the other hand, the respondent questions his inclusion in the decision of the labor tribunals below. He contends that the LA did not acquire jurisdiction over his person and emphasizes that he was never impleaded as a party respondent to the case but was merely included in the order for writ of execution of the money claims of the petitioner. He also questions his solidary liability with the corporation.

The respondent's assertions are not without basis, as can be seen from Sections 3[28] and 6[29] of Rule III of the 2005 Revised

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[28] Sec. 3. *Issuance of Summons*. – Within two (2) days from receipt of a complaint or amended complaint, the Labor Arbiter shall issue the required summons, attaching thereto a copy of the complaint or amended complaint. The summons shall specify the date, time and place of the mandatory conciliation and mediation conference in two (2) settings.

[29] Sec. 6. *Service of Notices and Resolutions*. – a) Notices or summons and copies of orders, shall be served on the parties to the case personally by the Bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; Provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail; Provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; Provided finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as may be practicable, which shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended.

For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

Rules of Procedure of the NLRC governing the issuance and services of notices and resolutions, including summons, in cases filed before the LAs.

Following the explicit language of the NLRC Rules, notices or summons shall be served on the parties to the case personally. The same rule allows under special circumstances, that service of summons may be effected in accordance with the provisions of the Rules of Court. The service of summons in cases before the LAs shall be served on the parties personally or by registered mail, provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court.

Supplementary or applied by analogy to these provisions are the provisions and prevailing jurisprudence in Civil Procedure. Where there is then no service of summons on or a voluntary general appearance by the defendant, the court acquires no jurisdiction to pronounce a judgment in the case.[30]

It is basic that the LA cannot acquire jurisdiction over the person of the respondent without the latter being served with summons. However, if there is no valid service of summons, he court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance.[31]

In this case, since the respondent is one of the officers of SEASUMCO, service of summons must be made to him personally or by registered mail. However, as borne by the records, it is evident that no service of summons and notices

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b) The Bailiff or officer serving the notice, order, resolution or decision shall submit his return within two (2) days from date of service thereof, stating legibly in his return his name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail, the Bailiff or officer shall write in the return, the names of persons served and the date of mailing of the resolution or decision. If no service was effected, the service officer shall state the reason therefor in the return.

[30] *Dynamic Signmaker Outdoor Advertising Services, Inc. v. Potongan*, 500 Phil. 113, 124 (2005).

[31] *Sy, et al. v. Fairland Knitcraft Co., Inc.*, 678 Phil. 265, 295 (2011).

were served on the respondent and he was not impleaded in NLRC RAB Case No. 12-01-00005-03. He was hauled to the case after he reacted to the improper execution of his properties and was actually dragged to court by mere motion of the petitioner with whom he has no privity of contract and after the decision in the main case had already become final and executory. The respondent only received the copy of the assailed Order dated August 17, 2007 of the LA on September 5, 2007.[32]

It can be recalled that the petitioners' original complaints for illegal dismissal with money claims were only against SEASUMCO, MAC, UCPB and COSUCECO. For these complaints, the LA issued summons to a conference for a possible settlement to the said corporations, including its chairman Margarita Sia and Michael Angala. The Court scanned the records but found nothing to indicate that summons with respect to the said complaints were ever served upon the respondent. The petitioner in fact does not even dispute the respondent's claim that no summons or notices were ever issued and served on him either personally or through registered mail. True to his claim, the respondent, indeed, was never summoned by the LA. Besides, even assuming that the respondent has knowledge of a labor case against SEASUMCO, this will not serve the same purpose as summons to him.

More so, the respondent did not voluntarily appear before the LA as to submit himself to its jurisdiction. Contrary to the petitioner's position, the validity of a judgment or order of a court or quasi-judicial tribunal which has become final and executory may be attacked when the records show that it lacked jurisdiction to render the judgment. For a judgment rendered against one in a case where jurisdiction over his person was not acquired is void, and a void judgment maybe assailed or impugned at any time either directly or collaterally by means of a petition filed in the same or separate case, or by resisting such judgment in any action or proceeding wherein it is invoked.[33]

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[32] *Rollo*, p. 71.

[33] *Dynamic Signmaker Outdoor Advertising Services, Inc. v. Potongan*, *supra* note 30, at 123.

Guided by the foregoing norms, the CA properly concluded that the proceedings before the LA deprived the respondent of due process. Considering that the respondent was never impleaded as a party respondent and was never validly served with summons, the LA never acquired jurisdiction over his person. Perforce, the proceedings conducted and the decision rendered are nugatory and without effect. This utter lack of jurisdiction voids any liability of the respondent for any monetary award or judgment in favor of the petitioner.

It has not escaped the Court's attention that the respondent's co-officer, Sia, also filed an appeal before the NLRC which the latter granted despite the fact that they were similarly situated. The Court agrees with the findings of the CA on this matter:

> Indeed, we find it strange, if not queer that [the respondent] who was similarly situated as that of Sia, would have been treated differently by [NLRC]. Both were in the same, if not exact, situation. [The respondent] and Sia, as the records show, were never impleaded as respondents in the complaint filed before the [LA] and neither too were they served with summons to enable them to file their answer before that level. Nevertheless, as the record shows, Sia's appeal was granted excluding him from liability for the reason that precisely he was not impleaded as a party to the case nor summons served on him. Strangely, however, as aforestated, [the respondent's] appeal was denied and was held liable for the monetary claims of private respondents. It would thus, clearly appear from the records that [NLRC] adopted two inconsistent positions in treating the appeals interposed by [the respondent] and Sia. The records likewise show that both [the respondent] and Sia were represented by the same counsel. For unknown reasons or for reasons only known to [NLRC], [the respondent's] and Sia's appeal were treated differently notwithstanding the identical situation they were in.[34]

While it is true that the LA and the NLRC are not bound by technical rules of evidence and procedure, such should not be interpreted so as to dispense with the fundamental and essential right of every person to due process of law.[35] "At all events,

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[34] *Rollo*, pp. 247-248.

[35] See *Cada v. Time Saver Laundry/Leslie Perez*, 597 Phil. 548 (2009).

even if administrative tribunals exercising quasi-judicial powers are not strictly bound by procedural requirements, they are still bound by law and equity to observe the fundamental requirements of due process."[36]

Finally, the Court sustains the CA's ruling that the respondent, as one of SEASUMCO's corporate officer and stockholder, should not be held solidarily liable with the corporation for its monetary liabilities with the petitioner.

Here, the LA pierced the veil of corporate fiction of SEASUMCO and held the respondent, in his personal capacity, jointly and severally liable with the corporation for the enforcement of the monetary awards to the petitioner. Even assuming that the labor tribunals had jurisdiction over the respondent, it was still improper to hold him liable for SEASUMCO's obligations to its employees.

In the recent case of *Jose Emmanuel P. Guillermo v. Crisanto P. Uson*,[37] the Court resolved the twin doctrines of piercing the veil of corporate fiction and personal liability of company officers in labor cases. According to the Court:

> The common thread running among the aforementioned cases, however, is that the veil of corporate fiction can be pierced, and responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarity in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. When the shield of a separate corporate identity is used to commit wrongdoing and opprobriously elude responsibility, the courts and the legal authorities in a labor case have not hesitated to step in and shatter the said shield and deny the usual protections to the offending party, even after final judgment. The key element is the presence of fraud, malice or bad faith. Bad faith, in this instance, does not connote bad judgment or

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[36] *Dynamic Signmaker Outdoor Advertising Services, Inc. v. Potongan*, *supra* note 30, at 124.

[37] G.R. No. 198967, March 7, 2016.

negligence but imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through motive or interest or ill will; it partakes of the nature of fraud.

As the foregoing implies, there is no hard and fast rule on when corporate fiction may be disregarded; instead, each case must be evaluated according to its peculiar circumstances. For the case at bar, applying the above criteria, a finding of personal and solidary liability against a corporate Officer like Guillermo must be rooted on a satisfactory showing of fraud, bad faith or malice, or the presence of any of the justifications for disregarding the corporate fiction. x x x.[38] (Citations omitted)

"A corporation is a juridical entity with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, as a general rule, an officer may not be held liable for the corporation's labor obligations unless he acted with evident malice and/or bad faith in dismissing an employee."[39] Section 31[40] of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation. To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.[41]

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[38] *Id*.

[39] *The Coffee Bean and Tea Leaf Philippines, Inc. v. Arenas*, G.R. No. 208908, March 11, 2015, 753 SCRA 187, 196.

[40] Sec. 31. *Liability of directors, trustees or officers.* – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

x x x x x x x x x

[41] *The Coffee Bean and Tea Leaf Philippines, Inc. v. Arenas*, *supra* note 39.

Based on the records, the petitioner and the private respondents in the NLRC case failed to specifically allege either in their complaint or position paper that the respondent, as an officer of SEASUMCO, willfully and knowingly assented to the corporations' patently unlawful act of closing the corporation, or that the respondent had been guilty of gross negligence or bad faith in directing the affairs of the corporation. In fact, there was no evidence at all to show the respondent's participation in the petitioner's illegal dismissal. Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold the respondent personally liable for the monetary awards to the petitioner, are lacking.

The respondent is merely one of the officers of SEASUMCO and to single him out and require him to personally answer for the liabilities of SEASUMCO are without basis. In the absence of a finding that he acted with malice or bad faith, it was error for the labor tribunals to hold him responsible.

The Court had repeatedly emphasized that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception.[42] To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

WHEREFORE, the petition is **DENIED**. The Decision dated August 13, 2009 and Resolution dated April 14, 2010 of the Court of Appeals in CA-G.R. SP No. 02575-MIN are **AFFIRMED**.

SO ORDERED.

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

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[42] *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477, 487 (2013).

THIRD DIVISION

[G.R. No. 193371. December 5, 2016]

24-K PROPERTY VENTURES, INC., *petitioner, vs.* **YOUNG BUILDERS CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION OF; A VALID DEMAND FOR THE IMMEDIATE PAYMENT OF THE FULL AMOUNT STATED IN THE WRIT OF EXECUTION AND ALL LAWFUL FEES IS NECESSARY TO A PROPER LEVY.— [T]he Sheriff's Report/Return failed to specifically indicate material information on the alleged attempted service on petitioner. It failed to state the name of the officer who allegedly refused to receive the writ and the circumstances surrounding such refusal, and even the date when said attempted service was allegedly made. x x x Sheriff Villegas also reported that service was made on petitioner's counsel after the alleged unsuccessful service on petitioner. The next query, then, is whether such service translates to a valid demand as required by Section 9, Rule 39 of the Revised Rules of Court. We answer in the negative. x x x It is to be noted that the service of the writ of execution was made on petitioner's counsel on 9 May 2006 or on the very day when levy was made on the real properties of petitioner. The lateness of the service of the writ of execution on petitioner's counsel or the prematurity of the levy precluded petitioner from having a real opportunity to effect the immediate payment of the judgment debt and the lawful fees. In requiring a valid demand, Section 9, Rule 39 of the Revised Rules of Court contemplates a situation where the judgment obligor is first given the chance to effect immediate payment of the judgment debt and the lawful fees through cash or certified bank checks. If this is not feasible, it is only then that a levy is effected, giving the judgment obligor the choice as to which property to levy upon, or if the judgment obligor does not exercise his choice, to effect the levy first on personal properties, and then on real properties.

2. ID.; ID.; ID.; A VALID LEVY MUST BE EFFECTED ONLY ON REAL PROPERTIES IF THERE ARE NO OR INSUFFICIENT PERSONAL PROPERTIES TO ANSWER FOR THE JUDGMENT; CIRCUMSTANCES SHOWING THAT PETITIONER WAS DEPRIVED TO HAVE HIS PERSONAL PROPERTIES GARNISHED FIRST BEFORE HIS REAL PROPERTIES.— In case the judgment debtor fails to choose which of his properties should be levied upon, the sheriff must first levy on the judgment debtor's personal properties, if any, and should such properties be insufficient, then the sheriff may levy on the judgment debtor's real properties. In all of these cases, the sheriff may levy and sell only such properties as are sufficient to satisfy the judgment debt and the lawful fees. The Sheriff's Report/Return, presumably in an effort to comply with the Rules, stated that a levy on petitioner's bank accounts was first attempted[.] x x x The CA accepted the sheriff's statements as gospel truth. In its recital of facts, the CA stated that "*on 05 May 2006,* [Sheriff Villegas] *served Notice of Garnishment to a number of banks but he was informed that the petitioner had no deposits, credits or money in those banks. On 9 May 2006, he levied on two real properties of the petitioner* x x x[.]" A perusal of the bank replies shows, however, that the attempt to first effect garnishment on petitioner's bank accounts before levying on petitioner's real properties is a mere ruse. Of the banks notified by Sheriff Villegas, only Equitable PCI Bank and Metropolitan Bank and Trust Company stated that petitioner had no garnishable funds with their banks. The Philippine National Bank, United Coconut Planters Bank, and East West Banking Corporation all replied that they were still validating with their branches whether petitioner had any accounts with them. More importantly, all these bank replies, even those stating that petitioner had no accounts with them, were all issued after 9 May 2006. This is quite understandable as the banks were served the Notice of Garnishment only on 5 May 2006. And yet, the levy on petitioner's real properties was made on 9 May 2006, clearly showing that petitioner was deprived of the opportunity to have his personal properties garnished or levied upon first before his real properties.

3. ID.; ID.; ID.; ID.; IMPROPER LEVY RESULTS IN THE DECLARATION OF THE INVALIDITY OF THE EXECUTION SALE.— [I]t being shown that there was no

proper levy in the case at bar, the consequent execution sale is thus declared invalid. As previously discussed, "(*a*) *sale unless preceded by a valid levy, is void, and the purchaser acquires no title.*" Petitioner and petitioners-in-intervention raise a number of irregularities supposedly attendant to the execution sale, and petitioner also questions the gross inadequacy of the purchase price for which the two lots were sold. The Court, however, deems it unnecessary to discuss these issues further in view of the declaration of invalidity of the execution sale owing to the improper levy.

APPEARANCES OF COUNSEL

Balgos Gumaro & Jalandoni for petitioner.
Raul A. Mora for respondent Young Builders Corporation.
Hernandez Surtida Galicia for movant-intervenors.

D E C I S I O N

PEREZ, *J.*:

Assailed in the present petition for review on *certiorari* is the Decision[1] dated 27April 2010 and the Resolution[2] dated 11 August 2010 of the Court of Appeals in CA-G.R. S.P. No. 111895, effectively affirming the Orders dated 28 October 2009 and 7 December 2009 of the Construction Industry Arbitration Commission (CIAC) denying the Motion to Set Aside Execution Sale and Motion for Reconsideration filed by (petitioner) 24-K Property Ventures, Inc.

Factual Background

This case is an offshoot of the Request for Arbitration/ Adjudication filed before the CIAC by (respondent) Young Builders Corporation against petitioner, and docketed as CIAC Case No. 32-1999.

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Mario L. Guariña III and Rodil V. Zalameda; *rollo*, pp. 9-23.

[2] *Id.* at 83-84.

The records show that on 7 August 1996, petitioner and respondent entered into a Construction Contract wherein respondent undertook to construct for petitioner a 20-storey office/residential building along Tomas Morato, Quezon City for the price of ₱165,000,000.00.[3] This building was to be known as Lansbergh Place.[4]

In 1988, petitioner was hit by the Asian Financial Crisis of 1997 and it incurred arrearages. Respondent refused to continue with the construction unless petitioner issued securities for its unpaid obligations. Petitioner then executed in respondent's favor a Deed of Real Estate Mortgage over two parcels of land covered by TCT No. N-164112 and No. N-164113. At that time, these lots were bare and without improvements.[5]

In 1999, respondent filed a complaint for collection of sum of money against petitioner before the CIAC.

Meanwhile, petitioner commenced the construction of another condominium project on the two parcels of land covered by TCT No. N- 164112 and No. N-164113, to be known as Torre Venezia.[6]

On 19 December 2005, the CIAC rendered a Final Award[7] ordering petitioner to pay respondent the sum of ₱91,084,206.43, with interest at the rate of 6% *per annum* from the date of the final award, and 12% *per annum* from the date the award becomes final and executory until it is fully paid.[8] This award became final and executory on 28 October 2008.[9]

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[3] CIAC Final Award; *rollo*, p. 738.

[4] Reply; *rollo*, p. 302.

[5] *Id.*

[6] *Id.*

[7] Rendered by Beda G. Fajardo, Cesar V. Canchela, and Wenfredo A. Firme; *rollo*, pp. 738-762.

[8] CIAC Final Award; *id.* at 761.

[9] CA Decision; *id.* at 10.

In the meantime, while the case was on appeal, the CIAC, upon motion of respondent, issued a writ of execution dated 2 May 2006 for the award of ₱91,084,206.43, as well as for the amount of ₱1,208,801.81 as arbitration costs. Respondent Sheriff Villamor R. Villegas (Sheriff Villegas) of the Regional Trial Court of Makati (RTC Makati) was designated to enforce thee writ.[10]

As reported by Sheriff Villegas, he exerted diligent efforts to serve the writ upon the officers of petitioner, but said officers refused to acknowledge receipt of said writ, causing him to serve the writ and the letter of request for compliance to petitioner's counsel who acknowledged receipt thereof.[11]

Sheriff Villegas also served notices of garnishment to the following banks: Banco de Oro Universal Bank, Philippine National Bank, Metropolitan Bank and Trust Company, United Coconut Planters Bank, and East West Banking Corporation.[12]

Sheriff Villegas subsequently levied on the real properties of petitioner, particularly on those covered by Condominium Certificate of Title No. N-14163, No. N-14183 and No. N-14286, etc. and Transfer Certificate Title No. N-164112 and No. N-164113.[13] The levy effected by Sheriff Villegas was on sixteen (16) condominium units of Lansbergh Place and on the two parcels of land upon which Torre Venezia, a 27-storey building with 302 condominium units, presently stands.[14]

Antecedent Proceedings

Petitioner filed a Manifestation with Motion to Suspend Enforcement of Notice of Sale and Re-computation of Award but the auction sale proceeded and the subject properties were sold to respondent for ₱110,504,888.05. A Certificate of Sale was consequently issued in respondent's favor.

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[10] Writ of Execution; *id*. at 85.

[11] Sheriff's Report/Return; *id*. at 87-88.

[12] *Id*. at 87.

[13] *Id*.

[14] Reply; *id*. at 311.

Petitioner filed a Motion to Set Aside Execution Sale, claiming that the sale was violative of various provisions of the Rules of Court and that the subject properties were sold at a grossly inadequate price. The CIAC, however, denied said motion as well as the subsequent Motion for Reconsideration.[15]

Petitioner elevated the case to the Court of Appeals (CA), contending that the CIAC gravely abused its discretion in upholding the execution sale on the basis of an erroneous application of the presumption of regular performance of official duties, laches, and making the filing of an administrative case against the erring sheriff a pre-requisite for the nullification of the execution sale. Petitioner additionally averred that although the gross inadequacy of the price of the sale does not invalidate the sale, such principle does not apply to the case at bar where the execution sale was attended with numerous violations of the Rules of Court and established jurisprudence.[16] The CA dismissed the petition. Hence, the present petition for review on *certiorari*.

Issues

In the present petition, petitioner raises the following issues:[17]

As First Assignment of Error

THE COURT OF APPEALS ERRED IN AFFIRMING THE CIAC'S ORDER DENYING PETITIONER'S MOTION TO SET ASIDE EXECUTION SALE AND ITS MOTION FOR RECONSIDERATION THEREOF, WHEN CLEARLY THE EXECUTION SALE WAS FRAUGHT WITH IRREGULARITIES AND NON-COMPLIANCE WITH THE RULES OF PROCEDURE ON EXECUTION OF MONEY JUDGMENTS.

As Second Assignment of Error

THE COURT OF APPEALS ERRED IN HOLDING THAT GROSS INADEQUACY OF THE PURCHASE PRICE IS NOT SUFFICIENT

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[15] CA *rollo*, pp. 31-34.

[16] CA Decision; *rollo*, p. 12.

[17] *Id*. at 37.

GROUND TO NULLIFY THE EXECUTION SALE THEREBY ALLOWING THE PRIVATE RESPONDENT TO ENRICH ITSELF UNJUSTLY AT THE EXPENSE OF THE PETITIONER.

As Third Assignment of Error

THE COURT OF APPEALS ERRED IN VALIDATING THE EXECUTION SALE DESPITE LACK OF FULL PAYMENT BY THE HIGHEST BIDDER (PRIVATE RESPONDENT) OF THE BID PRICE.

The Petition-in-Intervention

On 1 February 2013, a petition-in-intervention was filed[18] and adopted[19] by certain condominium unit buyers of Torre Venezia.

The intervenors claim that although petitioner already executed Deeds of Absolute Sale and Certificates of Ownership in their favor, petitioner failed to issue the respective Condominium Certificates of Title despite repeated demands. The intervenors later on learned that the mother titles of the lots upon which Torre Venezia is erected are in the possession of respondent by virtue of an execution sale pursuant to a final award issued by the CIAC. The intervenors assert, however, that they were not notified of the execution sale. Thus, they are now joining petitioner in assailing the validity of the execution sale for failure to comply with the pertinent rules under Act 3135.

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[18] Marriel Maano, Sean Carrascal Barrameda, Elenita Sabastian, Nelpha Vinoya, Evangeline Lee, Emelyn Cischke, Norman San Vicente, Carina Del Rosario, Lillian Chirapuntu, Calixto Adriatico, Marilou Cayetona, Juanito Quizon, Katherine Guinhawa, Harpinder Signh Gill, Joselito Cruz, Rachel Dela Cruz, Emmanuel Dating, Katherine San Vicente, Kristine Guinhawa, Lee Faminialagao, Isabelita Guinhawa, Karen Lee, Josefina Ayco, Romulo Vergara, Teresita Salcedo, Oneal San Vicente, Catalino Redondo, Jr., Mei Hwa Fang, Manuel Calayan, Hazel Gonzales, Ellery Gidaya, GL Equinox Pro. & Mgt., Inc., and Futuris Realty Corporation; *id*. at 380-381.

[19] Iluminada Lo, Joan Ado, Virginia Ascano, Maria Fe Pimentel, Sia Key Guan, Hendra Setiady, Grace Jingco, Elena Reyes, Agnes Tojino, Lydia Manlangit, Gil Guevarra, Michael Reyes, Roselyne Marie Balita, Mahmoud Moein, Emmylou Malgapo San Andres, Voltaire Arriola, Apolonia Macatangay, Alma De Guzman, Conrado Sanchez, Rodolfo Tumulak, Jr., Edgardo Ayento, and Agripina Amparo; *id*. at 985.

The intervenors additionally argue that when the CIAC issued the order confirming the sale and the conditional writ of possession in respondent's favor, they were already the owners of and in possession of their respective condominium units. Hence, the issuance of a writ of possession is not purely ministerial as intervenors are third parties not privy to the contract between petitioner and respondent, and who stand to be unjustifiably deprived of their respective properties.

Our Ruling

We grant the petition.

It is doctrinal that "*a lawful levy of execution is a prerequisite to an execution sale, either of real estate or of personalty, to the conveyance executed in pursuant thereof, and to the title acquired thereby*."[20] A proper levy is indispensable to a valid execution sale, and an execution sale, unless preceded by a proper levy, is void and the purchaser in said sale acquires no title to the property sold thereunder.[21]

In the case at bar, we find that the levy effected on the real properties of petitioner was improper.

A valid demand for the immediate payment of the full amount stated in the writ of execution and all lawful fees is necessary to a proper levy.

Section 9, Rule 39 of the Revised Rules of Court provides that in the execution of money judgments, "*(t)he officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees*."

The first crucial step in the execution of money judgments is a valid demand on the judgment obligor, usually via a valid

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[20] Commentaries and Jurisprudence on Attachment and Execution by Laureta and Nolledo; *id*. at 392.

[21] *Yupangco Cotton Mills v. CA, et al.*, 424 Phil. 469, 480 (2002), citing *The Consolidated Bank and Trust Corp. (Solidbank) v. Court of Appeals*, 271 Phil. 160, 179 (1991).

service of the writ of execution. In the case at bar, the Sheriff's Report/Return stated:[22]

> By virtue of the Writ of Execution, dated May 2, 2006 issued by Construction Industry Arbitration Commission, the undersigned sheriff tried to serve said writ upon officer of respondent corporation, however, despite (diligent] effort exerted by herein sheriff to serve to the officer of respondent corporation[,] [service] proved futile because they refused to acknowledge receipt thereof x x x.

Noticeably, the Sheriff's Report/Return failed to specifically indicate material information on the alleged attempted service on petitioner. It failed to state the name of the officer who allegedly refused to receive the writ and the circumstances surrounding such refusal, and even the date when said attempted service was allegedly made.

The CIAC and the CA unquestionably accepted Sheriff Villegas' ambiguous statements regarding the alleged attempted service on petitioner, relying on the presumption that the former performed his official duty regularly. The Court, however, holds that such presumption cannot be applied in the case at bar given the abstracted and vague declarations in the Sheriff's Report/Return. The ambiguity in the sheriff's statements as to the alleged attempted service on petitioner disputes the presumption that said sheriff performed his official duty in a regular manner.

Sheriff Villegas also reported that service was made on petitioner's counsel after the alleged unsuccessful service on petitioner. The next query, then, is whether such service translates to a valid demand as required by Section 9, Rule 39 of the Revised Rules of Court.

We answer in the negative.

The CIAC and the CA perfunctorily declared that there was a service of the writ of execution on petitioner and its counsel.[23] Both of them, however, failed to consider the material dates in the case at bar.

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[22] *Rollo*, p. 87.

[23] CA Decision; *id.* at 15.

It is to be noted that the service of the writ of execution was made on petitioner's counsel on 9 May 2006[24] or on the very day when levy was made on the real properties of petitioner.[25] The lateness of the service of the writ of execution on petitioner's counsel or the prematurity of the levy precluded petitioner from having a real opportunity to effect the immediate payment of the judgment debt and the lawful fees.

In requiring a valid demand, Section 9, Rule 39 of the Revised Rules of Court contemplates a situation where the judgment obligor is first given the chance to effect immediate payment of the judgment debt and the lawful fees through cash or certified bank checks. If this is not feasible, it is only then that a levy is effected, giving the judgment obligor the choice as to which property to levy upon, or if the judgment obligor does not exercise his choice, to effect the levy first on personal properties, and then on real properties.

A valid levy must first be effected on personal properties, if any, and then on real properties if personal properties are insufficient to answer for the judgment.

The Rules provide the order by which the property of the judgment debtor may be executed upon for the satisfaction of a money judgment:[26]

(b) Satisfaction by levy. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank checks or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if

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[24] *Id.* at 169.

[25] As stated in the Sheriff's Report/Return; *id.* at 87.

[26] Section 9, Rule 39 of the Revised Rules of Court.

any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

In case the judgment debtor fails to choose which of his properties should be levied upon, the sheriff must first levy on the judgment debtor's personal properties, if any, and should such properties be insufficient, then the sheriff may levy on the judgment debtor's real properties. In all of these cases, the sheriff may levy and sell only such properties as are sufficient to satisfy the judgment debt and the lawful fees.

The Sheriff's Report/Return, presumably in an effort to comply with the Rules, stated that a levy on petitioner's bank accounts was first attempted:[27]

That by virtue of said writ of execution[,] herein sheriff[,] on May 5, 2006[,] served a Notice of Garnishment on the following banks:

1. Banco de Oro Universal Bank
2. Philippine National Bank
3. Metropolitan Bank and Trust Company
4. United Coconut Planters Bank
5. East West Banking Corporation

and in response to said Notice of Garnishment, the said banks informed [me] that respondent 24-K Property Ventures, Inc. has no deposits, credits or money which are in possession and control of said banks. [Xerox] copies of said replies are hereto attached x x x.

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[27] *Rollo*, p. 87.

The CA accepted the sheriff's statements as gospel truth. In its recital of facts, the CA stated that "*on 05 May 2006*, [Sheriff Villegas] *served Notice of Garnishment to a number of banks but he was informed that the petitioner had no deposits, credits or money in those banks. On 9 May 2006, he levied on two real properties of the petitioner* x x x"[28]

A perusal of the bank replies shows, however, that the attempt to first effect garnishment on petitioner's bank accounts before levying on petitioner's real properties is a mere ruse. Of the banks notified by Sheriff Villegas, only Equitable PCI Bank[29] and Metropolitan Bank and Trust Company[30] stated that petitioner had no garnishable funds with their banks. The Philippine National Bank,[31] United Coconut Planters Bank,[32] and East West Banking Corporation[33] all replied that they were still validating with their branches whether petitioner had any accounts with them.

More importantly, all these bank replies, even those stating that petitioner had no accounts with them, were all issued after 9 May 2006. This is quite understandable as the banks were served the Notice of Garnishment only on 5 May 2006.

And yet, the levy on petitioner's real properties was made on 9 May 2006, clearly showing that petitioner was deprived of the opportunity to have his personal properties garnished or levied upon first before his real properties.

All in all, it being shown that there was no proper levy in the case at bar, the consequent execution sale is thus declared invalid. As previously discussed, "*(a) sale unless preceded by a valid levy, is void, and the purchaser acquires no title*."[34]

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[28] *Id.* at 15.

[29] *Id.* at 170.

[30] *Id.* at 172.

[31] *Id.* at 171.

[32] *Id.* at 173.

[33] *Id.* at 174.

[34] *Llenares v. Valdeavella*, 46 Phil. 358, 361 (1924).

Petitioner and petitioners-in-intervention raise a number of irregularities supposedly attendant to the execution sale, and petitioner also questions the gross inadequacy of the purchase price for which the two lots were sold. The Court, however, deems it unnecessary to discuss these issues further in view of the declaration of invalidity of the execution sale owing to the improper levy.

Nevertheless, the Court would like to remind our sheriffs to be circumspect in the levy and sale of the judgment debtor's properties. A sheriff's authority to levy and to sell properties under a writ of execution extends only to those properties as are sufficient to satisfy the judgment debt and lawful fees. Indeed:[35]

> Under his power, coupled with a trust, the execution officer is duty-bound to see that the property belonging to the judgment which were previously levied under a writ of execution "is not unduly sacrificed," and for this purpose, he need not obey such instructions of the execution creditor as will produce a sacrifice. His authority to sell the debtor's property levied under an execution is good only to what the rule considers "sufficient to satisfy the execution." His authority under the writ ends there.

WHEREFORE, in view of the foregoing, the present petition is hereby **GRANTED**. The execution sale over the properties covered by TCT Nos. N-164112 and N-164113 in favor of respondent is declared **NULL and VOID**.

Respondent Young Builders Corporation is **ENJOINED** from consolidating ownership and taking possession over the properties covered by TCT No. N-164112 and No. N-164113 or from exercising acts of ownership over them, while Sheriff Villamor R. Villegas of the Regional Trial Court of Makati City is **ENJOINED** from issuing a Final Deed of Sale confirming respondent's ownership of the subject properties, and the Register of Deeds of Quezon City is **ENJOINED** from annotating any

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[35] Commentaries and Jurisprudence on Attachment and Execution by Laureta and Nolledo; p. 447.

final deed of sale over the subject properties and from issuing new titles over the same.

The Final Award dated 19 December 2005 of the Construction Industry Arbitration Commission in CIAC Case No. 32-1999 is not affected by the disposition of the present petition, and respondent may obtain the issuance of another execution.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 195876. December 5, 2016]

PILIPINAS SHELL PETROLEUM CORPORATION, *petitioner, vs.* **COMMISSIONER OF CUSTOMS,** *respondent.*

SYLLABUS

1. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED; IMPORTATION; ABANDONMENT OF IMPORTED ARTICLES; THE IMPORTED ARTICLES ARE DEEMED ABANDONED WHEN THE IMPORTER FAILS TO FILE THE REQUIRED IMPORT ENTRY WITHIN THE NON-EXTENDIBLE PERIOD OF THIRTY DAYS FROM THE DATE OF DISCHARGE OF THE LAST SHIPMENT.— [T]he determination of the issues presented in this case requires a comprehensive assessment of the pronouncements made in the case of *Chevron Philippines, Inc. v. Commissioner of the Bureau*

* Designated as Additional Member in lieu of Associate Justice Bienvenido L. Reyes, per Raffle dated 7 December 2016.

of Customs x x x. [T]he Court simply applied the clear provision of Section 1801(b), in relation to Section 1301, of the TCCP, as amended, which categorically provides that mere failure on the part of the owner, importer, consignee or interested party, after due notice, to file an entry within a non-extendible period of 30 days from the date of discharge of the last package (shipment) from the vessel, would mean that such owner, importer, consignee or interested party is deemed to have abandoned said shipment. Consequently, abandonment of such shipment (imported article) constitutes renouncement of all his interests and property rights therein. x x x [I]t is the law itself that considers an imported article abandoned for failure to file the corresponding Import Entry and Internal Revenue Declaration within the allotted time. No acts or omissions to establish intent to abandon is necessary to effectuate the clear provision of the law. Since Section 1801(b) does not provide any qualification as to what may have caused such failure in filing said import entry within the prescriptive period in order to render the imported article abandoned, this Court shall likewise make no distinction and plainly apply the law as clearly stated. Hence, upon the lapse of the aforesaid non-extendible period of 30 days, without the required import entry filed by the importer within said period, its imported article is therefore deemed abandoned.

2. **ID.; ID.; ID.; ID.; ID.; RATIONALE.—** The rationale of strict compliance with the non-extendible period of 30 days within which import entries (IEIRDs) must be filed for imported articles are as follows: (a) to prevent considerable delay in the payment of duties and taxes; (b) to compel importers to file import entries and claim their importation as early as possible under the threat of having their importation declared as abandoned and forfeited in favor of the government; (c) to minimize the opportunity of graft; (d) to compel both the BOC and the importers to work for the early release of cargo, thus decongesting all ports of entry; (e) to facilitate the release of goods and thereby promoting trade and commerce; and (f) to minimize the pilferage of imported cargo at the ports of entry. The aforesaid policy considerations were significant to justify a firm observance of the aforesaid prescriptive period.

3. **ID.; ID.; ID.; ID.; OWNERSHIP OVER THE ABANDONED IMPORTED ARTICLES IS TRANSFERRED TO THE GOVERNMENT BY OPERATION OF LAW.—** Section 1802

of the x x x Code states to whom said abandoned imported articles belong as a consequence of such renouncement by the owner, importer, consignee or interested party. x x x In the *Chevron case*, we explained that the term "*ipso facto*" is defined as "by the very act itself" or "by mere act." Hence, there is no need for any affirmative act on the part of the government with respect to abandoned imported articles given that the law itself categorically provides that said articles shall *ipso facto* be deemed the property of the government. By using the term "*ipso facto*" in Section 1802 of the TCCP, as amended by R.A. No. 7651, the legislature removed the need for abandonment proceedings and for any declaration that imported articles have been abandoned before ownership thereof can be effectively transferred to the government. In other words, ownership over the abandoned imported articles is transferred to the government by operation of law.

4. ID.; ID.; ID.; ID.; NOTICE REQUIREMENT; APPLIES SOLELY TO PERSONS NOT CONSIDERED AS KNOWLEDGEABLE IMPORTERS, OR THOSE WHO ARE NOT FAMILIAR WITH THE GOVERNING RULES AND PROCEDURES IN THE RELEASE OF IMPORTATIONS.— [T]he requirement of due notice contemplated under Section 1801(b) of the TCCP, as amended, refers to the notice to the owner, importer, consignee or interested party of the *arrival of its shipment* and *details thereof*. The legislative intent was clear in emphasizing the importance of said notice of arrival, which is intended solely to persons not considered as *knowledgeable importers*, or those who are not familiar with the governing rules and procedures in the release of importations. We as much as said that the due notice requirement under Section 1801(b), does not apply to *knowledgeable importers*, such as Chevron x x x, for having been considered as one of the regular, large-scale and multinational importers of oil and oil products, familiar with said rules and procedures (including the duty and obligation of filing the IEIRD within a non-extendible period of 30 days) and fully aware of the arrival of its shipment on its privately owned pier or wharf in the Port of Batangas.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED ONLY TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.— [I]n a petition for review on *certiorari* under

Rule 45 of the Rules of Court, only questions of law may be raised. The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court — and they carry even more weight when the CA affirms the factual findings of the trial court. However, it is already a settled matter that, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; **(10) when the findings of fact are premised on the supposed absence of evidence** and contradicted by the evidence on record; and **(11) when the Court of Appeals manifestly overlooked certain relevant facts** not disputed by the parties**, which, if properly considered, would justify a different conclusion**.

6. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE BURDEN OF PROOF TO ESTABLISH FRAUD LIES IN THE PERSON MAKING SUCH ALLEGATIONS AND TO DISCHARGE THIS BURDEN, FRAUD MUST BE PROVEN BY CLEAR AND CONVINCING EVIDENCE.— Generally, fraud has been defined as "the deliberate intention to cause damage or prejudice. It is voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. For fraud to exist, it must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. It is never presumed and the burden of proof to establish lies in the person making such allegation since every person is presumed to be in good faith. To discharge this burden, fraud must be proven by clear and convincing evidence. Also, fraud

must be alleged and proven as a fact where the following requisites must concur: (a) the fraud must be established by evidence; and (b) the evidence of fraud must be clear and convincing, and not merely preponderant. Upon failure to establish these two (2) requisites, the presumption of good faith must prevail.

7. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED; FRAUD; DEFINED.— Section 3611(c) of the TCCP, as amended, defines the term fraud as the occurrence of a "material false statement or act in connection with the transaction which was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence." Again, such factual finding of fraud should be established based on clear, convincing, and uncontroverted evidence.

8. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER OF EVIDENCE; EVIDENCE NOT FORMALLY OFFERED DURING THE TRIAL CANNOT BE USED FOR OR AGAINST A PARTY LITIGANT BY THE TRIAL COURT IN DECIDING THE MERITS OF THE CASE.— In the case at bench, a perusal of the records reveals that there is neither any iota of evidence nor concrete proof offered and admitted to clearly establish that petitioner committed any fraudulent acts. The CTA in Division relied solely on the Memorandum dated 2 February 2001 issued by the CIIS-IPD of the BOC in ruling the existence of fraud committed by petitioner. However, there is no showing that such document was ever presented, identified, and testified to or offered in evidence by either party before the trial court. Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every *minute aspect* of their cases. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court x x x. [F]or evidence to be considered by the court, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a

party. In *Interpacific Transit, Inc. v. Aviles*, We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same. The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into evidence when the same have not been formally offered as part of the evidence, but more so if the same were not identified and marked as exhibits, such as in the present case. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone. x x x Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected.

9. ID.; ID.; DOCTRINE OF JUDICIAL NOTICE; RESTS ON THE WISDOM AND DISCRETION OF THE COURTS AND THE POWER TO TAKE JUDICIAL NOTICE MUST BE EXERCISED WITH CAUTION.— [T]he CTA x x x cannot *motu proprio* justify the existence of fraud committed by petitioner by applying the rules on judicial notice. Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them. Under the Rules of Court, judicial notice may either be mandatory or discretionary. x x x In relation thereto, it has been held that the doctrine of judicial notice rests on the wisdom and discretion of the courts; however, the power to take judicial notice is to be exercised by the courts with caution; care must be taken

that the requisite notoriety exists; and every reasonable doubt upon the subject should be promptly resolved in the negative.

10. ID.; ID.; ID.; COURTS ARE NOT AUTHORIZED TO TAKE JUDICIAL NOTICE OF THE CONTENTS OF THE RECORDS OF OTHER CASES; EXCEPTIONS.— As a general rule, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. However, this rule is subject to the exception that **in the absence of objection** and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when **with the knowledge of the opposing party**, reference is made to it, by name and number or in some other manner by which it is sufficiently designated. Thus, for said exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it. Such being the case, it would also be an error for the CTA in Division to even take judicial notice of the subject Memorandum being merely a part of the BOC Records submitted before the court *a quo*, without the same being identified by a witness, offered in and admitted as evidence, and effectively, depriving petitioner, first and foremost, an opportunity to object thereto. Hence, the subject Memorandum should not have been considered by the CTA in Division in its disposition.

11. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES; IMPORTATION; FINALITY OF LIQUIDATION; IN THE ABSENCE OF FRAUD, THE ENTRY AND THE CORRESPONDING PAYMENT OF DUTIES SHALL BE FINAL AND CONCLUSIVE UPON ALL THE PARTIES AFTER ONE YEAR FROM THE DATE OF PAYMENT OF DUTIES.— [I]n the absence of fraud, the entry and corresponding payment of duties made by petitioner becomes final and conclusive upon all parties after one (1) year from the date of the payment of duties in accordance with Section 1603 of the TCCP, as amended x x x. The x x x provision speaks of *entry and passage free of duty or settlements of duties*. Generally, in customs law, the term "entry" has a triple meaning, to wit: (1)

the documents filed at the customs house; (2) the submission and acceptance of the documents and (3) the procedure of passing goods through the customs house. As explained in the *Chevron case*, it specifically refers to the filing and acceptance of the Import Entry and Internal Revenue Declaration of the imported article. Simply put, the entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon. The term "duty" used therein denotes a tax or impost due to the government upon the importation or exportation of goods. It means that the duties on imports signify not merely a duty on the act of importation, but a duty on the thing imported. It is not confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country.

12. ID.; ID.; ID.; ID.; ANY ACTION QUESTIONING THE PROPRIETY OF THE ENTRY AND SETTLEMENT OF DUTIES MADE BEYOND THE ONE-YEAR PRESCRIPTIVE PERIOD IS BARRED BY PRESCRIPTION.— [T]he matters which become final and conclusive against all parties include the timeliness of filing the import entry within the period prescribed by law, the declarations and statements contained therein, and the payment or non-payment of customs duties covering the imported articles by the owner, importer, consignee or interested party. Since the primordial issue presented before us focuses on petitioner's non-compliance in filing its Import Entry and Internal Revenue Declaration within a non-extendible period of 30 days from the date of discharge of the last package from the vessel, respondent may only look into it within a limited period of one (1) year in accordance with x x x [Section 1603 of the TCCP, as amended]. In the case at bench, it is undisputed that petitioner filed its IEIRD and paid the remaining customs duties due on the subject shipment only on 23 May 1996. x x x Consequently, applying the foregoing provision and considering that we have determined already that there is no factual finding of fraud established herein, the liquidation of petitioner's imported crude oil shipment became final and conclusive on 24 May 1997, or exactly upon the lapse of the 1-year prescriptive period from the date of payment of final duties. As such, any action questioning the propriety of the

entry and settlement of duties pertaining to such shipment initiated beyond said date is therefore barred by prescription.

VELASCO, JR., *J.*, *concurring opinion*:

CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; *STARE DECISIS ET NON QUIETA MOVERE*; CANNOT BE INVOKED WHEN THE FACTS AND CIRCUMSTANCES IN THE SUCCEEDING CASE HAVE SO CHANGED AS TO HAVE ROBBED THE OLD RULE OF SIGNIFICANT APPLICATION.— The Latin maxim *stare decisis et non quieta movere* means stand by the thing and do not disturb the calm—a bar from any attempt at relitigating the same issues. It requires that high courts must follow, as a matter of sound policy, their own precedents, or respect settled jurisprudence absent compelling reason to do otherwise. As a recognized exception, the salutary doctrine cannot be invoked when the facts and circumstances in the succeeding case have so changed as to have robbed the old rule of significant application or justification. There is truth to the claim that the instant case bears striking resemblance to that of *Chevron Philippines v. Commissioner of the Bureau of Customs (Chevron)*. x x x Notwithstanding x x x [the] glaring similarities, it cannot hastily be concluded that *Chevron* is on all fours with the case at bar; **the two cases are diametrically opposed insofar as the issue of fraud on the part of the importer is concerned.** While the Court's ruling in *Chevron* was that the existence of fraud therein was sufficiently established, no clear and convincing evidence was presented herein to justify arriving at the same conclusion. x x x It is this lack of proof of fraud that substantially alters the terrain of the case, thereby precluding the applicability of the doctrine of *stare decisis*. Though the circumstance appears to be merely tangential, it is nevertheless the critical element in resolving the issue on prescription. Absent fraud, the government, through the BOC, is under legal compulsion to assess and collect customs duties within a strict one-year period. x x x Aside from the presence or absence of fraud, it is admitted that there is significant identity as to the factual milieu of *Chevron* and the case at bar. Both are concerned with the treatment of abandoned imported articles, and the collection by the Commissioner of Customs of the dutiable value pertaining

thereto. In *Chevron*, we have categorically ruled that "*due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable*." The converse should, therefore, likewise hold true—in the absence of fraud, the one-year prescriptive period under Sec. 1603 shall find application. Hence, even if *stare decisis* is then to be applied, it could only operate to sustain the dismissal of the case on the ground of prescription.

PERALTA, *J., dissenting opinion*:

1. CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; *STARE DECISIS*; WHEN THE SUPREME COURT HAS ONCE LAID DOWN A PRINCIPLE OF LAW AS APPLICABLE TO A CERTAIN STATE OF FACTS, IT WILL ADHERE TO THAT PRINCIPLE, AND APPLY IT TO ALL FUTURE CASES.— The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. Under this doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases. x x x It bears stressing that the basic facts of the present case and those of *Chevron*, which the Court follows as precedent, are practically the same. x x x Thus, since the present case and the case of *Chevron* basically arise from the same factual circumstances, it is the Court's duty to apply the ruling in *Chevron* to the present case.

2. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED; IMPORTATION; ABANDONMENT OF IMPORTED ARTICLES; THE IMPORTER'S FAILURE TO FILE THE REQUIRED ENTRIES WITHIN THE NON-EXTENDIBLE PERIOD OF THIRTY DAYS AS PROVIDED BY LAW CONSTITUTES ABANDONMENT OF IMPORTATION AND THE ABANDONED ARTICLES SHALL *IPSO FACTO* BE DEEMED THE PROPERTY OF THE GOVERNMENT.— [A]bandonment sets in once an importer fails to file the required import entry within the 30-day period provided by law after due notice of the arrival of its shipment (except in cases of knowledgeable owners or importers), without regard to any other act which may or may not have been committed by such

> importer with respect to the entry of and payment of duties of the imported articles. The necessary consequence of such abandonment is the transfer of ownership of the imported articles in favor of the government. x x x **[T]here was no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall *ipso facto* be deemed the property of the government.** Ownership over the abandoned importation was transferred to the government by operation of law under Section 1802 of the TCC[P], as amended by RA 7651. x x x [A]fter the expiration of the 30-day period, the government, *ipso facto*, becomes the owner of the abandoned articles and, **being the owner, the government's exercise of its rights of ownership over the abandoned imported article, which includes the right to recover the value of such abandoned article, which was already consumed by the importer, is not conditioned upon any prior act or proceeding nor is it subject to the prescriptive period provided under Section 1603.**

APPEARANCES OF COUNSEL

Cruz Marcelo and Tenefrancia for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 13 May 2010 Decision[1] and the 22 February 2011 Resolution[2] rendered by the Court of Tax Appeals

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[1] *Rollo*, pp. 131-156; Penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista and Erlinda P. Uy concurring.

[2] *Id*. at 157-186; Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Caesar A. Casanova concurring with a Dissenting Opinion penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista concurring.

(CTA) Former *En Banc* in C.T.A. EB No. 472 which dismissed petitioner's petition, and accordingly affirmed with modification as to the additional imposition of legal interest the 19 June 2008 Decision[3] of the CTA Former First Division (CTA in Division) ordering petitioner to pay the amount of ₱936,899,883.90, representing the total dutiable value of its 1996 crude oil importation, which was considered as abandoned in favor of the government by operation of law.

The Facts

The factual antecedents of the case are as follows:

On 16 April 1996, Republic Act (R.A.) No. 8180,[4] otherwise known as the "Downstream Oil Industry Deregulation Act of 1996" took effect. It provides, among others, for the reduction of the tariff duty on imported crude oil from ten percent (10%) to three percent (3%). The particular provision of which is hereunder quoted as follows:

Section 5. ***Liberalization of Downstream Oil Industry and Tariff Treatment***. – x x x

b) Any law to the contrary notwithstanding and starting with the effectivity of this Act, tariff shall be imposed and collected on imported crude oil at the rate of three percent (3%) and imported refined petroleum products at the rate of seven percent (7%), except fuel oil and LPG, the rate for which shall be the same as that for imported crude oil *Provided*, That beginning on January 1, 2004 the tariff rate on imported crude oil and refined petroleum products shall be the same: *Provided, further*, That this provision may be amended only by an Act of Congress.

Prior to its effectivity, petitioner's importation of 1,979,674.85 U.S. barrels of Arab Light Crude Oil, thru the *Ex MT Lanistels*,

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[3] *Id*. at 341-353; Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

[4] R.A. No. 8180 was declared unconstitutional in the consolidated cases of *Tatad v. The Sec. of the Dept. of Energy*, 346 Phil. 321 (1997). However, the events and transactions (importations) involved in the present case occurred when R.A. No. 8180 was still in effect.

arrived on 7 April 1996 nine (9) days earlier than the effectivity of the liberalization provision. Within a period of three days thereafter, or specifically on 10 April 1996, said shipment was unloaded from the carrying vessels docked at a wharf owned and operated by petitioner, to its oil tanks located at Batangas City.

Subsequently, petitioner filed the Import Entry and Internal Revenue Declaration and paid the import duty of said shipment in the amount of ₱11,231,081.00 on 23 May 1996.

More than four (4) years later or on 1 August 2000, petitioner received a demand letter[5] dated 27 July 2000 from the Bureau of Customs (BOC), through the District Collector of Batangas, assessing it to pay the deficiency customs duties in the amount of ₱120,162,991.00 due from the aforementioned crude oil importation, representing the difference between the amount allegedly due (at the old rate often percent (10%) or before the effectivity of R.A. No. 8180) and the actual amount of duties paid by petitioner (on the rate of 3%).

Petitioner protested the assessment on 14 August 2000,[6] to which the District Collector of the BOC replied on 4 September 2000[7] reiterating his demand for the payment of said deficiency customs duties.

On 11 October 2000,[8] petitioner appealed the 4 September 2000 decision of the District Collector of the BOC to the respondent and requested for the cancellation of the assessment for the same customs duties.

However, on 29 October 2001,[9] five years after petitioner paid the allegedly deficient import duty' it received by telefax from the respondent a demand letter for the payment of the

[5] *Rollo*, p. 452.

[6] *Id*. at 453-457.

[7] *Id*. at 458-459.

[8] *Id*. at 460-465.

[9] *Id*. at 466.

amount of ₱936,899,885.90, representing the dutiable value of its 1996 crude oil importation which had been allegedly abandoned in favor of the government by operation of law. Respondent stated that Import Entry No. 683-96 covering the subject importation had been irregularly filed and accepted beyond the thirty-day (30) period prescribed by law. Petitioner protested the aforesaid demand letter on 7 November 2001[10] for lack of factual and legal basis, and on the ground of prescription.

Seeking clarification as to what course of action the BOC is taking, and reiterating its position that the respondent's demand letters dated 29 October 2001 and 27 July 2000 have no legal basis, petitioner sent a letter to the Director of Legal Service of the BOC on 3 December 2001 for said purpose.

On 28 December 2001,[11] BOC Deputy Commissioner Gil A. Valera sent petitioner a letter which stated that the latter had not responded to the respondent's 29 October 2001 demand letter and demanded payment of the amount of ₱936,899,885.90, under threat to hold delivery of petitioner's subsequent shipments, pursuant to Section 1508[12] of the Tariff and Customs Code of the Philippines (TCCP),[13] and to file a civil complaint against petitioner.

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[10] *Id*. at 467-471.

[11] *Id*. at 472.

[12] Sec. 1508. *Authority of the Collector of Customs to Hold the Delivery or Release of Imported Articles*. – Whenever any importer, except the government, has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any article imported or consigned to such importer unless subsequently authorized by the Commissioner of Customs, and upon notice as in seizure cases, he may sell such importation or any portion thereof to cover the outstanding account of such importer; Provided, however, That at any time prior to the sale, the delinquent importer may settle his obligations with the Bureau of Customs, in which case the aforesaid articles may be delivered upon payment of the corresponding duties and taxes and compliance with all other legal requirements.

[13] Presidential Decree No. 1464 (The Tariff and Customs Code of 1978 – A Decree to Consolidate and Codify All the Tariff and Customs Laws of the Philippines), as amended by R.A. No. 1937 (An Act to Revise and Codify

In reply thereto, petitioner sent a letter dated 4 January 2002[14] to the BOC Deputy Commissioner and expressed that it had already responded to the aforesaid demand letter through the letters dated 7 November 2001 and 3 December 2001 sent to respondent and to the Director of Legal Service of the BOC, respectively.

On 11 April 2002, the BOC filed a civil case for collection of sum of money against petitioner, together with Caltex Philippines, Inc. as co-party therein, docketed as Civil Case No. 02103239, before Branch XXV, Regional Trial Court (RTC), of the City of Manila.[15]

Consequently, on 27 May 2002, petitioner filed with the Court of Tax Appeals (CTA) a Petition for Review, raffled to the Former First Division (CTA in Division), and docketed as C.T.A. Case No. 6485, upon consideration that the civil complaint filed in the RTC of Manila was the final decision of the BOC on its protest.[16]

Respondent filed on 2 August 2002 a motion to dismiss the said petition raising lack of jurisdiction and failure to state a cause of action as its grounds, which the CTA in Division denied in the Resolution dated 17 January 2003. Likewise, respondent's motion for reconsideration filed on 14 February 2003 was denied on its 16 June 2003 Resolution.[17]

Subsequently, respondent, through the Office of the Solicitor General, filed on 13 August 2003 before the Court of Appeals (CA) a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and Writ of

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the Tariff and Customs Laws of the Philippines), and by R.A. No. 7651 (An Act to Revitalize and Strengthen the Bureau of Customs, Amending tor the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, as Amended).

[14] *Rollo,* p. 473.

[15] *Id.* at 136.

[16] *Id*.

[17] *Id*. at 136-137.

Preliminary Injunction, docketed as CA-G.R. SP No. 78563, praying for the reversal and setting aside of the CTA in Division's Resolutions dated 17 January 2003 and 16 June 2003.[18]

In the interim, respondent filed his Answer to the petition in C.T.A. Case No. 6485 on 20 October 2003 which reiterated the lack of jurisdiction and failure to state a cause of action. Thereafter, trial on the merits ensued.

On 15 February 2007, the Former First Division of the CA dismissed respondent's petition in CA-G.R. SP No. 78563. Similarly, respondent's motion for reconsideration of the 15 February 2007 Decision was denied in its 24 July 2007 Resolution.[19]

The Ruling of the CTA in Division

In a Decision dated 19 June 2008,[20] the CTA in Division ruled to dismiss the Petition for Review on C.T.A. Case No. 6485 for lack of merit and accordingly ordered petitioner to pay the entire amount of ₱936,899,883.90[21] representing the total dutiable value of the subject shipment of Arab Light Crude Oil on the ground of implied abandonment pursuant to Sections 1801 and 1802 of the TCCP.

Relevant thereto, the CTA in Division made the following factual and legal findings: (a) that petitioner filed the specified entry form (Import Entry and Internal Revenue Declaration) beyond the 30-day period prescribed under Section 1301 of the TCCP;[22] (b) that for failure to file within the aforesaid 30-day period, the subject importation was deemed abandoned in favor of the government in accordance with Sections 1801

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[18] *Id.* at 137.

[19] *Id*.

[20] *Id*. at 341-353.

[21] Note that, as contained in the demand letters dated 29 October 2001 and 28 December 2001 sent by respondent to petitioner, the amount being collected was ₱936,899,885.90.

[22] *Rollo*, pp. 346-347.

and 1802 of the TCCP;[23] (c) that petitioner's excuses in the delay of filing its Import Entry and Internal Revenue Declaration were implausible;[24] (d) that since the government became the owner of the subject shipment by operation of law, petitioner has no right to withdraw the same and should be held liable to pay for the total dutiable value of said shipment computed at the time the importation was withdrawn from the carrying vessel pursuant to Section 204 of the TCCP;[25] (e) that there was fraud in the present case considering that "the District Collector, in conspiracy with the officials of Caltex and Shell acted without authority or [with] abused (sic) [of] authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments x x x;" thus, prescription under Section 1603 of the TCCP does not apply herein;[26] and (f) that the findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts; and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the government structure, should not be disturbed.[27]

On 24 February 2009, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit citing Section 5(b),[28] Rule 6 of the 2005 Revised Rules of the CTA, as sole

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[23] *Id*. at 347-350.

[24] *Id*. at 350.

[25] *Id*. at 350-351.

[26] *Id*. at 351-352; Citing pertinent portion of the Memorandum dated 2 February 2001 issued by the Investigation and Prosecution Division (IPD) of the BOC.

[27] *Id*. at 352.

[28] SEC. 5. *Answer*.–

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(b) *Transmittal of records*. – The respondent xxx Commissioner of Customs, xxx within ten days after his answer, xxx shall certify and forward to the

legal basis in considering the Memorandum dated 2 February 2001 issued by the Customs Intelligence & Investigation Service, Investigation & Prosecution Division (CIIS-IPD) of the BOC as evidence to establish fraud, and the case of *Chevron Phils., Inc. v. Commissioner of the Bureau of Customs*,[29] as the jurisprudential foundation therein.[30]

Aggrieved, petitioner appealed to the CTA Former *En Banc* by filing a Petition for Review on 31 March 2009, under Section 3(b), Rule 8 of the 2005 Revised Rules of the CTA, as amended, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended, docketed as C.T.A. EB No. 472.

The Ruling of the CTA Former En Banc

In the 13 May 2010 Decision,[31] the CTA Former *En Banc* affirmed the CTA in Division's ruling pertaining to the implied abandonment caused by petitioner's failure to file the Import Entry and Internal Revenue Declaration within the 30-day period, and transfer of ownership by operation of law to the government of the subject shipment in accordance with Sections 1801 and 1802, in relation to Section 1301, of the TCCP, and with the pronouncements made in the *Chevron* case. Notably however, the *ponente* of the assailed Decision declared therein that the existence of fraud is not controlling in the case at bench and would not actually affect petitioner's liability to pay the dutiable value of its imported crude oil, pertinent portion of which are quoted hereunder for ready reference, to wit:

Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court.

[29] 583 Phil. 706 (2008).

[30] *Rollo*, pp. 354-358.

[31] *Id*. at 131-156.

As regards the issue on the existence of fraud, it should be emphasized that fraud is not controlling in this case. Even in the absence of fraud, petitioner Shell is still liable for the payment of the dutiable value by operation of law. The liability of petitioner Shell for the payment of the dutiable value of its imported crude oil arose from the moment it appropriated for itself the said importation, which were already a property of the government by operation of law. **Absence of fraud in this case would not exclude petitioner Shell from the coverage of *Sections 1801 and 1802* of the *TCCP*.**[32] (Emphasis supplied)

Furthermore, citing the case of *Eastern Shipping Lines, Inc. v. Court of Appeals and Mercantile Insurance Company, Inc*.,[33] the CTA Former *En Banc* imposed an additional legal interest of six percent (6%) *per annum* on the total dutiable value of ₱936,899,883.90, accruing from the date said decision was promulgated until its finality; and afterwards, an interest rate of twelve percent (12%) *per annum* shall be applied until its full satisfaction.[34]

Not satisfied, petitioner filed a motion for reconsideration thereof which was denied in the assailed Resolution dated 22 February 2011.

Consequently, this Petition for Review wherein petitioner seeks the reversal and setting aside of the aforementioned Decision and Resolution dated 13 May 2010 and 22 February 2011, respectively, and accordingly prays that a decision be rendered finding: (a) that petitioner has already paid the proper duties on its importation and therefore not liable anymore; and (b) that petitioner is not deemed to have abandoned its subject shipment; or, in the alternative, (c) that respondent's attempt to collect is devoid of any legal and factual basis considering that the right to collect against petitioner relating to its subject shipment has already prescribed.

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

[33] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

[34] *Rollo*, pp. 153-154.

In support of its petition, petitioner posits the following assigned errors:

I

THE CTA FORMER *EN BANC* ERRED WHEN IT HELD IN THE QUESTIONED DECISION THAT PETITIONER PSPC IS DEEMED TO HAVE IMPLIEDLY ABANDONED THE SUBJECT SHIPMENT AND, THUS, IS LIABLE FOR THE ENTIRE VALUE OF THE SUBJECT SHIPMENT, PLUS INTEREST, DESPITE THE FACT THAT SUCH CLAIM, IF ANY AT ALL, HAS ALREADY PRESCRIBED, ESPECIALLY BECAUSE PETITIONER PSPC DID NOT COMMIT ANY FRAUD.

II

THE CTA FORMER *EN BANC* ERRED WHEN IT FAILED TO RECOGNIZE THAT THE GOVERNMENT DID NOT SUFFER ANY DAMAGE OR REVENUE LOSS SINCE ALL TARIFF DUTIES IMPOSABLE ON THE SUBJECT SHIPMENT WERE ALREADY PAID TO THE GOVERNMENT, SUCH THAT TO ALLOW RESPONDENT COMMISSIONER TO RECOVER THE ENTIRE VALUE OF THE SUBJECT SHIPMENT WOULD BE CONFISCATORY AND AMOUNT TO UNJUST ENRICHMENT ON THE PART OF THE GOVERNMENT.

III

THE CTA FORMER *EN BANC* ERRED WHEN IT CONSIDERED THE SUBJECT SHIPMENT AS IMPLIEDLY ABANDONED, DEPRIVING PETITIONER PSPC OF ITS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, CONSIDERING:

A. RESPONDENT COMMISSIONER DID NOT OBSERVE THE DUE NOTICE REQUIREMENT UNDER SECTION 1801 OF THE TCCP OR COMPLIED WITH THE RULES THAT BOC HAD PROMULGATED, WHICH DUE NOTICE IS MANDATORY IN THE ABSENCE OF FRAUD AS HELD IN THE CHEVRON CASE.

B. THE DUE NOTICE REQUIRED UNDER SECTION 1801 OF THE TCCP ACTUALLY REFERS TO THE NOTICE TO FILE ENTRY FOR IMPORTED ARTICLES AND NOT THE ARRIVAL THEREOF.

C. PETITIONER PSPC'S ADVANCE FILING OF ITS IED WHICH, BY LAW, ALREADY CONSTITUTES A VALID AND EFFECTIVE IMPORT ENTRY FORM, AND ITS CLEAR ACTUATIONS SHOWED AN INTENTION NOT TO ABANDON THE SUBJECT SHIPMENT ESPECIALLY SINCE IT HAD ALREADY FULLY PAID THE TARIFF DUTY DUE ON THE SHIPMENT IN ADVANCE.

D. RESPONDENT COMMISSIONER DID NOT CONSIDER PETITIONER PSPC'S REASONABLE AND JUSTIFIABLE REASONS FOR THE SLIGHT DELAY IN FILING ITS IEIRD.

E. TO SUSTAIN THE CTA FORMER *EN BANC* IS TO TREAT PETITIONER PSPC WORSE THAN SMUGGLERS AND COMMON CRIMINALS, AS TO DEPRIVE IT OF ITS RIGHT TO EQUAL PROTECTION OF THE LAW.

IV

THE CTA [FORMER] *EN BANC* ERRED IN FAILING TO RECOGNIZE THAT THE IMPOSITION OF A NINE HUNDRED THIRTY-SIX MILLION EIGHT HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-THREE AND 90/100 PESOS (₱936,889,883.90) PENALTY BY REASON OF IMPLIED ABANDONMENT AGAINST PETITIONER PSPC, DESPITE ITS FULL PAYMENT OF THE TARIFF DUTY DUE ON THE SHIPMENT AND THE JUSTIFIABLE SLIGHT DELAY IN THE LATTER'S SUBMISSION OF ITS IEIRD, IS IN VIOLATION OF INTERNATIONAL LAW UNDER THE REVISED KYOTO CONVENTION.

V

THE CTA [FORMER] *EN BANC* ERRED IN FAILING TO RECOGNIZE THAT THERE IS NO STATUTORY PROVISION EMPOWERING RESPONDENT COMMISSIONER TO SUBSTITUTE ITS CLAIMS FOR THE ABANDONED GOODS WITH THE VALUE THEREOF.

VI

THE CTA [FORMER] *EN BANC* GROSSLY MISAPPRECIATED THE FACTS AND MISAPPLIED THE RULING OF THE HONORABLE COURT IN THE *CHEVRON CASE* WHEN IT HELD THAT PRESCRIPTION IS NOT A DEFENSE AND THAT THE

NOTICE REQUIREMENT UNDER SECTION 1801 OF THE TCCP AND THE BOC'S OWN RULES AND REGULATIONS DO NOT APPLY EVEN IN THE ABSENCE OF FRAUD. QUITE THE CONTRARY, THE *CHEVRON CASE*CLEARLY RECOGNIZED THAT THE PRESCRIPTIVE PERIOD OF THE FINALITY OF THE LIQUIDATION UNDER SECTION 1603 OF THE TCCP IS A DEFENSE IN THE ABSENCE OF FRAUD AND THE NOTICE REQUIREMENT WAS SET ASIDE DUE TO THE FINDING OF FRAUD AGAINST CHEVRON. MOREOVER, UNLIKE IN *CHEVRON CASE* WHERE THE HONORABLE COURT FOUND CHEVRON TO HAVE BENEFITED FROM ITS DELAY AND WAS GUILTY OF FRAUD, THE QUESTIONED *DECISION* AND *RESOLUTION* BOTH DID NOT FIND FRAUD ON THE PART OF PETITIONER PRPC.[35]

Petitioner asseverates that: (a) in the absence of fraud, the right of respondent to claim against petitioner, assuming there is any, has already prescribed since an action involving payment of customs duties demanded after a period of one (1) year from the date of final payment of duties shall not succeed, relying on Section 1603 of the TCCP; (b) the alleged Memorandum dated 2 February 2001 issued by the Investigation and Prosecution Division (IPD) of the BOC, which served as the court *a quo*'s basis in finding fraud on the part of petitioner, was never presented, authenticated, marked, identified, nor formally offered in evidence; hence, inadmissible and cannot be the basis of any finding of fraud; (c) even if the Memorandum dated 2 February 2001 is legally admitted in evidence, it still does not constitute clear and convincing proof to establish any fraud on the part of petitioner since, unlike in the *Chevron case*, it was entitled to avail of the reduced three percent (3%) rate under R.A. No. 8180, which was already in effect as early as 16 April 1996; thus, petitioner did not gain any undue advantage or benefit from its justifiable delay in filing the Import Entry and Internal Revenue Declaration within the 30-day mandatory period; and (d) the evidence on record and the acts of petitioner [filing of Import Entry Declaration (IED) and paying advance duties] disclose honest and good faith on its part showing clear absence

[35] *Id*. at 43-45.

of any fraudulent intent to evade the payment of the proper customs duties and taxes due at the time of the entry of its imported crude oil in the Philippines.[36]

Petitioner further argues that the government suffered or lost nothing when petitioner filed its Import Entry and Internal Revenue Declaration thirteen (13) days beyond the period allowed by law, considering that the former did not lose any tax collection when petitioner had allegedly paid in advance the amount of ₱71,923,285.00 for the regular tariff duty of 10% then prevailing, notwithstanding its entitlement to the reduced 3% rate under RA No. 8180. Consequently, by ordering petitioner to pay for the entire dutiable value amounting to ₱936,899,883.90, the government shall be guilty of unjust enrichment, and such would result to deprivation of property on the part of petitioner without due process of law.[37]

Moreover, it is petitioner's contention that the principles enunciated in the *Chevron case* were misapplied in the case at bench. It explained that the reason for such ruling establishing the "*ipso facto* abandonment" doctrine was because there was a finding of fraud on the part of Chevron, being the importer. The existence of fraud was a critical and essential fact in the disposition on the issues in the *Chevron case* that justified the goods to be deemed impliedly abandoned in favor of the government. Corollarily, in the absence of fraud, goods cannot be deemed impliedly abandoned and *ipso facto* owned by the government arising from a mere delay in the submission of the Import Entry and Internal Revenue Declaration, such as in the present case. In other words, petitioner is convinced that the provisions of Sections 1801 and 1802 cannot be applied blindly which may cause goods to be impliedly abandoned in favor of the government, without even recognizing the peculiar circumstances of the case and without allowing the importer (petitioner herein) to provide justifications for the delay in the submission of its Import Entry and Internal Revenue Declaration.

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[36] *Id*. at 55-62.

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

Allegedly, both notices to the importer to file entry and for its failure to file an entry within the non-extendible period of 30 days are essential before a shipment can be considered impliedly abandoned. Otherwise, to do so would constitute violation of the basic substantial constitutional rights of petitioner.

Petitioner explains that, in issuing Customs Administrative Order (CAO) No. 5-93 dated 1 September 1993 and Customs Memorandum Order (CMO) No. 15-94 dated 29 April 1994, respondent even recognized the significance of the due notice requirement before any goods may be deemed impliedly abandoned articles. Such notice purportedly refers to notice to file entry, and not notice of arrival as mistakenly interpreted by the CTA Former *En Banc*. Thus, in the absence of such notice in the present case, there could have been no implied abandonment in favor of the government of the said imported crude oil by petitioner pursuant to Section 1801 of the TCCP.

Lastly, petitioner believes that affirmance of the ruling *a quo*, would be tantamount to a clear violation of international laws, *i.e.* the Revised Kyoto Convention, which generally prohibit the imposition of substantial penalties for errors when there is no fraud or gross negligence on the part of an importer. Consequently, such current and reasonable trend in the international and uniform application of customs rules and laws shows how unreasonable, unjust, confiscatory, iniquitous and incongruent the disposition made against petitioner in the instant case; hence, the very need to set aside the assailed Decision and Resolution of the CTA Former *En Banc* in C.T.A. EB No. 472, in order to prevent the creation of a legal precedent which contravenes State commitments.

Respondent, on the other hand, counters that petitioner's failure to file its Import Entry and Internal Revenue Declaration within the non-extendible period of 30 days was fatal to its cause of action. Resultantly, the subject imported crude oil is deemed abandoned in favor of the government by reason of

such non-filing of the imported entries within said prescriptive period.[38]

Our Ruling

The submissions of the parties to this case bring to fore two timelines and the consequences of the lapse of the prescribed periods. Petitioner appears to be covered by Section 1801, in relation to Section 1301, which respectively states:

> Sec. 1801. *Abandonment, Kinds and Effects of.* – An imported article is deemed abandoned under any of the following circumstances:
>
> (a) When the owner, importer, or consignee of the imported article expressly signifies in writing to the Collector of Customs his intentions to abandon; or
>
> (b) When the owner, importer, consignee or interested party after due notice, fails to file an entry **within thirty (30) days**, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days which shall not likewise be extendible, from the date of posting of the notice to claim such importation. (Emphasis supplied)
>
> Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.
>
> x x x x x x x x x
>
> Sec. 1301. *Persons Authorized to Make Import Entry.*— Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: *Provided*, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true

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[38] *Id.* at 1101-1147.

and correct: *Provided, further*, That such statements under oath shall constitute *prima facie* evidence of knowledge and consent of the importer of violations against applicable provisions of this Code when the importation is found to be unlawful.

Tersely put, when an importer after due notice fails to file an Import Entry and Internal Revenue Declaration within an unextendible period of thirty (30) days from the discharge of the last package, the imported article is deemed abandoned in favor of the government.

Upon the other hand, respondent is covered in a manner likewise mandatory, by the provisions of Section 1603 which states that:

Sec. 1603. Finality of Liquidation.— When articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, **after the expiration of one year**, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative. (Emphasis supplied)

We rule that in this case, Section 1603 is squarely applicable. The finality of liquidation which arises one (1) year after the date of the final payment of duties, which is in this case 23 May 1996, renders inoperable the provisions of Section 1801.

Discussion

At the outset, it bears emphasis that the determination of the issues presented in this case requires a comprehensive assessment of the pronouncements made in the case of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*;[39] thus, we find it imperative to reproduce hereunder the points there considered which are germane to the controversy under review.

THE IMPORTATION WERE ABANDONED IN FAVOR OF THE GOVERNMENT

The law is clear and explicit. It gives a non-extendible period of 30 days for the importer to file the entry which we have already

[39] *Supra* note 29.

ruled pertains to both the IED and IEIRD. Thus under Section 1801 in relation to Section 1301, when the importer fails to file the entry within the said period, he "shall be deemed to have renounced all his interests and property rights" to the importations and these shall be considered impliedly abandoned in favor of the government:

> Section 1801. Abandonment, Kinds and Effect of. –
>
> x x x x x x x x x
>
> **Any person who abandons an article** or who fails to claim his importation as provided for in the preceding paragraph **shall be deemed to have renounced all his interests and property rights therein**.

According to petitioner, the shipments should not be considered impliedly abandoned because none of its overt acts (filing of the IEDs and paying advance duties) revealed any intention to abandon the importations.

Unfortunately for petitioner, it was the law itself which considered the importation abandoned when it failed to file the IEIRDs within the allotted time. Before it was amended, Section 1801 was worded as follows:

> Sec. 1801. Abandonment, Kinds and Effect of. – **Abandonment** is express when it is made direct to the Collector by the interested party in writing and it **is implied when, from the action or omission of the interested party, an intention to abandon can be clearly inferred**. The failure of any interested party to tile the import entry within fifteen days or any extension thereof from the discharge of the vessel or aircraft, shall be implied abandonment. An implied abandonment shall not be effective **until the article is declared by the Collector to have been abandoned after notice thereof is given to the interested party as in seizure cases**.
>
> Any person who abandons an imported article renounces all his interests and property rights therein.

After it was amended by RA 7651, **there was an indubitable shift in language as to what could be considered implied abandonment**:

> Section 1801. Abandonment, Kinds and Effect of. — An imported article is **deemed abandoned** under any of the following circumstances:
>
> a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon;
>
> **b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel** or aircraft x x x.

From the wording of the amendment, RA 7651 no longer requires that there be other acts or omissions where an intent to abandon can be inferred. It is enough that the importer fails to file the required import entries within the reglementary period. The lawmakers could have easily retained the words used in the old law (with respect to the intention to abandon) but opted to omit them. It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment.[40] (Emphasis and underlining supplied)

Based on the foregoing, it appears that in the *Chevron case*, the Court simply applied the clear provision of Section 1801(b), in relation to Section 1301, of the TCCP, as amended, which categorically provides that mere failure on the part of the owner, importer, consignee or interested party, after due notice, to file an entry within a non-extendible period of 30 days from the date of discharge of the last package (shipment) from the vessel, would mean that such owner, importer, consignee or interested party is deemed to have abandoned said shipment. Consequently, abandonment of such shipment (imported article) constitutes renouncement of all his interests and property rights therein.

The rationale of strict compliance with the non-extendible period of 30 days within which import entries (IEIRDs) must be filed for imported articles are as follows: (a) to prevent considerable delay in the payment of duties and taxes; (b) to

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[40] *Id*. at 725-727.

compel importers to file import entries and claim their importation as early as possible under the threat of having their importation declared as abandoned and forfeited in favor of the government; (c) to minimize the opportunity of graft; (d) to compel both the BOC and the importers to work for the early release of cargo, thus decongesting all ports of entry; (e) to facilitate the release of goods and thereby promoting trade and commerce; and (f) to minimize the pilferage of imported cargo at the ports of entry.[41] The aforesaid policy considerations were significant to justify a firm observance of the aforesaid prescriptive period.

It was observed that it is the law itself that considers an imported article abandoned for failure to file the corresponding Import Entry and Internal Revenue Declaration within the allotted time. No acts or omissions to establish intent to abandon is necessary to effectuate the clear provision of the law. Since Section 1801(b) does not provide any qualification as to what may have caused such failure in filing said import entry within the prescriptive period in order to render the imported article abandoned, this Court shall likewise make no distinction and plainly apply the law as clearly stated. Hence, upon the lapse of the aforesaid non-extendible period of 30 days, without the required import entry filed by the importer within said period, its imported article is therefore deemed abandoned.

Moreover, Section 1802 of the same Code states to whom said abandoned imported articles belong as a consequence of such renouncement by the owner, importer, consignee or interested party. It provides:

> Sec. 1802. Abandonment of Imported Articles. An abandoned article shall ***ipso facto*** **be deemed the property of the Government** and shall be disposed of in accordance with the provisions of this Code.
>
> x x x x x x x x x (Emphasis supplied)

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[41] *Id.* at 720-721; Citing the congressional deliberations on House Bill No. 4502 which was enacted as R.A. No. 7651, amending the Tariff and Customs Code of the Philippines, including relevant portion of the Sponsorship Speech of Exequiel B. Javier, 22 March 1993.

In the *Chevron case*, we explained that the term "*ipso facto*" is defined as "by the very act itself" or "by mere act." Hence, there is no need for any affirmative act on the part of the government with respect to abandoned imported articles given that the law itself categorically provides that said articles shall *ipso facto* be deemed the property of the government. By using the term "*ipso facto*" in Section 1802 of the TCCP, as amended by R.A. No. 7651,[42] the legislature removed the need for abandonment proceedings and for any declaration that imported articles have been abandoned before ownership thereof can be effectively transferred to the government. In other words, ownership over the abandoned imported articles is transferred to the government by operation of law.

The rulings in Chevron was generously applied by CTA Former En Banc in the present case. Thus:

> **Petitioner Shell's failure to file the required entries, within the prescribed non-extendible period of thirty (30) days from the date of discharge of the last package from the carrying vessel, constitutes implied abandonment of its oil importation. This means, that from the precise moment that the non-extendible thirty-day period had lapsed, the abandoned shipment was deemed the property of the government.** Therefore, when petitioner withdrew the oil shipment for consumption, it appropriated for itself properties which already belonged to the government. x x x
>
> Petitioner Shell's contention that the **belated filing of its import entries is justified due to the late arrival of its import documents, which are necessary for the proper computation of the import duties, cannot be sustained.**
>
> x x x x x x x x x

[42] An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, as Amended, which was approved on 4 June 1993. This amendatory law, particularly Section 1 of RA No. 7651, deleted the requirement under Section 1802 that there must be a declaration by the Collector of Customs that the goods have been abandoned by the importers and that the latter shall be given notice of said declaration before any abandonment of the articles becomes effective.

> The [CTA Former *En Banc*] cannot also accept such excuses, **as the absence of supporting documents should not have prevented petitioner Shell from complying with the mandatory non-extendible period, since the law prescribes an extremely serious consequence for delayed filing**. If this kind of excuse was to be accepted, then the collection of customs duties would be at the mercy of importers, which our lawmakers try to avoid.
>
> For all the foregoing, we rule that the late filing of the IEIRDs alone, which constituted implied abandonment, makes petitioner Shell liable for the payment of the dutiable value of the imported crude oil. x x x[43] (Emphasis supplied)

Since it is undisputed that the Import Entry and Internal Revenue Declaration was belatedly filed by petitioner on 23 May 1996, or more than 30 days from the last day of discharge of its importation counted from 10 April 1996, the importation may be considered impliedly abandoned in favor of the government. Petitioner argues that before Section 1802 can be applied and the *ipso facto* provision invoked, the requirement of due notice to file entry and the determination of the intent of the importer are essential in order to consider the subject imported crude oil of petitioner impliedly abandoned in favor of the government. It further asserts that, in the *Chevron case*, it was conceded that as a general rule, due notice is indeed required before any imported article can be considered impliedly abandoned, but Chevron's non-entitlement to such prior notice was legally justified because of the finding of fraud established against it, rendering it impossible for the BOC to comply with the due notice requirement under the prevailing rules. Consequently, it is petitioner's conclusion that such finding of fraud is indispensable in order to waive the "due notice requirement," that would eventually consider the subject imported crude oil impliedly abandoned in favor of the government.

In Chevron, we observed that:

> **The minutes of the deliberations in the House of Representatives Committee on Ways and Means on the proposed amendment to**

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[43] *Rollo*, pp. 149-151.

Section 1801 of the TCC show that the phrase "after due notice" was intended for owners, consignees, importers of the shipments who live in rural areas or distant places far from the port where the shipments are discharged, who are unfamiliar with customs procedures and need the help and advice of people on how to file an entry:

x x x x x x x x x

MR. FERIA. 1801, your Honor. The question that was raised here in the last hearing was whether notice is required to be sent to the importer. **And, it has been brought forward that we can dispense with the notice to the importer because the shipping companies are notifying the importers on the arrival of their shipment. And, so that notice is sufficient to ... sufficient for the claimant or importer to know that the shipments have already arrived.**

Second, your Honor, **the legitimate businessmen always have ... they have their agents with the shipping companies, and so they should know the arrival of their shipment.**

x x x x x x x x x

HON. QUIMPO. Okay. Comparing the two, Mr. Chairman, I cannot help but notice that in the substitution now there is a failure to provide the phrase AFTER NOTICE THEREOF IS GIVEN TO THE INTERESTED PARTY, which was in the original. Now in the second, in the substitution, it has been deleted. I was first wondering whether this would be necessary in order to provide for due process. I'm thinking of certain cases, Mr. Chairman, where the **owner might not have known**. This is now on implied abandonment not the express abandonment.

x x x x x x x x x

HON. QUIMPO. Because I'm thinking, Mr. Chairman. I'm thinking of certain situations where the importer even though, you know, in the normal course of business sometimes **they fail to keep up the date or something to that effect**.

THE CHAIRMAN. Sometimes their cargoes get lost.

HON. QUIMPO. **So just to, you know . . . anyway, this is only a notice to be sent to them that they have a cargo there.**

x x x x x x x x x

MR. PARAYNO. Your Honor, I think as a general rule, five days [extendible] to another five days is a good enough period of time. **But we cannot discount that there are some consignees of shipments located in rural areas or distant from urban centers where the ports are located to come to the [BOC] and to ask for help particularly if a ship consignment is made to an individual who is uninitiated with customs procedures. He will probably have the problem of coming over to the urban centers, seek the advice of people on how to file entry. And therefore, the five day extendible to another five days might really be a tight period for some. But the majority of our importers are knowledgeable of procedures.** And in fact, it is in their interest to file the entry even before the arrival of the shipment. That's why we have a procedure in the bureau whereby importers can file their entries even before the shipment arrives in the country. (Emphasis supplied)

x x x x x x x x x

Petitioner, a regular, large-scale and multinational importer of oil and oil products, fell under the category of a knowledgeable importer which was familiar with the governing rules and procedures in the release of importations.

Furthermore, notice to petitioner was unnecessary because it was fully aware that its shipments had in fact arrived in the Port of Batangas. The oil shipments were discharged from the carriers docked in its private pier or wharf, into its shore tanks. From then on, petitioner had actual physical possession of its oil importations. It was thus incumbent upon it to know its obligation to file the IEIRD within the 30-day period prescribed by law. As a matter of fact, importers such as petitioner can, under existing rules and regulations, file in advance an import entry even before the arrival of the shipment to expedite the release of the same. However, it deliberately chose not to comply with its obligation under Section 1301.

The purpose of posting an "urgent notice to file entry" pursuant to Section B.2.1 of CMO 15-94 is only to notify the importer of the "arrival of its shipment" and the details of said shipment. Since it already had knowledge of such, notice was superfluous. Besides, the entries had already been filed, albeit belatedly. It

would have been oppressive to the government to demand a literal implementation of this notice requirement.[44] (Emphasis and underlining supplied)

Therefrom, it is without a doubt that the requirement of due notice contemplated under Section 1801(b) of the TCCP, as amended, refers to the notice to the owner, importer, consignee or interested party of the *arrival of its shipment* and *details thereof*. The legislative intent was clear in emphasizing the importance of said notice of arrival, which is intended solely to persons not considered as knowledgeable importers, or those who are not familiar with the governing rules and procedures in the release of importations. We as much as said that the due notice requirement under Section 1801(b), do not apply to knowledgeable importers, such as Chevron in the above-cited case, for having been considered as one of the regular, large-scale and multinational importers of oil and oil products, familiar with said rules and procedures (including the duty and obligation of filing the IEIRD within a non-extendible period of 30 days) and fully aware of the arrival of its shipment on its privately owned pier or wharf in the Port of Batangas. Applying Chevron, the decision assailed here said:

The due notice required under *Section 1301* is the notice of the arrival of the shipment. In this case, pursuant to the Chevron case, notice to petitioner Shell is not required under the peculiar circumstances of the case. **Petitioner Shell, like Chevron, is a regular, large-scale and multinational importer of oil and oil products, who falls under the category of a knowledgeable importer, familiar with the governing rules and procedures in the release of importations.**

More importantly, **petitioner Shell even admitted that it filed an application for Special Permit to Discharge and paid the corresponding advance duties on March 22, 1996 (*Exhibits "K" and "P"*), which undeniably proved knowledge on the part of petitioner Shell of the arrival of the shipment.**Likewise, upon arrival of the shipment, **they were unloaded from the carrying vessels**

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[44] *Chevron Phils., Inc. v. Commissioner of the Bureau of Customs*, *supra* note 29 at 731-733.

docked at the wharf owned by petitioner Shell at Tabangao, Batangas City; thus, petitioner Shell was fully aware that their importation had already arrived.[45] (Emphasis supplied)

The foregoing having been said, we must with equal concern, go to the other timeline which is provided for in Section 1603 of the TCCP, to wit:

> Sec. 1603. *Finality of Liquidation*. – When articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one year, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

Petitioner insists that, in the absence of fraud, the right of respondent to claim against it has already prescribed considering that an action involving the entry and payment of customs duties involving imported articles demanded after a period of one (1) year from the date of final payment of duties, shall not succeed, pursuant to the clear provision of Section 1603. It therefore contends that even if the subject imported crude oil of petitioner is by law deemed abandoned by operation of law under Sections 1801(b), in relation to Section 1301, of the Code, respondent's right to claim abandonment had already lapsed since fraud is wanting in this case. On the other hand, respondent counters that since there was a factual finding of fraud committed by petitioner in the filing of its Import Entry and Internal Revenue Declaration beyond the 30-day period prescribed under Section 1301 of the TCCP, the 1-year prescriptive period under Section 1603 therefore does not apply.

At this point, it bears emphasis that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[46] The Court is not a trier of facts and does not normally undertake the re-examination of the evidence

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[45] *Rollo*, pp. 148-149.

[46] *Salcedo v. People*, 400 Phil. 1302, 1304 (2000).

presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court[47] and they carry even more weight when the CA affirms the factual findings of the trial court.[48] However, it is already a settled matter that, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; **(10) when the findings of fact are premised on the supposed absence of evidence** and contradicted by the evidence on record; and **(11) when the Court of Appeals manifestly overlooked certain relevant facts** not disputed by the parties, **which, if properly considered, would justify a different conclusion**.[49]

Records of this case reveal that the CTA in Division in its 19 June 2008 Decision[50] made a pronouncement that there was indeed fraud committed by petitioner based on the factual finding contained in the Memorandum dated 2 February 2001 issued by Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr. of the CIIS-IPD of the BOC. Consequently, since such memorandum made such factual finding of fraud against petitioner, the court *a quo* ruled that

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[47] *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22 (2004).

[48] *Borromeo v. Sun*, 375 Phil. 595, 602 (1999).

[49] *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, *supra* note 47 at 22-23.

[50] *Rollo*, pp. 341-353.

prescription does not set in even if respondent's claim was made beyond the 1-year reglementary period.

Upon an assiduous review of the factual finding of fraud, we find petitioner's contention meritorious. Hence, the instant case falls among the exceptions to the general rule previously mentioned which would require this Court's judicial prerogative to review the court *a quo*'s findings of fact.

Generally, fraud has been defined as "the deliberate intention to cause damage or prejudice. It is voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission.[51] For fraud to exist, it must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[52] It is never presumed and the burden of proof to establish lies in the person making such allegation since every person is presumed to be in good faith.[53] To discharge this burden, fraud must be proven by clear and convincing evidence.[54] Also, fraud must be alleged and proven as a fact where the following requisites must concur: (a) the fraud must be established by evidence; and (b) the evidence of fraud must be clear and convincing, and not merely preponderant. Upon failure to establish these two (2) requisites, the presumption of good faith must prevail.

Section 3611(c) of the TCCP, as amended defines the term fraud as the occurrence of a "material false statement or act in connection with the transaction which was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence." Again, such factual finding of fraud should be established based on clear, convincing, and uncontroverted evidence.

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[51] *International Corporate Bank v. Guenco*, 404 Phil. 353, 364 (2001).

[52] *Transglobe International, Inc. v. Court of Appeals*, 361 Phil. 727, 739 (1999).

[53] *Astroland Developers, Inc. v. GSIS*, 481 Phil. 724, 748 (2004).

[54] *Republic v. CTA*, 458 Phil. 758, 767 (2001).

Relevant thereto, in the landmark case of *Aznar v. Court of Tax Appeals*,[55] we explained the general concept of fraud as applied to tax cases in the following fashion:

> **The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong doing with the sole object of avoiding the tax. **It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.**[56] (Emphasis supplied)

In the case at bench, a perusal of the records reveals that there is neither any iota of evidence nor concrete proof offered and admitted to clearly establish that petitioner committed any fraudulent acts. The CTA in Division relied solely on the Memorandum dated 2 February 2001 issued by the CIIS-IPD of the BOC in ruling the existence of fraud committed by petitioner. However, there is no showing that such document was ever presented, identified, and testified to or offered in evidence by either party before the trial court.

Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every *minute aspect* of their cases.[57] Section 8 of

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[55] 157 Phil. 510 (1974).

[56] *Id.* at 535.

[57] *Dizon v. CTA*, 576 Phil. 111, 128 (2008); and *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 547 Phil. 332, 339 (2007); and *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650, 664 (2005).

R.A. No. 1125,[58] as amended by R.A. No. 9282,[59] categorically described the CTA as a court of record. Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:

> **Section 34.** *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the foregoing provision, it is clear that for evidence to be considered by the court, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*,[60] We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.[61]

The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into

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[58] An Act Creating The Court Of Tax Appeals.

[59] An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

[60] 264 Phil. 753, 759 (1990).

[61] *Mato v. CA*, 320 Phil. 344, 349 (1995).

evidence when the same have not been formally offered as part of the evidence, but more so if the same were not identified and marked as exhibits, such as in the present case. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone.

As a matter of fact, even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court,[62] this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.

By analogy, in *Dizon v. CTA*,[63] this Court underscored the importance of a formal offer of evidence and the corresponding admission thereafter. We quote:

While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the

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[62] Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals requires, among others, the Commissioner of Customs, within ten days after his answer, to certify and forward to the court all the records of the case in their possession. Failure to transmit the records within the time prescribed herein or within the time allowed by law by the court may constitute indirect contempt of court.

[63] *Supra* note 57 at 131-132 citing *Heirs of Pasag v. Parocha*, 550 Phil. 571, 578-579 (2007).

presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. **The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause**. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR.

Per the records of this case, the BIR was directed to present its evidence in the hearing of February 21, 1996, but BIR's counsel failed to appear. The CTA denied petitioner's motion to consider BIR's presentation of evidence as waived, with a warning to BIR that such presentation would be considered waived if BIR's evidence would not be presented at the next hearing. Again, in the hearing of March 20, 1996, BIR's counsel failed to appear. Thus, in its Resolution dated March 21, 1996, the CTA considered the BIR to have waived presentation of its evidence. In the same Resolution, the parties were directed to file their respective memorandum. Petitioner complied but BIR failed to do so. In all of these proceedings, BIR was duly notified. Hence, in this case, we are constrained to apply our ruling in *Heirs of Pedro Pasag v. Parocha*:

> **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents' not previously scrutinized by the trial court.**
>
> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that **the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice.**"

> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. **Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.** (Emphasis and underlining supplied)

Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected.

Moreover, even if not submitted as a contention herein, We find it apropos to rule that the CTA likewise cannot *motu proprio* justify the existence of fraud committed by petitioner by applying the rules on judicial notice.

Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them.[64] Under the Rules of Court, judicial notice may either be mandatory or discretionary. Pertinent portions of Rule 129 of the Rules of Court provide as follows:

RULE 129

What Need Not Be Proved

Section 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of

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[64] *People v. Tundag*, 396 Phil. 873, 887 (2000).

legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

Section 2. *Judicial notice, when discretionary*. – A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Section 3. *Judicial notice, when hearing necessary*. – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

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In relation thereto, it has been held that the doctrine of judicial notice rests on the wisdom and discretion of the courts; however, the power to take judicial notice is to be exercised by the courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt upon the subject should be promptly resolved in the negative.[65]

As a general rule, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge.[66] However, this rule is subject to the exception that **in the absence of objection** and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when **with the knowledge of the opposing party**, reference is made to it, by name and number or in some other manner by which it is sufficiently designated.[67] Thus, for said

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[65] *Rep. of the Phils. v. CA*, 194 Phil. 476, 495 (1981).

[66] *Tabuena v. CA*, 274 Phil. 51, 57 (1991).

[67] *Id*. citing *U.S. v. Claveria*, 29 Phil. 527, 532 (1915).

exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it.

Such being the case, it would also be an error for the CTA in Division to even take judicial notice of the subject Memorandum being merely a part of the BOC Records submitted before the court *a quo*, without the same being identified by a witness, offered in and admitted as evidence, and effectively, depriving petitioner, first and foremost, an opportunity to object thereto. Hence, the subject Memorandum should not have been considered by the CTA in Division in its disposition.

It is well-settled that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[68]

The claim of respondent against petitioner has already prescribed

Since we have already laid to rest the question on whether or not there was fraud committed by petitioner, the last issue for Our resolution is whether respondent's claim against petitioner has already prescribed.

This Court rules in the affirmative.

There being no evidence to prove that petitioner committed fraud in belatedly filing its Import Entry and Internal Revenue Declaration within the 30-day period prescribed under Section 1301 of the TCCP, as amended, respondent's rights to question the propriety thereof and to collect the amount of the alleged deficiency customs duties, more so the entire value of the subject

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[68] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, 628 Phil. 430, 451 (2010).

shipment, have already prescribed. Simply put, in the absence of fraud, the entry and corresponding payment of duties made by petitioner becomes final and conclusive upon all parties after one (1) year from the date of the payment of duties in accordance with Section 1603 of the TCCP, as amended:

> Section 1603. *Finality of Liquidation*. – When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, **such entry and passage free of duty or settlements of duties as well, after the expiration of one (1) year, from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties**, unless the liquidation of the import entry was merely tentative. (Emphasis and underscoring supplied)

The above provision speaks of *entry and passage free of duty or settlements of duties*. Generally, in customs law, the term "entry" has a triple meaning, to wit: (1) the documents filed at the customs house; (2) the submission and acceptance of the documents and (3) the procedure of passing goods through the customs house.[69] As explained in the *Chevron case*, it specifically refers to the filing and acceptance of the Import Entry and Internal Revenue Declaration of the imported article. Simply put, the entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon.[70] The term "duty" used therein denotes a tax or impost due to the government upon the importation or exportation of goods. It means that the duties on imports signify not merely a duty on the act of importation, but a duty on the thing imported. It is not confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country.[71]

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[69] *Rodriguez v. CA*, 318 Phil. 313, 325 (1995).

[70] *Black's Law Dictionary*, 6th Edition, p. 369

[71] *Id.* at 349.

Based on the foregoing definitions, it is commonsensical that the finality of liquidation referred to under Section 1603 covers the propriety of the submission and acceptance of the Import Entry and Internal Revenue Declaration covering the imported articles being brought in the country for the sole purpose of determining whether it is subject to tax or not; and if it is, whether the computation of the tax or impost to be paid to the government was properly made. These shall include, among others, the declarations and statements contained in the entry, made under oath and under the penalties of falsification or perjury that such declarations and statements contained therein are true and correct, which shall constitute *prima facie* evidence of knowledge and consent of the importer of violation against applicable provisions of the TCCP when the importation is found to be unlawful.[72]

Indubitably, the matters which become final and conclusive against all parties include the timeliness of filing the import entry within the period prescribed by law, the declarations and statements contained therein, and the payment or non-payment of customs duties covering the imported articles by the owner, importer, consignee or interested party. Since the primordial issue presented before us focuses on petitioner's non-compliance in filing its Import Entry and Internal Revenue Declaration within a non-extendible period of 30 days from the date of discharge of' the last package from the vessel, respondent may only look into it within a limited period of one (1) year in accordance with the above-quoted provision.

In the case at bench, it is undisputed that petitioner filed its IEIRD and paid the remaining customs duties due on the subject shipment only on 23 May 1996. Yet, it was only on 1 August 2000, or more than four (4) years later, that petitioner received a demand letter from the District Collector of Batangas for the alleged unpaid duties covering the said shipment. Thereafter, on 29 October 2001, or after more than five (5) years, petitioner received another demand letter from respondent seeking to collect

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[72] See Section 1301 of the TCCP.

for the entire dutiable value of the same shipment amounting to ₱936,899,855.90.

Consequently, applying the foregoing provision and considering that we have determined already that there is no factual finding of fraud established herein, the liquidation of petitioner's imported crude oil shipment became final and conclusive on 24 May 1997, or exactly upon the lapse of the 1-year prescriptive period from the date of payment of final duties. As such, any action questioning the propriety of the entry and settlement of duties pertaining to such shipment initiated beyond said date is therefore barred by prescription.

Since time immemorial, this Court has consistently recognized and applied the statute of limitations to preclude the Government from exercising its power to assess and collect taxes beyond the prescribed period, and we intend to abide by our rulings on prescription and to strictly apply the same in the case of petitioner; otherwise, both the procedural and substantive rights of petitioner would be violated. After all, prescription is a substantive defense that may be invoked to prevent stale claims from being resurrected causing inconvenience and uncertainty to a person who has long enjoyed the exercise. Thus, symptomatic of the magnitude of the concept of prescription, this Court has elucidated that:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because **after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents.** The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to

the taxpayer within the contemplation of the Commission which recommend (sic) the approval of the law.[73] (*Emphasis supplied*)

Basic is the rule that provisions of the law should be read in relation to other provisions therein. A statute must be interpreted to give it efficient operation and effect as a whole avoiding the nullification of cognate provisions. Statutes are read in a manner that makes it wholly operative and effective, consistent with the legal maxim *ut res magis valeat quam pereat*.

This maxim applied, we read Sections 1301, 1801, and 1802, together with Section 1603 of the TCCP. Thus, should there be failure on the part of the owner, importer, consignee or interested party, after due notice of the arrival of its shipment (except in cases of *knowledgeable owners or importers*), to file an entry within the non-extendible period of 30 days from the date of discharge of the last package (shipment) from the vessel, such owner, importer, consignee or interested party is deemed to have abandoned said shipment in favor of the government. As imperative, however, is the strict compliance with Section 1603 of the TCCP, which should be read as we have ruled. Any action or claim questioning the propriety of the entry and settlement of duties pertaining to such shipment made beyond the 1-year prescriptive period from the date of payment of final duties, is barred by prescription. In the present case, the failure on the part of respondent to timely question the propriety of the entry and settlement of duties by petitioner involving the subject shipment, renders such entry and settlement of duties final and conclusive against both parties. Hence, respondent cannot any longer have any claim from petitioner. Sections 1301, 1801, and 1802 of the TCCP have been rendered inoperable by reason of the lapse of the period stated in Section 1603 of the same Code.

Indeed, if the prescriptive period of one year specified in Section 1603 of the TCCP is not applied against the respondent, the reality that the shipment has been unloaded from the carrying vessels to petitioner's oil tanks and that import duty in the amount

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[73] *Rep. of the Philippines v. Ablaza*, 108 Phil. 1105, 1108 (1960).

of ₱11,231,081.00 has been paid would be obliterated by the application of the principle of deemed abandonment four years after the occurrence of the facts of possession and payment, as a consequence of which application, the petitioner would be made to pay the government the entire value of the shipment it had as vendee of the shipper already paid.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated 13 May 2010 and Resolution dated 22 February 2011 of the Court of Tax Appeals Former *En Banc* in C.T.A. EB No. 472 are hereby **REVERSED** and **SET ASIDE** on the ground of prescription.

No costs.

SO ORDERED.

Reyes, J., concurs.

Velasco, Jr., J. (*Chairperson*), see separate concurring opinion.

Peralta, J., dissents, pls. see dissenting opinion.

Jardeleza, J., joins the dissent of *J.* Peralta.

CONCURRING OPINION

VELASCO, JR., *J.*:

I register my concurrence with the *ponencia*.

The Latin maxim *stare decisis et non quieta movere* means stand by the thing and do not disturb the calm—a bar from any attempt at relitigating the same issues. It requires that high courts must follow, as a matter of sound policy, their own precedents, or respect settled jurisprudence absent compelling reason to do otherwise.[1] As a recognized exception, the salutary doctrine cannot be invoked when the facts and circumstances in the succeeding case have so changed as to have robbed the old rule of significant application or justification.

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[1] *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694.

There is truth to the claim that the instant case bears striking resemblance to that of *Chevron Philippines v. Commissioner of the Bureau of Customs (Chevron)*.[2] As observed by Associate Justice Diosdado M. Peralta (Justice Peralta) in his dissent:[3]

> x x x As in *Chevron*, the imported crude oil subject of the present case arrived in the Philippines and was discharged from the carrying vessels prior to the effectivity of RA 8180. The import entries in both cases were filed beyond the 30-day period required under Section 1301 of the [Tariff and Customs Code of the Philippines]. In fact, it is on the bases of the facts obtaining in these importations of petitioner and Chevron (then known as Caltex Phils., Inc.) that only one civil suit for collection of the dutiable value of the imported articles was filed by the [Bureau of Customs] against these two corporations as defendants. It is from this factual backdrop and the ensuing demand by the [Bureau of Customs] to collect the dutiable value of the importations that the case of *Chevron* reached this Court and was ultimately decided in favor of the [Bureau of Customs]. x x x

Notwithstanding these glaring similarities, it cannot hastily be concluded that *Chevron* is on all fours with the case at bar; **the two cases are diametrically opposed insofar as the issue of fraud on the part of the importer is concerned.**While the Court's ruling in *Chevron* was that the existence of fraud therein was sufficiently established, no clear and convincing evidence was presented herein to justify arriving at the same conclusion.

Whether or not petitioner Pilipinas Shell Petroleum Corporation (Pilipinas Shell) defrauded the Bureau of Customs (BOC) becomes pivotal in this case because of Sec. 1603 of the Tariff and Customs Code (TCC), to wit:

> Section 1603. *Finality of Liquidation*. When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or **settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, in the absence of fraud** or protest or compliance audit pursuant to the provisions of

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[2] G.R. No. 178759, August 11, 2008, 561 SCRA 710.

[3] Dissenting Opinion, p. 4.

this Code, **be final and conclusive upon all parties**, unless the liquidation of the import entry was merely tentative. (emphasis added)

Pursuant to the above-quoted provision, the attendance of fraud would remove the case from the ambit of the statute of limitations, and would consequently allow the government to exercise its power to assess and collect duties even beyond the one-year prescriptive period, rendering it virtually imprescriptible.

Exhaustively discussed by the *ponencia* was that no scintilla of proof was ever offered in evidence by respondent Commissioner of Customs to reinforce the claim that Pilipinas Shell acted in bad faith, then *a fortiori*, in a fraudulent manner, in its settlement of duties on its imported crude oil. The February 2, 2001 Memorandum on which the Court of Tax Appeals (CTA), both in division and *en banc*, chiefly anchored the finding of fraudulent intent was **never formally offered**, but was instead merely included in the records of the proceedings before the Bureau of Customs.

Respondent was remiss in presenting this crucial piece of evidence in the *de novo* proceeding before the CTA. Much has already been said by the *ponencia* about the adverse effect of the procedural lapse on the admissibility of the Memorandum and on its probative value. If I may inject: regardless of whether the document adverted to was marked during pre-trial, or was otherwise identified during trial proper, it cannot be accorded any evidentiary weight in finally resolving the case. As held in *Heirs of Pasag v. Sps. Parocha*:[4]

x x x Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence **cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value**. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while

[4] G.R. No. 155483, Apri1 27, 2007, 522 SCRA 410.

the latter is done only when the party rests its case. **The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.** (emphasis added)

It is this lack of proof of fraud that substantially alters the terrain of the case, thereby precluding the applicability of the doctrine of *stare decisis*. Though the circumstance appears to be merely tangential, it is nevertheless the critical element in resolving the issue on prescription. Absent fraud, the government, through the BOC, is under legal compulsion to assess and collect customs duties within a strict one-year period. As brought to fore by the *ponencia*, respondent was regrettably remiss in complying with the statutory mandate of Sec. 1603 of the TCC:[5]

> It is undisputed that petitioner filed its [Import Entry and Internal Revenue Declaration] and paid the remaining customs duties on the subject shipment only on **23 May 1996**. Yet, it was only on **1 August 2000**, or more than **four (4) years later**, that petitioner received a demand letter from the District Collector of Batangas for the alleged unpaid duties covering the said, shipment. Thereafter, on **29 October 2001**, or after **more than five (5) years**, petitioner received another demand letter from respondent seeking to collect for the entire dutiable value of the same shipment amounting to ₱936,899,855.90. (emphasis added)

Upon expiration of the prescriptive period, respondent was barred from further collecting from petitioner the dutiable value of its imported crude oil. The hands of the Court are then constrained. There is no other course of action for us to take other than to grant the instant petition.

Notably, Justice Peralta never questioned the finding of the *ponencia* as regards respondent's procedural lapse. However, it is his postulation that the presence or even the absence of fraud is irrelevant since Sec. 1603 of the TCC does not find

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[5] Decision, p. 30.

application in cases wherein the government exercises its right over abandoned imported articles, rather than its power to assess and collect taxes.

Unfortunately, I cannot join the dissent. I am perplexed at the contradiction of how the argument is raised in the same breath as the invocation of *stare decisis*. The irony lies in the discussion in *Chevron* of the very same issue of prescription and the coverage of Sec. 1603.

Aside from the presence or absence of fraud, it is admitted that there is significant identity as to the factual milieu of *Chevron* and the case at bar. Both are concerned with the treatment of abandoned imported articles, and the collection by the Commissioner of Customs of the dutiable value pertaining thereto. In Chevron, we have categorically ruled that "*due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable.*" The converse should, therefore, likewise hold true—in the absence of fraud, the one-year prescriptive period under Sec. 1603 shall find application. Hence, even if *stare decisis* is then to be applied, it could only operate to sustain the dismissal of the case on the ground of prescription. Only then could the ruling of the *ponencia* not possibly be considered as a deviation from a settled norm.

DISSENTING OPINION

PERALTA, *J.*:

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions.[1] Under this doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases.[2] With all due respect to my colleagues, it is on

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[1] *Ty v. Banco Filipino Savings and Mortgage Bank*, 689 Phil. 603, 613 (2012).

[2] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320, 336 (2008).

this settled principle and in this context that I register my dissent from the *ponencia*.

At the outset, a brief account of the undisputed factual and procedural antecedents that transpired and led to the filing of this case is in order.

Petitioner Pilipinas Shell Petroleum Corporation is a domestic corporation engaged in the business of importing crude oil, of processing it into different finished petroleum products and, thereafter, distributing and marketing these finished products.

On April 7, 1996, petitioner's importation of 1,979,674.85 US barrels of Arab Light Crude Oil arrived in the Philippines through vessels which docked at a wharf it owns and operates.

On April 10, 1996, three days after the arrival of its importation, the shipments were unloaded and brought to petitioner's oil tanks in Batangas City.

On May 23, 1996, forty-three (43) days from the date of discharge of its importation, petitioner filed the required Import Entry and Internal Revenue Declaration (*IEIRD*) and paid import duty in the amount of ₱11,231,081.00.

In the meantime, on April 16, 1996, Republic Act No. 8180 (RA 8180), otherwise known as the *Downstream Oil Industry Deregulation Act of 1996*, took effect, which, among others, provided for the reduction of the tariff duty on imported crude oil from ten percent (10%) to three percent (3%).

On August 1, 2000, petitioner received a demand letter from the Bureau of Customs (*BOC*), coursed through the District Collector of Batangas, assessing it the amount of ₱120,162,991.00, representing deficiency customs duties resulting from the difference between the customs duties due computed at the old rate of 10% (prior to the effectivity of RA 8180) and the actual amount of duties paid by petitioner at the rate of 3%.

Petitioner protested the assessment but was denied by the District Collector. Petitioner appealed the District Collector's decision to herein respondent Commissioner of Customs.

Thereafter, on October 29, 2001, petitioner received from respondent a demand letter for the payment of the amount of ₱936,899,885.90, representing the dutiable value of the subject crude oil importation which was held to be abandoned for petitioner's failure to file the required import entry on time.

On November 7, 2001, petitioner filed a protest contending that the demand letter has no factual and legal basis, and that such demand has already prescribed.

Subsequently, on April 11, 2002 the BOC filed a civil action for collection of a sum of money against petitioner and Caltex Philippines, Inc., which also made crude oil importations like petitioner, for their refusal to pay the dutiable value of their importations which they have consumed.[3]

On May 27, 2002, petitioner filed a petition for review with the Court of Tax Appeals (*CTA*) questioning the BOC's demand letters which required petitioner to pay deficiency customs duties as well as the dutiable value of its 1996 crude oil importation. The case was raffled to the CTA First Division.

On June 19, 2008, the CTA First Division promulgated its Decision[4] dismissing petitioner's petition for review for lack of merit. Petitioner's motion for reconsideration was denied in a Resolution[5] issued by the CTA First Division on February 24, 2009.

Petitioner then filed a petition for review with the CTA Former En Banc.

On May 13, 2010, the CTA Former *En Banc* promulgated its Decision[6] dismissing petitioner's petition for review and

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[3] The BOC's Complaint was filed with the Regional Trial Court of Manila, Branch 25 and was docketed as Civil Case No. 02-103239; *rollo*, pp. 724-730.

[4] Penned by Associate Justice Caesar A. Casanova, with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista; *rollo*, pp. 341-353.

[5] *Id*. at 354-358.

[6] Penned by Associate Justice Olga Palanca-Enriquez, with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista and Erlinda P. Uy; *id.* at 131-156.

affirming with modification the CTA First Division's assailed Decision and Resolution by imposing 6% interest on the sum awarded from the date of promulgation until finality of the decision and 12% interest from finality of the decision until full satisfaction.

Aggrieved, petitioner filed a motion for reconsideration which was, however, denied for lack of merit by the CTA Former *En Banc* in its Resolution[7] dated February 22, 2011.

Hence, the present petition for review on *certiorari*.

The basic issue that needs to be resolved in the instant petition is whether or not respondent may still recover from petitioner the dutiable value of the latter's crude oil importation which it has consumed despite its having been deemed abandoned by operation of law.

The *ponencia* rules that "there being no evidence to prove that petitioner committed fraud in belatedly filing its [Import Entry and Internal Revenue Declaration] (*IEIRD*) within the 30-day period prescribed under Section 1301 of the [Tariff and Customs Code of the Philippines] (*TCCP*), as amended, respondent's right to question the propriety thereof and to collect the amount of the alleged deficiency customs duties, **more so the entire value of the subject shipment**, have already prescribed."[8]

I take exception to the above pronouncement as it is my considered view that it runs counter to the pertinent provisions of the TCCP and of this Court's ruling in the leading case of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs (Chevron)*.[9]

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[7] Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Erlinda P. Uy and Caesar A. Casanova; *id*. at 157-171, Associate Justice Olga Palanca-Enriquez dissented and she was joined by Presiding Justice Ernesto D. Acosta and Lovell R. Bautista; *id*. at 172-186.

[8] Emphasis supplied.

[9] 583 Phil. 706 (2008). The *ponencia* was penned by former Chief Justice Renato C. Corona, with the concurrence of former Chief Justice Reynato

It bears stressing that the basic facts of the present case and those of *Chevron*, which the Court follows as precedent, are practically the same. As in *Chevron*, the imported crude oil subject of the present case arrived in the Philippines[10] and was discharged from the carrying vessels prior to the effectivity of RA 8180.[11] The import entries in both cases were filed beyond the 30-day period required under Section 1301 of the TCCP. In fact, it is on the basis of the facts obtaining in these importations of petitioner and Chevron (then known as Caltex Phils., Inc.) that only one civil suit for collection of the dutiable value of the imported articles was filed by the BOC against these two corporations as defendants. It is from this factual backdrop and the ensuing demand by the BOC to collect the dutiable value of the importations that the case of *Chevron* reached this Court and was ultimately decided in favor of the BOC. Thus, since the present case and the case of *Chevron* basically arise from the same factual circumstances, it is the Court's duty to apply the ruling in Chevron to the present case. In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*,[12] this Court ruled as follows:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere. Stand by the decisions and disturb not what is settled. Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from

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S. Puno and Associate Justices Antonio T. Carpio, Ma. Alicia Austria-Martinez and Teresita J. Leonardo-De Castro.

[10] Chevron's importations arrived separately on March 8, 1996, March 18, 1996, March 21, 1996, March 26, 1996 and April 10, 1996, while petitioner's importation arrived on April 7, 1996.

[11] Chevron's and petitioner's importations were unloaded from the carrying vessels three (3) days after their arrival.

[12] *Supra* note 2.

the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisisis a bar to any attempt to relitigate the same issue.[13]

Nonetheless, petitioner contends that the ruling in *Chevron* does not apply to the present case and relies on the provisions of Section 1603 of the TCCP, which provides as follows:

Section 1603. *Finality of Liquidation.* When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

On the other hand, Sections 1301, 1801 and 1802 of the TCCP, as amended by Republic Act No. 7651(RA 7651),[14] also provide:

Section 1301. *Persons Authorized to Make Import Entry*. – **Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from date of discharge of the last package from the vessel or aircraft** either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute *prima facie* evidence of knowledge and consent

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[13] *Id.* at 337.

[14] *An Act to Revitalize and Strengthen the Bureau of Customs, Amending for the Purpose Certain Sections of the Tariff and Customs Code of the Philippines, As Amended*.

of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful.

Section 1801. *Abandonment, Kinds and Effect of.* – **An imported article is deemed abandoned under any of the following circumstances**:

a. When the owner, importer, consignee of the imported article expressly signifies in writing to the Collector of Customs his intention to abandon; or

b. **When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft**, or having filed such entry, fails to claim his importation within fifteen (15) days which shall not likewise be extendible, from the date of posting of the notice to claim such importation.

Any person who abandons an article or who fails to claim his importation as provided for in the preceding paragraph shall be deemed to have renounced all his interests and property rights therein.

Section 1802. *Abandonment of Imported Articles.* — **An abandoned article shall ipso facto be deemed the property of the Government and shall be disposed of in accordance with the provisions of this Code.**

x x x x x x x x x[15]

It is clear that, under the abovequoted provisions of Section 1301, in relation to Sections 1801 and 1802, when the importer fails to file the entry within the required 30-day period, he shall be deemed to have renounced all his interests and property rights to the importations, and these shall be considered impliedly abandoned in favor of the government.

From the wording of the above provisions of Section 1801, as amended by RA 7651, it was held in *Chevron* that the law "no longer requires that there be other acts or omissions where an intent to abandon can be inferred. It is enough that the importer

[15] Emphases ours.

fails to file the required import entries within the reglementary period. The lawmakers could have easily retained the words used in the old law (with respect to the intention to abandon) but opted to omit them. It would be error on our part to continue applying the old law despite the clear changes introduced by the amendment."[16]

From these pronouncements, it is clear that abandonment sets in once an importer fails to file the required import entry within the 30-day period provided by law after due notice of the arrival of its shipment (except in cases of knowledgeable owners or importers), without regard to any other act which may or may not have been committed by such importer with respect to the entry of and payment of duties of the imported articles.

The necessary consequence of such abandonment is the transfer of ownership of the imported articles in favor of the government. Thus, as quoted above, Section 1802 of the TCCP provides as follows:

> Section 1802. Abandonment of Imported Articles. **An abandoned article shall *ipso facto* be deemed the property of the Government** and shall be disposed of in accordance with the provisions of this Code.[17]

Chevron ruled that, "[n]o doubt, by using the term *ipso facto* in Section 1802 as amended by RA 7651, **the legislature removed the need for abandonment proceedings and for a declaration that the imported articles have been abandoned before ownership thereof can be transferred to the government**."[18]

It was also held in the same case that "[p]etitioner's failure to file the required entries within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constituted implied abandonment of its oil

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[16] *Supra* note 9, at 727.

[17] Emphasis ours.

[18] *Supra* note 9, at 735. (Emphasis ours)

importations. This means that from the precise moment that the non-extendible thirty-day period lapsed, the abandoned shipments were deemed, *ipso facto*, (that is, they became) the property of the government."[19]

The term *ipso facto* is defined as by the very act itself or by mere act. Probably a closer translation of the Latin term would be by the fact itself. **Thus, there was no need for any affirmative act on the part of the government with respect to the abandoned imported articles since the law itself provides that the abandoned articles shall *ipso facto* be deemed the property of the government.** Ownership over the abandoned importation was transferred to the government by operation of law under Section 1802 of the TCC[P], as amended by RA 7651. **Therefore, when petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government. Accordingly, it became liable for the total dutiable value of the shipments of [its] imported crude oi1.**[20]

It becomes apparent from the above discussions, that the issue of whether or not an importer is guilty of fraud in the filing of its import entry is immaterial insofar as its liability for the payment of the dutiable value of its abandoned importation is concerned. As applied to the present case, petitioner becomes liable to pay the dutiable value of its importation, regardless of whether or not it is guilty of fraud, especially since it consumed or used its imported crude oil despite losing ownership thereof. Thus, the CTA Former *En Banc* correctly held that:

> As regards the issue on the existence of fraud, it should be emphasized that fraud is not controlling in this case. Even in the absence of fraud, petitioner Shell is still liable for the payment of the dutiable value by operation of law. The liability of petitioner Shell for the payment of the dutiable value of its imported crude oil arose from the moment it appropriated for itself the said importation, which were already a property of the government by operation of

[19] *Id*. at 736-737.

[20] *Id*. at 733.

law. Absence of fraud in this case would not exclude petitioner Shell from the coverage of Sections 1810 and 1802 of the TCCP.[21]

The *ponencia* sustains petitioner's contention and rules that the provisions of Sections 1301, 1801 and 1802 of the TCCP should be read in relation to Section 1603 to make the whole statute wholly operative and effective. I agree that a statute must be read or construed as a whole or in its entirety and that all parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole.[22] However, it would be error to rely on petitioner's fallacious premise that, under Section 1603 of the TCCP, the government's right to claim abandonment and recover the dutiable value of the abandoned importation is dependent on whether or not it (petitioner) is guilty of fraud, and its subsequent position that, if it is not guilty of fraud, the government's right to claim abandonment will lapse after a period of one (1) year. How can the government's right to claim abandonment lapse if the government's ownership over the abandoned articles is already transferred to it by operation of law from the moment that petitioner failed to file its import entry within the non-extendible 30-day period? In other words, after the expiration of the 30-day period, the government, *ipso facto*, becomes the owner of the abandoned articles and, **being the owner, the government's exercise of its rights of ownership over the abandoned imported article, which includes the right to recover the value of such abandoned article, which was already consumed by the importer, is not conditioned upon any prior act or proceeding nor is it subject to the prescriptive period provided under Section 1603.**

Contrary to what has been stated in the *ponencia*, the government, in the present case, is not exercising its power to assess and collect taxes. What it exercises is its right of ownership over abandoned imported articles.

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[21] *Rollo*, pp.152-153.

[22] *Atty. Valera v. Office of the Ombudsman, et al.*, 570 Phil. 368, 390 (2008).

Petitioner's strained and stretched interpretation of Section 1603, as maintained by the *ponencia*, to the effect that it would preclude the government from exercising its right of ownership over the abandoned imported articles, would, in effect, render the provisions of Sections 1801 and 1802 nugatory. A careful reading of the provisions of Sections 1801 and 1802, as well as the Congressional deliberations on policy considerations[23] for the non-extendible 30-day period for the filing of the import entry in Section 1301, do not make any mention of nor reference to the provisions of Section 1603 as an exception to the application of the provisions of Sections 1801 and 1802. Particularly, the law does not make the absence of fraud on the part of the importer, nor questions or issues regarding the propriety of the importer's entry and settlement of duties, as factors which would prevent the government from subsequently considering the imported article as abandoned and of recovering its value in case the said article is consumed by the importer despite losing ownership thereof.

If the Court were to follow petitioner's interpretation, it would, in effect, impose an additional condition on the government's right to exercise its ownership over the abandoned imported article, a condition which is not provided by law.

Also, insofar as petitioner's liability for the payment of the dutiable value of its imported crude oil is concerned, the provisions of Section 1603 of the TCCP are not applicable. Aside from the reasons discussed above, it is observed that Section 1603 falls under Part V, Title IV of the TCCP which

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[23] As discussed in the *ponencia*, the following are the policy considerations in imposing the 30-day non-extendible period within which import entries must be filed: (a) to prevent considerable delay in the payment of duties and taxes; (b) **to compel importers to file import entries and claim their importation as early as possible under the threat of having their importation declared as abandoned and forfeited in favor of the government**; (c) to minimize the opportunity of graft; (d) to compel both the BOC and the importers to work for the early release of cargo, thus decongesting all ports of entry; (e) to facilitate the release of goods and thereby promoting trade and commerce; and (f) to minimize the pilferage of imported cargo at the ports of entry. (Emphasis ours)

is entitled "Liquidation of Duties." A cursory reading of the related Sections (1601, 1602 and 1604), which fall under this heading, would show that what becomes final and conclusive after the expiration of one (1) year from the final payment of duties is only the determination of the total amount and settlement as well as adjustment of duties, taxes, surcharges, wharfage, and/or other charges to be paid on entries. Nothing in the provisions under this heading excuses an importer from its liability to pay the dutiable value of the importation it consumed despite having abandoned the same in the eyes of the law.

Moreover, as discussed above, it would be grossly disadvantageous to the government if the Court were to follow petitioner's interpretation that, in the absence of fraud and after the lapse of one (1) year from the date of its payment of duties, the government is already precluded from recovering the dutiable value of the' subject imported crude oil which the government already owns by operation of law but which was, nonetheless, appropriated and consumed by petitioner.

To recapitulate, the ruling in *Chevron* is clear and simple. There, it was held that the petitioner's failure to file the required entries within a non-extendible period of thirty (30) days from date of discharge of the last package from the carrying vessel constituted implied abandonment of its oil importations, which means that from the precise moment that the non-extendible thirty-day period lapsed, the abandoned shipments became the property of the government. As a consequence, when the petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government and, thus, became liable for the total dutiable value of the shipments of imported crude oil, without regard to whether or not the importer was guilty of fraud in filing its import entries and in the settlement of its duties pertaining to such importation.

In addition, it is not amiss to point out that in *Chevron*, the Court ruled that the importer's liability to pay the total dutiable value of its shipments of imported crude oil should be reduced by the total amount of duties it had paid thereon. I submit that the same rule should be applied in the present case.

Finally, it is my opinion that this case should have been referred to the Court *en banc* as the ruling in this case runs contrary to the principle established in *Chevron*.

Accordingly, I vote to **DENY** the petition and **AFFIRM** the Decision dated May 13, 2010 and Resolution dated February 22, 2011 of the CTA Former *En Banc* in C.T.A. EB No. 472, subject to the modification that petitioner should be made to pay the total dutiable value of its shipment of imported crude oil reduced by the total amount of duties it had already paid to the government for such importation.

FIRST DIVISION

[G.R. No. 196256. December 5, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLY VALLAR, HERACLEO VALLAR, JR. (a.k.a. ORACLEO VALLAR, JR.) DANNY VALLAR, and EDGARDO MABELIN,** *accused,* **HERACLEO VALLAR, JR. (a.k.a. ORACLEO VALLAR, JR.),** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ACCORDED RESPECT.— We have held that that the factual findings of the trial court involving the credibility of witnesses are accorded respect especially when affirmed by the CA. This is clearly because the trial judge was the one who personally heard the accused and the witnesses and observed their demeanor, as well as the manner in which they testified during trial.

Accordingly, the trial court is in a better position to assess and weigh the evidence presented during trial. Here, the trial court and the CA gave full weight to the testimonies of the prosecution witnesses, and We find no compelling reason to disturb their assessment.

2. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; THE TERM HOMICIDE IS USED IN GENERIC SENSE WHICH EMBRACES NOT ONLY ACTS RESULTING IN DEATH BUT ALSO OTHER ACTS PRODUCING BODILY INJURY, HENCE, IT IS CHARACTERIZED AS SUCH REGARDLESS OF THE NUMBER OF HOMICIDES COMMITTED AND INJURIES INFLICTED.— We agree with the CA however, in its modification of the crime to robbery with homicide: Concerning the legal characterization of the crime, the Court finds that its proper designation is not robbery with homicide and frustrated homicide, as inaccurately labelled by the prosecution and unwittingly adopted by the trial court, but is simply one of robbery with homicide. It has been jurisprudentially settled that the term homicide in Article 294, paragraph 1, of the Revised Penal Code is to be used in its generic sense, to embrace not only acts that result in death, but all other acts producing any bodily injury short of death. It is thus characterized as such regardless of the number of homicides committed and the physical injuries inflicted.

3. ID.; ID.; ID.; CONSIDERING THE NUMBER OF MALEFACTORS AND THE KIND OF WEAPONS USED, AGGRAVATING CIRCUMSTANCE OF SUPERIOR STRENGTH WAS PROPERLY APPRECIATED; PENALTY.— [T]he CA properly appreciated the aggravating circumstance of superior strength, considering the number of malefactors and the kind of weapons used in facilitating the commission of the crime. Because the crime was attended by two aggravating circumstances, the appropriate penalty should be *reclusion perpetua* in lieu of death, pursuant to R.A. 9346.

4. ID.; ID.; ID.; CIVIL LIABILITY.— In robbery with homicide, civil indemnity and moral damages are awarded automatically without need of allegation and evidence other than the death of the victim owing to the crime. The CA was correct in granting these awards, except that for Pedrita, the amount that should

be granted is ₱100,000 in conformity with prevailing jurisprudence. Opiso, as a victim who suffered mortal or fatal wounds and could have died if not for timely medical intervention, is also entitled to civil indemnity and moral damages in the amount of ₱75,000. The CA further awarded exemplary damages in view of the two aggravating circumstances of disguise and abuse of superior strength. We, however, modify the amount that should be awarded from ₱25,000 to ₱100,000 for Pedrita, and ₱25,000 to ₱75,000 for Opiso. As for temperate damages, the CA awarded Pedrita and Opiso temperate damages in the amount of ₱25,000 in lieu of actual damages, it having been shown that she suffered some pecuniary losses, though its amount could not be proven with certainty. In line with prevailing jurisprudence, We increase Pedrita's award of temperate damages to ₱50,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

SERENO, *C.J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) affirming the Decision[2] of the Regional Trial Court (RTC) of Gingoog City, Branch 27. The RTC found appellant Oracleo Vallar, Jr. (Oracleo) guilty of the crime of robbery with homicide, attended by the aggravating circumstance of employment of disguise and abuse of superior strength.

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[1] *Rollo*, p. 5-23; the Decision dated 9 December 2010 issued by the Court of Appeals (Special) Twenty-Second Division in CA-G.R. CR-H.C. No. 00158-MIN was penned by Associate Justice Edgardo A. Camello, and concurred in by Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba.

[2] CA *rollo*, pp. 39-69; the Decision dated 30 July 2002 issued by Regional Trial Court of Gingoog City, Branch 27, in Criminal Cases No. 89-323 for robbery with homicide and frustrated homicide was penned by Presiding Judge Editho Lucagbo.

THE INFORMATION

Criminal Case No. 89-323

That on or about the 21st day of June 1989, at more or less 7:00 o'clock in the evening, at San Isidro, Malibud, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with high powered firearms and bladed weapon with which the accused were conveniently provided, did then and there wilfully, unlawfully and feloniously and by means of violence, with intent of gain and against the consent of the owner, take, steal and carry away cash money worth Fifteen Thousand (₱15,000.00) Pesos belonging to Eugracia Bagabaldo, to the damage and prejudice of the said owner in the aforementioned sum of ₱15,000.00, Philippine currency, and that on the occasion of said robbery, the said accused in pursuance of their conspiracy, did then and there unlawfully and feloniously with treachery and evident premeditation, taking advantage of their superior number and strength, treacherously attack assault, shoot and stab the person of Cipriano Opiso, thereby wounding him on the epigastric area penetrating abdominal cavity and other parts of his body, and perform all acts of execution which would have killed said Cipriano Opiso as a consequence thereof, but nevertheless did not produce it by reason of causes independent of the will of the accused that is because of the timely and able medical attendance given to Opiso which prevented his death, and also the said accused in pursuance of their conspiracy, did then and there unlawfully and feloniously with treachery and evident premeditation, taking advantage of their superior number and strength, treacherously attack, shoot, assault and violate the person of Eufracio Bagabaldo, without giving Bagabaldo the chance to defend himself, inflicting upon Bagabaldo gunshot wounds on the left auxiliary region, left side of the face and other parts of his body resulting to the instantaneous death of Eufracio Bagabaldo. That the offense was committed with the aggravating circumstances of nighttime, band, evident premeditation, use of disguise, taking advantage of treachery and superior strength to facilitate the commission of the crime.

Contrary to and in violation of Article 293 in relation to Article 294 and Article 14, paragraphs 6, 13, 14, 15 and 16 of the Revised Penal Code.[3]

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

EVIDENCE PRESENTED

According to the prosecution, the robbery incident occurred around seven o'clock in the evening of 21 June 1989. At the time, Cipriano Opiso (Opiso) was sitting on a bench alongside the store of Eufracio Bagabaldo (Eufracio), when the following persons arrived, all wearing masks: Willy Vallar (Willy), Danny Vallar (Danny), Oracleo and Edgardo Mabelin (Edgardo).[4] Willy pointed his M14 rifle to the left side of the body of Opiso and said, "Don't move because this is a robbery." The latter managed to stand up, hold the muzzle of the gun and raise it upward, after which it exploded hitting the top of his head. Opiso continued to grapple for possession of the rifle and, in the process, unmasked Willy.[5] Suddenly, accused Oracleo moved toward Opiso and stabbed the latter in the stomach. Willy pushed Opiso, who fell to the bench, pleading "Do not kill me because I will die with this wound already."[6] Willy and Danny left Opiso and proceeded into the store. Edgardo and Oracleo remained on the roadside and served as lookouts.[7]

Once inside, Danny and Willy pointed their weapons at the spouses Eufracio and Pedrita Bagabaldo. Danny fired his pistol into the air and declared, "Money, this is a robbery." Unnoticed by the accused, Oscar Omac (Omac), the Bagabaldos' household helper, hid beside a table, from which he witnessed the entire incident. Meanwhile, Pedrita begged for their lives and placed ₱15,000 cash on the table upon which Danny put the cash inside a bag. Unsatisfied, he demanded for more money, but Pedrita explained that it was the only amount left.[8] Thereafter, he and Willy held Eufracio by his shirt collar and dragged him outside the store. Pedrita ran to the kitchen to hide.[9]

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[4] *Id.* at 41.

[5] *Rollo*, p. 7.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 8.

Meanwhile, Opiso was crawling towards the residence of Eufracio for safety when he heard two gunshots.[10] Pedrita,[11] Omac,[12] and a neighbour—Paterio Denoso (Denoso)—also heard the gunshots.[13] Denoso immediately went out to check what happened. On the way, he heard footsteps so he hid himself behind tall grasses. From his position, he recognized Willy and three other persons. After the four left, Denoso continued towards the Bagabaldo residence and found Eufracio lying on the ground dead.[14] The latter's remains were then brought inside the house, while Opiso was rushed to the hospital.[15]

The post-mortem report prepared by the medico-legal officer of Gingoog City revealed that Eufracio sustained a gunshot wound in the brain. Meanwhile, the medical examination of Opiso showed that the victim sustained a two-centimeter stab wound that penetrated his abdominal cavity and would have caused his death if not for the timely medical treatment.[16]

During trial, Opiso claimed that though the other accused wore masks, he was able to recognize their identity because he had known them personally for twenty years from the time that they were still students.[17] Omac testified that he clearly saw Willy's face; recognized Danny based on his stature, voice and mannerism; and was very familiar with the Vallar brothers, because they were residents of Malibud.[18] Meanwhile, Candelaria Solijon testified that on the day of the incident, at around six o'clock in the afternoon, she saw the four accused walking together.[19]

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[10] CA *rollo*, p. 42.

[11] *Rollo*, p. 8.

[12] CA *rollo*, p. 47.

[13] *Id*. at 43.

[14] *Id*. at 43-44.

[15] *Rollo*, p. 8.

[16] *Id*.

[17] CA *rollo*, p. 42.

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

[19] *Id*. at 42-43.

For his defense, Willy denied commiting the crime and claimed that he was working as a farmer at the time of the incident.[20] Danny also denied any involvement, explaining that he was with his family inside their house at that time.[21] Meanwhile, Edgardo testified that during the date and time of the incident, he was in Cagayan de Oro City busy tending the farmland owned by one Oscar Ramos.[22]

Oracleo likewise invoked the defenses of denial and alibi, averring that he was at the Gingoog City Junior College attending his classes, at around 5:30 and 7:30p.m on the date of the incident. He further asserted that after his last class on that day, he accompanied his girlfriend-classmate to her residence in Recurro, Gingoog City, and even met another classmate named Cecilia Bitangcor (Bitangcor) on the way. He further alleged that after conducting his girlfriend to her house, he proceeded to his residence at Lapak, Gingoog City. To corroborate his story, he presented his teacher Sheila Daapong (Daapong) who claimed that Oracleo attended both classes and even took the quizzes scheduled at 5:30 to 6:30 and at 6:30 to 7:30p.m. Bitangcor also testified that she met Oracleo and his girlfriend at around eight o'clock on the date of the incident on Motoomull Street, Gingoog City.[23]

THE RTC RULING

In a Decision dated 20 July 2002, the RTC found Willy, Danny, Oracleo, and Edgardo guilty of the crime of robbery with homicide and frustrated homicide attended by the aggravating circumstance of employment of disguise and commission of the crime by a band.[24] Appellants were sentenced to suffer the penalty of *reclusion perpetua* and to indemnify

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[20] *Id.* at 51.

[21] *Id.*

[22] *Rollo,* p. 9.

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

[24] CA *rollo,* p. 68.

the offended parties—Pedrita in the amounts of ₱100,000 as moral damages and ₱50,000 as compensatory damages; and to Opiso the amount of ₱50,000 for actual expenses and ₱30,000 for moral damages.[25] With respect to Willy who had already died, his criminal liability was deemed extinguished pursuant to Article 89, par. 1 of the Revised Penal Code.[26]

The trial court gave no credence to the defenses of denial and alibi proffered by the accused. The RTC reiterated the time-honored principle that the defense of alibi cannot prevail over the positive declaration of witnesses who have convincingly identified the accused as the perpetrators of the crime charged.[27] In particular, with regard to Oracleo's defense, the RTC observed that the testimony of Daapong was vague, as she admitted that there were errors in her class record and that, at times, she did not check attendance in her classes. Furthermore, none of Oracleo's classmates were presented to prove his allegation, except Bitangcor who was absent from class that evening.[28] The RTC further noted that the accused Willy, Danny, Oracleo, and Edgar were charged with robbery in Criminal Case No. 89-395.[29] In sum, the trial court concluded that the prosecution was able to prove their guilt, and that the offense was attended by the aggravating circumstance of employment of disguise and commission of the crime by a band.[30] Thereafter, Edgar and Oracleo elevated their conviction to the CA.

THE CA RULING

The CA rendered a Decision[31] modifying that of the RTC. The appellate court found accused-appellants guilty of the crime

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[25] *Id*. at 69.

[26] *Id*.

[27] *Id*. at 67.

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

[29] *Id*. at 67.

[30] *Id*. at 68.

[31] *Supra* note 1.

of robbery with homicide only, attended by the aggravating circumstances of employment of disguise and abuse of superior strength. The award of ₱50,000 compensatory damages was deleted; and instead, both accused-appellants were ordered to pay each of the offended parties ₱25,000 as temperate damages. The moral damages awarded to Pedrita were reduced from ₱100,000 to ₱50,000. Accused-appellants were further ordered to pay civil indemnity to Pedrita in the amount of ₱50,000, as well as exemplary damages to each of the offended parties in the amount of ₱25,000, plus costs of the suit.[32]

The CA was convinced that the prosecution witnesses, specifically Opiso, had positively identified accused-appellants Oracleo and Edgardo as among the four perpetrators of the crime.[33] As for the defense, the CA ruled that the two accused-appellants had failed to prove that it was physically impossible for them to have been at or near the scene of the crime.[34]

Appellant perfected his appeal to this Court with the timely filing of a Notice of Appeal. He and the Solicitor General separately manifested that they would adopt their respective briefs filed before the CA as their supplemental briefs.

ISSUE

Whether there is proof beyond reasonable doubt that appellant is guilty of the crime of robbery with homicide, attended by the aggravating circumstances of employment of disguise and abuse of superior strength.

OUR RULING

We deny the appeal.

There is no merit in the contentions that the testimonies on the exact participation of accused-appellant were inconclusive and unreliable.[35] A judicious review of the records shows that

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[32] *Id.* at 22-23.

[33] *Id.* at 11.

[34] *Id.* at 17-19.

[35] CA *rollo*, p. 166.

the testimonies of the prosecution witnesses—especially Opiso—were clear, categorical and straightforward. While it is true that none of the prosecution witnesses directly saw the face of accused-appellant, Opiso positively identified him because of the latter's utmost familiarity with appellant's physical build and bodily actions. Opiso had personally known the four accused for about 20 years, because they were residents of the same *barangay,* and they used to buy from the store.[36]

Further, there is no merit in the contention of appellant that the testimony of his teacher substantially corroborated his defense that he was attending class at the time of the incident.[37] We quote with approval the CA's conclusions:

> Appellant Oracleo apparently failed to establish the requisite physical impossibility of his having been at the *locus* and *tempus* of the crime's commission. The *locus criminis* was merely five (5) kilometres away from Gingoog City proper—the place where appellant claims he was when the crime was committed. It must be noted that several public utility jeepneys and private motorcycles are plying the route. Besides, the Barangay of San Isidro, Malibud, Gingoog City could be reached in only about thirty (3) minutes from the City proper.
>
> Furthermore, Sheila Daapong's testimony to the effect that appellant Oracleo continuously attended her classes on June 21, 1989 from 5:30 p.m. to 7:30 p.m. cannot be heavily relied upon inasmuch as she herself admitted that she was not checking the attendance of her students in class. And even assuming that Oracleo indeed took the quizzes she gave in her two classes, it was not concretely proven that appellant stayed in school for the whole period from 5:30 p.m. to 7:30 p.m. As a matter of fact, Ms. Daapong even declared that her students could very well finish the examinations in thirty (30) minutes. Given these circumstances, it is highly probable that appellant had finished the examinations in the second subject and left the class before 7:00p.m.
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> Similarly futile is the testimony of Ma. Cecilia Bitangcor that she met Oracleo and his girlfriend-classmate, Merlin Lupoy at J. Motoomull Street, Gingoog City, at around 8:00 o'clock in the evening of June

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[36] TSN, dated 4 December 1989, pp. 20-21; *rollo,* p. 12.

[37] CA *rollo,* p. 165.

21, 1989. Ms. Bitangcor's testimony could not concretely support appellant's defense of alibi as the robbery-shooting incident happened at around 7:00 o'clock in the evening. Appellant failed to establish his physical impossibility of being at the crime scene an hour before his alleged meeting with Ms. Bitangor at J. Motoomull Street, Gingoog City.[38]

Time and again, We have held that that the factual findings of the trial court involving the credibility of witnesses are accorded respect especially when affirmed by the CA.[39] This is clearly because the trial judge was the one who personally heard the accused and the witnesses and observed their demeanor, as well as the manner in which they testified during trial. Accordingly, the trial court is in a better position to assess and weigh the evidence presented during trial.[40] Here, the trial court and the CA gave full weight to the testimonies of the prosecution witnesses, and We find no compelling reason to disturb their assessment.

Appellant was properly convicted of robbery with homicide

We agree with the CA however, its modification of the crime to robbery with homicide.

Concerning the legal characterization of the crime, the Court finds that its proper designation is not robbery with homicide and frustrated homicide, as inaccurately labelled by the prosecution and unwittingly adopted by the trial court, but is simply one of robbery with homicide. It has been jurisprudentially settled that the term homicide in Article 294, paragraph 1, of the Revised Penal Code is to be used in its generic sense, to embrace not only acts that result in death, but all other acts producing any bodily injury short of death. It is thus characterized as such regardless of the number of homicides committed and the physical injuries inflicted.[41]

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[38] *Rollo*, pp. 17-18.

[39] *People v. Ramos*, 715 Phil. 193-210 (2013).

[40] *People v. Maningding*, 673 Phil. 443-459 (2011), citing *People v. Gabrino*, 660 Phil. 485-504 (2011).

[41] *Rollo*, pp. 19-20.

We also agree with the CA when it corrected the trial court's appreciation of the aggravating circumstances present at that time. While both lower courts properly appreciated the aggravating circumstance of employment of disguise, the commission of a crime by a band was not established because only Willy, Danny and Oracleo were proven to have carried arms.[42] Nevertheless, the CA properly appreciated the aggravating circumstance of superior strength, considering the number of malefactors and the kind of weapons used in facilitating the commission of the crime. Because the crime was attended by two aggravating circumstances, the appropriate penalty should be *reclusion perpetua*[43] in lieu of death, pursuant to R.A. 9346.[44]

Civil Aspect of the Case

In robbery with homicide, civil indemnity and moral damages are awarded automatically without need of allegation and evidence other than the death of the victim owing to the crime.[45] The CA was correct in granting these awards, except that for Pedrita, the amount that should be granted is ₱100,000 in conformity with prevailing jurisprudence.[46] Opiso, as a victim who suffered mortal or fatal wounds and could have died if not for timely medical intervention, is also entitled to civil indemnity and moral damages in the amount of ₱75,000.[47]

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[42] REVISED PENAL CODE, Article 296. *Definition of a band and penalty incurred by members thereof.* – When more than three armed malefactors take part in the commission of the robbery, it shall be deemed to have been committed by a band. xxx

[43] REVISED PENAL CODE, Articles 294 (1) and 63.

[44] Also known as, "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[45] *People v. Villamor*, G.R. No. 202705, 13 January 2016.

[46] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

[47] *Id*.

The CA further awarded exemplary damages in view of the two aggravating circumstances of disguise and abuse of superior strength. We, however, modify the amount that should be awarded from ₱25,000 to ₱100,000 for Pedrita, and ₱25,000 to ₱75,000 for Opiso. As for temperate damages, the CA awarded Pedrita and Opiso temperate damages in the amount of ₱25,000 in lieu of actual damages, it having been shown that she suffered some pecuniary losses, though its amount could not be proven with certainty. In line with prevailing jurisprudence, We increase Pedrita's award of temperate damages to ₱50,000.[48]

WHEREFORE, the Petition is **DENIED**. The CA Decision dated 9 December 2010 in CA-G.R. CR-H.C. No. 00158-MIN convicting appellant Heracleo Vallar, Jr. (a.k.a. Oracleo Vallar, Jr.) of the crime of robbery with homicide is **AFFIRMED with MODIFICATIONS**. For *Pedrita Bagabaldo*: (a) civil indemnity and moral damages are increased from ₱50,000 to ₱100,000, respectively; (b) exemplary damages are also increased from ₱25,000 to ₱100,000; and (c) temperate damages are likewise increased from ₱25,000 to ₱50,000. For *Cipriano Opiso*: (a) he is granted civil indemnity in the amount of ₱75,000; (b) moral damages are increased from ₱30,000 to ₱75,000; and (c) exemplary damages are increased from ₱25,000 to ₱75,000.

SO ORDERED.

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

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[48] *Id*.

THIRD DIVISION

[G.R. No. 201017. December 5, 2016]

MAJESTIC PLUS HOLDING INTERNATIONAL, INC., *petitioner, vs.* **BULLION INVESTMENT AND DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 215289. December 5, 2016]

MAJESTIC PLUS HOLDING INTERNATIONAL, INC., *petitioner, vs.* **BULLION INVESTMENT AND DEVELOPMENT CORPORATION, GENESSON U. TECSON, ROLAND M. LAUTCHANG, WILSON CHUNBON CHENG KOA, LUIS K. LOKIN, JR., JEFFERSON U. TECSON and ROSALINE C. CHING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; SPECIAL COMMERCIAL COURTS ARE STILL CONSIDERED COURTS OF GENERAL JURISDICTION.— [I]t should be noted that Special Commercial Courts (SCCs) are still considered courts of general jurisdiction. Section 5.2 of R.A. No. 8799, otherwise known as *The Securities Regulation Code*, directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

2. ID.; SUMMARY JUDGMENT; DEFINED AND EXPLAINED.— Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits. Summary judgments are proper when, upon motion of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a genuine issue as to any material fact and that one party is entitled to a judgment as a matter of law. **But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.**

3. ID.; ID.; EVEN IF BOTH PARTIES MOVED FOR A SUMMARY JUDGMENT, THE COURT CANNOT ISSUE SAID JUDGMENT WITHOUT CONDUCTING A HEARING TO DETERMINE IF THERE ARE INDEED NO GENUINE ISSUES OF FACT THAT WOULD NECESSITATE TRIAL.— In the present case, it is true that both parties moved for the rendition of a summary judgment. However, it is apparent that the RTC did not comply with the procedural guidelines when it ordered that the case be submitted for summary judgment without first conducting a hearing to determine if there are indeed no genuine issues of fact that would necessitate trial. The trial court merely required the parties to submit their respective memoranda, together with their affidavits and exhibits and, although the parties presented opposing claims, the RTC hastily rendered a summary judgment. Thus, the trial court erred in cursorily issuing the said judgment.

4. ID.; ID.; SUMMARY JUDGMENT, NOT PROPER IN CASE AT BAR; DIAMETRICALLY OPPOSED AND CONFLICTING CLAIMS OF THE PARTIES PRESENT A FACTUAL DISPUTE WHICH CAN BE RESOLVED AND SETTLED ONLY BY MEANS OF EVIDENCE DURING TRIAL.— [T]he case at bar may not, even by the most liberal or strained interpretation, be considered as one not involving genuine issues of fact which necessitates presentation of evidence to determine which of the two conflicting assertions is correct. A careful examination of the pleadings will show that Majestic's

causes of action in its Complaint are anchored on Bullion's supposed violations of the provision of the subject MOA. On the other hand, Majestic's allegations are controverted by Bullion who, in a like manner, asserts that by virtue of Majestic's failure to comply with the provisions of the said MOA, it decided to rescind the same. These diametrically opposed and conflicting claims present a factual dispute which can be resolved and settled only by means of evidence presented during trial. The documents and memorandum submitted by the parties all the more show that the facts pleaded are disputed or contested. It is true that the main document from which the parties base their claims and defenses is the same MOA and that the issue submitted for resolution before the RTC is which of the parties complied with or violated the provisions of the said MOA. However, arising from this main issue are conflicting allegations coming from both parties. In turn, these allegations tender genuine issues of fact necessitating the presentation of evidence, thus, precluding the rendition of a summary judgment. Certainly, the issue as to who violated the subject MOA, thus, raised by the parties and formulated by the RTC in its Amended Pre-Trial Order, as well as the particular matters as to whether or not the said MOA has been validly rescinded and whether or not Majestic has, in fact, incurred ₱134,522,803.22 in completing the construction of and in maintaining the operation of the Meisic Mall, are issues which may not be categorized as frivolous and sham so as to dispense with the presentation of evidence in a formal trial.

5. CIVIL LAW; CONTRACTS; RESCISSION; WHERE BOTH PARTIES ALLEGED THAT THE OTHER VIOLATED THE AGREEMENT, THE ISSUE OF RESCISSION NECESSITATES JUDICIAL INTERVENTION.— It is a settled rule that extrajudicial rescission has a legal effect where the other party does not oppose it. Where it is objected to, a judicial determination of the issue is still necessary. Thus, considering Majestic's strong opposition to Bullion's rescission of the MOA, and since both parties allege that the other had violated the MOA, the Court agrees with the CA that the issue of rescission necessitates judicial intervention which entails examination by the trial court of evidence presented by the parties in a full-blown trial.

APPEARANCES OF COUNSEL

De Sagun Law Office for Majestic Plus Holding, Int'l, Inc.
Ponce Enrile Reyes & Manalastas for Bullion Investment and Dev't. Corporation.

D E C I S I O N

PERALTA, *J.*:

Before the Court are two (2) consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court.

In G.R. No. 201017, petitioner Majestic Plus Holdings International, Inc. (*Majestic*) seeks to nullify the Decision[1] dated November 2, 2011 and the Resolution[2] dated March 14, 2012, respectively, of the Court of Appeals (*CA*) in CA-G.R. SP No. 121072.

In G.R. No. 215289, Majestic prays for the reversal and setting aside of the Decision[3] dated October 23, 2013 and the Resolution[4] dated November 4, 2014, respectively, of the CA in CA-G.R. CV No. 97537.

The factual and procedural antecedents follow.

In a Resolution passed on August 14, 2001, the City Council of Manila authorized its Mayor to enter into a contract with any reputable corporation for the long term lease and development of a 4,808.40-square-meter non-income generating property of the City located within the vicinity of Felipe II, Reina Regente and General La Chambre Streets in Binondo, Manila. Pursuant to such

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[1] Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro, concurring, *rollo* (G.R. No. 201017), pp. 58-82.

[2] *Id.* at 84-87.

[3] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba, concurring, *rollo* (G.R. No. 215289), pp. 52-69.

[4] *Id.* at 71-74.

authority, the Office of the City Mayor issued an Invitation to Pre-qualify and Bid for the said development project. Subsequently, herein respondent company, Bullion Investment and Development Corporation (*Bullion*) participated and won in the bidding.

Thus, on June 30, 2003, the City of Manila, through then City Mayor Joselito Atienza, and Bullion, represented by its President Roland Lautachang, entered into a Contract[5] for the lease of the said property for a period of twenty-five (25) years. Under the Contract, Bullion, as lessee, agreed to construct two 4-storey buildings, one of which shall be used as an extension office of the Manila City Hall for its institutional services, while the other shall be used for commercial purposes.

Bullion then commenced construction and was able to finish and turn over the City Hall extension building to the Manila City Government. However, Bullion was unable to finish the construction of the commercial building. Bullion then sought the help of and was able to convince petitioner corporation, Majestic Plus Holding International, Incorporation (*Majestic*), to invest in Bullion's business venture, particularly the completion of the construction of its commercial building which was intended to be used as a mall (*Meisic Mall*).

On September 7, 2004, Bullion, represented by its President, entered into a Memorandum of Agreement[6] (*MOA*) with Majestic, which was represented by one Dionisio N. Yao. Pertinent portions of the MOA read, thus:

> **1. SUBJECT MATTER**
> **MAJESTIC** agrees to acquire 80% equity interest in **BULLION**, subject to the following terms and conditions, and the completion of the construction of the subject MALL by both parties.
>
> **2. CONSIDERATION**
> 2.1. **MAJESTIC** and **BULLION** agree that the present shareholdings and assets of **BULLION** shall be valued at

[5] Records, Vol. I, pp. 22-30.

[6] *Id*. at 31-37.

ONE HUNDRED TWENTY MILLION PESOS (Php120,000,000.00).

2.2. It is expressly agreed that the 80% equity interest to be acquired by **MAJESTIC** shall correspond to NINETY-SIX MILLION PESOS (PhP96,000,000.00), payable by **MAJESTIC** under the following Terms of Payment provided in the succeeding section.

2.3 **MAJESTIC** agrees to infuse additional capital to cover the expenditure for the completion of the construction of the MALL.

3. TERMS OF PAYMENT

The 80% equity interest, corresponding to NINETY-SIX MILLION PESOS (Php96,000,000.00), shall be payable by **MAJESTIC** to the existing stockholders of **BULLION** as follows:

3.1 Upon execution of this MOA, **MAJESTIC** shall pay THIRTY-FIVE MILLION PESOS (Php35,000,000.00).

3.2 The balance of SIXTY-ONE MILLION PESOS (Php61,000,000.00) shall be payable as follows:

3.2.1. TEN MILLION PESOS (Php10,000,000.00) within 75 days from the execution of this MOA;
3.2.2. SIX MILLION PESOS (Php6,000,000.00) payable 30 days thereafter;
3.2.3. SIX MILLION PESOS (Php6,000,000.00) payable 30 days after 3.2.2;
3.2.4. SIX MILLION PESOS (Php6,000,000.00) payable 30 days after 3.2.3;
3.2.5. SIX MILLION PESOS (Php6,000,000.00) payable 30 days after 3.2.4;
3.2.6. ELEVEN MILLION PESOS (Php11,000,000.00) payable 30 days after 3.2.5;
3.2.7. EIGHT MILLION PESOS (Php8,000,000.00) payable 30 days after 3.2.6;
3.2.8. EIGHT MILLION PESOS (Php8,000,000.00) payable within two (2) years from the execution of this MOA.

3.3 The above payments shall all be covered by post-dated checks to be issued by **MAJESTIC** in favor of **BULLION and/or Bingson U. Tecson**, duly-authorized representative of existing stockholders.

4. TRANSFER OF SHARES

4.1. The shares representing the 30% equity of **BULLION** shall be ceded and transferred to **MAJESTIC** only upon full payment of the amount of THIRTY-FIVE MILLION PESOS (Php35,000,000.00), pursuant to Sec. 3.1.

4.2. Additional shares representing the 10% equity of **BULLION** shall be assigned and transferred to **MAJESTIC** upon payment of the additional amount of TEN MILLION PESOS (Php10,000,000.00) based on Sec. 3.2.1

4.3. Upon payment of the additional amount of TWENTY-FOUR MILLION PESOS (Php24,000,000.00) based on Secs. 3.2.2, 3.2.3, 3.2.4 and 3.2.5, additional shareholdings representing 20% equity of **BULLION** shall be assigned and transferred to **MAJESTIC**.

4.4. The parties undertake to execute the necessary documents for the transfer of additional shares corresponding to another 20% upon receipt of the full payment of the EIGHTY-EIGHT MILLION PESOS (Php88,000,000.00).

4.5. **BULLION** shall provide and/or furnish **MAJESTIC** copies of all corporate records, such as but not limited to [the] Article of Incorporation, By-laws, Financial Statements, General Information Sheets, Board Resolutions, etc.

5. CAPITAL INFUSION

5.1. The **MAJESTIC** shall infuse additional capital to cover the construction cost for the full completion of the MALL. The additional funding for the construction cost and completion of the MALL shall be converted to increased equity for **MAJESTIC**.

5.2. **BULLION and MAJESTIC** agree to amend the Authorized Capital Stock of BULLION from the existing THIRTY MILLION PESOS (Php30,000,000.00) to at least TWO HUNDRED MILLION PESOS (Php200,000,000.00) to reflect the actual capital investments of the parties and for the construction and completion of the MALL.

5.3. In the event of any capital call and infusion, existing **BULLION** stockholders shall have the option to maintain their 20% percent equity. In case any stockholder waives his option to subscribe to any additional capital call or infusion, the other stockholders shall be given the option to subscribe to the remaining unpaid subscription rights offering.

6. ACCELERATION CLAUSE

6.1. **MAJESTIC** shall have the option to accelerate the Terms of Payment under Sec. 3 in order to expedite the implementation of Sec. 4.

6.2. In the event that **MAJESTIC** fails to pay, despite written demands, at least two (2) installment dues within the period provided in this MOA, the full balance of the amount unpaid shall become immediately due and demandable.

7. DEFAULT

7.1. Should **MAJESTIC** default in the payment of at least two (2) installment dues under this contract, **BULLION**, at its sole option may elect to rescind the contract in which event only half of the total amount paid by **MAJESTIC** shall be refunded to it without need of demand. **MAJESTIC** shall be considered in default upon its failure to pay the full amount of the outstanding obligation within fifteen (15) days from written demand of **BULLION**.

7.2 In the event **BULLION** elects to rescind the contract under this provision, it shall serve a written notice of the rescission to **MAJESTIC**.

7.3. In the event **BULLION** fails to comply with any of its undertaking under this contract, a written demand shall likewise be made giving it 15 days to comply. Upon failure to do so, **MAJESTIC** shall serve a written notice of rescission to **BULLION**. All sums paid by **MAJESTIC** shall be refunded to it after written demand.

7.4. In the event that any of the parties should be compelled to seek judicial relief against any of the parties, the aggrieved parties shall pay an amount equivalent to 10% of the total amount claimed as attorney's fees, plus cost of litigation and other expenses.

8. MANAGEMENT

Upon payment of Php35,000,000.00 by MAJESTIC, a joint management committee shall be created and convened by the Board of Directors that will oversee the construction and operation of the MALL for a period of six (6) months.

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[7] *Id*. at 32-35.

Following the execution of the MOA, Majestic issued five (5) checks, on various dates, for an aggregate amount of Fifty-Seven Million Pesos (₱57,000,000.00) in favor of Bullion, as partial payment of the 80% equity interest in the latter. Bullion acknowledged such payment. However, it alleged that an additional four (4) checks, representing a total amount of ₱31,000,000.00, which were subsequently issued by Majestic were dishonored because of "Stop Payment" orders.[8] As a result, Bullion sent letters to Majestic demanding payment in full of the latter's outstanding obligations, otherwise the former would be constrained to rescind the MOA.[9] For Majestic's failure to heed Bullion's demands, the latter sent another letter to the former, dated June 24, 2005, informing it that Bullion had elected to rescind the MOA.[10]

Meanwhile, Majestic took over the supervision and eventually finished the construction of the Meisic Mall, except with respect to some minor installations. Based on the Summary of Payments,[11] attached to its complaint, Majestic claims that, aside from the ₱57,000,000.00 it had earlier paid to Bullion, it also incurred expenses for the purpose of sustaining the construction of Meisic Mall and the acquisition of various equipment for use inside the mall in the sum of One Hundred Thirty-Four Million Five Hundred Twenty-Two Thousand Eight Hundred Three Pesos and Twenty-Two Centavos (₱134,522,803.22).[12] Thus, the aggregate amount alleged to have been invested by Majestic is ₱191,522,803.22.

With the completion of major construction works and the installation of the aforementioned equipment, the Meisic Mall became operational as early as May 2005. Majestic conducted business therein by renting out the mall's leasable spaces to

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[8] See Defendants' Answer, records, Vol. I, pp. 182-184; pp. 197-200.

[9] Records, Vol. I, pp. 201-204.

[10] *Id.* at 205-206.

[11] *Id.* at 41-44.

[12] See Complaint, records, *id.* at 13-14.

stallholders and by employing personnel for the security, maintenance and upkeep of the mall's premises.[13]

However, in the morning of June 25, 2005, respondent, aided by several police personnel and security guards, entered the premises and took physical possession and control of Meisic Mall.

This prompted Majestic to file a Complaint[14] for Specific Performance, Injunction and Damages with a Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction against Bullion, together with several other persons. Majestic alleged that it has become a majority shareholder of Bullion by reason of its ₱191,522,803.22 investment, which comprises 95.76% of the agreed ₱200,000,000.00 authorized capital stock of Bullion. Majestic also claims that the subject MOA remains valid and binding and that Bullion failed to comply with its undertakings thereunder.

In its Answer,[15] Bullion denied the material allegations of Majestic's complaint alleging the defense that it was the latter which, in fact, violated the provisions of the MOA causing Bullion to rescind the said agreement.

Initially, the instant case was treated as an intra-corporate dispute and raffled to Branch 24 of the Regional Trial Court (*RTC*) of Manila, a commercial court, wherein several Orders were issued against Bullion, and eventually, a Decision[16] dated October 12, 2005 was rendered in favor of Majestic. Bullion assailed the RTC Orders via a special civil action for *certiorari* filed with the CA, docketed as CA-G.R. SP No. 91886, while respondent's stockholders filed an appeal of the RTC Decision, docketed as CA-G.R. CV No. 86167. These two (2) actions were subsequently consolidated by the CA and in its Decision,[17]

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[13] Records, Vol. 1, pp. 9 and 14.

[14] *Id*. at 1-19.

[15] *Id*. at 176-196.

[16] Records, Vol. II, pp. 18-23.

[17] Records, Vol. III, pp. 12-37.

promulgated on February 19, 2008, via a special division of five, unanimously set aside the Decision of the commercial court and remanded the case to Branch 24, RTC of Manila to be tried as an ordinary specific performance case. However, on Majestic's motion, the presiding judge of Branch 24 subsequently inhibited himself from the case[18] prompting the executive judge to assign the same to Branch 46, RTC of Manila which is also a commercial court.[19] The parties did not question the jurisdiction of Branch 46.

In the ensuing proceedings before Branch 46, the parties jointly moved that the case be submitted for summary judgment, to which the RTC acceded.[20]

On July 28, 2011, Branch 46, RTC of Manila rendered a Decision[21] in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Majestic Plus Holding International, Inc. and against the herein defendants, ordering the latter to:
>
> 1. Strictly comply and implement in full the terms and conditions of the Memorandum of Agreement, more particularly the acquisition of 80% shareholdings of defendant Bullion by plaintiff Majestic;
> 2. Issue the shares of stock of defendant Bullion in favor of plaintiff Majestic corresponding to 40% which has long been paid by plaintiff Majestic and record the same in its Stock and Transfer Book;
> 3. Maintain/restore plaintiff Majestic in the physical possession and control of the entire Meisic Mall premises;
> 4. Transfer the remaining shares of stock in the name of plaintiff Majestic up to the extent of 80% shareholdings

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[18] See RTC Order dated June 15, 2010**,** *id*. at 120.

[19] See RTC Order dated June 21, 2010, *id*. at 123.

[20] See Amended Pre-Trial Order dated July 18, 2011, *id*. at 340.

[21] Records, Vol. III, pp. 468-478.

upon payment of the balance of ₱39,000,000.00 and to record the same in the Stock and Transfer Book;

5. Furnish/provide plaintiff Majestic within reasonable time all of defendant Bullion's corporate records;

6. Immediately cause the amendment of the authorized capital stock of defendant Bullion from ₱30,000,000.00 to ₱200,000,000.00 and reflect the increased equity of plaintiff Majestic brought about by the expenses it incurred to complete the Meisic Mall; and

7. Pay the cost of this suit.

The counterclaims of the herein defendants are dismissed for lack of merit.

SO ORDERED.[22]

Bullion and its directors appealed the above RTC Decision with the CA.[23]

On August 22, 2011, Majestic filed a Motion for Execution Pending Appeal[24] which was granted by the RTC by virtue of a Special Order[25] and two other related orders,[26] all dated September 1, 2011. Consequently, a Writ of Execution Pending Appeal[27] on even date was issued. Per Sheriff's Return dated September 2, 2011, the Writ was served on Bullion and was thereby immediately implemented.[28] In accordance with the Writ, the Sheriff was able to completely and successfully remove the physical possession and control of Meisic Mall from Bullion and deliver the same to Majestic.[29]

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[22] *Id*. at 477-478.

[23] *Id*. at 489 and 495.

[24] *Id*. at 479-488.

[25] *Id*. at 513-514.

[26] *Id*. at 515-516.

[27] *Id*. at 517-518.

[28] *Id*. at 519-520.

[29] *Id*.

In view thereof, Bullion filed a Petition for *Certiorari*[30] before the CA seeking the nullification of the: (1) Special Order granting the Motion for Execution Pending Appeal; (2) Order granting police assistance to the implementing Sheriff; (3) Order granting the appointment of a Special Sheriff; and (4) Writ of Execution Pending Appeal. Bullion also prayed for the issuance of a Temporary Restraining Order and Mandatory Injunction.

In its Decision[31] dated November 2, 2011, the CA granted the aforesaid Petition and annulled and set aside the Special Order and the two (2) other assailed Orders, all dated September 1, 2011, the dispositive portion of which states:

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The assailed Special Order and the two (2) other Orders, all dated 02 September 2011 rendered by the public respondent judge are **ANNULLED** and **SET ASIDE**. Any and all acts committed in pursuance of the said Orders are necessarily **NULLIFIED**.

Accordingly, let a writ of final prohibitory and mandatory injunction issue, as follows:

1. The public and private respondents, together with all persons acting for and in their behalf are **ENJOINED** from proceeding with the implementation of the public respondent's Decision dated 28 July 2011 in Civil Case No. 05-113352 entitled, "Majestic Plus Holding International, Inc. vs. Bullion Investment and Development Corporation, Genesson U. Tecson, Roland M. Lautchang, Wilson Chun Bon Cheng Koa, Luis K. Lokin, Jr., Jefferson U. Tecson and Rosalie C. Ching," as well as the writ of execution pending appeal dated 01 September 2011; and

2. The public and private respondents, and all persons acting for and in their behalf, are **ORDERED** to **RESTORE** the possession and control of the Meisic Mall to petitioner in the same situation and condition immediately before the Decision dated 28 July 2011 in Civil Case No. 05-113352 aforecited.

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[30] *Rollo* (G.R. No. 201017), pp. 259-275.

[31] *Id*. at 58-82.

SO ORDERED.[32]

The CA basically ruled that the RTC committed grave abuse of discretion in granting Majestic's motion for execution pending appeal since the "good reasons" required by Rule 39 of the Rules of Court are found to be absent in the instant case.

On November 14, 2011, Majestic filed a Motion for Reconsideration with the CA, which was denied in its Resolution[33] dated March 14, 2012. Thus, the filing of the present petition by Majestic, docketed as G.R. No. 201017, raising the following grounds:

A.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT RULED THAT THE REQUISITE FILING OF A MOTION FOR RECONSIDERATION WOULD ONLY DELAY THE URGENT NECESSITY TO RESOLVE THE TEMPORARY RESTRAINING ORDER AS CONTAINED IN THE PETITION ITSELF.

B.

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ACCEPTED A HIGHLY DEFECTIVE VERIFICATION AND CERTIFICATION AS WELL AS SECRETARY'S CERTIFICATE SUBMITTED BY BULLION.

C.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN DISREGARDING THE UNDISPUTED FACT THAT BULLION'S PETITION FOR CERTIORARI PRESENTS ISSUES/ MATTERS THAT ARE PROPER AND ALSO THE SUBJECT OF THE APPEAL INTERPOSED BY BULLION.

D.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT STRUCK DOWN THE "GOOD REASONS" AS FOUND BY THE TRIAL COURT.

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[32] *Id.* at 81-82. (Emphasis in the original)

[33] *Id.* at 84-87.

E.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING THE RESTORATION OF THE POSSESSION AND CONTROL OF THE MEISIC MALL TO BULLION.[34]

During the pendency of G.R. No. 201017, the CA promulgated its Decision[35] on Bullion's appeal of the July 28, 2011 Decision of the RTC. The CA essentially ruled that since there are genuine issues of fact in the present case which require the presentation of evidence, the RTC should have proceeded to conduct a full-blown trial and should have refrained from issuing a summary judgment. Hence, the assailed CA Decision disposed as follows:

WHEREFORE, the appealed July 28, 2011 Decision of the Regional Trial Court of Manila, Branch 46, National Capital Judicial Region is hereby **REVERSED AND SET ASIDE**.

Accordingly, the portion of the Decision directing defendant-appellant Bullion Investment and Development Corporation to maintain/restore plaintiff Majestic in the physical possession and control of the entire Meisic Mall premises is declared to be of no force and effect. The right of defendant-appellant Bullion Investment and Development Corporation to physically possess, manage and control the Meisic Mall, now known as 11/88 Mall, is recognized. As to the other aspects of the case, let this case be **REMANDED** to the RTC of Manila, to be re-raffled to a regular court and not to a special commercial court, for further proceedings and proper disposition, according to regular procedure.

SO ORDERED.[36]

Aggrieved by the CA Decision, Majestic comes to this Court via the instant petition, docketed as G.R. No. 215289, on the following grounds:

I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT BRANCH 46 OF MANILA.

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[34] *Id*. at 26.

[35] *Rollo* (G.R. No. 215289), pp. 52-69.

[36] *Id*. at 67-68. (Emphasis in the original)

II. THE REGIONAL TRIAL COURT BRANCH 46 OF MANILA HAS JURISDICTION OVER THE CASE.

III. THE REGIONAL TRIAL COURT BRANCH 46 OF MANILA DID NOT EXCEED JURISDICTION.

IV. THE REGIONAL TRIAL COURT BRANCH 46 OF MANILA DID NOT ERR IN GRANTING MAJESTIC CLAIMS AND DISMISSING DEFENDANTS-APPELLANTS' COUNTER-CLAIM.

V. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DENIED MAJESTIC'S MOTION FOR RECONSIDERATION.[37]

In a Resolution[38] dated January 28, 2015, this Court resolved to consolidate G.R. No. 201017 and 215289.

The petitions lack merit.

At the outset, it behooves this Court to determine the issue of whether or not the RTC, Branch 46 of Manila has jurisdiction over the subject matter of the instant case. In its Comment in G.R. No. 215289, Bullion contends that neither Branch 24 nor Branch 46 of the RTC of Manila has jurisdiction over the suit for specific performance filed by Majestic. Bullion argues that having been designated as special commercial courts, the jurisdiction of Branches 24 and 46 is limited to trying and deciding special commercial cases only. On the other hand, Majestic counters that the designation of RTCs as special commercial courts has not, in any way, limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

As a basic premise, the Court reiterates the principle that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction.[39] Jurisdiction over the subject matter of a case

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[37] *Id*. at 22.

[38] *Rollo* (G.R. No. 201017), p. 313.

[39] *Concorde Condominium, Inc., etc., et al. v. Augusto H. Baculio,* G.R. No. 203678, February 17, 2016; *Gonzales, et al. v. GJH Land, Inc., et al.*, G.R. No. 202664, November 10, 2015.

is conferred by law, whereas a court's exercise of jurisdiction, unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Supreme Court.[40] The matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction.[41]

Moreover, it should be noted that Special Commercial Courts (SCCs) are still considered courts of general jurisdiction.[42] Section 5.2[43] of R.A. No. 8799, otherwise known as *The Securities Regulation Code*, directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter.[44] Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs.[45] The RTC exercising

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[40] *Id*.

[41] *Id*.

[42] *G.D. Express Worldwide, N.V., et al. v. Court of Appeals (4th Dvision), et al.*, 605 Phil. 406, 418 (2009); *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation, et al.*, 649 Phil. 669, 687 (2010); *Concorde Condominium, Inc., etc., et al. v. Augusto H. Baculio, supra* note 39.

[43] 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

[44] *G.D. Express Worldwide, N.V., et al. v. Court of Appeals (4th Dvision), et al., supra* note 42, at 419.

[45] *Id*.

jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.[46]

Stated differently, in the ruling case of *Gonzales, et al. v. GJH Land, Inc., et al.*,[47] this Court held that:

> x x x the fact that a particular branch x x x has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the imprimatur of statutory law, *i.e.*, Batas Pambansa Bilang (BP) 129. To restate, the designation of Special Commercial Courts was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's **exercise of jurisdiction.** This designation was not made by statute but only by an internal Supreme Court rule under its authority to promulgate rules governing matters of procedure and its constitutional mandate to supervise the administration of all courts and the personnel thereof. Certainly, an internal rule promulgated by the Court cannot go beyond the commanding statute. But as a more fundamental reason, the designation of Special Commercial Courts is, to stress, merely an incident related to the court's exercise of jurisdiction, which, as first discussed, is distinct from the concept of jurisdiction over the subject matter. The RTC's general jurisdiction over ordinary civil cases is therefore not abdicated by an internal rule streamlining court procedure.[48]

Hence, based on the foregoing, it is clear that Branch 46, RTC of Manila, despite being designated as an SCC, has jurisdiction to hear and decide Majestic's suit for specific performance.

Having disposed of the question of jurisdiction, the Court will now proceed to delve into the merits of the present petitions.

There are two basic issues posed in these two petitions. First is the correctness of the July 28, 2011 Decision of the RTC via summary judgment. Second is the propriety of ordering the

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[46] *Id.*

[47] *Supra* note 39.

[48] *Id*.

execution of such Decision pending appeal. In turn, the Court notes that both these issues hinge on the preliminary determination of whether or not the RTC was correct in considering the case appropriate for summary judgment. The Court will, thus, follow the course taken by the CA and proceed to determine first if it was proper for the RTC to render its assailed summary judgment.

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays.[49] Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits.[50] Summary judgments are proper when, upon motion of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a genuine issue as to any material fact and that one party is entitled to a judgment as a matter of law.[51] **But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment.**[52] **Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.**[53]

In *Calubaquib, et al. v. Republic of the Philippines*,[54] this Court had the occasion to discuss the nature of a summary judgment and to reiterate the conditions that should be met before it can be resorted to, to wit:

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[49] *Spouses Villuga v. Kelly Hardware and Construction Supply, Inc.*, 691 Phil. 353, 364 (2012).

[50] *YKR Corporation, et al. v. Philippine Agri-Business Center Corporation*, G.R. No. 191838, October 20, 2014, 738 SCRA 577, 598.

[51] *Spouses Soller v. Heirs of Jeremias Ulayao*, 691 Phil. 348, 351 (2012), citing *Calubaquib, et al. v. Republic of the Philippines*, 667 Phil. 653, 661 (2011).

[52] *YKR Corporation, et al. v. Philippine Agri-Business Center Corporation, supra* note 50. (Emphasis ours)

[53] *Id.* (Emphasis ours)

[54] *Supra* note 51.

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An examination of the Rules will readily show that a summary judgment is by no means a hasty one. It assumes a scrutiny of facts in a summary hearing after the filing of a motion for summary judgment by one party supported by affidavits, depositions, admissions, or other documents, with notice upon the adverse party who may file an opposition to the motion supported also by affidavits, depositions, or other documents x x x. **In spite of its expediting character, relief by summary judgment can only be allowed after compliance with the minimum requirement of vigilance by the court in a summary hearing considering that this remedy is in derogation of a party's right to a plenary trial of his case.** At any rate, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.

As mentioned above, a summary judgment is permitted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The test of the propriety of rendering summary judgments is the existence of a genuine issue of fact, as distinguished from a sham, fictitious, contrived or false claim. A factual issue raised by a party is considered as sham when by its nature it is evident that it cannot be proven or it is such that the party tendering the same has neither any sincere intention nor adequate evidence to prove it. This usually happens in denials made by defendants merely for the sake of having an issue and thereby gaining delay, taking advantage of the fact that their answers are not under oath anyway.

In determining the genuineness of the issues, and hence the propriety of rendering a summary judgment, the court is obliged to carefully study and appraise, not the tenor or contents of the pleadings, but the facts alleged under oath by the parties and/or their witnesses in the affidavits that they submitted with the motion and the corresponding opposition. Thus, it is held that, even if the pleadings on their face appear to raise issues, a summary judgment is proper so long as "the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine."

The filing of a motion and the conduct of a hearing on the motion are, therefore, important because these enable the court

to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action. The non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment.[55]

In the present case, it is true that both parties moved for the rendition of a summary judgment.[56] However, it is apparent that the RTC did not comply with the procedural guidelines when it ordered that the case be submitted for summary judgment without first conducting a hearing to determine if there are indeed no genuine issues of fact that would necessitate trial. The trial court merely required the parties to submit their respective memoranda, together with their affidavits and exhibits and, although the parties presented opposing claims, the RTC hastily rendered a summary judgment. Thus, the trial court erred in cursorily issuing the said judgment.

Undoubtedly, the case at bar may not, even by the most liberal or strained interpretation, be considered as one not involving genuine issues of fact which necessitates presentation of evidence to determine which of the two conflicting assertions is correct. A careful examination of the pleadings will show that Majestic's causes of action in its Complaint are anchored on Bullion's supposed violations of the provision of the subject MOA. On the other hand, Majestic's allegations are controverted by Bullion who, in a like manner, asserts that by virtue of Majestic's failure to comply with the provisions of the said MOA, it decided to rescind the same. These diametrically opposed and conflicting claims present a factual dispute which can be resolved and settled only by means of evidence presented during trial. The documents and memorandum submitted by the parties all the more show that

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[55] *Calubaquib, et al. v. Republic of the Philippines, id.* at 661-663, citing *Viajar v. Estenzo*, 178 Phil. 561, 572-573 (1979). (Emphases supplied; citations omitted)

[56] See RTC Order dated June 23, 2011, records, Vol. III, p. 267.

the facts pleaded are disputed or contested. It is true that the main document from which the parties base their claims and defenses is the same MOA and that the issue submitted for resolution before the RTC is which of the parties complied with or violated the provisions of the said MOA. However, arising from this main issue are conflicting allegations coming from both parties. In turn, these allegations tender genuine issues of fact necessitating the presentation of evidence, thus, precluding the rendition of a summary judgment. Certainly, the issue as to who violated the subject MOA, thus, raised by the parties and formulated by the RTC in its Amended Pre-Trial Order, as well as the particular matters as to whether or not the said MOA has been validly rescinded and whether or not Majestic has, in fact, incurred ₱134,522,803.22 in completing the construction of and in maintaining the operation of the Meisic Mall, are issues which may not be categorized as frivolous and sham so as to dispense with the presentation of evidence in a formal trial.

As to the issue of rescission of the subject MOA, Bullion contends that it rescinded the MOA because Majestic failed to pay several installments of its obligations which are due thereunder, which failure gives Bullion the right to rescind the same. On the other hand, Majestic opposes the rescission insisting that the MOA remains valid and binding for Bullion's failure to comply with the conditions of a valid rescission as set under the MOA. Majestic likewise argues that it was, in fact, Bullion which violated the provisions of the MOA. It is a settled rule that extrajudicial rescission has a legal effect where the other party does not oppose it.[57] Where it is objected to, a judicial determination of the issue is still necessary.[58] Thus, considering Majestic's strong opposition to Bullion's rescission of the MOA, and since both parties allege that the other had violated the MOA, the Court agrees with the CA that the issue of rescission

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[57] *Subic Bay Metropolitan Authority, et al. v. Universal International Group of Taiwan, et al.*, 394 Phil. 691, 711 (2000); *Palay, Inc., et al. v. Clave, et al.*, 209 Phil. 523, 530 (1983).

[58] *Id.*

necessitates judicial intervention which entails examination by the trial court of evidence presented by the parties in a full-blown trial.

Also, the Court finds no error in the ruling of the CA that the aggregate sum of ₱134,522,803.22 alleged by Majestic as expenses it incurred in completing the construction of the Meisic Mall, as well as in the acquisition of equipment and facilities used therein, is yet to be substantiated by competent proof. The only evidence presented by Majestic to support its claims is an Affidavit[59] executed by the Finance Comptroller of its allied corporation, accompanied by a summary of Payments Made to Meisic Mall.[60] Majestic has yet to present receipts or other competent documentary evidence to prove the said payments. Moreover, these claims were specifically denied by Bullion in its Answer to the Complaint. In view of such denial, Majestic's claims are, thus, subject to confirmation and validation by proof during trial proper.

Moreover, in a Special Division composed of five (5) Justices, the CA in its February 19, 2008 Decision, which remanded the case to the RTC to be tried as an ordinary specific performance case, held that Majestic's Complaint raises many factual issues which, while refuted by Bullion's Answer, would still have to be disproved by evidence in further proceedings.[61] Also, in its presently assailed Decision dated November 2, 2011, another Division of the CA, which annulled the RTC Order granting Majestic's motion for execution pending appeal, expressed misgivings with respect to the trial court's disposition of the case by ratiocinating in this wise:

> What is more, the Court is mystified [perplexed?] on how the public respondent judge came to rule as to the actions sought to be implemented or enforced in the assailed Orders. Of course, the Court is aware that the entry of private respondents shareholdings in the stock and transfer books, the amendment of value of its investments

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[59] Records, Vol. III, p. 387.

[60] *Id*. at 388-391.

[61] See records, Vol. III, p. 36.

and the award of physical possession of the Meisic Mall, are all contained in the dispositive portion of the lower court's Decision. However, it appears in the very same Decision that the proceedings before the public respondent are summary in nature and that the sole issue which the parties agreed upon is who between these parties violated the Memorandum of Agreement. Nothing more, nothing less.[62]

Furthermore, a perusal of the records of the case would show that Majestic itself is not totally convinced that the case is, indeed, ripe for summary judgment. In its Motion for Reconsideration of the May 13, 2010 Order of the RTC of Manila, which initially dismissed its Complaint on the ground of lack of cause of action, Majestic argued for the need of a full-blown trial to thresh out the parties' conflicting claims, to wit:

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As regard[s] defendant Bullion's alleged non commission of any act or omission in violation of [Majestic's] rights and the failure of the latter to comply with its obligations, these are in no doubt, evidentiary matters which have yet to be established in a full blown trial. As the records would show, the case has not even reached the pre-trial hearing and therefore, it becomes too premature for the Honorable Court to make a definite ruling on the alleged lack of cause of action.

Indeed, unless the parties have presented their respective evidence in chief, any findings on the alleged lack of cause of action will be highly premature and speculative at best.[63]

In granting Majestic's Motion for Reconsideration, the RTC agreed with Majestic's above-quoted argument and ruled, thus:

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A perusal of the complaint hypothetically admitting all the facts and allegations in the subject complaint [shows that] there [are] sufficient factual averments where this Court can render valid judgments. Essentially, these causes of action raise many factual issues traversing on the Memorandum of Agreement and the obligation of

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[62] *Rollo* (G.R. No. 201017), p. 76.

[63] Records, Vol. III, p. 115.

the defendant[s] to the plaintiff which indeed have to be disproved by the defendants in a full blown trial as this was refuted in the Answer. Even the comment in the motion for reconsideration establishing the circumstances involving the rescission of the Memorandum of Agreement are clear factual matters which should be proved and threshed out in a full blown trial.[64]

On the basis of the foregoing, it is clear that the RTC erred in rendering its assailed summary judgment. Thus, the CA did not commit error in setting aside the said summary judgment.

In view of this Court's affirmance of the CA ruling which reversed and set aside the July 28, 2011 Decision of the RTC, there is no longer any RTC judgment that may be executed. Hence, the issue as to whether or not there are "good reasons" to execute the assailed Decision of the RTC has become moot and academic. This is in accordance with our ruling in *Osmeña III v. Social Security System of the Philippines*,[65] where we defined a moot and academic case or issue as follows:

> 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 " save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.[66]

Consequently, this Court no longer finds any need to discuss and resolve the other issues raised in G.R. No. 201017.

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[64] See RTC Order dated January 11, 2011; *id*. at 146.

[65] 559 Phil. 723 (2007).

[66] *Osmena III v. Social Security System of the Philippines, supra,* at 735, citing *Governor Mandanas v. Honorable Romulo*, 473 Phil. 806 (2004); *Olanolan v. Comelec*, 494 Phil. 749, 759 (2005); *Paloma v. Court of Appeals*, 461 Phil. 269, 276-277 (2003). (Citations omitted)

As to who between the parties has the right of possession, control and operation of the Meisic Mall, suffice it to say that the Court agrees with the disquisition of the CA in its October 23, 2013 Decision in CA-G.R. CV No. 97537, which sustains the restoration of possession and control of the Meisic Mall in favor of Bullion, to wit:

> Basic is the rule in corporation law that the business and affairs of a corporation [are] handled by a Board of Directors and not the controlling stockholder. All corporate powers are exercised, all business conducted and all properties controlled by the Board of Directors. Hence, [even granting that] Majestic has become the controlling stockholder of the Bullion x x x by itself alone, it cannot have the physical possession and operate the business of the Meisic Mall.[67]

Finally, the Court agrees with the ruling of the CA which ordered the remand of the case to the RTC of Manila to be re-raffled to a non-commercial court for further proceedings and proper disposition.

WHEREFORE, the instant petitions are **DENIED**. The November 2, 2011 Decision and March 14, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 121072 are **AFFIRMED**. The October 23, 2013 Decision and November 4, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 97537 are, likewise, **AFFIRMED**. The Executive Judge of the Regional Trial Court of Manila is hereby **ORDERED** to **PROMPTLY RE-RAFFLE** the case among the non-commercial courts with a directive that the same be resolved with deliberate dispatch.

SO ORDERED.

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

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[67] *Rollo* (G.R. No. 215289), p. 67.

[*] Designated Additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated December 5, 2016.

THIRD DIVISION

[G.R. No. 204014. December 5, 2016]

PHILIPPINE STOCK EXCHANGE, INC., *petitioner, vs.* **ANTONIO K. LITONJUA**[1] **and AURELIO K. LITONJUA, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONSENT; AS A REQUISITE FOR A VALID CONTRACT, CONSENT IS MANIFESTED BY THE MEETING OF THE OFFER AND THE ACCEPTANCE UPON THE THING AND THE CAUSE WHICH ARE TO CONSTITUTE THE CONTRACT; IN CORPORATIONS, CONSENT IS MANIFESTED THROUGH A BOARD RESOLUTION SINCE POWERS ARE EXERCISED THROUGH THE BOARD OF DIRECTORS.— According to Article 1305 of the Civil Code, "a contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or render some service." For a contract to be binding: there must be consent of the contracting parties; the subject matter of the contract must be certain; and the cause of the obligation must be established. Consent, as a requisite to have a valid contract, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and acceptance absolute. A qualified acceptance constitutes a counter offer. In corporations, consent is manifested through a board resolution since powers are exercised through x x x [the] board of directors. The mandate of Section 23 of the Corporation Code is clear that unless otherwise provided in the Code, "the corporate powers of all corporations shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees..." Further, as a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies

[1] Respondent Antonio K. Litonjua died on 1 April 2012 and is now represented by Antonio Patrick A. Litonjua.

and is responsible for the efficiency of management. As a general rule, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. This is so because a corporation is a juridical person, separate and distinct from its stockholders and members, having powers, attributes and properties expressly authorized by law or incident to its existence.

2. ID.; ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; REQUISITES.— There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. Applying law and jurisprudence, the principle of unjust enrichment requires PSE to return the money it had received at the expense of the Litonjua Group since it benefited from the use of it without any valid justification.

3. ID.; ID.; OBLIGATIONS AND CONTRACTS; ESTOPPEL; WHEN PRESENT.— Estoppel has its roots in equity. It is a response to the demands of moral right and natural justice. For estoppel to exist, it is indispensable that there be a declaration, act or omission by the party who is sought to be bound. It is equally a requisite that he, who would claim the benefits of such a principle, must have altered his position, having been so intentionally and deliberately led to comport himself; thus, by what was declared or what was done or failed to be done.

4. ID.; ID.; ID.; DAMAGES; EXEMPLARY DAMAGES; CANNOT BE RECOVERED AS A MATTER OF RIGHT AND THE COURT WILL DECIDE WHETHER OR NOT THEY SHOULD BE ADJUDICATED.— In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated. While the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before

the court may consider the question of whether or not exemplary damages should be awarded.

5. ID.; ID.; ID.; ID.; LEGAL INTEREST; THE INTEREST RATE FOR LOAN OR FORBEARANCE OF MONEY, GOODS OR CREDITS AND THE RATE ALLOWED IN JUDGMENTS, IN THE ABSENCE OF AN EXPRESS CONTRACT AS TO SUCH RATE OF INTEREST, SHALL BE SIX PERCENT *PER ANNUM*, PURSUANT TO CIRCULAR NO. 799 OF THE MONETARY BOARD OF THE *BANGKO SENTRAL NG PILIPINAS*.— Pursuant to Circular No. 799 of Monetary Board of the *Bangko Sentral ng Pilipinas* dated 21 June 2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum*. Therefore, the rate of interest imposed [by] the trial court in its judgment, as affirmed by the ruling of the CA, will be at 12% interest *per annum* from 30 July 2006 to 30 June 2013 and 6% interest *per annum* [from] 1 July 2013 until full satisfaction.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for petitioner.
Benedict A. Litonjua for respondents.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by the Philippine Stock Exchange, Inc. (PSE) seeking to annul the 23 May 2012 Decision[2] and 17 October 2012 Resolution[3] of the Court of Appeals (CA) upholding the 22 February 2010 Decision[4] of the Pasig City Regional Trial Court (RTC), Branch

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[2] Penned by Associate Justice Danton Q. Bueser with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring; *rollo*, pp. 65-84.

[3] CA *rollo*, p. 327.

[4] RTC Decision; records, pp. 693-702.

154, granting the claim for refund of Antonio K. Litonjua and Aurelio K. Litonjua, Jr. (Litonjua Group).[5]

Antecedent Facts

On 20 April 1999, the Litonjua Group wrote a letter-agreement to Trendline Securities, Inc. (Trendline) through its President Priscilla D. Zapanta (Zapanta), confirming a previous agreement for the acquisition of the 85% majority equity of Trendline's membership seat in PSE, a domestic stock corporation licensed by the Securities and Exchange Commission (SEC) to engage in the business of operating a market for the buying and selling of securities.[6] The salient features of the agreement are as follow:

1. The sale of majority equity Membership/Seat equivalent to eighty-five percent (85%) of the value, to Antonio and Aurelio K. Litonjua, Jr., and/or assignees and immediate members of their family (Litonjua Group). The balance of the fifteen percent (15%) equity to be retained by you and/or immediate members of your family;

2. The aggregate price for the Membership/Seat is Twenty-three million Pesos (₱23,000,000.00) broken down as follows:

a. Litonjua Group	- 85% equity	₱19,555,000.00
b. Zapanta	- 15% equity	₱ 3,445,000.00
Total Equity:		₱23,000,000.00

3. Terms of Payment

   1. On account of the outstanding claims of the Philippine Stock Exchange (PSE), the Litonjua Group is willing to pay in advance direct to PSE the present claims of ₱18,547,643.81 with the following conditions:

   a. That the amount of ₱18,547,643.81 is the entire obligation of Trendline Securities Inc., *i.e.* as full

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[5] During the cross-examination, Antonio K. Litonjua testified that the Litonjua Group is composed of his brothers Aurelio and Aurelio, Jr and sons Patrick and Benedict, all surnamed Litonjua, p. 22, Cross, 25 November 2008.

[6] Exhibit "A", records, pp. 8-9.

settlement of all claims and outstanding obligations including interest;

b. Upon acceptance of payment and approval of PSE board, PSE will lift the suspension and allow the Litonjua Group to resume the normal trading operation of the Membership/Seat;

c. That PSE will agree and accept nominations of our assignee for the Membership/Seat subject to PSE rules, regulations and criteria for accepting a new member or nominee;

d. That should the new membership be organized, PSE will approve and register the new member subject to rules, regulations and criteria for accepting a new member corporations.

2. The balance of ₱1,007,356.19 will be paid after incorporation of the new company to which the membership/seat will be transferred.

The letter was conformed to by Zapanta for and on behalf of Trendline.[7]

In a letter-confirmation dated 21 April 1999, the Litonjua Group undertook to pay the amount of ₱18,547,643.81 directly to PSE within three working days upon confirmation that it will be for the full settlement of all claims and outstanding obligations including interest of Trendline to lift its membership suspension and the resumption to normal trading operation. Further in the letter, Trendline was obligated to secure the approval and written confirmation of PSE for a new corporation to be incorporated that will own a seat.[8]

On 26 April 1999, Trendline, in compliance with the conditions set forth in the 20 April 1999 letter-agreement, advised PSE of the salient terms and conditions imposed upon it for the acquisition of the membership/seat.[9]

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[7] Exhibit "A-2", *id.* at 9.

[8] Exhibit "L", *id.* at 367.

[9] Annex E; records, p. 60.

On 29 April 1999, the PSE, through Atty. Ruben L. Almadro (Atty. Almadro), Vice-President for Compliance and Surveillance Department, sent a letter[10] to Trendline advising the latter that the Business Conduct and Ethics Committee (BCEC) of PSE has resolved to accept the amount of ₱19,000,000.00 as full and final settlement of its outstanding obligations to be paid not later than 13 May 1999, broken down as follows:

Unpaid PSE Advances to Clearing House	₱15,918,744.14
Compromise Fines/Penalties	3,081,255.86
	₱19,000,000.00

Trendline was further advised that failure to pay the said amount by 13 May 1999 will result to collection in full of imposable fines/penalties and enforcement of payment by selling its seat at public auction.

On 3 May 1999, Trendline sent a reply-letter to PSE acknowledging its receipt of the 29 April 1999 letter and its assurance that the Litonjua Group will comply with the terms of the agreement.[11]

In compliance, the Litonjua Group in a letter dated 12 May 1999, delivered to PSE through Atty. Almadro three check payments,[12] all dated 13 May 1999 and payable to PSE, totaling to an amount of ₱19,000,000.00 broken down as follow:

Bank	Check No.	Amount
1. Metro Bank	0127631	₱ 1,700,000.00
2. Standard Chartered	0000062	₱ 1,350,000.00
2. Standard Chartered	0000064	₱ 15,950,000.00
		₱ 19,000,000.00

The letter, as conformed to by Trendline, indicated that the above payment represents the advance payment of the Litonjua

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[10] Exhibit "B", *id.* at 10.

[11] Exhibit "O", *id.* at 371; see also p. 65.

[12] Annexes "C-1"; "C-2" and "C-3", *id.* at 12.

Group for the acquisition of the seat/membership with the PSE and as full settlement of the outstanding obligation of Trendline.[13]

The letter and checks were received by the PSE from Trendline on 13 May 1999 as evidenced by Official Receipt Number 42264. It bore an annotation that the checks were received as an advance payment for full settlement of Trendline's outstanding obligation to PSE.[14]

Trendline, on its part, also sent a letter dated 13 May 1999 advising PSE of the payment of penalties and interest and reactivation of its suspension to seat/membership. Further, PSE was informed that Zapanta had already resigned as Trendline's nominee and in lieu of the position, nominate Aurelio K. Litonjua, Jr. as the new nominee to the seat/membership.[15]

Despite several exchange of letters of conformity and delivery of checks representing payment of full settlement of Trendline's obligations, PSE failed to lift the suspension imposed on Trendline's seat.[16]

On 30 July 2006, the Litonjua Group, through a letter, requested PSE to reimburse the ₱19,000,000.00 it had paid with interest, upon knowledge that the specific performance by PSE of transferring the membership seat under the agreement will no longer be possible.[17]

PSE, however, refused to refund the claimed amount as without any legal basis. As a result, the Litonjua Group on 10 October 2006 filed a Complaint for Collection of Sum of Money with Damages against PSE before the RTC of Pasig City.[18]

PSE presented its version of the facts.

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[13] Annex "C", *id.* at 11 and 369.

[14] Exhibit "D", *id.* at 13.

[15] Exhibit "F", *id.* at 364.

[16] Exhibit "E", *id.* at 14-15

[17] *Id.*

[18] Complaint; *id.* at 1-7.

Prior to its re-organization in 2001, PSE was organized as a non-stock corporation with 200 members, one of which was Trendline. As a member, Trendline owns a trading seat with a right to conduct trading activities in the PSE.[19]

During the course of its trading activities, Trendline violated some PSE rules in trading and failed to pay its cash settlement payables to the Securities Clearing Corporation of the Philippines in the amount of ₱113.7 Million. As a result, PSE was compelled to assume Trendline's obligation. PSE, in turn, suspended Trendline's trading privileges.[20]

On 30 October 1998, Zapanta negotiated for an extension period until 31 July 1999 to settle its obligations with PSE. In reply, BCEC advised Trendline that it has until 31 March 1999 to settle its obligations to the PSE.[21]

Prior to the expiration of the deadline, Trendline and the Litonjua Group were already negotiating for the purchase of the former's membership/seat. Accordingly, a letter-agreement dated 20 April 1999 was issued by the Group providing for the terms of acquisition, without, however, securing the consent of PSE for approval. This letter-agreement, was confirmed by Trendline through the approval of Zapanta.[22]

On 12 May 1999, PSE received three checks amounting to ₱19,000,000.00 for the full settlement of Trendline's outstanding obligation. Trendline, and not the Litonjua Group, was the one indicated as the payor of the obligation.[23]

On 26 August 1999, PSE's Compliance and Surveillance Group (CSG) discovered during a follow-up audit that Trendline had a considerable amount of shortfalls and outstanding obligations to its clients, in addition to its unsettled and unliquidated accounts.[24]

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[19] Petition for Review on *Certiorari; rollo*, p. 12.

[20] *Id.*

[21] *Id.*

[22] *Id.* at pp.12-13.

[23] p. 14.

[24] Answer *Ad Cautelam*; records, p. 123.

Despite the outstanding obligations due to PSE, Zapanta, on 1 March 2004, requested the PSE's Compliance and Surveillance Group, for an audit of accounts preparatory to the issuance of clearance to transfer their corporate membership seat to the Litonjua Group.[25]

Granting the request, the CSG on 8 March 2004 conducted a special audit of Trendline's books and records. It was then confirmed that Trendline was not financially liquid to settle all its outstanding obligations to its clients.[26]

On 3 January 2006, Atty. Sixto Jose C. Antonio (Atty. Antonio) sent a letter to PSE informing the latter that Trendline has filed for a petition for corporate rehabilitation before the Regional Trial Court of Manila and that he has been appointed by the court as the rehabilitation receiver.[27]

In reply, PSE in a letter dated 6 February 2006 informed Atty. Antonio that 85% of Trendline's membership seat is being claimed by the Litonjua Group. Further, PSE enumerated the names of individuals who have a pending claims against Trendline totaling to ₱19,600,000.[28]

On 30 July 2006, PSE received a demand letter from the Litonjua Group requesting for a reimbursement of its paid ₱19,000,000.00 with interest reckoned from 13 May 1999.

Declining reimbursement, PSE in its Answer *Ad Cautelam* raised primarily that it received the amount not from the Litonjua Group but from Trendline as a settlement of its obligation. It insisted that the cause of action of the Litonjua Group is against Trendline and not the exchange, the latter being a non-party to the letter agreement.[29]

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[25] *Id.* at 148.

[26] Answer *Ad Cautelam*; *id.* at 123-124.

[27] *Id.* at 151.

[28] Answer; *id.* at 154.

[29] Answer *Ad Cautelam*; *id.* at 121-143.

After conclusion of trial, the trial court rendered a decision granting that the Litonjua Group is entitled to claim a refund from PSE. The dispositive portions reads:

> WHEREFORE, premises considered, decision is rendered in favor of the plaintiffs and against the defendant PSE ordering the defendant PSE to pay the plaintiffs the amount of:
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> (1) [₱]19,000,000.00 plus interest thereon at 12% per annum from July 30, 2006;
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> (2) Exemplary damages in the amount of [₱]1,000,000.00;
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> (3) Attorney's fees in the amount of [₱]100,000.00, and
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> (4) Cost of suit.[30]

The decision is anchored on the principle of *solutio indebiti* as defined in Article No. 2154 of the New Civil Code. *If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.*[31]

The trial court clarified that Litonjua's cause of action is not founded on the 20 April 1999 letter-agreement but on the mistake on the part of the Litonjua Group when it delivered the ₱19,000,000.00 to PSE on the notion that amount was for the consideration of the trading seat of Trendline. PSE's insistence that it was not a privy to the letter-agreement only bolstered the fact that it was devoid of any right to receive the payment.[32]

In addition to the refund, legal interest was likewise imposed from the date of demand reckoned from 30 July 2006 at twelve percent (12%) *per annum*. Also, exemplary damages were imposed due to the continuous refusal of PSE to refund the ₱19,000,000.00 despite the fact that it received the amount without any right to receive it. Such conduct of PSE was

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[30] RTC Decision; *id.* at 701.

[31] *Id.* at 698 and 699, Records.

[32] *Id.* at 699-700.

characterized by the trial court as wanton, oppressive and malevolent in nature as defined under Article 2232[33] of the New Civil Code justifying the award of exemplary damages. Finally, attorney's fees were awarded in view of the grant of exemplary damages and to the fact that the Litonjua Group was forced to litigate in court to assert its right.[34]

Aggrieved, PSE filed an appeal before the CA alleging errors on the part of the trial court when it ruled that (1) the cause of action of the Litonjua Group is based on quasi-contract; (2) in not finding that the party liable for refund is Trendline pursuant to Article 1236[35] of the New Civil Code; and lastly, in granting the award of exemplary damages.

On 23 May 2012, the CA affirmed, in the result, the challenged decision of the trial court. The appellate court principally relied on the principle of constructive trust instead of *solutio indebiti* as an appropriate remedy against the unjust enrichment of PSE. It was held that:

> We strongly believe that if we will not allow the recovery of the amount of Nineteen Million Pesos (₱19,000,000.00), there will be unjust enrichment on the part of the PSE. This We cannot tolerate[;] thus, the application here of the principles of the law on trust. In particular, constructive trust which is a class of implied trust.
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> A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it.
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[33] **Art. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.**

[34] *Id.* at p. 701.

[35] **Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.**

Certainly, constructive trust is the formula through which the conscience of equity finds expression x x x. Applying the same in the instant case, as the money involved here – which amounts to millions — was actually acquired under the circumstance where the beneficial interest cannot be retained in good conscience, the equity converts PSE into a trustee. x x x The PSE, without a doubt, as the trustee of a constructive trust, has the obligation to convey or deliver back to the Litonjua Group the amount subject of the dispute. The money rightfully belongs to the latter there being no contract existing where PSE can base its right to receive the amount.[36]

As to the issue of the applicability of Article 1236, the CA ruled in the negative. According to the law:[37]

The Creditor is not bound to accept the payment or performance by a third person who has no interest in the fulfillment of the obligation unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

However, the provision must be read in relation to the provision on novation of contract provided by Article 1293 which states that, *novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment of the new debtor gives him the rights mentioned in Art. 1236 and 1237*. (Emphasis ours)

It also ruled that the acts of PSE subsequent to the execution of the 20 April 1999 letter-agreement were tantamount to consent, only for it to retract later and claim that it never issued any Board Resolution authorizing PSE to bind itself to the terms and obligations of the letter-agreement. These acts, if not fraudulent, were made with recklessness, hence, the justification of the exemplary damages.

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[36] CA Decision; *rollo*, pp. 79-81.

[37] *Id.* at 77.

Before this Court, PSE posits the following issues: (1) The contemporaneous and subsequent acts of the PSE are not tantamount to rendering the PSE a party to the letter-agreement; (2) the case of *Smith, Bell and Co*. is not applicable to the present case; (3) the provision of Article 1236 should not be read together with Article 1293; (4) Trendline should be considered as an indispensable party; (5) PSE was not unjustly enriched by its receipt of the amount of ₱19,000,000.00; (6) no constructive trust exists between the PSE and the Litonjua Group; and finally (7) the Litonjua Group is not entitled to exemplary damages.

In its Comment, the Litonjua Group countered that since PSE insists that there is no contract to speak of due to absence of consent, it is only equitable to return the money paid. The money was conditionally delivered by the Litonjua Group based on its belief that PSE had already approved of the transaction and the obligations imposed upon it by the letter-agreement. In view of the fact that the money was acquired through mistake, PSE, by force of law, is now considered as a trustee of an implied trust for the benefit of the Litonjua Group.[38]

We deny the petition.

After review of the records, we summarize the issues, thus: *First*, is PSE considered a party to the letter-agreement; *Second*, against whom should the Litonjua Group seek reimbursement; *Third*, is PSE liable to return the payment received; and *lastly*, whether the PSE is liable to pay exemplary damages.

PSE asserts that it is not a party in the letter-agreement due to the absence of any board resolution authorizing the corporation to be bound by the terms of the contract between Trendline and the Litonjua Group. In essence, it avers that no consent was given to be bound by the terms of the letter-agreement. We agree.

According to Article 1305 of the Civil Code, "a contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or render

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[38] Comment; *id.* at 123-133.

some service." For a contract to be binding: there must be consent of the contracting parties; the subject matter of the contract must be certain; and the cause of the obligation must be established.[39] Consent, as a requisite to have a valid contract, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and acceptance absolute. A qualified acceptance constitutes a counter offer.[40]

In corporations, consent is manifested through a board resolution since powers are exercised through its board of directors. The mandate of Section 23 of the Corporation Code is clear that unless otherwise provided in the Code, "the corporate powers of all corporations shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees..."

Further, as a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management. As a general rule, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. This is so because a corporation is a juridical person, separate and distinct from its stockholders and members, having powers, attributes and properties expressly authorized by law or incident to its existence.[41]

Admittedly in this case, no board resolution was issued to authorize PSE to become a party to the letter-agreement. This fact was confirmed by PSE's Corporate Secretary Atty. Aissa V. Encarnacion in her direct testimony by way of judicial affidavit.[42] She testified that based on her review of the meetings

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[39] Art. 1318 of the Civil Code.

[40] Art. 1319 of the Civil Code.

[41] *Peoples Aircargo and Warehousing Co. Inc., v. Court Of Appeals and Stefani Sao*, 357 Phil. 850, 862 (1998).

[42] Exhibit "19", records, pp. 467-473. TSN of Antonio K. Litonjua, 25 November 2008.

of the PSE Board of Directors from 1998 to July 2009, there was no record of any board resolution authorizing PSE to bind itself to the said obligations under the letter-agreement or to lift the suspension over Trendline's PSE seat in accordance with the terms and conditions of the said letter-agreement. PSE was never authorized by the Board to be bound by the obligations stated therein. This fact was confirmed by Antonio K. Litonjua himself when he admitted during cross-examination that he failed to ask from PSE for any board resolution authorizing itself to be bound by the terms of the letter-agreement.[43]

From the foregoing, PSE is not considered as a party to the letter-agreement.

Following this precept, PSE maintains that the proper recourse of Litonjua Group is to demand reimbursement from Trendline following the provision of Article 1236. We disagree.

Reiterating Article 1236, the Creditor is not bound to accept the payment or performance by a third person who has no interest in the fulfillment of the obligation unless there is a stipulation to the contrary. Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Contrary to the argument of PSE, we find inapplicable the provision of Article 1236 allowing the demand by the payor from the debtor of what was paid. It is correct that PSE is not bound to accept the payment of a third person who has no interest in the fulfillment of the obligation.[44] However, the Litonjua Group is not a disinterested party. Since the inception of the initial meeting between the Litonjua Group, PSE and Trendline, there was already a clear understanding that the Litonjua Group has the intention to settle the outstanding obligation of Trendline

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[43] TSN of Antonio K. Litonjua, 25 November 2008, pp. 41-42.

[44] See for reference *Land Bank of the Philippines v. Ong*, 650 Phil. 627, 638 (2010).

in consideration of its acquisition of 85% seat ownership and PSE's lifting of suspension of trading seat.

The next question now is, can PSE, though not a party to the agreement, be still held liable to return the money it received? We answer in the affirmative. This is pursuant to the principles of unjust enrichment and estoppel; it is only but rightful to return the money received since PSE has no intention from the beginning to be a party to the agreement.

PSE insists that there is no unjust enrichment when it received the ₱19,000,000.00 since it has every right to accept the amount which was voluntarily and knowingly paid by the Litonjua Group to discharge Trendline from its obligations to the corporation. Following this premise, it is not obligated to return the money. Again, we disagree.

The principle of unjust enrichment is embodied by the letter of Article 22 of the Civil Code:

> Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[45] The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.[46]

The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.[47]

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[45] *Philippine Realty and Holdings Corporation v. Ley Construction and Development Corporation*, 667 Phil. 32, 65 (2011).

[46] *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210, 221 (2011).

[47] *Id.*

Applying law and jurisprudence, the principle of unjust enrichment requires PSE to return the money it had received at the expense of the Litonjua Group since it benefited from the use of it without any valid justification.

In addition, principle of estoppel finds merit.

Estoppel has its roots in equity. It is a response to the demands of moral right and natural justice. For estoppel to exist, it is indispensable that there be a declaration, act or omission by the party who is sought to be bound. It is equally a requisite that he, who would claim the benefits of such a principle, must have altered his position, having been so intentionally and deliberately led to comport himself; thus, by what was declared or what was done or failed to be done.[48]

In *Philippine National Bank v. The Honorable Intermediate Appellate Court (First Civil Cases Division) and Romeo Alcedo*,[49] estoppel is further elucidated in this wise:

> The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against its own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. Said doctrine springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[50]

In this case, the Litonjua Group was led to believe that the payment of ₱19,000,000.00 will be the full settlement of all the obligations due, including the penalties and interests, in order to effect the lifting of the suspension of the seat/membership. This is apparent from the April 29, 1999 letter of Atty. Almadro to Trendline. According to its terms, the Business

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[48] *Dizon v. Suntay,* 150-C Phil. 861, 867-868 (1972).

[49] 267 Phil. 720 (1990).

[50] *Philippine National Bank v. The Honorable Intermediate Appellate Court (First Civil Cases Division) and Romeo Alcedo, supra* at 727, citing *Philippine National Bank v. Court of Appeals,* 183 Phil. 54, 63-64 (1979).

Conduct and Ethics Committee of PSE resolved to accept the amount of Nineteen Million Pesos (₱19,000,000.00) as full and final settlement of its outstanding obligations to be paid not later than 13 May 1999. Trendline was further advised that failure to pay the said amount by 13 May 1999 will result to collection in full of imposable fines/penalties and enforcement of payment by selling its seat at public auction. In turn, Trendline assured PSE that the Litonjua Group will pay the required amount. The Litonjua Group, before the turnover of the checks, even took a further step and sent a letter to Atty. Almadro indicating that the payment will be the full satisfaction for the acquisition of the seat/membership Trendline. Upon receipt of the checks, an annotation was indicated by PSE that the checks were received as advance payment for full settlement of Trendline's outstanding obligation. PSE became an active participant in all the transactions between the Litonjua Group and Trendline. By accepting Litonjua's payment, PSE is now estopped from claims that Trendline still has a penalty obligation that must be settled before the transfer of the seat.

PSE cannot assert to be a non-party to the letter-agreement and at the same time claim a right to receive the money for the satisfaction of the obligation of Trendline. PSE must not be allowed to contradict itself. A position must be made. PSE must either consider itself a party to the letter agreement and assume all rights and obligations flowing from the transaction or disavow its consent derivative from its participation. Since, it is already made clear that it is not a party due to its lack of consent, it is now estopped from claiming the right to be paid.

Finally, PSE insists that the appellate court erred when it awarded exemplary damages to the Litonjua Group due to the corporation's recklessness in its business dealings. When it accepted the payment, PSE contends that it was merely exercising its right to be paid. We again disagree.

In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent,

reckless, oppressive, or malevolent manner.[51] Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.[52] While the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[53]

In *Arco Pulp and Paper Co., Inc. v. Dan T. Lim*,[54] the Court reiterated the ratio behind the award:

> Also known as 'punitive' or 'vindictive' damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[55]

PSE, despite demands by the Litonjua Group, continuously refused to return the money received despite the fact that it

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[51] Art. 2232 of the Civil Code

[52] Art. 2233 of the Civil Code.

[53] Art. 2234 of the Civil Code.

[54] 737 Phil. 133 (2014).

[55] *Id.* at 152-153, citing, *Tankeh v. Development Bank of the Philippines, et al.*, 720 Phil. 641, 693 (2013).

received it without any legal right to do so. This conduct, as found by the trial court, falls within the purview of wanton, oppressive and malevolent in nature. Further, we find the words of the appellate court on its justification of the award meritorious:

> We cannot blame the Litonjua Group for believing that the actions of the PSE are as good as giving consent to the subject agreement. And, it surely came as a surprise on the part of the Litonjua Group to know that none of the PSE's dealings can be considered as approval of the agreement. It appears that these actions of the PSE, if it cannot be considered fraudulent, were definitely made with recklessness. As huge amount of money (₱19 Million) were involved, the PSE could have been more cautious or wary in dealing with the Litonjua Group. It should have avoided making actions that would send wrong signal to the other party with which it was transacting. Hence, we have no choice but to conclude that PSE acted with recklessness that would warrant an award of exemplary damages in favor of the Litonjua Group.[56]

Thus, absent any other compelling reason to overturn the findings, we uphold the award of exemplary damages.

Finally, a note on the legal interest.

Pursuant to Circular No. 799 of Monetary Board of the *Bangko Sentral ng Pilipinas* dated 21 June 2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum*. Therefore, the rate of interest imposed the trial court in its judgment, as affirmed by the ruling of the CA, will be at 12% interest *per annum* from 30 July 2006 to 30 June 2013 and 6% interest *per annum* 1 July 2013 until full satisfaction.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision and Resolution of the Court of Appeals dated 23 May 2012 and 17 October 2012 respectively, upholding the 22 February 2010 Decision of the Regional Trial Court of Pasig

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[56] *Rollo,* p. 82.

City are hereby **AFFIRMED WITH MODIFICATION**. Philippine Stock Exchange is hereby ordered to pay the Litonjua Group the following amounts:

1. as to the imposition of legal interest to be imposed to the ₱19,000,000.00 from 12% to 6% *per annum* reckoned from the date of demand on 30 July 2006;
2. Exemplary damages in the amount of ₱1,000,000.00;
3. Attorney's fees in the amount of ₱100,000.00; and
4. Cost of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204063. December 5, 2016]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **DR. DAVID A. SOBREPEÑA, SR., DR. MONA LISA DABAO, DR. POLIXEMA ADORADA, DEOBELA FORTES and LIRIO CORPUZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO BAIL; THE COURT'S GRANT OR REFUSAL OF BAIL MUST CONTAIN A SUMMARY OF THE EVIDENCE OF THE PROSECUTION ON THE BASIS OF WHICH SHOULD BE FORMULATED THE JUDGE'S OWN CONCLUSION ON WHETHER SUCH EVIDENCE IS STRONG ENOUGH TO INDICATE THE GUILT OF THE ACCUSED.— [I]n

cases involving non-bailable offenses, what is controlling is the determination of whether the evidence of guilt is strong which is a matter of judicial discretion that remains with the judge. The judge is under legal obligation to conduct a hearing whether summary or otherwise in the discretion of the court to determine the existence of strong evidence or lack of it against the accused to enable the judge to make an intelligent assessment of the evidence presented by the parties. "The court's grant or refusal of bail must contain a summary of the evidence of the prosecution on the basis of which should be formulated the judge's own conclusion on whether such evidence is strong enough to indicate the guilt of the accused." x x x "A summary hearing is defined as 'such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail.' On such hearing, the Court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary examination and cross-examination."

2. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INVOLVES A CORRECTION OF ERRORS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, WHEN PRESENT.— "[A] writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, not errors of judgment. It does not include correction of the trial court's evaluation of the evidence and factual findings thereon. It does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof." An act of a court or tribunal may only be considered to have been committed in grave abuse of discretion when the same was "done contrary to the Constitution, the law or jurisprudence or x x x executed 'whimsically or arbitrarily' in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Añover Añover San Diego & Primavera Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari* seeking to reverse and set aside the Decision[1] dated January 31, 2012 and Resolution[2] dated October 3, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 116733 filed by People of the Philippines (petitioner) against Dr. David A. Sobrepeña, Sr., Dr. Mona Lisa Dabao, Dr. Polixema Adorada, Deobela Fortes and Lirio Corpuz (collectively respondents).

The factual antecedents as synthesized by the CA are as follows:

Respondents are officers and employees of Union College of Laguna, an educational institution in Santa Cruz, Laguna. They were charged in several informations for allegedly committing Estafa and Large Scale Illegal Recruitment before the Regional Trial Court (RTC) of Santa Cruz, Laguna. By reason thereof, respondents were incarcerated. Invoking the provisions of Section 13, Article III of the Constitution and Section 7, Rule 114 of the Rules of Court[3] and in their belief that the evidence of their guilt is not strong, respondents filed a Petition for Bail.

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[1] CA *rollo*, pp. 766-775; penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Noel G. Tijam and Romeo F. Barza.

[2] *Id.* at 850-851.

[3] SEC. 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* – No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

In opposition to the Petition, the prosecution presented Adelfo Carandang who testified that:

x x x [S]ometime in June 2008, he saw an advertisement with the phrase "*Work, Earn and Live in Canada*" printed on a tarpaulin placed on the walls of Union College. Thereafter, after consulting with his wife, he visited the said institution and inquired about the said advertisement. He met private-respondent Deobela Fortes who introduced herself as the Director for Career and Placement of Union College. The latter told him that Union College is engaged in Careers and Enhancement Program and it is offering seminars, trainings and workshops and that through its Canadian partner known as Infoskills Learning Incorporated of British Columbia (INFOSKILLS) it is offering high-quality certification classes endorsed by the British Columbia Ministry of Health and Tourism, Worksafe British Columbia and the Canadian Red Cross. INFOSKILLS is delivery partner of British Columbia Ministry of Health and Tourism, Canadian Red Cross, Construction Safety Network, Enform and it is the training agency of Worksafe British Columbia. Also, he was informed that GDX Visa and Immigration Incorporated of British Columbia will be providing work and immigration assessment program for all participants. Fortes allegedly assured him that the graduates of the program will be hired as restaurant host, hostess, food and beverage service banquet server and a host of other jobs in food and beverage industry in Canada with a monthly fee of 1,500.00 Canadian Dollars; that he can soon become an immigrant of Canada and be able to bring his family with him after becoming such; that the program is on a first come first served basis. Thus, enticed with this promise of a bright future, he immediately paid the fees and enrolled himself for the first batch. These include the $2,500 USD for visa and placement fees plus Php15,000.00 for English Language Proficiency (ELP) fee.

Carandang also testified that the other private-respondents were also very much active in luring him to join the program. In fact, Dr. Dabao and Dr. David Sobrepeña told him to wait for his employment contract. But none was forthcoming, hence the filing of Estafa and Large Scale Illegal Recruitment cases against the herein petitioners.

Upon cross-examination, Carandang testified that he is a college graduate, having finished Bachelor of Science in Marketing and Commerce. He confirmed that he knew Union College to be a school in Santa Cruz for a long time and that its officers and employees never had cases for illegal recruitment. He further attested that in

the particular flyer that he got the actual statement was not quoted in full. The complete statement in the flyer being that: "*INVEST IN YOUR FUTURE GET THE SKILLS YOU NEED TO WORK EARN AND LIVE IN CANADA.*" x x x

x x x x x x x x x

With respect to the registration form that he signed, Carandang admitted that although in his judicial affidavit he stated that the $2,500 USD he paid was for visa processing fees or job placement fees, however, the registration form that he actually signed does not contain words of such import. In fact, the $2,500 USD, as stated in the registration form was for the courses in entry level in food and hospitality which he admitted to have actually attended under the tutelage of two Canadian instructors who served as their professors. Furthermore, Carandang testified on cross that while he mentioned in his judicial affidavit that the alleged victims paid 12 Million pesos, such conclusion is his mere estimate and he has no personal knowledge of the actual amount.

On re-direct, Carandang adamantly alleged that herein petitioners were saying things different from what the flyers and advertisement purported. He alleged that the petitioners assured him that he will be working in Canada and though he was part of the 37 persons who were alleged to have been hired 100% by "dairy cream franchisers", he was, however, not able to go abroad.

Prosecution also presented Sherlene G. Furiscal, Jaypee P. Sarmiento and Jaymalyn R. Jabay who identified their judicial affidavits and affirmed the contents thereof. They also corroborated the testimony of Adelfo D. Carandang.[4]

Ruling of the Regional Trial Court

After a summary hearing conducted and based on the summary of evidence, the RTC in an Order[5] dated September 9, 2010, denied the Petition to Bail, *viz*.:

From the foregoing, after the requisite hearing on the Petition to Bail and based on the obtained summary of evidence from the exhibits presented by the prosecution, this Court finds that there is evident

[4] CA *rollo*, pp. 767-769.

[5] *Id*. at 26-30.

proof against all the accused. This Court holds that the evidence of guilt for all the accused is STRONG.

WHEREFORE, premises considered, the Petition to Bail filed by all the accused is hereby DENIED.

SO ORDERED.[6]

The Motion for Reconsideration filed by the respondents was denied in an Order[7] dated October 18, 2010.

Ruling of the Court of Appeals

Unsatisfied, respondents filed before the CA a Petition for *Certiorari* under Rule 65 of the Rules of Court. Respondents assailed the Orders of the RTC for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction in ruling that the evidence of guilt is strong despite the presence of evidence to the contrary. They attacked the propriety of the RTC rulings on the ground that the prosecution's own documentary evidence negates the claim that Union College promised employment abroad for a fee.

The CA was convinced that the RTC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in rendering the assailed Orders. According to the CA, there is doubt as to whether there is strong evidence against respondents for the charge of estafa or large scale illegal recruitment; that the evidence available on record merely showed that Union College provided the venue and the English language training course; that the trial court failed to appreciate the fact that the prosecution purposely took out of context the statement appearing in the flyer *i.e.*, "INVEST IN YOUR FUTURE GET THE SKILLS YOU NEED TO WORK, EARN, AND LIVE IN CANADA"; that there were no statements to the effect that Union College is acting as a job placement agency; that there is no direct evidence to show that Carandang was illegally enticed by respondents to enroll at Union College; that there is no direct

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[6] *Id.* at 30.

[7] *Id.* at 31-34.

evidence showing that respondents overtly represented that they have the power to send the trainees abroad for employment; and finally, there is no evidence that respondents are flight risk.

Thus, on January 31, 2012, the CA disposed the Petition as follows:

> WHEREFORE, the foregoing premises all considered, the petition is GRANTED. The Orders dated September 9, 2010 and October 18, 2010 of the Regional Trial Court, Branch 27 of Santa Cruz, Laguna in Criminal Case Nos. SC-14043 to SC-14053; SC-14057; SC-14092 to SC-14102 and SC-14103 are hereby NULLIFIED and SET ASIDE. The public respondent is hereby ORDERED to GIVE DUE COURSE to the Petition for Bail filed by the petitioners in accordance with this Decision.
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> SO ORDERED.[8]

Petitioner's Motion for Reconsideration was denied per Resolution dated October 3, 2012.

Thus, petitioner filed a Petition for Review on *Certiorari* for the reversal and setting aside of the January 31, 2012 CA Decision and its October 3, 2012 Resolution and likewise prayed that the impugned Orders of the RTC be reinstated.

Petitioner invokes as ground for the allowance of this Petition the alleged CA's serious reversible error when it nullified and set aside the Orders of the RTC which it claimed to have correctly denied the Petition for Bail because the evidence of respondents' guilt was strong.

Our Ruling

We rule in favor of the petitioner.

Section 13, Article III of the Constitution provides:

> Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties or be released

[8] *Id*. at 774.

on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Section 7, Rule 114 of the Rules of Court also states that no person charged with a capital offense or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when the evidence of guilt is strong, regardless of the stage of the criminal action.

Thus from the above-cited provisions and in cases involving non-bailable offenses, what is controlling is the determination of whether the evidence of guilt is strong which is a matter of judicial discretion that remains with the judge.[9] The judge is under legal obligation to conduct a hearing whether summary or otherwise in the discretion of the court to determine the existence of strong evidence or lack of it against the accused to enable the judge to make an intelligent assessment of the evidence presented by the parties. "The court's grant or refusal of bail must contain a summary of the evidence of the prosecution on the basis of which should be formulated the judge's own conclusion on whether such evidence is strong enough to indicate the guilt of the accused."[10] In *People v. Plaza*,[11] the Court defined a summary hearing and expounded the court's discretionary power to grant bail to an accused. "A summary hearing is defined as 'such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail.' On such hearing, the Court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to

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[9] *Pros. Jamora v. Judge Bersales*, 488 Phil. 22, 31 (2004).

[10] *Id*. at 30.

[11] 617 Phil. 669 (2009).

receiving such evidence as has reference to substantial matters, avoiding unnecessary examination and cross-examination."[12]

In the present case, the RTC held a summary hearing and based on the summary of evidence, formulated its conclusion in denying the Petition to Bail. Respondents impugned said finding through a Petition for *Certiorari*. The CA gave due course to the Petition imputing grave abuse of discretion on the part of the RTC in denying bail to respondents. The CA held that based on the evidence thus far presented by the prosecution in the bail hearing, the evidence of guilt is not strong against Union College particularly its employees and officers with respect to the charges filed against them.

From a perspective of the CA Decision, the issue therein resolved is not so much on the bail application but already on the merits of the case. The matters dealt therein involved the evaluation of evidence which is not within the jurisdiction of the CA to resolve in a Petition for *Certiorari*. The findings and assessment of the trial court during the bail hearing were only a preliminary appraisal of the strength of the prosecution's evidence for the limited purpose of determining whether respondents are entitled to be released on bail during the pendency of the trial.

We would like to stress that "a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, not errors of judgment. It does not include correction of the trial court's evaluation of the evidence and factual findings thereon. It does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof."[13]

An act of a court or tribunal may only be considered to have been committed in grave abuse of discretion when the same was "done contrary to the Constitution, the law or jurisprudence or x x x executed 'whimsically or arbitrarily' in a manner so

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[12] *Id*. at 674.

[13] *Chan v. Chan*, 590 Phil. 116, 132 (2008).

patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined."[14]

No such circumstances exist in this case as to justify the issuance of a writ of *certiorari* by the CA. On the contrary, the RTC acted in complete accord with law and jurisprudence in denying bail in favor of respondents.

WHEREFORE, premises considered, the Petition is **GRANTED**. The assailed Decision dated January 31, 2012 and Resolution dated October 3, 2012 of the Court of Appeals in CA-G.R. SP No. 116733 are hereby declared null and void and thus set aside and the Orders dated September 9, 2010 and October 18, 2010 of the Regional Trial Court, Branch 27, Santa Cruz, Laguna are **REINSTATED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 204719. December 5, 2016]

POWER SECTOR ASSETS and LIABILITIES MANAGEMENT CORPORATION, *petitioner, vs.* **SEM-CALACA POWER CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES THAT ARE AFFIRMED BY THE COURT OF APPEALS

[14] *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City*, 596 Phil. 778, 795 (2009).

ARE GENERALLY CONCLUSIVE ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT.— [T]he rulings of administrative agencies like the ERC are accorded great respect, owing to a traditional deference given to such administrative agencies equipped with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters. Factual findings of administrative agencies that are affirmed by the Court of Appeals are generally conclusive on the parties and not reviewable by this Court. Although there are instances when such a practice is not applied, such as when the board or official has gone beyond its/his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily without regard to its/his duty or with grave abuse of discretion, or when the actuation of the administrative official or administrative board or agency is tainted by a failure to abide by the command of the law, none of such instances obtain in the present case which would prompt this Court to reverse the findings of the tribunal below.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; ENERGY REGULATORY COMMISSION; HAS AMONG ITS FUNCTIONS THE INTERPRETATION OF CONTRACTS AND THE DETERMINATION OF THE RIGHTS OF THE PARTIES, WHICH TRADITIONALLY WERE THE EXCLUSIVE DOMAIN OF THE JUDICIAL BRANCH.—** We find the ERC to have acted within its statutory powers as defined in Section 43 (u), RA 9136, or the EPIRA Law, which grants it original and exclusive jurisdiction "over all cases involving disputes between and among participants or players in the energy sector." Jurisprudence also states that administrative agencies like the ERC, which were created to address the complexities of settling disputes in a modern and diverse society and economy, count among their functions the interpretation of contracts and the determination of the rights of parties, which traditionally were the exclusive domain of the judicial branch. x x x [T]he ERC merely performed its statutory function of resolving disputes among the parties who are players in the industry, and exercised its quasi-judicial and administrative powers as outlined in jurisprudence by interpreting the contract between the parties in the present dispute, the so-called APA and specifically its Schedule W.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; THE CONTRACT'S MEANING SHOULD BE DETERMINED FROM ITS CLEAR TERMS WITHOUT REFERENCE TO EXTRINSIC FACTS.— Among the key principles in the interpretation of contracts is that espoused in Article 1370, paragraph 1, of the Civil Code x x x. The rule means that the contract's meaning should be determined from its clear terms without reference to extrinsic facts or aids. The intention of the parties must be gathered from the contract's language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense.

4. ID.; ID.; ID.; ID.; WHEN THE TERMS OF THE CONTRACT IS AMBIGUOUS, THE INTERPRETATION IS LEFT TO THE COURT OR ANOTHER TRIBUNAL WITH JURISDICTION OVER IT.— [W]hen the terms of the contract are unclear or are ambiguous, interpretation must proceed beyond the words' literal meaning. x x x Discerning the parties' true intent requires the application of other principles of contract interpretation. Jurisprudence dictates that when the intention of the parties cannot be discerned from the plain and literal language of the contract, or where there is more than just one way of reading it for its meaning, the court must make a preliminary inquiry of whether the contract before it is an ambiguous one. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. In such case, its interpretation is left to the court, or another tribunal with jurisdiction over it. More simply, "interpretation" is defined as the act of making intelligible what was before not understood, ambiguous, or not obvious; it is a method by which the meaning of language is ascertained. The "interpretation" of a contract is the determination of the meaning attached to the words written or spoken which make the contract.

5. ID.; ID.; ID.; ID.; THE LEGAL EFFECT OF A CONTRACT IS NOT DETERMINED ALONE BY ANY PARTICULAR PROVISION DISCONNECTED FROM ALL OTHERS, BUT FROM THE WHOLE READ TOGETHER.— [C]ontracts should be so construed as to harmonize and give

effect to its different provisions. The legal effect of a contract is not determined alone by any particular provision disconnected from all others, but from the whole read together. Following the above rules and principles, the ERC correctly interpreted the ambiguity in Schedule W in a way that would render all of the contracts' provisions effectual. Although there was ambiguity, as earlier stated, in the figures 10.841% and 169,000 kW that appear on the said schedule, the ERC properly harmonized both provisions. It did not just disregard or dispense with either of the figures as such would have violated the principles that the "various stipulations of the contract shall be interpreted together" and that the "doubtful provisions shall be attributed with the sense which may result from all of them taken jointly." Instead, it interpreted both in a way that they would be preserved and work together. The parties clearly intended for the figures to be in the contract and bestowed such with meanings which the ERC had no power to just ignore or remove.

6. ID.; ID.; ID.; ID.; PRINCIPLE OF "REASONABLENESS OF RESULTS"; IN THE INTERPRETATION OF CONTRACTS, THE REASONABLENESS OF THE RESULT OBTAINED, AFTER ANALYSIS AND CONSTRUCTION OF THE CONTRACT, MUST BE CAREFULLY CONSIDERED.— [O]verturning the ERC's and the CA's interpretation would result in the absurd scenario of requiring SCPC to supply more than 169,000kW for MERALCO despite the fact that its contracted demand levels for various customers listed in Schedule W were pegged at 322 MW only and its dependable capacity is only 330 MW. As this Court has verified in the records, the ERC correctly explained that the Calaca Power Plant only produces up to 322 MW in electricity net of plant use; out of such produced, MERALCO obtains the biggest allocation of 169,000 kW (169 MW), whereas the rest of the customers share 153,000 kW (153MW). It would be highly unreasonable to require SCPC to allocate even a marginal increase from 169,000 kW for MERALCO when such would cause it to renege on its obligations to supply its other customers. Such an interpretation that would lead to an unreasonableness which is frowned upon, for another oft-cited rule in the interpretation of contracts is that "the reasonableness of the result obtained, after analysis and construction of the contract, must also be carefully considered."

APPEARANCES OF COUNSEL

Maria Luz L. Caminero and *Cecilio B. Gellado, Jr.* for petitioner PSALM Corp.

Puyat Jacinto & Santos for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Court of Appeals Decision[1] dated September 4, 2012 and Resolution[2] dated November 27, 2012 in CA-G.R. SP No. 123997, which affirmed the rulings of the Energy Regulatory Commission (*ERC*) specifying respondent's capacity allocation as a power producer.

The facts of the case follow.

The Electric Power Industry Reform Act of 2001 (*EPIRA*), or Republic Act (*R.A.*) No. 9136, which was signed into law by then President Gloria Macapagal Arroyo on June 8, 2001, was intended to provide a framework for the restructuring of the electric power industry, including the privatization of the assets of the National Power Corporation (*NPC*), the transition to the desired competitive structure and the definition of the responsibilities of the various government agencies and private entities with respect to the reform of the electric power industry.[3]

The EPIRA also provided for the creation of petitioner Power Sector Assets and Liabilities Management Corporation (*PSALM*),

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Manuel M. Barrios, concurring; *rollo*, pp. 59-73.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Leoncia R. Dimagiba, concurring; *id.* at 74-75.

[3] RA 9136, Sec. 3.

a government-owned and controlled corporation which took over ownership of the generation assets, liabilities, independent power producer (*IPP*) contracts, real estate and other disposable assets of the NPC.[4] PSALM's principal purpose under the law is to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner."[5]

Among the assets put on sale by PSALM was the 600-MW Batangas Coal-Fired Thermal Power Plant in Calaca, Batangas (*Calaca Power Plant*).[6] In July 2009, DMCI Holdings, Inc. (*DMCI*) was declared the highest bidder in the sale.[7] The sale was effected through an Asset Purchase Agreement (*APA*) executed by PSALM and DMCI on July 29, 2009, and became effective on August 3, 2009.[8]

On December 2, 2009, DMCI transferred all of its rights and obligations under the APA and the Land Lease Agreement (also called Final Transaction Documents) to herein respondent SEM-Calaca Power Corporation (*SCPC*) by entering into an Amendment, Accession and Assumption Agreement that was signed by PSALM, DMCI and SCPC.[9] Under the agreement, SCPC took over all the rights and obligations of DMCI under the said documents. SCPC also alleged that on that same date, it took over the physical possession, operation and maintenance of the Calaca Power Plant.[10]

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[4] *Id.,* Sec. 49.

[5] *Id.* at Sec. 50.

[6] *Rollo,* pp. 8, 458.

[7] *Id.* The parties differ as to the actual date of the declaration of DMCI as winning bidder. Petitioners state the date as July 8, 2009, while respondents put it on July 3, 2009.

[8] *Rollo,* pp. 8, 76-124, 458.

[9] *Id.* at 8, 459.

[10] *Id.* at 459.

Also on the same date, SCPC started providing electricity to customers listed in Schedule W of the APA, among which is MERALCO.[11]

Schedule W is partially reproduced hereunder:

SCHEDULE W[12]
POWER SUPPLY CONTRACTS

Part I: Description of the PSC

CUSTOMERS	POWER SUPPLY CONTRACT				REMAINING CONTRACT VOLUME as of 26 June 2009		
	Contract Duration		Monthly Average				
	Effectivity	Expiration	Energy (MWh)	Demand (kW)	Energy (Mwh)	Demand (kW)	Average (MWh/mo)
Meralco (10.841%)	6 Nov 2006	25 Nov 2011	69,256	169,000	1,517,414	169,000	69,256
PEZA-Cavite Ecozone	26 June 2006	25 June 2011	34,038	55,420	623,320	80,800	24,933
BATELEC I	26Dec 2006	25 Dec. 2010	16,450	42,000	334,586	42,000	17,610
Sunpower Philippines	18 Aug 2004	17 Aug 2019	5,500	8,955	676,500	8,970	5,500
Steel Asia	26 Mar 2008	25 Dec 2009	5,263	8,000	57,770	10,000	8,253
SteelCorp	26 June 2009	25 Dec 2009	2,500	8,000	15,000	8,320	2,500
Puyat Steel Corp.	26 Nov 2008	25 Nov 2009	194	1,300	3,260	2,150	543
ECSCO, Inc.	26 Dec2005	25 Dec 2010	206	450	4,445	440	234
Lipa Ice Plant	26 Jan. 2005	25 Dec 2010	220	400	4,650	520	245
BCFTPP Contractor							
Semirara Mining	NA	NA	291	1450	NA	NA	Actual Consumption
Pozzolanic Industries Inc.	NA	NA	11	50	NA	NA	Actual Consumption
TOTAL		MWh	703,506		3,236,945		129,056
		MW		295		322	

[11] *Id.* at 10, 459.

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

Notes:

- All figures mentioned above are only indicative and will be based on the hourly/daily/monthly nominated volume as per average monthly contract level. A typical hourly customer's load profile for Calaca is demonstrated in the attached Figure 1 of this Schedule J (sic) (Power Supply Contract).
- The special conditions governing the assumption by the Buyer of the assignment of a portion of the Contract Energy under Meralco TSC are contained in Part II of this Schedule J (sic) (Power Supply Contract).

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Furthermore, in the event that the Purchased Assets (sic) is not able to supply the contracted power under the aforesaid contracts due to the unavailability of coal or other causes, the Buyer may enter into a back-to-back supply contract with other generators or buy directly from the market for the deficiency.

Part II: Special Conditions of the MERALCO TSC

The following conditions, unique to the MERALCO-NPC contract, shall apply to the assigned portion of the Contract Energy from the MERALCO TSC.

1. Neither the MERALCO TSC nor any portion thereof shall be assigned to the Buyer. It is the Contract Energy specified in part I that is the subject of the assignment.

x x x x x x x x x

SCPC contends that it is obliged to supply 10.841% of MERALCO's total requirement but not to exceed 169,000 kW in any hourly interval.[13] However, PSALM holds a different view and contends that SCPC is bound to supply the entire 10.841% of what MERALCO requires, without regard to any cap or limit.[14]

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[13] *Id.* at 459.

[14] *Id.* at 11.

Thus, during a period of high demand, specifically in the summer of the year 2010, when SCPC fell short of supplying the entire 10.841% of MERALCO's requirements, the deficiency was filled by supply from the Wholesale Electricity Spot Market (*WESM*).[15] SCPC contends that this was the consequence of NPC's and PSALM's nominations in excess of what SCPC claims to be the 169,000 kW cap or limit in its supply.[16] PSALM disputes that there is such a cap or limit, noting that SCPC was obligated to supply the entire 10.841% under Schedule W of the APA.[17] Thus, NPC and PSALM, who contend that they were merely following the Transition Supply Contract (*TSC*) with MERALCO, billed the latter for the electricity delivered by SCPC and that supplied through WESM.[18] SCPC claims, however, that PSALM withheld MERALCO's payments even for the electricity that SCPC supplied without the latter's knowledge nor consent.[19] NPC also allegedly replaced SCPC Power Bills to MERALCO with PSALM Power Bills, with instructions that payments be remitted directly to PSALM instead of SCPC.[20]

On March 16, 2010, SCPC wrote a letter to PSALM insisting that the 169,000 kW supplied to MERALCO "should be treated as the maximum limit of the MERALCO allocation which SCPC is bound to supply under the APA in accordance with Schedule W."[21] On April 20, 2010, SCPC wrote a demand letter formally asking both PSALM and NPC to release MERALCO's payments for the period of January 26, 2010 to February 25, 2010 amounting to Php451,450,889.13 and to directly remit to SCPC all subsequent amounts due from MERALCO.[22]

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[15] *Id.*

[16] *Id.* at 461.

[17] *Id.* at 11.

[18] *Id.*

[19] *Id.* at 461.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 11, 461-462.

On May 13, 2010, PSALM replied through a letter reiterating that SCPC assumed the obligation to supply 10.841% of MERALCO's TSC and that the latter's payments would be remitted to SCPC only after deducting the cost of power supplied by WESM.[23]

Thus, PSALM proceeded to deduct from its remittances to SCPC the cost of the power that NPC allegedly purchased from WESM.[24] SCPC claims that for the months of January 2010 to June 2010, the amounts due it was Php1,894,028,305.00. Instead, PSALM paid it the amount of only Php934,114,678.04, or short of Php959,913,626.96, which allegedly represents the cost of electricity that PSALM charged against SCPC representing the power NPC supposedly obtained from WESM to fill the alleged deficiency in SCPC's supply to MERALCO.[25]

Eventually, following negotiations between the parties, PSALM agreed, through a letter dated June 21, 2010, to cap MERALCO's nominations from the Calaca Power Plant "in any hour up to 169MWh or 10.841% of each hourly energy nomination submitted by MERALCO to NPC under the MERALCO TSC effective June 26, 2010."[26]

However, as SCPC was insisting that the MERALCO cap should have taken effect much earlier, or on December 2, 2009, *i.e.*, the date of effectivity of the APA, and as the parties failed to execute the Implementation, Agreement and Protocol (Implementation Agreement) covering the parties' responsibilities with regards to the supply of power to MERALCO, SCPC made an offer to PSALM for the issues to be brought to the ERC for arbitration.[27] The proposal, however, was rejected by PSALM.[28]

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[23] *Id.* at 12, 462.

[24] *Id.* at 462.

[25] *Id.*

[26] *Id.* at 12, 462.

[27] *Id.* at 12-13, 462-463.

[28] *Id.* at 13, 463.

Hence, SCPC initiated the instant case by filing a Petition for Dispute Resolution (with Prayer for Provisional Remedies) before the Energy Regulatory Commission (*ERC*) against NPC and PSALM.[29]

In its Decision[30] dated July 6, 2011, the ERC ruled in favor of SCPC and against NPC and PSALM, with the following dispositive portion:

WHEREFORE, the foregoing premises considered, the Commission hereby resolves the issues raised in this instant dispute as follows:

1. SCPC's obligation under Schedule W of the APA is to deliver 10.841% of MERALCO's energy requirements but not to exceed 169,000 kW capacity allocation, at any given hour;

2. The obligation to deliver 10.841% of MERALCO's energy requirements, but not to exceed 169,000 kW capacity, at any given hour, shall commence from December 2, 2009 when the physical possession, occupation and operation of the Calaca Power Plant was formally turned over to SCPC;

3. The NPC and PSALM have no basis, in fact and in law, to charge against SCPC the nominations beyond the 169,000 kW capacity which NPC allegedly purchased for MERALCO from the WESM. There being no basis to charge SCPC, PSALM must return all the payments of MERALCO which were withheld by PSALM, including the amount representing the cost of electricity nominated and purchased by NPC beyond the 169,000 kW from the WESM for the period January 2010 to June 25, 2010;

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[29] The petition was docketed as ERC Case No. 2010-058MC and entitled *In the Matter of the Petition for Dispute Resolution, with Application for the Issuance of Provisional Remedies, Sem-Calaca Power Corporation, petitioner, vs. National Power Corporation and Power Sector Assets and Liabilities Management Corporation, respondents*; *id.* at 13, 463, 490-508.

[30] Signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Rauf A. Tan, Alejandro Z. Barin and Jose C. Reyes; *id.* at 295-318.

4. The payment of interests on the amount to be returned by PSALM to SCPC is in order. However, in the absence of a stipulation, the amount of interest shall be pegged at 6% per annum; and

5. NPC shall continue to nominate for MERALCO's energy requirements, in accordance with the TSC between them. However, in nominating for MERALCO's contract energy under the APA, NPC shall consider the 169,000 kW capacity limit, in accordance with Schedule W of the APA, considering the generating capacity of the Calaca Power Plant. In the absence of an Implementation Agreement and Protocol, all nominations made for MERALCO by SCPC in accordance with the APA, shall henceforth be billed through NPC and payment thereof shall be collected directly from MERALCO by SCPC.

Accordingly, the NPC is hereby enjoined from making nominations beyond the 169,000 kW of MERALCO's allocation. On the other hand, PSALM is hereby directed to (1) refrain from charging against SCPC the cost of power beyond the 169,000 kW of MERALCO's allocation and to (2) refrain from withholding all MERALCO payments for electricity supplied by SCPC.

The NPC, PSALM and SCPC are further directed to account for and reconcile the amounts charged against the SCPC by PSALM, on account of the NPC's nominations and purchases from the WESM beyond the 169,000 kW capacity allocation during the period January 2010 to June 25, 2010. Thereafter, the parties are directed to submit to the Commission the reconciled computation of the over-nominations and other MERALCO payments withheld by PSALM for the said period, within ten (10) days from receipt of this Decision. Further, PSALM is hereby directed to return to SCPC, the amount as computed and reconciled, including the interests thereon at the rate of 6% per annum, within ten (10) days from the parties' submission of the reconciled computation to the Commission. Finally, the parties are directed to submit their Compliance with the foregoing dispositions within thirty (30) days from receipt of this Decision.

SO ORDERED.[31]

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[31] *Id.* at 315-317.

PSALM filed a motion for reconsideration of the above decision. However, in an Order[32] dated February 13, 2012, the ERC denied the said motion.

Aggrieved, PSALM filed a Petition for Review of the ERC decision to the Court of Appeals (*CA*).[33]

In its assailed Decision[34] dated September 4, 2012, the CA denied PSALM's petition and upheld the findings of the ERC. The dispositive portion of the decision states:

> WHEREFORE, premises considered, the petition is DENIED. The Decision dated July 6, 2011 and the Order dated February 13, 2012 of the Energy Regulatory Commission in ERC Case No. 2010-058 are hereby AFFIRMED.
>
> SO ORDERED.[35]

The CA sustained the ERC's interpretation of the APA that SCPC's obligation was to supply 10.841% of MERALCO's energy requirement, but not to exceed 169,000 kW at any given hour, as such interpretation would reconcile the presence of the two figures in Schedule W and harmonize the provisions of the said contract.[36] Likewise, the appellate court upheld ERC in explaining why a cap of 169,000 kW is placed on SCPC's obligation to supply electricity to MERALCO, the explanation being: unlike before the privatization when NPC, with all its generation assets, was the sole supplier of MERALCO and, therefore, could obtain electricity from any of those assets, in the current situation, SCPC is just one of many suppliers and SCPC's asset is only the Calaca Power Plant, which has a limited capacity.[37] The

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[32] Signed by Chairperson Zenaida Cruz-Ducut and Commissioners Jose C. Reyes, Maria Teresa A.R. Castañeda and Gloria Victoria C. Yap-Taruc; *id.* at 337-350.

[33] *Rollo,* pp. 351-373.

[34] *Id.* at 69-73.

[35] *Id.* at 72.

[36] *Id.* at 67-69.

[37] *Id.* at 69-71.

CA likewise stated that the findings of administrative or regulatory agencies on matters within their technical area of expertise are generally accorded not only respect but finality if such findings are supported by substantial evidence.[38]

PSALM filed a Motion for Reconsideration of the decision above, but the same was likewise denied in a Resolution of the CA, dated November 27, 2012.[39]

Hence, PSALM goes to this Court via the present Petition for Review on *Certiorari.*

PSALM contends that the CA erred in placing a cap of 169,000 kW on SCPC's obligation to supply 10.841% of MERALCO's requirement. It insists that SCPC stepped into the shoes of NPC and PSALM in terms of the fulfillment of the obligation of the latter to supply 10.841% of MERALCO's nominated volume.[40] In PSALM's view, SCPC is deemed to have assumed PSALM's rights and obligations under the Power Supply Contracts (*PSCs)* subject to the conditions specified in Schedule W.[41]

Further, it adds that Schedule W is unambiguous and requires no construction or interpretation.[42] Allegedly, the figure 169,000 kW is not meant to qualify the 10.841% of MERALCO's energy requirement; instead, Schedule W's "Notes" portion supposedly explains that 169,000 kW and all the other figures mentioned therein are only "indicative" and the supply of MERALCO's energy requirement "will still be based on the hourly/daily/monthly nominated volume per average monthly contract level."[43] Thus, for PSALM, it was error for the ERC and CA to conclude that a cap exists as to the 10.841% energy requirement of MERALCO.[44]

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[38] *Id.* at 71.

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

[40] *Id.* at 19-20.

[41] *Id.* at 20.

[42] *Id.* at 23.

[43] *Id.* at 21-23.

[44] *Id.* at 25.

Petitioner PSALM additionally holds that the ERC erred in harmonizing only two figures in Schedule W: the 10.841% and the 169,000 kW, since it claims that such figures are not the only stipulations in the said Schedule, there being special conditions such as the Notes which, had it been read together with the rest of the conditions, should have led the ERC to a different conclusion.[45] PSALM also cites additional stipulations such as the so-called Special Conditions of the MERALCO TSC, the Calaca Typical Hourly Customer's Load Profile and the Nomination Protocol between MERALCO and NPC of TSC Contract Energy.[46] Then, there is also a provision supposedly in Schedule W in which SCPC has the option to enter into back-to-back supply contracts with other generators or purchase directly from the market should it become unable to supply the contracted power under the contracts in Schedule W.[47] According to PSALM, these are clear indications that a cap on SCPC's supply had not been intended by the parties.[48]

PSALM also poses that even granting that Schedule W is ambiguous, the CA's and ERC's interpretations were restrictive and incorrect.[49] It also accuses the ERC of erroneously resorting to extrinsic evidence in its interpretation, a method also erroneously concurred in by the CA.[50] Allegedly, this was done when the ERC cited the testimony of a witness in interpreting Schedule W.[51] From the testimony, the ERC supposedly inferred that "prior to privatization, NPC did not take into account the capacities of its assets" in relation to its supply contract with MERALCO, meaning that before, NPC was the sole supplier and could make its various assets generate the supply needed,

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[45] *Id*. at 27-29.

[46] *Id.* at 29.

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

[48] *Id.* at 30.

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

[50] *Id.* at 32-33.

[51] *Id.* at 33.

unlike at present, where SCPC is just one of many suppliers with a single generating asset, with a limited capacity.[52] Allegedly, this led the ERC and the CA to erroneously conclude that a cap of 169,000 kW in SCPC's supply obligations was indeed intended.[53]

Thus, according to PSALM, given the allegedly erroneous rulings, the CA should not have relied on the principle of upholding the findings of fact of administrative agencies, like the ERC, and instead, should have reversed the latter's findings.[54]

In its Comment, SCPC writes that PSALM's own interpretation, while also self-serving and inconsistent, would render the implementation of Schedule W impossible and absurd.[55] For one, SCPC posits that the figure 10.841%, when observed alone and literally applied, provides no meaningful reference, because Schedule W itself does not state that the figure refers to 10.841% of the actual volume nominated for MERALCO.[56] It has no base value and is an incomplete mathematical statement.[57] Further, SCPC claims that observing the figure 10.841% alone disregards all the other figures that appear in Schedule W, including the 169,000 kW which in fact appears twice in the said schedule.[58] And finally, it argues that mainly relying on the Notes and its statement that the figures in the schedule are "indicative" would render all the figures in Schedule W insignificant, as if concluding that SCPC's supply obligations are unlimited.[59]

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[52] *Id.* at 31-33.

[53] *Id.*

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

[55] *Id.* at 471.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

SCPC maintains that such interpretation by PSALM has no support from any principle of contract interpretation, while it was the ERC and the CA that applied the correct rule of interpretation, such as one found in the Civil Code, to wit:[60]

> Art. 1374. 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.

SCPC also touts the ERC's reason for not applying the Notes' statement that the figures were "indicative," or mere estimates of the true value. The reason is that such would lead to an absurdity as it would allocate more than 169,000 kW for MERALCO despite the limited actual generating capacity of the Calaca Power Plant.[61] Instead, the ERC allegedly employed the principle of "reasonableness of results" in contract interpretation to avoid an unreasonable or absurd outcome.[62]

As for the other clause in the Notes which grants SCPC the option to enter into back-to-back supply contracts with other suppliers in order to fulfill its MERALCO obligations, SCPC again quotes the ERC in stating that it is, in fact, NPC's responsibility to fill any shortfall in supply to MERALCO, and that the back-to-back supply contracts to be entered into by SCPC only refer to when the latter is unable to supply MERALCO to the extent of 169,000 kW, which is the cap in its obligation; shortages due to nominations by NPC in excess of 169,000 kW are no longer the contractual obligation of SCPC.[63]

Further, SCPC states that the ERC sufficiently explained the implications of the Special Conditions of the MERALCO TSC, clarifying that "NPC's and PSALM's obligation to supply the entire energy contract to MERALCO, including the obligation to replace any curtailed energy, was not passed on or assigned

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[60] *Id.*

[61] *Id.* at 473.

[62] *Id.*

[63] *Id.* at 473-474.

to SCPC," rather, only such portion as defined in Part I of Schedule W was assigned to SCPC, as clearly provided for under Part II of Schedule W.[64] As for the Calaca Typical Hourly Customer's Load Profile and Nomination Protocol, ERC explained that previously, when NPC was the sole supplier and had other existing assets, even if a particular allocation exceeded a plant's capacity, NPC could obtain supply from its other generating assets.[65] ERC stated that such is no longer the situation in the case at bar, where supply is supposed to come from a specific plant – the Calaca Power Plant – which has a limited capacity.[66]

SCPC argues that the CA correctly considered the circumstances surrounding the execution of the APA in interpreting Schedule W, *i.e.*, the poor condition of the Calaca Power Plant which, at that time only had a dependable capacity of 330 MW out of its 600 MW rated capacity.[67] SCPC narrates that the low dependable capacity is the reason why the contracted demand levels for various customers listed in Schedule W were pegged at 322 MW only and, with a reserve of only eight (8) MW, the plant is well short of providing NPC's excess nominations which allegedly went up to 25,531.93 kWh (25MW) during one billing period.[68] SCPC asserts that DMCI, the original purchaser of the Calaca Power Plant, then knew of the plant's dependable capacity, which it saw as consistent with the total demand listed in Schedule W, which was what prompted it to naturally assume only the obligations spelled out in the said APA and Schedule W.[69] Thus, SCPC states that PSALM's claim that the buyer also assumed "the risk of supplying energy considering the diminishing capacity of the other plants" is

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[64] *Id.* at 474.

[65] *Id.* at 475.

[66] *Id.*

[67] *Id.* at 476-477.

[68] *Id.*

[69] *Id.* at 477.

absurd and unreasonable, as these could not have been known despite the buyer's due diligence.[70] Besides, SCPC argues that any ambiguity should be interpreted against PSALM, the seller and the party who prepared the APA.[71]

Lastly, SCPC contends that the witness, whose testimony was considered by the ERC in ruling that the actual capacity of a power plant is material in determining its allocation, was PSALM's own witness, therefore, the latter party may not disavow her testimony.[72]

The singular issue now before the Court is: whether there was error in the CA's affirmation of the ERC's interpretation of Schedule W of the so-called Asset Purchase Agreement (*APA*), *i.e.*, the contract between the parties PSALM and SCPC, to mean that SCPC's obligation thereunder is to deliver 10.841% of MERALCO's energy requirements but not to exceed 169,000 kW capacity allocation, at any given hour.

We resolve to deny the petition. No error attended the CA's affirmation of the ruling of the ERC.

It is general practice among the courts that the rulings of administrative agencies like the ERC are accorded great respect, owing to a traditional deference given to such administrative agencies equipped with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters.[73] Factual findings of administrative agencies that are affirmed by the Court of Appeals are generally conclusive on the parties and not reviewable by this Court.[74] Although there are instances when such a practice is not applied, such as when the board or official has gone beyond its/his statutory authority,

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[70] *Id.*

[71] *Id.* at 477-478.

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

[73] *Globe Telecom, Inc. v. National Telecommunications Commission*, 479 Phil. 1, 11 (2004).

[74] *Herida v. F&C Pawnshop and Jewelry Store*, 603 Phil. 385, 390 (2006).

exercised unconstitutional powers or clearly acted arbitrarily without regard to its/his duty or with grave abuse of discretion, or when the actuation of the administrative official or administrative board or agency is tainted by a failure to abide by the command of the law,[75] none of such instances obtain in the present case which would prompt this Court to reverse the findings of the tribunal below.

On the contrary, We find the ERC to have acted within its statutory powers as defined in Section 43 (u), RA 9136, or the EPIRA Law, which grants it original and exclusive jurisdiction "over all cases involving disputes between and among participants or players in the energy sector."[76] Jurisprudence also states that administrative agencies like the ERC, which were created to address the complexities of settling disputes in a modern and diverse society and economy, count among their functions the interpretation of contracts and the determination of the rights of parties, which traditionally were the exclusive domain of the judicial branch.[77] Such broadened quasi-judicial powers of administrative agencies are explained in the case of *Antipolo Realty Corporation v. NHA*,[78] which states:

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[75] *Ruby Industrial Corporation v. Court of Appeals*, 348 Phil. 480, 492 (1998).

[76] Sec. 43. Functions of the ERC.

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(u) The ERC shall have the **original and exclusive jurisdiction** over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities **and over all cases involving disputes between and among participants or players in the energy sector.** (Emphasis supplied.)

An "Electric Power Industry Participant" is defined in Section 4 of the same law as referring to "any person or entity engaged in the generation, transmission, distribution or supply of electricity.

[77] *Christian General Assembly, Inc. v. Spouses Ignacio*, 613 Phil. 629, 640-641 (2009); *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996).

[78] 237 Phil. 389, 396-398 (1987). (Emphasis ours; citations omitted)

In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well nigh indispensable. Thus, in 1984, the Court noted that "between the power lodged in an administrative body and a court, the unmistakable trend has been to refer it to the former. x x x."

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In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. **In the exercise of such powers, the agency concerned must commonly interpret and apply contracts and determine the rights of private parties under such contracts. One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer a uniquely judicial function, exercisable only by our regular courts.**

As the foregoing imply, the ERC merely performed its statutory function of resolving disputes among the parties who are players in the industry, and exercised its *quasi*-judicial and administrative powers as outlined in jurisprudence by interpreting the contract between the parties in the present dispute, the so-called APA and specifically its Schedule W.

As for the correctness of the ERC's interpretation and finding, this Court examined the records and found no reason to depart from the rule that especially when supported by substantial evidence and affirmed by the Court of Appeals, the findings of a *quasi*-judicial body like the ERC deserve the highest respect, if not finality.[79]

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[79] *Mount Carmel College Employees Union (MCCEU) v. Mount Carmel College, Inc.,* G.R. No. 187621, September 24, 2014, 736 SCRA 381, 389.

The petitioner PSALM assails ERC's holding that SCPC's obligation is "to deliver 10.841% of MERALCO's energy requirements but not to exceed 169,000 kW capacity allocation, at any given hour," which the ERC based on its interpretation of the figures 169,000 kW and 10.841% found in three columns of Schedule W.

We affirm the ERC's interpretation, as upheld by the CA.

Among the key principles in the interpretation of contracts is that espoused in Article 1370, paragraph 1, of the Civil Code, quoted as follows:

> Art. 1370. 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.

The rule means that the contract's meaning should be determined from its clear terms without reference to extrinsic facts or aids.[80] The intention of the parties must be gathered from the contract's language, and from that language alone.[81] Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense.[82]

Thus, conversely, when the terms of the contract are unclear or are ambiguous, interpretation must proceed beyond the words' literal meaning. Paragraph 2 of the same Article 1370 provides:

> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

Discerning the parties' true intent requires the application of other principles of contract interpretation. Jurisprudence dictates

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[80] *Magoyag, et al. v. Maruhom*, 640 Phil. 289, 298 (2010).

[81] *Id*.

[82] *Id.* at 298-299.

that when the intention of the parties cannot be discerned from the plain and literal language of the contract, or where there is more than just one way of reading it for its meaning, the court must make a preliminary inquiry of whether the contract before it is an ambiguous one.[83] A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations.[84] In such case, its interpretation is left to the court, or another tribunal with jurisdiction over it.[85] More simply, "interpretation" is defined as the act of making intelligible what was before not understood, ambiguous, or not obvious; it is a method by which the meaning of language is ascertained.[86] The "interpretation" of a contract is the determination of the meaning attached to the words written or spoken which make the contract.[87]

In the case at bar, the Court finds that ambiguity indeed surrounds the figures 10.841% and 169,000 kW found in the contract, the former because it does not indicate a base value with a specific quantity and a definite unit of measurement and the latter because there is uncertainty as to whether it is a cap or limit on the party's obligation or not. These were similarly the findings of both the ERC and the appellate court. Even to the casual observer, it is obvious that the plain language alone of Schedule W does not shed light on these figures.

The ERC correctly explained and interpreted these provisions, in this wise:

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[83] *Law Firm of Tungol v. Court of Appeals*, 579 Phil. 717, 726 (2008), citing *Abad v. Goldloop Properties, Inc.*, 549 Phil. 641, 654 (2007).

[84] *Id*.

[85] *Id.*

[86] *National Irrigation Administration v. Gamit*, G.R. No. 85869, November 6, 1992, 215 SCRA 436, 453, citing *Martin, Comments on the Rules of Court*, Vol. V, 1986 ed., p. 124, citing *Dick vs. King*, 236 P. 1059, 73 Mont. 465.

[87] *Id.* at 453-454, citing *Dent v. Industrial Oil & Gas Co.*, Ark. 122 2d. 162, 164.

It is worthy to note that Schedule W of the APA indicates the value "10.841%", which is enclosed in parenthesis, under the name of MERALCO in the first column, without any reference as to its base value. The figure 10.841% simply written as it is (without reference on the base value), is an incomplete mathematical sentence and, therefore, is susceptible to several interpretations. For instance, it can be construed as 10.841% of the entire SCPC capacity (10.841% of 322 MW) or it can also be taken to mean that 169,000 kW represents 10.841% of MERALCO's contract energy. A close scrutiny of Schedule W, however, indicates that 10.841% is not synonymous to 169,000 kW, *i.e.*, 169,000 kW does not represent 10.841% of MERALCO's energy requirement. To complete its meaning, the figure 10.841% should have been followed by a reference value and should have been written as "10.841% of ..." a specific base reference. Thus, to use 10.841% as the reference value alone for MERALCO's contract energy at any given hour would not be appropriate under the circumstances because SCPC would not have an idea of how much energy MERALCO would need at any given time and the capacity that the power plant can generate may not match with it.

On the other hand, to use the nominal figure 169,000 kW alone in reference to MERALCO's contract energy would likewise not be appropriate under the circumstances because the "10.841%" value written in parenthesis underneath the name "MERALCO" in the first column of Schedule W cannot just simply be ignored.

To synthesize, the Commission believes that neither of the figures (10.841% or 169,000 kW) taken alone should be controlling in reference to MERALCO's contract energy under the APA. The 10.841% value should be read and harmonized with the nominal figure 169,000 kW in order to give meaning to both, consistent with and in relation to the APA. In giving meaning to the words and intention of Schedule W, the Commission abides by the law stipulated under Article 1374 of the New Civil Code, which provides:

> ART. 1374. 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.[88]

The ambiguity in Schedule W partly lies in the figure "10.841%," which lacks a base value and is bereft of any specific

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[88] *Rollo,* pp. 306-307.

quantity or number (in kilowatts or any other unit) to represent the generated electricity that SCPC was obliged to deliver to MERALCO. A mere percentage below MERALCO's name without indicating what it is and what its base value is amounts to an incomplete numerical statement. Then, on the right columns, specific quantities, including the "160,000 kW," are laid down which seem to correspond or add up to SCPC's generating capacity but which, in the "Notes" section of the schedule, are confusingly referred to as merely "indicative," *i.e.*, estimates, which do not help reduce the uncertainty.

Such a lack of clarity results in a perplexing situation wherein the obligation to deliver could be interpreted as open-ended by one party – the obligee, but could be argued as "capped" or "limited" by the other party – the obligor. Obviously, such divergence needed to be addressed by a disinterested third party like the ERC.

Although how such confusion came about despite the presumed knowledge of both parties of both the high and low ranges of MERALCO's projected requirements, at any given time, as well as the limited generating capacity of the Calaca Power Plant, the supplier's sole generating asset, is beyond the subject of this review, what is certain is that there is an ambiguity that, if left to stand or to remain unresolved, would inevitably lead to interminable disputes. Thus, the Court sustains the ERC's decision to interpret the contract as well as its resulting interpretation and explanation.

The ERC correctly cited another principle under the Civil Code in contract interpretation which states,

> Art. 1374. 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.[89]

Additionally, under the Rules on Evidence, it is required that:

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[89] See also *Licaros v. Gatmaitan*, 414 Phil. 857 (2001); *China Banking Corporation v. Court of Appeals*, 333 Phil. 158 (1996).

RULE 130

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Sec. 11. *Instrument construed so as to give effect to all provisions.* – In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Then, case law is also settled on the rule that contracts should be so construed as to harmonize and give effect to its different provisions.[90] The legal effect of a contract is not determined alone by any particular provision disconnected from all others, but from the whole read together.[91]

Following the above rules and principles, the ERC correctly interpreted the ambiguity in Schedule W in a way that would render all of the contracts' provisions effectual. Although there was ambiguity, as earlier stated, in the figures 10.841% and 169,000 kW that appear on the said schedule, the ERC properly harmonized both provisions. It did not just disregard or dispense with either of the figures as such would have violated the principles that the "various stipulations of the contract shall be interpreted together" and that the "doubtful provisions shall be attributed with the sense which may result from all of them taken jointly." Instead, it interpreted both in a way that they would be preserved and work together. The parties clearly intended for the figures to be in the contract and bestowed such with meanings which the ERC had no power to just ignore or remove.

As stated by the ERC, the 10.841% without any base reference is mathematically incomplete and therefore opens itself up to various interpretations; thus, it is ambiguous. On the other hand, the 169,000 kW, which appears twice in Schedule W, if treated as merely "indicative" or just an "estimate," as PSALM

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[90] *Mendros, Jr. v. Mitsubishi Motors Phils. Corporation (MMPC)*, 599 Phil. 1, 18 (2009), citing *Reparations Commission v. Northern Lines, Inc., et al.*, 145 Phil. 24, 33 (1970).

[91] *Id.*

alleges, would be rendered insignificant or as if it was not even written in the contract, and the same could be said of all the other figures in the schedule including the 10.841%. Clearly, this was not the intention of the parties. The parties clearly assigned a common meaning to the figures and they were not mere estimates nor insignificant because, otherwise, the contract would be ineffectual and without these figures, the contract would not have even been signed in the first place.

It bears emphasis as well that the contract APA and its Schedule W appear to have been prepared by PSALM, so that the interpretation of any obscure or ambiguous words or stipulations therein should not favor it, as it is presumed to have caused such obscurity or ambiguity.[92]

Moreover, overturning the ERC's and the CA's interpretation would result in the absurd scenario of requiring SCPC to supply more than 169,000kW for MERALCO despite the fact that its contracted demand levels for various customers listed in Schedule W were pegged at 322 MW only and its dependable capacity is only 330 MW. As this Court has verified in the records, the ERC correctly explained that the Calaca Power Plant only produces up to 322 MW in electricity net of plant use; out of such produced, MERALCO obtains the biggest allocation of 169,000 kW (169 MW), whereas the rest of the customers share 153,000 kW (153MW).[93] It would be highly unreasonable to require SCPC to allocate even a marginal increase from 169,000 kW for MERALCO when such would cause it to renege on its obligations to supply its other customers. Such an interpretation that would lead to an unreasonableness which is frowned upon, for another oft-cited rule in the interpretation of contracts is that "the reasonableness of the result obtained, after analysis

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[92] CIVIL CODE, Art. 1377; *Horrigan v. Troika Commercial, Inc.*, 512 Phil. 782, 785 (2005).

[93] *Rollo,* p. 308.

and construction of the contract, must also be carefully considered."[94]

PSALM also contends that other stipulations in the contract such as the Special Conditions of the MERALCO TSC, as well as SCPC's option to enter into back-to-back supply contracts with other generators (or to purchase directly from the market), should it become unable to supply the contracted power under Schedule W, clearly are indications that there is no cap in SCPC's supply obligations. The contention, however, has no merit and, upon this Court's own examination of the contracts, affirms as correct the ERC's explanation in its Order[95] dated March 12, 2012 dismissing PSALM's motion for reconsideration, to wit:

A. NPC/PSALM's OBLIGATION UNDER THE TSC

Under the TSC contracted between MERALCO and NPC, the latter is obliged to deliver MERALCO's total energy requirements. As such, NPC is required to exhaust all means to find other sources of power to replace any curtailed energy at no extra cost to MERALCO. **Simply put, NPC is directly responsible to make up for any shortfall under the MERALCO TSC**. In fact, in its "Motion for Reconsideration," PSALM mentioned that "*Undeniably, Respondent PSALM under the MERALCO TSC is obligated to deliver the entire contracted energy as stated therein. x x x*" and that "*Respondent PSALM's obligation is to keep MERALCO whole.*"

It must be emphasized that **NPC and PSALM's obligation to supply the entire energy contract to MERALCO, including the obligation to replace any curtailed energy, was not passed on or assigned to SCPC**. Only the portion of the contract energy as defined in Part I of Schedule W was assigned to SCPC. Such is clear under Part II of Schedule W, which states:

"*Part II. Special Conditions of the MERALCO TSC*

The following conditions, unique to the MERALCO-NPC contract, shall apply to the assigned portion of the Contract Energy from the MERALCO TSC.

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[94] *JMA House Incorporated v. Sta. Monica Industrial Dev't. Corp*, 532 Phil. 233, 254 (2006), citing *RP v. David*, 480 Phil. 258, 266-267 (2004); *Carceller v. CA*, 362 Phil. 332, 340 (1994).

[95] *Rollo* pp. 337-350.

1. Neither the MERALCO TSC nor any portion thereof shall be assigned to the Buyer. It is the Contract Energy specified in part I that is the subject of the assignment."

B. SCPC'S OBLIGATION UNDER SCHEDULE W OF THE APA

On the other hand, under Schedule W of the APA, SCPC is legally obligated to deliver 10.841% of MERALCO's energy requirements but not to exceed 169,000 kW capacity allocation at any given hour. Accordingly, SCPC is responsible for any shortfall and is under obligation to provide and make up for curtailed energy if it fails to produce up to 169,000 kW capacity, at any given hour.[96]

The above explanation by the ERC states, in simple terms, that SCPC is not accountable for any shortfall once it had delivered 169,000 kW at any given hour, the same being the responsibility of NPC. SCPC becomes liable only whenever it fails to deliver whichever is lower of 169,000 kW or 10.841% of MERALCO's requirements, at any given hour. The Court has exhaustively examined the contract between the parties, including the so-called Special Conditions of the MERALCO TSC,[97] the Calaca Typical Hourly Customer's Load Profile[98] and the Nomination Protocol between MERALCO and NPC of TSC Contract Energy,[99] as cited by PSALM in its petition, and specifically the provisions thereof quoted by the ERC, and found the same to be consistent with the above conclusions of the said agency. As such, the Court will not interfere with the same, mindful of the principle that actions of an administrative agency may not be disturbed nor set aside by the judicial department *sans* any error of law, grave abuse of power or lack of jurisdiction, or grave abuse of discretion clearly conflicting with either the letter or spirit of the law.[100]

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[96] *Id.* at 343-345. (Emphasis supplied; italics on the original)

[97] *Id.* at 126.

[98] *Id.* at 127.

[99] *Id.* at 128.

[100] *Eastern Shipping Lines, Inc. v. Court of Appeals*, 353 Phil. 676, 685 (1998).

WHEREFORE, the petition is **DENIED**. The Court of Appeals' Decision dated September 4, 2012 and Resolution dated November 27, 2012 in CA-G.R. SP No. 123997 are **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206425. December 5, 2016]

VILMA N. CLAVE, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN [VISAYAS], CEBU CITY, HON. NELSON BARTOLOME, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 67, GUIMBAL, ILOILO, COMMISSION ON AUDIT (COA), REGIONAL OFFICE NO. VI, ILOILO CITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; INVESTIGATIVE AND PROSECUTORIAL POWERS; CANNOT BE INTERFERED WITH BY THE SUPREME COURT, SAVE IN CASES WHEN THE OMBUDSMAN'S GRAVE ABUSE IN THE EXERCISE OF ITS DISCRETION IS CLEAR.— In reviewing the Ombudsman's exercise of its constitutionally mandated powers, we bear in mind that *certiorari* is an extraordinary prerogative writ that is not demandable as a matter of right. For us to even consider a petition for *certiorari* questioning the Ombudsman's findings of probable cause, the petition must clearly and convincingly show that the Ombudsman

gravely abused its discretion, thus warranting the exercise of our jurisdiction under the Constitution and the Rules of Court. In this exercise, the justiciable issue to be resolved is *only* the presence or absence of grave abuse of discretion. The limited recourse to this Court is fundamentally based on the laws creating the Ombudsman, and the absence of any other instrumentality of the government exercising the same function insofar as criminal cases before the Sandiganbayan are concerned. Simply put, there is no other government body that determines probable cause against respondents who are to be indicted before the Sandiganbayan. Neither does the Court exercise this function when the matter is elevated *via* a petition for *certiorari*. In the light of these considerations, we have developed a policy of not interfering with the Ombudsman's findings of probable cause, save in the cases when the Ombudsman's grave abuse in the exercise of its discretion is clear. The general rule is that the courts should not interfere when the Ombudsman exercises its plenary investigative and prosecutorial powers. x x x [A]bsent any good and compelling reason, specifically the presence of grave abuse of discretion, courts will leave the Ombudsman alone in undertaking its tasks. But then again, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny.

2. ID.; ID.; ID.; ID.; PRELIMINARY INVESTIGATION; TO ARRIVE AT A FINDING OF PROBABLE CAUSE, THE OMBUDSMAN ONLY HAS TO FIND ENOUGH RELEVANT EVIDENCE TO SUPPORT ITS BELIEF THAT THE ACCUSED MOST LIKELY COMMITTED THE CRIME CHARGED.— During a preliminary investigation, the Ombudsman merely determines whether probable cause exists. It does not touch on the issue of guilt or innocence of the accused as it is not its function to rule on such issue. All that it does is to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused is probably guilty thereof. x x x [I]in order to arrive at its finding of probable cause, the Ombudsman only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, badges of grave abuse of discretion can be attributed to its ruling. After reviewing the records of this case, we cannot conclude

that the Ombudsman has been guilty of grave abuse in finding that Clave could possibly be guilty of the complex crime of malversation through the falsification of a public document. The Ombudsman in this case determined probable cause, not once but twice, as the trial court ordered it to review the case again before the warrant of arrest was issued.

APPEARANCES OF COUNSEL

Orlando S. Paulma for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for *certiorari*[1] filed under Rule 65 of the Rules of Court by petitioner Vilma N. Clave, assailing the Resolution dated December 30, 2010[2] and the Order dated December 13, 2012[3] of the Office of the Ombudsman-Visayas (*Ombudsman*) in OMB-V-C-09-0415-L. The assailed rulings found probable cause to formally charge Clave for the crime of malversation of public funds through the falsification of a public document.[4]

THE FACTUAL ANTECEDENTS

Clave was the General Manager of the Miagao Water District (*MWD*) in Iloilo from November 4, 2003, until she resigned on November 3, 2006. At first, Clave hesitated to accept the position as she had been employed with the San Jose Del Monte City Water District in Bulacan for almost six (6) years, and her family had permanently settled there. She nevertheless accepted the

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[1] With Application for a Temporary Restraining Order and a Writ of Preliminary Injunction.

[2] *Rollo*, pp. 40-48; attached as ANNEX "A" of the petition.

[3] *Id*. at 49-58; attached as ANNEX "B" of the petition.

[4] Defined and punished under Article 217 in relation to Article 171, paragraphs 2 and 4 and Article 48 of the Revised Penal Code.

offer on the assurance from the municipal mayor and the MWD's management that she would be given financial assistance in relocating her family.

At that time, the MWD could not immediately shoulder the relocation because of its financial condition, so its management advised Clave to secure a loan from the Rural Bank of Miagao, Iloilo. With the assurance from the board of directors that the MWD would shoulder the payment of the loan, Clave secured a loan from the bank.

The MWD board of directors used their *per diems* and amounts supposedly allocated for seminar expenses to initially pay the loan, Clave also used her personal money for this purpose. Thereafter, the MWD, through its board, allegedly requested the local government for financial assistance to recover the amounts "advanced" by Clave and the MWD directors.[5]

On August 3, 2005, the Municipality of Miagao, Iloilo, issued to MWD a PNB Check for Fifty Thousand Pesos (₱50,000.00).[6] According to Clave, the MWD directors directly instructed her to issue Official Receipt No. 716 (*OR No. 716*) indicating that the MWD received the total amount of the check,[7] but the duplicate copy of the receipt would only indicate the partial payment of one of the members of the board amounting to Three Hundred Pesos (₱300.00).[8] This transaction was entered in the MWD's records as reflected in the duplicate copy of OR No. 716.[9]

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[5] It must be noted, however, that the board resolution requesting for funds made no mention that the funds requested were to be used to cover the loan Clave applied for; *rollo*, p. 80: Board Resolution No. 011, attached as ANNEX "D" of the complaint-affidavit.

[6] *Id*. at 81; PNB Check No. 00000067814, attached as ANNEX "E" of the complaint-affidavit.

[7] *Id.* at 85, Miagao Water District Official Receipt No. 716, attached as ANNEX "I" of the complaint-affidavit.

[8] *Id.* at 83, Duplicate Copy of Miagao Water District Official Receipt No. 716, attached as ANNEX "G" of the complaint-affidavit.

[9] *Id*. at 82, Report of Collections and Deposits of Miagao Water District dated August 19, 2005, attached as ANNEX "F" of the complaint-affidavit.

A few weeks after Clave resigned from the MWD, the audit team tasked by the Commission on Audit (*COA*) issued Audit Observation Memorandum No. 2006-01 (2005) dated November 21, 2006 expressing the observation that OR No. 716 had been falsified and that the financial assistance of ₱50,000.00 could have been misappropriated.[10] The incumbent general manager then forwarded the findings of the audit team to Clave. In turn, she explained that she was merely acting under the direct instructions of the MWD board of directors, and that they eventually explained to the municipal mayor — through her letter of July 5, 2006 — how the financial assistance was spent.[11]

On ***September 23, 2009***, the COA filed a criminal complaint against Clave for falsification of public document and misappropriation of public funds.

Without any explanation from Clave but after sending her two notices to file her counter-affidavit, the Ombudsman issued the first assailed resolution finding probable cause that Clave is guilty of malversation through the falsification of OR No. 716. It held that she committed falsification when she knowingly issued a different duplicate copy of an acknowledgment receipt worth ₱300.00 when the original receipt was actually for the amount of ₱50,000.00. These discrepancies led the Ombudsman to assume that she misappropriated the difference. It accordingly filed an information with the appropriate court.

On Clave's motion,[12] the Regional Trial Court, Branch 61 of Guimbal, Iloilo (*RTC*), ordered the Ombudsman to conduct a reinvestigation, this time with Clave's participation in the preliminary investigation.[13]

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[10] *Id*. at 75, attached as ANNEX "B" of the complaint-affidavit.

[11] This letter was with concurrence of the MWD board of directors; *id.* at 114-115, attached as ANNEX "A" of Clave's counter-affidavit.

[12] *Id*. at 93-97, attached as ANNEX "I" of the petition.

[13] *Id.* at 100, attached as ANNEX "J" of the petition.

After the reinvestigation and after considering Clave's explanation and the settlement of the ₱50,000.00, the Ombudsman maintained its finding of probable cause. To the Ombudsman, Clave failed to present any corroborating evidence to prove that indeed she had merely been acting under the instructions of the MWD's directors.

Moreover, the municipal mayor's alleged knowledge of the deviation of the municipality's financial assistance, as well as the alleged "honest mistake" of not recording the transaction in the MWD books placed Clave in a more dubious position. To the Ombudsman, her return of the ₱50,000.00, would only be a mitigating circumstance if appreciated at all during trial.

Upon submission of the Ombudsman's findings, the RTC ordered the revival of the information initially filed against Clave, and issued the corresponding warrant for her arrest.[14] This warrant, however, was never implemented since Clave, after her resignation, has been outside Philippine jurisdiction, working as an Overseas Filipino Worker in Dubai, UAE.

THE PETITION

In her present petition, Clave cites the following grounds as errors:

(1) The Ombudsman failed to appreciate that there had already been a settlement of the P50,000.00 even before the complaint-affidavit was filed by the COA.

(2) The Ombudsman did not consider: the letter addressed to the municipal mayor, which had the *concurrence* of all the members of the MWD board of directors, and Clave's other documentary evidence, all of them submitted to prove that the financial assistance from the municipality was duly accounted for and was not used for her personal use, gain or benefits.

(3) The Ombudsman erred in not dismissing the criminal complaint against Clave for absence or lack of probable cause.

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[14] *Id.* at 120, attached as ANNEX "O" of the petition.

On the *first* assignment of error, Clave claims that the Notice of Charge/s sent by the COA gave her the opportunity to settle the amount she was accountable for.[15] On ***June 23, 2008***, evidenced by an official receipt issued by the MWD, Clave paid the amount of ₱50,000.00 to the MWD to cover the amount supposedly misappropriated.[16] She posits that had the MWD informed the COA of this final settlement, the latter would not have filed any criminal complaint in the first place.

On the *second* assignment of error, Clave narrates that the municipal mayor called for a meeting to discuss where exactly the ₱50,000.00 financial assistance went. At this meeting, the letter (duly signed by Clave and all of the MWD's directors) was submitted, which letter explained where the municipal payment went. The submission satisfied the municipal mayor who considered the issue over the financial discrepancy already settled. Again, this letter and the meeting with the municipal mayor would have already settled the issue had the MWD disclosed these circumstances to the COA.

Clave further suggests that the MWD management probably concealed these matters because they could be used as evidence that would place the directors in a controversial situation similar to hers.

On the *third* assignment of error, Clave faults the Ombudsman for not giving appropriate consideration to the letter which should serve as sufficient corroborating evidence to prove that she had acted in good faith as she was merely acting under the direct instruction of the MWD directors.

In addition, Clave argues that in issuing the original and the duplicate copies of OR No. 716, there was no simulation of facts. Both receipts reveal real and true facts as to the stated amounts and as to the name of the payees. The original copy

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[15] *Id*. at 116, Notice of Charges No. 2007-01(05) dated March 28, 2007, attached as ANNEX "B" of Clave's counter-affidavit.

[16] *Id*. at 119, Miagao Water District Official Receipt No. 7874, attached as ANNEX "D" of Clave's counter-affidavit.

reflects the true amount of ₱50,000.00 received from the Municipality of Miagao, Iloilo. On the other hand, the duplicate copy reflects the true amount of ₱300.00 as the amount actually received as partial payment of one of the directors for her water bill.

Lastly, Clave points out that there was no intent to hide the actual use of the money the MWD received from the municipality. There was transparency as to how and where the amount was spent. Likewise, no cash shortage was reported by the COA; the government had not suffered any damage or prejudice.

THE OMBUDSMAN'S COMMENT

The Ombudsman, represented by the Office of the Solicitor General (*OSG*), counters by saying that the assailed resolution and order were based on evidence; hence, *no grave abuse of discretion* can be attributed in arriving at its ruling.

The OSG submits that the Ombudsman did not err in its finding of probable cause for the crime of malversation of public funds through the falsification of a public document because all the elements of the charged crime were duly backed up by *prima facie* evidence on record.

At any rate, the OSG suggests that the matters that Clave raised pose factual issues that would necessarily require the consideration of evidentiary matters at a full blown trial. In this manner, the parties would be given the opportunity to adduce their respective evidence.

As to Clave's defense of good faith, the OSG submits that the "instruction" of the board of directors to write different entries in the original and duplicate copies of OR No. 716, assuming this to be true, can by no means be considered lawful. As an accountable officer, Clave ought to have known that the "order" emanating from the MWD directors was wrong and highly irregular.

With respect to the explanation on where the money was spent and the subsequent settlement of the ₱50,000.00, the OSG posits that neither would exonerate Clave from criminal liability.

The restitution of the amount misappropriated, if at all, would only affect the civil aspect of the crime. The letter to the municipal mayor, on the other hand, was a mere afterthought and a belated attempt to make it appear that there were actual and lawful expenditures using the money that had been misappropriated. The OSG points out that a cursory examination of the letter would readily show that not all the items it reflected were authorized expenses and were backed up by the required official receipts.

OUR RULING

We find the present petition unmeritorious.

Preliminary Considerations

In reviewing the Ombudsman's exercise of its constitutionally mandated powers, we bear in mind that *certiorari* is an extraordinary prerogative writ that is not demandable as a matter of right.[17] For us to even consider a petition for *certiorari* questioning the Ombudsman's findings of probable cause, the petition must clearly and convincingly show that the Ombudsman gravely abused its discretion, thus warranting the exercise of our jurisdiction under the Constitution and the Rules of Court.[18] In this exercise, the justiciable issue to be resolved is *only* the presence or absence of grave abuse of discretion.

The limited recourse to this Court is fundamentally based on the laws creating the Ombudsman,[19] and the absence of any other instrumentality of the government exercising the same function insofar as criminal cases before the Sandiganbayan

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[17] *Angeles v. Gutierrez,* 685 Phil. 183, 193 (2012).

[18] See: Section 1, Article VIII of the 1987 Constitution on judicial power, as well as Rule 65 of the Rules of Court on the review via a petition for *certiorari* of acts in the exercise of judicial and quasi-judicial functions for lack or excess of jurisdiction or for grave abuse of discretion amounting to lack of jurisdiction.

[19] Constitution, Article XI, Sections 12 & 13; R.A. No. 6770, otherwise known as the Ombdusman Act of 1989, Sections 11(4)(a) & 15(1).

are concerned. Simply put, there is no other government body that determines probable cause against respondents who are to be indicted before the Sandiganbayan.[20] Neither does the Court exercise this function when the matter is elevated *via* a petition for *certiorari*.

In the light of these considerations, we have developed a policy of not interfering with the Ombudsman's findings of probable cause, save in the cases when the Ombudsman's grave abuse in the exercise of its discretion is clear. The general rule is that the courts should not interfere when the Ombudsman exercises its plenary investigative and prosecutorial powers. As explained in *Esquivel v. Ombudsman*:[21]

> The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.[22]

Thus, absent any good and compelling reason, specifically the presence of grave abuse of discretion, courts will leave the Ombudsman alone in undertaking its tasks. But then again, where

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[20] See P.D. No. 1606, as amended by R.A. No. 10660, Section 4.

[21] 437 Phil. 702 (2002).

[22] *Id.* at 711-712.

there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny.

From this point, we may now look into the Ombudsman's acts *only to review* whether grave abuse of discretion is shown.[23] If, indeed, a petitioner has shown that the Ombudsman capriciously and whimsically exercised its judgment in determining the existence of probable cause, we may then accordingly issue a writ of *certiorari* to nullify its findings on the ground that these were made in excess of jurisdiction.

The Ombudsman is hardly guilty of any grave abuse of discretion in finding probable cause to indict Clave of malversation of public funds through the falsification of a public document

On the petitioner lies the burden of demonstrating all the facts essential to establish the right to a writ of *certiorari*.[24] He must discharge the burden of proving grave abuse of discretion on the part of the Ombudsman in accordance with the definition and standards set by law and jurisprudence.[25] In other words, Clave, as the petitioner in this case, must prove with sufficient evidence her allegations and claims that the Ombudsman gravely abused its discretion in finding probable cause.

During a preliminary investigation, the Ombudsman merely determines whether probable cause exists. It does not touch on the issue of guilt or innocence of the accused as it is not its function to rule on such issue.[26] All that it does is to weigh the

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[23] See *Quarto v. Marcelo*, G.R. No. 182848, October 5, 2011, 658 SCRA 580; *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, 23 November 2007, 538 SCRA 207; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 415 Phil. 135 (2001).

[24] *People v. Sandiganbayan*, 681 Phil. 90, 110 (2012), citing *Corpuz v. Sandiganbayan*, 484 Phil. 899 (2004).

[25] *Agdeppa v. Office of the Ombudsman*, G.R, No. 146376, 23 April 2014, 723 SCRA 293, 332.

[26] *Ganaden v. Office of the Ombudsman*, 665 Phil. 224, 231-232 (2011).

evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused is probably guilty thereof.[27]

In *Galario v. Office of the Ombudsman*,[28] we explained that a finding of probable cause needs only to rest on evidence showing that *more likely than not* a crime has been committed and there is enough reason to believe that it was committed by the accused.[29] The term is merely based on opinion and reasonable belief.[30]

In *Casing v. Ombudsman*,[31] we held that **substantial evidence** — *i.e.*, relevant evidence as a reasonable mind may accept as adequate to support a conclusion — must support the Ombudsman's ruling for its decision to stand because probable cause is concerned merely with probability and not with absolute or even moral certainty.[32]

From all these, we gather that in order to arrive at its finding of probable cause, the Ombudsman only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, badges of grave abuse of discretion can be attributed to its ruling.[33]

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[27] *Id*.

[28] G.R. No. 166797, July 10, 2007, 527 SCRA 190.

[29] *Id.* at 204.

[30] *Id.*

[31] 687 Phil. 468 (2012).

[32] *Id.* at 477.

[33] Grave abuse of discretion Implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law in order to exceptionally warrant judicial intervention, *id.* at 476. See also *Sistoza v. Desierto*, 476 Phil. 117 (2002) to show an instance when the Court held that the Ombudsman was guilty of grave abuse of discretion in its finding of probable cause.

After reviewing the records of this case, we cannot conclude that the Ombudsman has been guilty of grave abuse in finding that Clave could possibly be guilty of the complex crime of malversation through the falsification of a public document. The Ombudsman in this case determined probable cause, not once but twice, as the trial court ordered it to review the case again before the warrant of arrest was issued.

In the present case, all the Ombudsman had to do was to compare the original and the duplicate copy of OR No. 716 to immediately appreciate that Clave indicated different amounts therein. It is likewise basic common sense that a duplicate copy of a document should reflect what appears in the original. The point of having a duplicate copy is for both parties to a transaction to have the needed documents to back up their respective records so that when a subsequent examination is conducted, their records will tally. True enough, when the COA conducted its audit of the municipality and the MWD, it immediately saw the discrepancy with regard to OR No. 716.

The Ombudsman obviously did not accord significant merit to Clave's claim that she was merely acting under the direct instruction of the MWD board of directors. As pointed out by the OSG, the instruction to write different entries in the original and duplicate copy of OR No. 716 is patently wrong. To our mind, a person who blindly obeys a patent unlawful order certainly cannot claim good faith.

As for the more serious charge of malversation, we find that Clave failed to prove her allegation that the loan she applied for would be shouldered by the MWD. What actually appears in the MWD board resolution to justify the request for financial assistance from the municipality are prior obligations of the MWD with the Iloilo Electric Cooperative. If the financial assistance really intended to cover the loan for Clave's relocation expenses, it appears strange that this was not indicated in the MWD's request.

Moreover, by issuing a duplicate copy showing that the MWD received only ₱300.00 (when in fact it received ₱50,000.00), the clear intent was to show — per the MWD records — that

it only received such amount. Hence, it was not difficult for the COA to conclude that the MWD received money that was not accounted for. These circumstances clearly suggest that the difference could have possibly been misappropriated.[34]

All told, we agree with the findings of the Ombudsman that Clave could have misappropriated the financial allocation given to the MWD by issuing a false duplicate copy of OR No. 716. She, therefore, should stand charged for malversation through the falsification of a public document.

In arriving at this conclusion, we however, find it peculiar that the Ombudsman did not charge the MWD board of directors as well, given that Clave proved that they knew what was going on all along. In the letter explaining to the municipal mayor what happened to the financial assistance from the municipality, we note that this letter was duly concurred in by all the members of the board. Moreover, the duplicate copy of OR No. 716 was issued to one of the members of the board supposedly to reflect her partial payment for her water bill. Lastly, Clave alleged that the MWD directors were present during the meeting with the municipal mayor, and they all explained what really happened with the ₱50,000.00 financial allocation from the municipality.

Under the above circumstances, we do not find it out of place to suggest to the Ombudsman to likewise look into the participation of the MWD directors and to assess their possible criminal liability.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[34] See *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015 and *People v. Pantaleon*, 600 Phil. 186 (2009) where the Court found the accused guilty for the complex crime of malversation through the falsification of public documents.

THIRD DIVISION

[G.R. No. 208643. December 5, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SUSAN M. TAMAÑO AND JAFFY B. GULMATICO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In every prosecution for illegal sale of dangerous drugs, like *shabu* in this case, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence. The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— With respect to the prosecution for illegal possession of dangerous drugs, the following facts must be proved: (a) the accused was in possession of dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of dangerous drugs. x x x The mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* (intent to possess) sufficient to convict an accused in the absence of any satisfactory explanation.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS OR ILLEGAL SALE OF DANGEROUS DRUGS; THE DANGEROUS DRUG ITSELF CONSTITUTES THE VERY *CORPUS DELICTI* OF THE OFFENSE.— In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. 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-appellant; otherwise, the prosecution for illegal possession of dangerous drugs under R.A. No. 9165 fails. x x x Similarly, in the prosecution of illegal sale of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence beyond reasonable doubt, plus the fact of its delivery and/or sale, are both vital and essential to a judgment of conviction. And more than just the fact of sale, of prime importance is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

4. ID.; ID.; CUSTODY OF SEIZED ITEMS; NON-COMPLIANCE WITH THE PROCEDURE THEREON DOES NOT RENDER VOID THE SEIZURE OF AND CUSTODY OVER THE SEIZED ITEMS, FOR AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS.— [N]on-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. While

nowhere in the prosecution's evidence would show the "justifiable ground" which may excuse the police operatives involved from making an immediate physical inventory of the drugs confiscated and/or seized, such omission shall not render appellants' arrest illegal or the items seized/confiscated from them as inadmissible in evidence. Said "justifiable ground" will remain unknown in the light of the apparent failure of appellants to specifically challenge the custody and safekeeping or the issue of disposition and preservation of the subject drug before the trial court. They cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.

5. ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENT; PERFORMS THE FUNCTION OF ENSURING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.— [T]he rule on chain of custody x x x expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs from the time they are seized from the accused until the time they are presented in court. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.

6. ID.; ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE THEREWITH IS SUFFICIENT AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS.— [W]hile the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain. Thus, failure to strictly comply with Section 21 (1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. The most important factor is the preservation of the integrity and evidentiary value of the seized item. In a number of cases

We held that with the implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement, substantial compliance is sufficient as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officers. We ruled that the failure to photograph and conduct physical inventory of the seized items are not fatal to the case against the accused, and do not *ipso facto* render inadmissible in evidence the items seized. What is important is that the seized item marked at the police station is identified as the same item produced in court.

7. ID.; ID.; ILLEGAL POSSESSION OF EQUIPMENT, INSTRUMENT, APPARATUS AND OTHER PARAPHERNALIA FOR DANGEROUS DRUGS; ELEMENTS.— The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

8. REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT ATTAIN MORE CREDIBILITY THAN THE TESTIMONY OF THE PROSECUTION WITNESS WHO TESTIFIED CLEARLY, PROVIDING POSITIVE EVIDENCE ON THE CRIME COMMITTED.— [M]ere denial cannot prevail over the positive and categorical identification and declarations of the police officers. The defense of denial, frame-up or extortion, like *alibi*, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act. As evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed. One such positive evidence, in this case, is the result of the laboratory examination conducted on the drugs recovered from the appellants which revealed that the plastic sachets tested positive for the presence of "*shabu*."

9. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CAN ONLY BE OVERCOME THROUGH CLEAR AND CONVINCING EVIDENCE SHOWING EITHER THAT THE LAW ENFORCEMENT AGENCIES WERE NOT PROPERLY PERFORMING THEIR DUTY OR THAT THEY WERE INSPIRED BY ANY IMPROPER MOTIVE.— [T]he defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. In the present cases, appellants failed to overcome such presumption.

10. ID.; ID.; CREDIBILITY OF WITNESSES; THE FINDINGS AND CONCLUSION OF THE TRIAL COURT THEREON ARE ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL.— Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. The rule finds an even more stringent application where said findings are sustained by the CA as in these cases. Hence, We find no compelling reason to deviate from the CA's findings that, indeed, the appellants' guilt were sufficiently proven by the prosecution beyond reasonable doubt.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Romero Espera & Associates for accused-appellants.

D E C I S I O N

PERALTA, *J.*:

This is an appeal of the Decision[1] dated August 31, 2012 of the Court of Appeals (*CA*) in CA-G.R. CEB-CR-H.C. No. 00762 affirming the Decision[2] dated May 29, 2007 of the Regional Trial Court (*RTC*) of Iloilo City, Branch 36, in Criminal Case Nos. 0459517 to 0459521, convicting herein appellants Susan M. Tamaño and Jaffy B. Gulmatico of Violation of Sections 5, 11 and 12, Article II of Republic Act No. (R.A. No.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

On July 30, 2004,[3] appellants were charged with Violation of Section 5 (*Illegal Sale of Dangerous Drugs*), Section 11 (Illegal Possession of Dangerous Drugs) and Section 12 (Illegal Possession of Dangerous Drug Paraphernalia), Article II of R.A. No. 9165 in five (5) separate Informations,[4] the accusatory portions of which read as follows:

Criminal Case No. 0459517

(Violation of Section 5 against accused Tamaño and Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating between themselves, working together and helping one another, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally sell/distribute/and deliver to a PNP poseur-buyer one (1) plastic sachet containing 0.220 gram of methylamphetamine hydrochloride (shabu), a dangerous drug, in consideration of ₱500.00 without the authority to sell and distribute the same; that one (1)

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[1] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 3-27.

[2] *Id.* At 107-139.

[3] *Id.* at 6.

[4] *Id.* at 108 to 109.

₱500.00 marked bill with Serial No. LL-637648 was recovered from the possession of herein accused as proceeds of the sale/buy-bust money.

Criminal Case No. 0459518

(Violation of Section 11 against accused Tamaño and Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously have in her possession and control three (3) small heat-sealed transparent plastic bags marked "Susan Kelly and Merriam" placed in a heat-sealed transparent plastic bag marked "B2" containing a total weight of 0.345 gram of methylamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Criminal Case No. 0459519

(Violation of Section 12 against accused Tamaño)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, did then and there willfully, unlawfully and feloniously have in her possession and control two (2) pieces disposable lighters and four (4) pcs. empty plastic sachets, paraphernalia/equipment fit and intended for administering, consuming and introducing into the body methamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Criminal Case No. 0459520

(Violation of Section 11 against accused Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously have in his possession and control twenty-four (24) small heat-sealed transparent plastic bags containing a total weight of 8.695 grams of methylamphetamine hydrochloride (shabu) and two (2) small heat-sealed transparent plastic bags of 0.192 gram of methylamphetamine hydrochloride (shabu), all with the aggregate weight of 8.887 grams of methylamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Criminal Case No. 0459521

(Violation of Section 12 against accused Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, did then and there willfully, unlawfully and feloniously have in his possession and control fifteen (15) pieces of empty plastic sachets, one (1) plastic straw used in scooping shabu, one (1) piece of blade, one (1) pair of scissors, and nine (9) sliced aluminum foils, all paraphernalia/equipment fit and intended for administering, consuming and introducing into the body methylamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Upon arraignment on September 13, 2004, both appellants pleaded not guilty[5] to the respective charges against them. During the pre-trial conference, the parties entered into the following stipulation of facts:

1) That appellants are the same persons charged in the separate Informations;
2) That the RTC has jurisdiction to try the cases;
3) That appellants were at Zone 6, Barangay Gustilo, Lapaz, Iloilo City on July 27, 004 at 12:05 noon;
4) That on the same date, at past 12:05 in the afternoon, appellants were brought by the members of the Philippine Drug Enforcement Agency (PDEA) at Camp Delgado, Iloilo City;
5) That appellants were photographed at the Iloilo City Prosecutor's Office, together with Prosecutor Espanola and other persons in the morning of on July 28, 2004;
6) That on July 28, 2004, the PDEA made a request for laboratory examination of dangerous drug and dangerous drug paraphernalia;
7) That appellants admit the existence of Chemistry Report No. D- 173-04 and the expertise of Police Senior Inspector Agustina Ompoy, the Forensic Chemical Officer of the Philippine National Police Crime Laboratory who examined the items subject of the cases.[6]

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[5] *Id.* at 110.

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

Thereafter, joint trial on the merits ensued. The prosecution presented the testimonies of four (4) members of the PDEA who participated in the apprehension of appellants, namely, PO3 Rudy Gepaneca, P/Sr. Inspector Leroy Rapiz, PO1 Rommel Aguenido and SPO3 Novemito Calaor. The prosecution also presented SPO4 Glicerio Gafate, Exhibit Custodian of the PDEA, who took initial custody of the items seized from appellants, and P/Insp. Agustina Ompoy, the one who examined the items subject of the cases.[7]

The evidence of the prosecution may be summed up as follows: On July 22, 2004, PO3 Gepaneca of the PDEA was informed by a confidential agent that one *alias* "Susan Kana" was selling shabu in Brgy. Gustilo, Zone 6, Lapaz, Iloilo City. The following day, PO3 Gepaneca and the agent conducted a surveillance of the said area wherein the agent pointed to a woman identified as "Susan Kana."[8]

On July 27, 2004, after confirmation from the agent that that they could purchase shabu from "Susan Kana," a buy-bust team was formed by P/Sr. Inspector Rapiz. Around 11:30 in the morning, the team proceeded to the target area in Brgy. Gustilo. After waiting for a while, appellants arrived. PO3 Gepaneca was introduced by the agent to one Susan Kana who turned out to be appellant Susan Tamaño. Then, PO3 Gepaneca took the ₱500 buy-bust money and handed it to appellant Tamaño who, in turn, told appellant Gulmatico to give a sachet of *shabu* to PO3 Gepaneca. After appellant Gulmatico handed to PO3 Gepaneca one (1) plastic sachet of *shabu* weighing 0.220 gram (*Exhibits "J-1"*), the latter took off his cap as a signal that the transaction was consummated. At that point, PO1 Aguenido immediately arrested and searched the persons of appellants. The ₱500.00 bill (*Exhibits "M-1"*) was recovered from the right hand of appellant Tamaño; and from her right pocket, a big plastic sachet was recovered containing three (3) plastic sachets of suspected *shabu* with markings "Susan", "Merriam and "Kelly"

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[7] *Id.* at 111.

[8] *Id.* at 111-118.

(*Exhibits "I-2", "I-3", "I-4"*) with a total weight of 0.345 gram. Also, four (4) empty plastic sachets and two (2) pieces of disposable lighters (*Exhibits "P-1" and "P-2"*), among others, were recovered from the bag of appellant Tamaño. On the other hand, PO1 Aguenido recovered from the right pocket of appellant Gulmatico twenty- four (24) sachets of suspected shabu (*Exhibits "K-2" to "K-25", "E-2-A"*) with a total weight of 8.695 grams and two (2) small sachets of suspected *shabu* (*Exhibits "K-27" and "K-28"*); and, from his plastic bag were recovered fifteen (15) empty plastic sachets, one (1) plastic straw (*Exhibits "L-1"*) and nine (9) sliced aluminum foils (*Exhibits "T-1" to "T-9"*). The seized items were brought to the police officers' office and were accordingly marked by SPO3 Calaor and turned over to PDEA Exhibit Custodian SPO4 Gafate. The following day, SPO3 Calaor took the same items to the Iloilo City Prosecution Office where they were all inventoried. Thereafter, SPO3 Calaor submitted some of the items, including the sachets of suspected *shabu*, to the PNP Crime Laboratory for examination. P/Insp. Ompoy, Forensic Chemical Officer, examined the sachets, and the contents turned positive to the test for methamphetamine hydrochloride (*shabu*), while the plastic straw revealed traces of *shabu*, as stated in Chemistry Report No. D-17304 (*Exhibits "E" and "E-3"*).

The defense, on the other hand, presented appellants and offered a different version of what transpired on the day of the arrest. Appellants narrated that around 9:00 o'clock in the morning of July 27, 2004, appellant Tamaño was helping her aunt at the latter's "carenderia" situated at the Lapaz Public Market. She was, at the same time, waiting for appellant Gulmatico because they agreed to visit their friend, Joel Amihan, in Brgy. Gustilo, Lapaz. Appellant Tamaño's friend named Gigi arrived and requested appellant Tamaño to bring to Gigi's boyfriend, in Bo. Obrero, Iloilo City, pieces of clothing placed in a plastic bag. When appellant Gulmatico arrived, the two appellants proceeded to Brgy. Gustilo. Along the way, appellant Tamaño got suspicious of the contents of the plastic bag, so she let appellant Gulmatico carry the same. When the two were at the house of Joel Amihan, Jeffrey Valenzuela, who is a

common friend, arrived. After some conversations, the four decided to leave the place. While leaving, appellants were accosted by the police officers and brought to Camp Delgado where they were searched. As a result of the search, sachets of suspected *shabu* and *shabu* paraphernalia, among others, were recovered from the plastic bag of Gigi which was then being carried by appellant Gulmatico.[9] During the trial of the cases, two other witnesses corroborated some portions of the testimonies of appellants.[10]

On May 29, 2007, the RTC rendered a Decision convicting appellants of Violation of Sections 5, 11 and 12, Article II of R.A. No. 9165. The pertinent portions of the *fallo* read as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. Finding accused Susan Tamaño y Marcelino and Jaffy Gulmatico y Banal GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 04-59517 and sentencing both accused to suffer the penalty of life imprisonment and to pay individually the fine of Five Hundred Thousand (₱500,000.00) Pesos;

2. Finding accused Susan Tamaño y Marcelino GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 04-59518 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Twelve (12) Years and One (1) Day, as minimum, to Fourteen (14) Years, as maximum, and to pay the fine of Three Hundred Thousand (₱300,000.00) Pesos;

3. Finding accused Susan Tamaño y Marcelino GUILTY beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 in Criminal Case No. 04-59519 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) Day, as minimum, to Two (2) Years as maximum, and to pay the fine of Ten Thousand (₱10,000.00) Pesos;

4. Finding accused Jaffy Gulmatico y Benal GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic

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[9] *Id.* at 118-119

[10] *Id.* at 111.

Act No. 9165 in Criminal Case No. 04-59520 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Twenty (20) Years and One (1) Day, as minimum, to Life Imprisonment, as maximum, and to pay the fine of Three Hundred Thousand (₱300,000.00) Pesos;

5. Finding accused Jaffy Gulmatico y Banal GUILTY beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 in Criminal Case No. 04-59521 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) Day, as minimum, to Two (2) Years, as maximum, and to pay the fine of Ten Thousand (₱10,000.00) Pesos;

Insofar as Criminal Case Nos. 04-59518 to 04-59521 both accused are entitled to the full benefits of their preventive detention provided they voluntarily agree in writing to abide by the conditions imposed on convicted prisoners pursuant to the provision of Article 29 of the Revised Penal Code.[11]

Aggrieved, appellants appealed the aforesaid Decision to the CA *via* a Notice of Appeal.

On August 31, 2012, the CA affirmed the appellants' conviction. The *fallo* of the Decision reads, thus:

WHEREFORE, in view of the foregoing premises, the Decision of the Regional Trial Court convicting both appellants is hereby AFFIRMED *in toto*.[12]

Still unsatisfied, appellants elevated the aforesaid Decision of the CA to this Court *via* a Notice of Appeal.

In a Resolution dated October 9, 2013, this Court required the parties to submit their respective Supplemental Briefs if they so desire.[13] Both parties manifested that they are no longer filing a Supplemental Brief.

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[11] *Id.* at 136-137.

[12] *Id* at 26. (Emphasis in the original)

[13] *Id.* at 34.

In their Brief,[14] appellants stated that the trial court has "misapplied some facts of value which if considered could probably alter the result of the decision convicting both accused-appellants of the crime/crimes as charged, such as:"

A. THAT THE PROSECUTION WITNESSES COMMITTED CONTRADICTION AS TO THE IDENTITY OF THEIR SUBJECT PERSON WHICH POINTS TO THE FACT THAT THERE WAS NO BUY-BUST OPERATION AT ALL;

B. THE TIME OF THE RECORDING OF THE BUY-BUST MONEY CAME LATER THAN THE TIME OF ARREST;

C. THAT NO INVENTORY OF THE RECOVERIES WERE MADE AT THE PLACE WHERE THE ALEGED BUY-BUST WAS HELD;

D. THAT THERE IS NO CLEAR STATEMENT AS TO WHO ACTUALLY CARRIED THE ARTICLES SEIZED FROM THE PLACE OF THE ALLEGED BUY-BUST OPERATION;

E. THAT THE EXAMINATION CONDUCTED BY THE FORENSIC OFFICER OF THE SPECIMEN SUBJECT OF THE CASE IS NOT SUFFICIENT COMPLIANCE UNDER SECTION 21 OF R.A. 9165.

We dismiss the appeal. From the issues raised by the appellants, they are basically questioning the validity of the buy-bust operation and the compliance with the chain of custody rule.

In every prosecution for illegal sale of dangerous drugs, like *shabu* in this case, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence. The commission of the offense of illegal sale of dangerous drugs requires merely

[14] *Id.* at 63-106.

the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.[15]

In Criminal Case No. 04-59517, We agree with the lower courts that the aforesaid elements of illegal sale of dangerous drugs were adequately and satisfactorily established by the prosecution.

The appellants who were caught *in flagrante delicto* were positively identified by the prosecution witnesses as the same persons who sold one (1) plastic sachet containing 0.220 gram of white crystalline substance, later confirmed as *shabu*, for a consideration of ₱500.00. The said plastic sachet of *shabu* was presented in court, which the prosecution identified to be the same object sold by appellants. Likewise, the testimonies of the prosecution witnesses established how the transaction with appellants happened from the moment the informant introduced PO3 Gepaneca, the poseur-buyer, to appellants, as someone interested in buying their stuff, up to the time PO3 Gepaneca handed to appellant Tamaño the ₱500.00 bill and, in turn, appellant Gulmatico handed to him the plastic sachet of suspected *shabu*, thus, consummating the sale transaction between them. SPO3 Calaor caused the plastic sachet of suspected *shabu* be examined at the PNP Crime Laboratory. The item weighing 0.220 gram was tested positive to the test for methamphetamine hydrochloride (*shabu*), as evidenced by Chemistry Report No. D-17304 prepared by P/Insp. Ompoy, the Forensic Chemical Officer. It must be noted that the defense admitted the expertise of P/Insp. Ompoy who examined the drug specimens.

Thus, the collective evidence presented during the trial by the prosecution adequately established that a valid buy-bust operation was conducted. Appellants conspired and confederated with each other to sell *shabu*. Appellant Tamaño received the

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[15] *People v. Villarta*, G.R. No. 205610, July 30, 2014, 731 SCRA 497, 509.

₱500 bill, while appellant Gulmatico handed the *shabu* to the buyer. Their respective acts lead to no other conclusion except that they have a common design and purpose — to sell *shabu*.

Appellants argue that the prosecution witnesses committed contradiction as to the identity of their subject person which was identified as one Susan Kana, and which allegedly points to the fact that there was no buy-bust operation at all. This argument is flawed. The fact that appellants were caught *in flagrante delicto* makes the discrepancies between the names of the suspects in the surveillance reports and the names of the accused immaterial. What is material is that the transaction or sale actually took place, as in this case. What matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.[16]

With respect to the prosecution for illegal possession of dangerous drugs, the following facts must be proved: (a) the accused was in possession of dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[17]

In the cases under consideration specifically Criminal Case Nos. 04- 595118 and 04-59520, We also conform to the lower courts' findings that all the elements of illegal possession of dangerous drugs were adequately proven by the prosecution. When an accused is caught *in flagrante delicto* in accordance with Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure, the police officers are not only authorized, but are duty-bound, to arrest him even without a warrant.[18] Thus, since

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[16] *People v. Dela Rosa*, G.R. No. 185166, January 26, 2011, 640 SCRA 635.

[17] *Valencia v. People*, 725 Phil. 268, 277 (2014); *People v. Abedin*, 685 Phil. 552, 563 (2012); *Asiatico v. People*, 673 Phil. 74, 81 (2011).

[18] *People v. Pavia*, G.R. No. 202687, January 14, 2015, 746 SCRA 216, 221.

appellants' arrest was legal, the search and seizure that resulted from it were likewise lawful.[19]

As a result of the lawful search on the persons of appellants, appellant Tamaño was found to be in possession of a big plastic sachet containing three (3) plastic sachets of *shabu*, a dangerous drug, with markings "Susan", "Merriam and "Kelly", and with a total weight of 0.345 gram (*Exhibits "I-2", "I-3", "I-4"*). On the other hand, appellant Gulmatico was found to be in possession of twenty-four (24) sachets of *shabu* with a total weight of 8.695 grams (*Exhibits "K-2" to "K-25", "E-2-A"*) and two (2) small sachets of *shabu* (*Exhibits "K-27" and "K-28"*). Both could not present any proof or justification that they were fully authorized by law to possess the same. The mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* (intent to possess) sufficient to convict an accused in the absence of any satisfactory explanation.[20] Both appellants were found in possession of dangerous drugs.

We find untenable the contention of appellants that since the provision of Section 21, Article II of Republic Act No. 9165 was not strictly complied with, the prosecution allegedly failed to prove the identity and integrity of the seized prohibited drugs.

Section 21, paragraph 1, of Article II of R.A. No. 9165 reads:

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essentials Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[19] *People v. Enrique Hindoy*, 410 Phil. 6, 21 (2001).

[20] *People v. Tancinco*, 736 Phil. 610, 623 (2014).

(1) The apprehending officer/team having initial custody and control of the drugs shall immediately, after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Further, Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 similarly provides that:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. 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-appellant; otherwise, the prosecution for illegal possession of dangerous drugs under R.A. No. 9165 fails.[21] In this regard, the aforesaid provisions outline the procedure to

[21] *Fajardo v. People*, 691 Phil. 758-759 (2012); *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

be observed by the apprehending officers in the seizure and custody of dangerous drugs.

Similarly, in the prosecution of illegal sale of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence beyond reasonable doubt, plus the fact of its delivery and/or sale, are both vital and essential to a judgment of conviction. And more than just the fact of sale, of prime importance is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[22]

However, under the same proviso aforecited, non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.[23] While nowhere in the prosecution's evidence would show the "justifiable ground" which may excuse the police operatives involved from making an immediate physical inventory of the drugs confiscated and/or seized, such omission shall not render appellants' arrest illegal or the items seized/ confiscated from them as inadmissible in evidence. Said "justifiable ground" will remain unknown in the light of the apparent failure of appellants to specifically challenge the custody and safekeeping or the issue of disposition and preservation of the subject drug before the trial court. They cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.[24]

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[22] *People v. Havana*, G.R. No. 198450, January 11, 2016.

[23] *People v. Ventura*, 619 Phil. 536, 552 (2009).

[24] *Saraum v. People*, G.R. No. 205472, January 25, 2016, citing *People v. Campomanes, et al.*, 641 Phil. 610, 623 (2010).

Moreover, the rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs from the time they are seized from the accused until the time they are presented in court.[25] The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[26]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing R.A. No. 9165, defines chain of custody as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment 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.

In the cases at bar, PO1 Aguenido immediately searched the persons of appellants. From the right pocket of appellant Tamaño, a big plastic sachet was recovered containing three (3) plastic sachets of *shabu* with a total weight of 0.345 gram. On the other hand, PO1 Aguenido recovered from the right pocket of appellant Gulmatico twenty-four (24) sachets of *shabu* with a total weight of 8.695 grams and two (2) small sachets of *shabu*.

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[25] *People v. Bautista*, 682 Phil. 487, 501 (2012).

[26] *People v. Dela Rosa, supra* note 16.

The seized items were brought to the police officers' office and were accordingly marked by SPO3 Calaor and turned over to PDEA Exhibit Custodian SPO4 Gafate. The following day, SPO3 Calaor took the same items to the Iloilo City Prosecution Office where they were all inventoried. Thereafter, SPO3 Calaor submitted some of the items including the sachets of *shabu* to the PNP Crime Laboratory for examination. P/Insp. Ompoy, Forensic Chemical Officer, examined the sachets and the contents were positive to the test for methampheatmine hydrochloride (*shabu*). During the trial of the cases, PO3 Gepaneca, P/Sr. Inspector Rapiz, PO1 Aguenido, SPO3 Calaor, SPO4 Gafate and P/Insp. Ompoy testified for the prosecution. They properly identified the Chemistry Report and the subject specimens when presented in court.

From the foregoing, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drugs had not been compromised because it established the crucial link in the chain of custody of the seized item from the time it was first discovered until it was brought to the court for examination.[27] The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court.[28]

In these subject cases, the facts persuasively proved that the sachets of *shabu*, including the drug paraphernalia presented in court, were the same items sold/seized from appellants. The integrity and evidentiary value thereof were duly preserved. The marking and the handling of the specimens were testified to by PO1 Aguenido, SPO3 Calaor, SPO4 Gafate and P/Sr. Inspector Agustina Ompoy. It must be noted that appellants admitted the expertise of Police Senior Inspector Ompoy, the chemist who conducted the laboratory tests. Hence, the aforesaid

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[27] *People v. Pavia, supra* note 18, at 224.

[28] *People v. Alivio, et al.*, 664 Phil. 565, 577-578 (2011).

prosecution witnesses testified about every link in the chain, from the moment the seized items were picked up to the time they were offered into evidence in court.

To reiterate, We discussed in the case of *Mallillin v. People*[29] how the chain of custody of seized items should be established, thus:

> 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 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.[30]

However, while the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain.[31] Thus, failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. The most important factor is the preservation of the integrity and evidentiary value of the seized item.[32]

In a number of cases[33] We held that with the implied judicial recognition of the difficulty of complete compliance with the

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[29] 576 Phil. 576 (2008).

[30] *Mallillin v. People, supra,* at 587. (Citations omitted)

[31] *Zalameda v. People*, 614 Phil. 710, 741 (2009).

[32] *Id*.

[33] *People v. Marate*, G.R. No. 201156, January 29, 2014,715 SCRA 115; *People v. Cerdon,* G.R. No. 201111, August 6, 2014, 732 SCRA 335.

chain of custody requirement, substantial compliance is sufficient as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officers. We ruled that the failure to photograph and conduct physical inventory of the seized items are not fatal to the case against the accused, and do not *ipso facto* render inadmissible in evidence the items seized. What is important is that the seized item marked at the police station is identified as the same item produced in court.[34]

Therefore, in the cases under consideration, even though there was no inventory of the items at the place where the buy bust was held, this will not render appellants' arrest illegal or the items seized from them inadmissible. There is substantial compliance by the police officers as to the required procedure on the custody and control of the confiscated items. The succession of events established by evidence and the overall handling of the seized items by the prosecution witnesses all show that the items seized were the same evidence subsequently identified and testified to in open court.[35]

Specifically, in *People v. Padua*,[36] We stated that the purpose of the procedure outlined in the implementing rules is centered on the preservation of the integrity and evidentiary value of the seized items. We also reiterated in *People v. Hernandez, et al*.[37] that non-compliance with Section 21 would not render an accused's arrest illegal or the items seized/ confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

We now go to the charge of illegal possession of drug paraphernalia. The elements of illegal possession of equipment,

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[34] *People v. Yable*, G.R. No. 200358, April 7, 2014, 721 SCRA 91, 99.

[35] S*araum v. People, supra* note 24; *People v. Mark Lester Dela Rosa, supra* note 16, at 650.

[36] 639 Phil. 235, 248 (2010).

[37] 607 Phil. 617, 638 (2009).

instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[38]

In Criminal Case Nos. 04-59519 and 04-59521, the prosecution has convincingly established that appellants were in possession of drug paraphernalia, particularly (2) pieces of disposable lighters, plastic straw and nine (9) sliced aluminum foils, all of which were offered and admitted in evidence.

To reiterate, considering that appellants' arrest was legal, the search and seizure that resulted from it were likewise lawful. The various drug paraphernalia that the police officers found and seized from appellants are, therefore, admissible in evidence for having proceeded from a valid search and seizure. The confiscated drug paraphernalia are the very *corpus delicti* of the crime charged.[39]

However, the four (4) empty plastic sachets recovered from appellant Tamaño and the fifteen (15) empty plastic sachets recovered from appellant Gulmatico are not drug paraphernalia. They are not instruments or equipment which could be used to inject, administer or introduce into the body any dangerous drug as defined in Section 12 of Article II. As correctly held by the RTC, they could be merely used to pack or repack *shabu* for safekeeping. Nor are scissors and the blade considered drug paraphernalia in view of the limited explanation made by the prosecution, and they do not appear to be instruments that could be directly used to introduce *shabu* into the body.

All told, We therefore sustain the judgment of conviction of herein appellants. Their mere denial cannot prevail over the positive and categorical identification and declarations of the

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[38] *Saraum v. People, supra* note 24.

[39] *Id.*

police officers. The defense of denial, frame-up or extortion, like *alibi*, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.[40] As evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed.[41] One such positive evidence, in this case, is the result of the laboratory examination conducted on the drugs recovered from the appellants which revealed that the plastic sachets tested positive for the presence of "*shabu*."[42]

Furthermore, the defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[43]

In the present cases, appellants failed to overcome such presumption. The bare denial of the appellants cannot prevail over the positive testimony of the prosecution witnesses[44] that appellants are the persons who sold *shabu*. As correctly stated by the RTC, the version of the appellants appeared to be a well-rehearsed prefabricated story, not worthy of credence. It is not

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[40] *People v. Mariano*, 698 Phil. 772, 785 (2012); *Ambre v. People*, 692 Phil. 681, 697 (2012); *People v. Villahermosa*, 665 Phil. 399, 418 (2011); *Zalameda v. People*, 614 Phil. 710, 729 and 733 (2009).

[41] *People v. Nicart*, 690 Phil. 263, (2012).

[42] *People v. Pavia, supra* note 18.

[43] *Miclat, Jr. v. People*, 672 Phil. 191, 210 (2011); *People v. Pagkalinawan*, 628 Phil. 1011, 118 (2010).

[44] *People v. Mariano*, 698 Phil. 772, 785 (2012); *People v. Villahermosa*, 665 Phil. 399, 418 (2011); and *People v. Saulo*, G.R. No. 201450, April 7, 2014.

natural that the friends of appellants would simply walk away while appellants were accosted for no apparent reason. If indeed appellants were accosted for no apparent reason, it was easy for their friends to intervene, as it happened in a busy place and around noontime. They could have even reported the incident to the barangay officials or to the nearest police station. It is hard to believe that appellant Tamaño would simply receive a plastic bag from a friend without knowing or verifying its contents, considering that the bag could be easily opened and somewhat transparent. And that it was harder to believe that appellant Tamaño would continue to hold on to the bag even if she already suspected that the contents thereof are illegal.[45]

Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.[46] The rule finds an even more stringent application where said findings are sustained by the CA as in these cases.[47] Hence, We find no compelling reason to deviate from the CA's findings that, indeed, the appellants' guilt were sufficiently proven by the prosecution beyond reasonable doubt.

Turning now to the imposable penalty, We sustain the penalty imposed by the RTC and affirmed by the CA in Criminal Case Nos. 04-59517 to 04- 59519 and 04-59521. But, We modify the penalty imposed in Criminal Case No. 04-59520.

The penalty for illegal sale of *shabu* regardless of its quantity and purity, as provided for in Section 5, Article II of R.A. No. 9165, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. With the enactment of R.A. No. 9346, only life

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[45] *Id.* at 119.

[46] *People v. Villahermosa, supra* note 44, at 420; *People v. Campomanes,* 641 Phil. 621, 622 (2010); *People v. Canaya,* G.R. No. 212173, February 25, 2015 (Third Division Resolution).

[47] *People v. Villahermosa, supra* note 44, at 420.

imprisonment and fine shall be the imposed. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed on the appellants in Criminal Case No. 04-59517 is proper.

The penalty for illegal possession of dangerous drug paraphernalia, as provided for in Section 12, Article II of the same law, is imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00). Hence, the indeterminate penalty of imprisonment ranging from six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and a fine of ₱10,000.00 was correctly imposed on both appellants in Criminal Case Nos. 04-59519 and 04-59521.

For illegal possession of dangerous drugs, Section 11, Article II of R.A. No. 9165 provides:

> Section 11. *Possession of Dangerous Drugs*.– The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
>
> x x x x x x x x x
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> x x x x x x x x x
>
> (2) **Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four Hundred Thousand Pesos (₱400,000.00) to Five Hundred Thousand Pesos (₱500,000.00)**, if the quantities of dangerous drugs are **five (5) grams or more but less than ten (10) grams** of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or *"shabu"***, or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana. (Emphasis supplied).

(3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00)**, if the quantities of dangerous drugs are **less than five (5) grams** of opium, morphine, heroin, cocaine, or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstacy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana.[48]

From the aforecited provision, if the quantity of the dangerous drug is less than five (5) grams, the penalty for illegal possession of dangerous drugs is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00. In Criminal Case No. 04-59518, appellant Tamaño was found to have been in illegal possession of 0.345 gram of *shabu*. She was properly meted the penalty of imprisonment ranging from twelve (12) years and one (1) day to 14 years and to pay a fine of ₱300,000.00.

Moreover, if the quantity of the dangerous drug is five (5) grams or more but less than ten (10) grams, the penalty for illegal possession of dangerous drugs is imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four Hundred Thousand Pesos (₱400,000.00) to Five Hundred Thousand Pesos (₱500,000.00). In Criminal Case No. 04-59520, appellant Gulmatico was found to have been in illegal possession of twenty-four (24) sachets of *shabu* with a total weight of 8.695 grams and two (2) small sachets of *shabu* weighing 0.192 gram, all with the aggregate weight of 8.887 grams. He was correctly sentenced to imprisonment ranging from twenty (20) years and one (1) day to life imprisonment.[49] But the imposed fine of ₱300,000.00 is not in accord with law.

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[48] Emphasis ours.

[49] *People v. Dela Rosa, supra* note 26; *People v. Tancinco*, G.R. No. 200598, June 18, 2014, 726 SCRA 659, 674.

Therefore, for the illegal possession of *shabu* in the amount of 8.887 grams, the fine that must be imposed is Four Hundred Thousand Pesos (₱400,000.00).

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated August 31, 2012 in CA-G.R. CEB-CR-H.C. No. 00762 is **AFFIRMED with MODIFICATION** on the fine imposed in Criminal Case No. 04-59520. For Violation of Section 11, Article II of Republic Act No. 9165, **JAFFY B. GULMATICO** is hereby sentenced to suffer a penalty of imprisonment of TWENTY (20) YEARS and ONE (1) DAY TO LIFE IMPRISONMENT and a fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00).

SO ORDERED.

Velasco, Jr. (*Chairperson*), *del Castillo,*[*] *Perez,* and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 210434. December 5, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER ELIZALDE *y* SUMAGDON and ALLAN PLACENTE *y* BUSIO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT BY THE TRIAL COURT THEREON IS GENERALLY CONCLUSIVE,

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

BINDING, AND ENTITLED TO GREAT WEIGHT.— [T]he question of credibility of witnesses is primarily for the trial court to determine. Its assessment of the credibility of a witness is conclusive, binding, and entitled to great weight, unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered. Absent any showing that the trial judge acted arbitrarily, or overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of the credibility of witnesses deserves high respect by the appellate court. After a careful review of the records, the Court finds no cogent reason to overturn the trial court's ruling, as affirmed by the appellate court, finding the prosecution witnesses' testimonies credible.

2. **ID.; ID.; ALIBI AND DENIAL; CONSIDERED AS INHERENTLY WEAK DEFENSES AND MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED.—** [A]s noted by the trial court, the appellants' defenses of alibi and denial were not even corroborated by any credible witness. Well settled is the rule that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. It is only axiomatic that positive testimony prevails over negative testimony. In the instant case, it seems as if appellants urge Us to accept — hook, line, and sinker — their self-serving statements that Elizalde was merely selling peanuts while Placente was simply driving his neighbor's tricycle without even attempting to corroborate the same with any supporting evidence. As aptly pointed out by the RTC, Elizalde's cousin or Placente's neighbor could have been presented to substantiate their stories. Regrettably, appellants failed to convince.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY INCONSISTENCIES ON THE TESTIMONIES REFERRING TO MINOR DETAILS.—** With respect to the contention that Antonio's testimony contains inconsistencies, the Court agrees with the appellate court when it ruled that the so-called inconsistencies are inconsequential for they merely refer to minor details which actually serve to strengthen rather than weaken his credibility as they erase

suspicion of being rehearsed. This is so because what really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants.

4. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; MAY BE PRESUMED FROM AND PROVEN BY THE ACTS OF THE ACCUSED POINTING TO A JOINT PURPOSE, DESIGN, CONCERTED ACTION, AND COMMUNITY OF INTERESTS.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. When conspiracy is established, the responsibility of the conspirators is collective, not individual, rendering all of them equally liable regardless of the extent of their respective participations. Accordingly, direct proof is not essential to establish conspiracy, as it can be presumed from and proven by the acts of the accused pointing to a joint purpose, design, concerted action, and community of interests. As aptly held by the CA, the community of criminal design by the appellants and their cohorts is evident as they each played a role in the commission of the crime. While appellant Placente and companions pointed their guns at Antonio, Elizalde and companions simultaneously dragged Letty into their van. Thereafter, they demanded ransom money as a condition for her release, which, however, never materialized due to a shootout that sadly led to her death. Consequently, therefore, appellants are equally liable for the crime charged herein.

5. ID.; ID.; KIDNAPPING FOR RANSOM WITH HOMICIDE; DULY ESTABLISHED IN CASE AT BAR; PENALTY.— [I]n *People v. Mercado*, the Court explained that when the person kidnapped is killed in the course of the detention, the same shall be punished as a special complex crime x x x. [T]he Court finds no reason to disturb the rulings of the lower courts for they aptly convicted appellants with the special complex crime of kidnapping for ransom with homicide. As clearly proved by the prosecution, appellants succeeded in executing their common criminal design in abducting the victim herein, demanding for the payment of money for her release, and thereafter, killing her as a result of the encounter with the police officers. Accordingly, the Court affirms the lower court's imposition of the penalty of *reclusion perpetua*, without eligibility for parole,

which should have been death, had it not been for the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" prohibiting the imposition thereof.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated May 31, 2013 of the Court Appeals (*CA*) in CA-G.R. CR-HC No. 05100, which affirmed the Decision[2] dated March 4, 2011 of the Regional Trial Court (*RTC*), Branch 195, Parañaque City, in Criminal Case No. 05-0669 for kidnapping for ransom with homicide.

The antecedent facts are as follows:

On June 3, 2005, an Information[3] was filed against accused-appellants Christopher Elizalde y Sumagdon and Allan Placente y Busio, together with their co-accused Arcel Lucban y Lindero, Allan Dela Peña, Alden Diaz, and alias Erwin, charging them with the special complex crime of kidnapping for ransom with homicide as defined and penalized under Article 267 of the Revised Penal Code (*RPC*) for detaining and depriving, with the use of firearms and threats, Letty Tan y Co of her liberty and against her will, for the purpose of extorting a ₱20,000,000.00 ransom as a condition for her release, by shoving her inside a red Toyota Lite Ace van, then later transferring her to a jeepney where she was eventually found dead with gunshot wounds

[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Remedios A. Salazar-Fernando and Zenaida T. Galapate-Laguilles concurring; *rollo*, pp. 2-25.

[2] Penned by Judge Aida Estrella Macapagal; CA *rollo*, pp. 28-43.

[3] *Rollo*, p. 3.

after an armed encounter with police operatives. The accusatory portion of said Information reads:

> That on or about 6:30 in the evening of June 17, 2003 on Dr. A. Santos St., Sucat Road, Paranaque City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually aiding and abetting one another, with the use of firearms, employing force, threat, and intimidation did then and there, wilfully, unlawfully, and feloniously take, carry away, kidnap and deprive Letty Tan y Co of her liberty against her will by shoving her inside a red Toyota Lite Ace van with plate number ULK 341 at gunpoint and thereafter transferred her to a Mazda XLT jitney bearing plate number CRV-299 where said victim was later found with gunshot wounds which caused her death engaging in armed encounter with police operatives in Tarlac City. The abduction of Letty Tan y Co was for the purpose of extorting ransom from her family as in fact a demand for ransom was made as a condition for her release amounting to Twenty Million Pesos (₱20,000,000.00) to the damage and prejudice of the heirs of said Letty Tan y Co in whatever amount may be awarded them under the provisions of the New Civil Code.
>
> Contrary to law.[4]

Only appellants Elizalde and Placente as well as Dela Pena were arrested while the rest remain at-large. Upon arraignment, they all pleaded not guilty to the offense charged.[5] Thereafter, during trial, the prosecution presented the testimonies of the victim's husband, Antonio Tan, an eyewitness, Mario Ramos, and several police officers, namely, PO3 Nestor Acebuche, Police Inspector Joselito Nelmida, Dr. Ronaldo B. Mendez, Kagawad Honorio Ramos Lundang, and SPO2 Miguel Acosta.[6]

Antonio testified that at around 6:30 p.m. on June 17, 2003, while he was closing their concrete products store, Nysan Concrete Products, along Dr. A. Santos Avenue, Sucat, Parañaque City, Letty went inside their vehicle that was parked at the

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[4] CA *rollo*, pp. 28-29.

[5] *Rollo*, p. 4.

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

right side of the road facing their store. Suddenly, a red Toyota Lite Ace van with plate number ULK 341 arrived. He then saw about seven (7) armed men alight therefrom, three (3) of which pointed their guns at him and told him not to move, while two (2) of the other four (4) dragged Letty into their van. Thereafter, they sped away. Antonio immediately called his children and his brother, Nick. In a series of telephone calls to the store's phone, the kidnappers told them not to report the matter to the authorities and to be ready with ₱20M the following day. Nevertheless, they called the Police Anti-Crime and Emergency Response (PACER) unit of the PNP who met them at the Mandarin Oriental Hotel at around 9:00 p.m. that same day. Through Antonio's cellular phone, they would bargain with the kidnappers, telling them that they did not have the amount, to which the kidnappers replied that they will not see Letty again without it. At noon of the next day, the PACER team informed Antonio and his family about a shootout in Tarlac where three (3) persons were killed. They proceeded to the Tarlac Provincial Hall where they saw Letty's lifeless body with a gunshot below her chin. Antonio identified the other bodies as those who kidnapped his wife and later learned that the others, appellants included, were able to escape.[7]

Sometime in April 2004, however, Antonio saw a news report on TV which showed a picture of a wounded person involved in a shooting incident in Navotas. He instantly recognized said person as appellant Elizalde and called a PACER agent to inform him thereof. Consequently, together with the PACER team, he went to V. Luna Hospital where Elizalde was confined and identified him as one of the men who dragged his wife into the red van.[8]

A few years after, when appellant Placente was arrested in 2007, Antonio identified him as one of the armed persons who poked a gun at him while the others dragged his wife. This was through the cartographic sketches that the PACER team drew at the time of the incident. Antonio also identified Placente,

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[7] *Id*. at 5-8.

[8] *Id*. at 8.

who was apparently also involved in the April 2004 kidnapping, when he was shown several photos of suspects from PACER's gallery. According to Antonio, he easily recognized appellants for they were all not wearing masks at the time of the incident.[9]

Prosecution witness P/Insp. Nelmilda, who had been stationed at the Intelligence Unit of the Police Non-Commissioned Office (*PNCO*) Tarlac City for sixteen (16) years, likewise testified that in the morning of June 18, 2003, he received information that a stolen red Toyota Light Ace van would be passing their area. Two (2) police cars were dispatched. Aboard one (1) of the two (2) cars, Nelmida and his team tailed the red van after seeing it pass through their control point. Upon seeing both police cars, the passengers of the red van alighted and fired at Nelmida and the other police officers. A shootout ensued during which a colorless jeepney passed by and likewise fired at the police. Nelmida recalled being shot at the buttocks by appellant Elizalde, who was riding the jeepney. He further recalled that after the shootout, the jeepney passengers eventually dumped said vehicle near a bridge along Sitio Barbon, Tarlac, wherein he saw Letty's lifeless body.[10]

P/Insp. Nelmida's testimony was corroborated by Mario Ramos who narrated that at around noon on June 18, 2003, while he was walking towards Sitio Barbon with his friend to go fishing, he saw a colorless jeepney crisscrossing along the road. After passing through fifteen (15) meters from where they were standing, the jeepney stopped. He then heard three (3) gunshots from inside it. Thereafter, he saw four (4) armed persons alight therefrom to head towards the irrigation area. He recalled appellant Elizalde being the last person to alight the jeepney. When the door of the vehicle opened, he saw the dead body of a fat, fair-skinned Chinese woman with a bullet hole in her head, her clothes ripped apart. When the police officers arrived at the scene, Ramos and his friend left.[11]

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

[10] *Id.* at 9.

[11] *Id.* at 10.

The defense countered by presenting the testimonies of appellants, Technical Sergeant Ortillano, who prepared appellant Elizalde's clinical records, and a certain Nilo Avelina.[12]

Appellant Elizalde denied the charges against him, claiming that he did not know Antonio, Letty or any of his co-accused.[13] According to him, he went to Manila for the first time on April 15, 2003 from Samar, where he was working in a bakery, to look for his mother. He lived with his cousin in Sta. Cruz, Manila. On the day of the alleged kidnapping on June 17, 2003, Elizalde testified that he was in Blumentritt, Manila, selling boiled peanuts in a pushcart from 7:00 a.m. to 3:00 p.m. Afterwards, he went straight home for fear of getting lost, being in Manila for the first time.[14]

Almost a year thereafter, on April 1, 2004, Elizalde narrated that another one of his cousins visited him at home and promised that he would help him find a job. They then boarded a small red vehicle with three (3) other persons he did not know. Elizalde asked his cousin who said persons were and where they were going but his cousin would not tell him. After an hour, he was surprised to hear gunshots. He was hit at the right portion of his chest below the naval and thereafter lost consciousness. When he woke up, he was already at the V. Luna Hospital and learned that he was the only one who had survived. He recounted that after a week thereat, several police officers came with a man in handcuffs he later came to know as Nilo Avelina. According to Elizalde, the police officers forced Avelina to point at him as one of the perpetrators in a kidnapping case in Quezon City, even if Avelina did not know who he was. A week after, a different set of police officers came and forced him to admit to being involved in said case, which he succumbed to even if he had no knowledge thereon for fear of what said officers might do to him. The Quezon City RTC eventually convicted Elizalde and Avelina for kidnapping. Meanwhile,

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[12] *Id*.

[13] *Id*.

[14] *Id*. at 11.

several police officers came to inform him that he was going to be brought to Tarlac to face Frustrated Murder and Carnapping charges against him. He was convicted by the Tarlac RTC of Frustrated Murder, but was subsequently acquitted on appeal. Thereafter, he was again informed of another case, this time, on the instant Kidnapping for Ransom with Homicide accusation.[15]

During trial, the defense also presented Avelina to corroborate appellant Elizalde's testimony as to the latter's claim that the former pointed to him as co-kidnapper in the Q.C. case even if Avelina did not know who he was and merely because he was told that he would be freed if he did as he was told.[16]

In addition, appellant Placente next testified and also denied knowing any of his co-accused as well as the accusations against him. According to Placente, he came to Manila in 1982 from Samar. On the alleged day and time of the kidnapping, he was merely working, driving a tricycle owned by his neighbor on his way to the market in Pasig City. His job normally ends at 8:00 p.m., and on that day, he claimed that he did not go anywhere other than his daily route. Thereafter, he parked the tricycle in front of his neighbor's house and returned the key, as he normally did. In August 2003, he began driving a taxi. In 2005, however, he went back to Samar with his pregnant wife and his son so that his wife can give birth there. He worked as a laborer and a farmer until he was arrested on May 9, 2007.[17]

On March 4, 2011, the RTC found appellants guilty beyond reasonable doubt of the special complex crime of kidnapping for ransom with homicide and rendered its Decision, the dispositive portion of which reads:

WHEREFORE, this Court finds both accused CHRISTOPHER ELIZALDE Y SUMAGDON AND ALLAN BUSIO PLACENTE, GUILTY BEYOND REASONABLE DOUBT of the special complex

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[15] *Id*. at 11-13.

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

[17] *Id*. 14-15.

crime of KIDNAPPING FOR RANSOM WITH HOMICIDE and hereby sentences them to suffer the penalty of Reclusion Perpetua without eligibility for parole.

Accused Elizalde and Placente are likewise ordered to pay the heirs of Letty Tan y Co the following: ₱75,000.00 as civil indemnity; ₱500,000.00 as moral damages; ₱25,000.00 as temperate damages; and ₱100,000.00 as exemplary damages.

As regards accused ALLAN DELA PEÑA, for failure of the prosecution to prove his guilt beyond reasonable doubt, he is hereby ordered ACQUITTED. The City Jail Warden of Parañaque City is hereby ordered to release said accused from his custody unless he is being held for some other legal cause/s.

With respect to accused Arcel Lucban y Lindero @ Nonoy, Alden Diaz and one Alias Erwin, the instant case is hereby ordered ARCHIVED. Let Alias Warrants of Arrest be issued against them.

SO ORDERED.[18]

The RTC gave credence not only to the fact that the prosecution witnesses testified in a positive, categorical, unequivocal and straightforward manner, but also to the inherent weakness of appellants' defenses of denial and alibi. According to the trial court, the prosecution duly established all the following elements of the crime of kidnapping for ransom: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim.[19] Antonio, in positively identifying the appellants, convincingly testified on the events that transpired on the day of the alleged incident. Said testimony was even strengthened by the testimonies of the other prosecution witnesses, especially in light of the fact that there exists no showing that said witnesses were impelled with improper and ill motive.[20]

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[18] CA *rollo*, pp. 42-43.

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

[20] *Id*. at 40.

Aside from this, the trial court further noted that the appellants' defense of denial was not even corroborated by any credible witness. Elizalde's testimony that he was just selling peanuts, as well as Placente's testimony that he was merely driving his neighbor's tricycle, are self-serving statements unsupported by any substantiating evidence. Elizalde's cousin or Placente's neighbor could have been presented to corroborate their claims. The defense, however, failed to do so. Moreover, Avelina's testimony that he was forced by policemen to point at appellant Elizalde as one of his cohorts in the kidnapping case in Quezon City, even if true, has no bearing in this case simply because it was an entirely different case.[21] Thus, in view of the clarity of the prosecution's version of events, the trial court found the presence of conspiracy shown by Placente's act of poking a gun at Antonio, while Elizalde and their cohorts dragged Letty into the van.[22]

On appeal, the CA affirmed the RTC Decision, but reduced the moral damages to ₱100,000.00. The CA ruled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great weight and respect. On the one hand, the prosecution witnesses unerringly established the crime in a clear and candid manner, positively identifying appellants as Letty's abductors. The argument that Antonio's testimony contains inconsistencies is inconsequential for they merely refer to minor details which actually serves to strengthen rather than weaken his credibility as they erase suspicion of being rehearsed.[23] On the other hand, the appellate court ruled that appellants' defense cannot prosper having failed to prove that they were at some other place at the time when the crime was committed and that it was physically impossible for them to be at the *locus criminis* at the time.[24] Appellants merely alleged

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[21] *Id.* 39.

[22] *Id.* at 41.

[23] *Rollo*, p. 20.

[24] *Id.* at 21.

their bare alibis of selling peanuts and driving a tricycle without even attempting to present any credible witness that could corroborate the same.[25]

In this regard, the CA agreed with the RTC as to the existence of conspiracy among appellants and their cohorts. Their community of criminal design could be inferred from their arrival at Antonio's store already armed with weapons, Placente and companions pointing their guns at Antonio, while Elizalde and companions dragged Letty into their van. Moreover, they demanded ₱20M for Letty's freedom which never materialized as she was killed during captivity by the kidnappers before evading arrest. Thus, having been proven that they each took part in the accomplishment of their common criminal design, appellants are equally liable for the complex crime of kidnapping for ransom with homicide.[26]

Consequently, appellant filed a Notice of Appeal[27] on June 25, 2013. Thereafter, in a Resolution[28] dated February 26, 2014, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In their Brief, appellants essentially assigned the following error:

I.

THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED BY GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE.[29]

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[25] *Id.* at 22.

[26] *Id.* at 22-23.

[27] *Id.* at 26.

[28] *Id.* at 32.

[29] CA *rollo*, p. 67.

Appellants argue that the positive identification made by the prosecution witnesses should not be given any weight and credence. This is because Antonio only recognized appellant Elizalde on television in April 2004, or ten (10) months after the incident. In fact, a day after the incident, no cartographic sketch was made of Elizalde. Thus, if Antonio could not describe Elizalde's physical appearance a day after the incident, it would be highly incredible that he would be able to identify his wife's abductors ten (10) months after. This lapse of time would definitely affect his memory. In addition, Antonio's identification of Elizalde at the hospital was marked by suggestiveness for he was already informed beforehand that Elizalde was involved in the instant kidnapping. Thus, Antonio was inclined to point to just anybody. Appellants also raise inconsistencies in Antonio's testimonies as to the time his family left Mandarin Hotel, the number of PACER people who met them there, the exact number of his wife's abductors, and such other factual circumstances that cast doubt on his credibility. Thus, while it is true that alibi is a weak defense, the prosecution cannot profit therefrom, but on the strength of its own evidence. Finally, appellants assert that there is no showing that they were informed of their constitutional rights at the time of their arrest. Consequently, the entire proceedings are a nullity.

We affirm appellants' conviction, with modification as to the award of damages.

Time and again, the Court has held that the question of credibility of witnesses is primarily for the trial court to determine.[30] Its assessment of the credibility of a witness is conclusive, binding, and entitled to great weight, unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[31] Absent any showing that the trial judge acted arbitrarily, or overlooked, misunderstood, or misapplied some

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[30] *People v. Dionaldo*, G.R. No. 207949, July 23, 2014, 731 SCRA 68, 76.

[31] *Id*.

facts or circumstances of weight which would affect the result of the case, his assessment of the credibility of witnesses deserves high respect by the appellate court.[32]

After a careful review of the records, the Court finds no cogent reason to overturn the trial court's ruling, as affirmed by the appellate court, finding the prosecution witnesses' testimonies credible. According to the lower courts, the prosecution witnesses testified in a categorical and straightforward manner, positively identifying appellants as part of the group who kidnapped the victim. Particularly, Antonio unmistakably and convincingly narrated, in detail, the series of events that transpired on the day of the incident from the moment he saw appellants alight from their red van, who thereafter split up into two (2) groups, one, pointing guns at him, and the other, dragging his wife to their van, up until the time when they successfully boarded said vehicle before speeding away. In fact, he easily recognized appellants from the photographs in the PACER gallery for all throughout the incident, their faces remained visible, uncovered by any sort of mask. We quote the pertinent portions of his testimony, thus:

Q: Did you recognize any of the persons or the pictures in the photo gallery of PACER?
A: Yes, sir.

Q: Do you know the names of these persons whom you recognized there in the photo gallery of PACER?
A: The face I can recall but the name I can no longer remember, sir.

Q: And would you be able to tell if it's the same person just by looking on the cartographic sketch?
A: Yes, sir.

Q: I'm showing you the prosecution's EXHIBITS "D". "E" and "F", Mr. Witness, can you tell us if the persons depicted therein are the same ones you are referring to?
A: Yes sir, these are the pictures of the persons I identified when I was brought to the photo gallery of PACER.

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[32] *Id*.

QUESTIONS FROM THE COURT:

Q: What is the relation of these pictures to those persons who kidnapped your wife (EXHIBITS "D", "E", and "F")?

A: The people in these pictures, your Honor, were the ones who pointed at me.

Q: Pointed what?
A: They were the ones who poked a gun on me.

Q: Those three persons?
A: Yes, your Honor.

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Q: Mr. Witness, after you were shown scanned photographs of the other suspects and these are EXHIBITS "D" for the picture of Arcel Lucban; EXHIBIT "E" for the picture of Allan Dela Pena and EXHIBIT "E" for the picture of Allan Placente, you mentioned that they were the ones who came up to you and pointed their guns at you. Now, Mr. Witness, how about accused Christopher Elizalde, what did he do during the abduction of your wife?

A: He was one of the two persons who pulled out my wife from the vehicle, sir.

COURT:

Q: From which vehicle?
A: Our car, your Honor.[33]

In addition, such testimony was duly corroborated and further strengthened by other prosecution witnesses, such as P/Insp. Nelmida, who was personally engaged in the shootout and whose buttocks were even shot by appellant Elizalde, as well as Mario Ramos, who personally saw appellants alight from the jeepney where he eventually saw the lifeless body of the victim. The Court cannot, therefore, turn a blind eye to the probative value of the testimonies of the prosecution witnesses, consistent with each other, given in the absence of any showing of ill motive.

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[33] CA *rollo*, pp. 132-133. (Emphasis ours)

This is especially so when, as noted by the trial court, the appellants' defenses of alibi and denial were not even corroborated by any credible witness. Well settled is the rule that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. It is only axiomatic that positive testimony prevails over negative testimony.[34] In the instant case, it seems as if appellants urge Us to accept – hook, line, and sinker – their self-serving statements that Elizalde was merely selling peanuts while Placente was simply driving his neighbor's tricycle without even attempting to corroborate the same with any supporting evidence. As aptly pointed out by the RTC, Elizalde's cousin or Placente's neighbor could have been presented to substantiate their stories. Regrettably, appellants failed to convince.

Neither is the Court persuaded by appellants' assertions in their appeal in view of the CA's refutations thereof. Contrary to appellants' argument that Antonio's positive identification of Elizalde should not be given credence due to the fact that Antonio only recognized Elizalde on television in April 2004 and that the day after the incident, no cartographic sketch was made, the CA held that Antonio actually identified Elizalde as his wife's abductor twice prior to confirming his identity in the hospital.[35] The day after the incident, Antonio recognized Elizalde from four (4) cartographic sketches based on the descriptions given by Antonio. Thus, appellants' claim that there was no cartographic sketch of Elizalde made after the crime has no basis. Thereafter, Antonio again recognized Elizalde on television prompting him to immediately call the PACER agents. Verily, the Court cannot give credence to appellants' assertion that Elizalde's identification at the hospital was marked by suggestiveness for as clearly narrated, it was Antonio who first recognized Elizalde on television and who instantly

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[34] *People v. Torres, et al.,* G.R. No. 189850, September 22, 2014, 735 SCRA 687, 704.

[35] *Rollo,* p. 20.

contacted the PACER agents, not the other way around. Antonio categorically testified, *viz.*:

Q: Mr. Witness, after this incident on June 17, 2003, what, if any, incident took place which is related to the abduction of your wife?

A: While I was watching TV sir in April 2004, I saw a news item regarding a shooting incident I saw in Navotas.

Q: And what about that footage you saw?

A: When a picture of a wounded person from the shooting incident in Navotas was flashed on the screen, I recall that that person was one of the persons who kidnapped my wife, sir.

Q: And what, if any, did you do about it, Mr. Witness?

A: I immediately called up PACER, sir.

Q: And what did the PACER do, if any?

COURT: No. Why did you call the PACER?

A: I told the agent of the PACER that the person I saw on TV was one of the persons who kidnapped my wife, your honor.

Q: Was that person whom you saw on TV one of those who were shot during that encounter in Navotas?

A: Yes, your honor.

COURT: Proceed.

PROS. MARAYA:

Q: What, if any, did PACER do after you informed them that you recognized one of the persons who were shot in that encounter in Navotas?

A: We decided to go personally to the person I identified on TV to personally identify, sir.

QUESTIONS FROM THE COURT:

Q: So you went to Navotas?

A: No, your honor.

Q: Where did you go after calling the PACER?

A: We went to the hospital, your Honor.

Q: What hospital?

A: V. Mapa hospital, your Honor.

Q: Did you see the person whom you said you have identified as one of the kidnappers of your wife [in] that hospital?
A: Yes, your Honor.[36]

With respect to the contention that Antonio's testimony contains inconsistencies, the Court agrees with the appellate court when it ruled that the so-called inconsistencies are inconsequential for they merely refer to minor details which actually serve to strengthen rather than weaken his credibility as they erase suspicion of being rehearsed. This is so because what really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants.[37] As for the alleged nullity of the proceedings due to the absence of any showing that the police officers informed appellants of their constitutional rights, the Court sustains the CA's ruling that even assuming said failure to inform, the same is immaterial considering that no admission or confession was elicited from them.[38] As previously discussed, their guilt was established by the strength of the prosecution witnesses' testimonies.

In view of the foregoing, the Court sustains the findings of the trial court, as positively affirmed by the appellate court, insofar as the existence of conspiracy is concerned. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[39] When conspiracy is established, the responsibility of the conspirators is collective, not individual, rendering all of them equally liable regardless of the extent of their respective participations.[40] Accordingly, direct proof is not essential to establish conspiracy, as it can be presumed from and proven by the acts of the accused pointing to a joint purpose, design,

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[36] CA *rollo*, pp. 137-138. (Emphasis ours)

[37] *People v. Montanir, et al.*, 662 Phil. 535, 552 (2011).

[38] *Rollo*, pp. 23-24.

[39] *People v. Dionaldo, supra* note 30, at 77.

[40] *Id*.

concerted action, and community of interests.[41] As aptly held by the CA, the community of criminal design by the appellants and their cohorts is evident as they each played a role in the commission of the crime. While appellant Placente and companions pointed their guns at Antonio, Elizalde and companions simultaneously dragged Letty into their van. Thereafter, they demanded ransom money as a condition for her release, which, however, never materialized due to a shootout that sadly led to her death. Consequently, therefore, appellants are equally liable for the crime charged herein.

In this respect, Article 267 of the Revised Penal Code as amended by Republic Act (RA) No. 7659, provides:

> Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
>
> 2. If it shall have been committed simulating public authority.
>
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
>
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;
>
> **The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.**
>
> **When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.**[42]

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[41] *Id*.

[42] Emphasis ours.

Accordingly, in *People v. Mercado*,[43] the Court explained that when the person kidnapped is killed in the course of the detention, the same shall be punished as a special complex crime, to wit:

> In *People v. Ramos*, the accused was found guilty of two separate heinous crimes of kidnapping for ransom and murder committed on July 13, 1994 and sentenced to death. On appeal, this Court modified the ruling and found the accused guilty of the "special complex crime" of kidnapping for ransom with murder under the last paragraph of Article 267, as amended by Republic Act No. 7659. This Court said:
>
> > x x x This amendment introduced in our criminal statutes the concept of 'special complex crime' of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. **Consequently, the rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659**.[44]

On this score, the Court finds no reason to disturb the rulings of the lower courts for they aptly convicted appellants with the special complex crime of kidnapping for ransom with homicide. As clearly proved by the prosecution, appellants succeeded in executing their common criminal design in abducting the victim herein, demanding for the payment of money for her release, and thereafter, killing her as a result of the encounter with the police officers. Accordingly, the Court affirms the lower court's imposition of the penalty of *reclusion perpetua*, without eligibility for parole, which should have been death, had it not been for the passage of Republic Act No. 9346, entitled

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[43] 400 Phil. 37 (2000).

[44] *People v. Mercado, supra,* at 82-83. (Emphasis ours)

"An Act Prohibiting the Imposition of the Death Penalty in the Philippines" prohibiting the imposition thereof.

There is, however, a need to modify the amounts of damages awarded. Verily, pursuant to prevailing jurisprudence,[45] the amount of damages are increased to ₱100,000.00 as civil indemnity, and ₱50,000.00 as temperate damages, and that an interest be imposed on all damages awarded at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[46]

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision dated May 31, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05100 finding appellants Christopher Elizalde y Sumagdon and Allan Placente y Busio guilty beyond reasonable doubt of the crime of kidnapping for ransom with homicide, as defined and penalized under Article 267 of the Revised Penal Code, sentencing them to suffer the penalty of *reclusion perpetua*, without eligibility for parole, in accordance with the mandate under Republic Act No. 9346, prohibiting the imposition of death penalty, and to pay Letty Tan y Co's heirs the amounts of ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages, with **MODIFICATIONS** in view of prevailing jurisprudence,[47] that the amount of damages be increased to ₱100,000.00 as civil indemnity and ₱50,000.00 as temperate damages, and that an interest be imposed on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *del Castillo,*[*] *Perez,* and *Reyes, JJ.*, concur.

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[45] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[46] *Id.*

[47] *Id.*

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 22, 2014.

THIRD DIVISION

[G.R. No. 211312. December 5, 2016]

PEOPLE'S SECURITY, INC. and NESTOR RACHO, *petitioners, vs.* **JULIUS S. FLORES and ESTEBAN S. TAPIRU,** *respondents.*

SYLLABUS

1. POLITICAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; LABOR; SECURITY OF TENURE; AN EMPLOYEE MAY ONLY BE TERMINATED FOR JUST OR AUTHORIZED CAUSES THAT MUST COMPLY WITH THE DUE PROCESS REQUIREMENTS MANDATED BY LAW.— As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; IN TERMINATION CASES, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE DISMISSAL OF THE EMPLOYEE WAS VALIDLY MADE.— [I]n termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal. Accordingly, the burden of proof to show that the respondents' dismissal from employment was for a just cause falls on PSI as employer. PSI cannot discharge this burden by merely alleging that it did not dismiss the respondents. x x x Considering that there is no showing of a clear, valid and legal

cause for the termination of employment, the law considers it a case of illegal dismissal.

3. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; REQUISITES.— [T]he petitioners miserably failed to prove that the respondents abandoned their work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts. The Court is not convinced that the respondents failed to report for work or have been absent without valid or justifiable cause.

4. ID.; ID.; ID.; TWO-NOTICE REQUIREMENT; FAILURE TO COMPLY THEREWITH RENDERS THE DISMISSAL ILLEGAL.— PSI did not afford the respondents due process. The validity of the dismissal of an employee hinges not only on the fact that the dismissal was for a just or authorized cause, but also on the very manner of the dismissal itself. It is elementary that the termination of an employee must be effected in accordance with law. It is required that the employer furnish the employee with two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. Beyond dispute is the fact that no written notice was sent by PSI informing the respondents that they had been terminated due to abandonment of work. This failure on the part of PSI to comply with the twin-notice requirement, indeed, placed the legality of the dismissal in question, at the very least, doubtful, rendering the dismissal illegal.

5. CIVIL LAW; CIVIL CODE; PRESCRIPTION OF ACTIONS; ACTIONS BASED UPON AN INJURY TO THE RIGHTS OF THE PLAINTIFF MUST BE BROUGHT WITHIN FOUR YEARS.— In illegal dismissal cases, the employee concerned is given a period of four years from the time of his

illegal dismissal within which to institute the complaint. This is based on Article 1146 of the New Civil Code which states that actions based upon an injury to the rights of the plaintiff must be brought within four years. The four-year prescriptive period shall commence to run only upon the accrual of a cause of action of the worker. The respondents were dismissed on January 13, 2003. They filed their respective complaints for illegal dismissal in September 2005. Clearly, then, the complaints for illegal dismissal were filed within the prescriptive period.

6. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE CORPORATE VEIL; APPLIES ONLY WHEN THE CORPORATE FICTION IS USED TO DEFEAT PUBLIC CONVENIENCE, JUSTIFYING WRONG, PROTECT FRAUD, OR DEFEND CRIME.— A corporation has a personality separate and distinct from its directors, officers, or owners. Nevertheless, in exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Thus, under Section 31 of the Corporation Code of the Philippines, "[d]irectors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees, shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons." The doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.

APPEARANCES OF COUNSEL

Rodolfo R. Ranion for respondents.

RESOLUTION

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 25, 2013 and the Resolution[3] dated February 7, 2014 issued by the Court of Appeals (CA) in CA-G.R. SP No. 115464.

Facts

Julius S. Flores (Flores) and Esteban S. Tapiru (Tapiru) (collectively, the respondents) were security guards previously employed by People's Security, Inc. (PSI). The respondents were assigned at the various facilities of Philippine Long Distance Telephone Company (PLDT) pursuant to a security services agreement between PSI and PLDT. On October 1, 2001, however, PSI's security services agreement with PLDT was terminated and, accordingly, PSI recalled its security guards assigned to PLDT including the respondents.[4]

On October 8, 2001, the respondents, together with several other security guards employed by PSI, filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against PLDT and PSI, claiming that they are PLDT employees. The case was raffled to Labor Arbiter (LA) Felipe Pati (LA Pati) for resolution.[5]

Thereafter, PSI assigned the respondents to the facilities of its other clients such as the warehouse of a certain Marivic

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[1] *Rollo*, pp. 25-65.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonia-Valenzuela concurring; *id.* at 70-81.

[3] *Id.* at 83-84.

[4] *Id.* at 28.

[5] *Id.*

Yulo in Sta. Ana, Manila and Trinity College's Elementary Department in Quezon City.[6]

On October 22, 2002, LA Pati rendered a Decision declaring that the respondents and the other complainants therein were employees of PLDT and are, thus, entitled to be reinstated to their former assignments. Consequently, however, LA Pati's decision was set aside by the NLRC, which ruled that the complainants therein are not employees of PLDT. The NLRC's disposition was affirmed by the CA and, ultimately, by this Court.[7]

Meanwhile, on January 13, 2003, the respondents were relieved from their respective assignments pursuant to Special Order No. 20031010[8] dated January 10, 2003 issued by Col. Leonardo L. Aquino, the Operations Manager of PSI.[9] Accordingly, Flores and Tapiru, on September 6 and 27, 2005, respectively, filed with the Regional Arbitration Branch of the NLRC in Quezon City a complaint for illegal dismissal and non-payment of service incentive leave pay and cash bond, with prayer for separation pay, against PSI and its President Nestor Racho (Racho) (collectively, the petitioners).[10]

On January 16, 2006, the petitioners filed a Motion to Dismiss[11] the complaints for illegal dismissal on the ground of forum shopping. In their comment,[12] the respondents denied that they are guilty of forum shopping. They pointed out that the illegal dismissal complaint that they previously filed against PLDT and PSI is a separate case since it involves their removal from their respective assignments on account of the termination of the security services agreement between PSI and PLDT.[13]

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[6] *Id.* at 71.

[7] *Id.* at 28-29.

[8] *Id.* at 154-155.

[9] *Id.* at 71.

[10] *Id.* at 85-86.

[11] *Id.* at 87-91.

[12] *Id.* at 120-124.

[13] *Id.* at 121.

On May 21, 2006, the LA issued an Order,[14] dismissing the respondents' complaints on the ground of forum shopping. However, upon reconsideration, it was subsequently reversed by the NLRC in. its Decision dated March 26, 2008. The case was then remanded to the LA for further proceedings.[15]

On October 22, 2008, the LA directed the parties to submit their respective position papers within an unextendible period of 10 days from receipt of the Order.[16]

In their position paper,[17] the respondents claimed that, after they were relieved from their assignment in the warehouse in Sta. Ana, Manila on January 13, 2003, they repeatedly reported to PSI's office for possible assignment, but the latter refused to give them any assignment.[18]

On the other hand, the petitioners, in their position paper,[19] claimed that the respondents were merely relieved from their assignment in the warehouse in Sta. Ana, Manila and that the same was on account of their performance evaluation, which indicated that they were ill-suited for the said assignment. They likewise averred that while the respondents vacated their post pursuant to Special Order No. 20031010, the latter refused to acknowledge receipt of the same. The petitioners claimed that the respondents, after vacating their posts in the warehouse in Sta. Ana, Manila, no longer reported to PSI's premises for their next assignment.[20]

The petitioners pointed out that the respondents' relief from their last assignment was an exercise of PSI's management prerogative to transfer its employees in accordance with the

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[14] Rendered by LA Elias H. Salinas; *id.* at 126-129.

[15] *Id.* at 31.

[16] *Id.* at 130-131.

[17] *Id.* at 158-160.

[18] *Id.* at 158.

[19] *Id.* at 132-153.

[20] *Id.* at 134.

requirements of its business.[21] They also claimed that the respondents, in failing to report to PSI's premises after being relieved from their previous assignment, had abandoned and effectively resigned from their employment.[22]

On January 30, 2009, the LA rendered a Decision[23] finding that the respondents were illegally dismissed from their employment and, thus, directing the petitioners jointly and severally liable to pay the former separation pay and backwages. The LA dismissed the petitioners' defense of abandonment, ruling that the records do not bear any credible evidence that would warrant such a finding.[24]

On appeal, the NLRC, in its Decision[25] dated April 14, 2010, reversed the LA Decision dated January 30, 2009. The NLRC, in finding for the petitioners, opined that:

> Undisputed here in this case is the fact that when [the respondents] were relieved from their posts on January 13, 2003, they sought employment from other security agencies. Complainant Flores contracted regular employment with Multimodal Security and Investigation Agency, on May 2003, while complainant Tapiru also contracted employment with Pacific World Security and Investigation Agency on July 2003, as indicated by their SSS records.
>
> All of the foregoing evidences [sic] considered, coupled by their overt acts of filing an illegal dismissal case against [the petitioners] only after they lost their case against PLDT in the Supreme Court, finding work with another security agency when the six months floating periods have not yet lapsed, and asking only for separation pay after three years from their alleged dismissal from employment, are proofs that [the respondents] herein were the ones who severed the employer-employee relationship with [PSI].[26]

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[21] *Id.* at 139.

[22] *Id.* at 141-142.

[23] *Id.* at 188-198.

[24] *Id.* at 196.

[25] *Id.* at 270-281.

[26] *Id.* at 279-280.

The respondents sought a reconsideration[27] of the Decision dated April 14, 2010, but it was denied by the NLRC in its Resolution[28] dated June 15, 2010. Aggrieved, the respondents filed a petition for *certiorari*[29] with the CA, maintaining that they were illegally dismissed from their employment and that the petitioners failed to substantiate their defense of abandonment.

On April 25, 2013, the CA rendered the herein assailed Decision,[30] reversing the NLRC's Decision dated April 14, 2010 and Resolution dated June 15, 2010. In finding that the respondents were illegally dismissed, the CA found that the petitioners failed to prove that the respondents had abandoned their work and that their defense of abandonment was negated by the filing of a case for illegal dismissal.[31] The CA likewise opined that the petitioners failed to prove that it sent the respondents a written notice asking them to explain their supposed failure to report to work as required under Book V, Rule XIV, Sections 2 and 5 of the Implementing Rules of the Labor Code.[32]

The petitioners sought reconsideration[33] of the CA's Decision dated April 25, 2013, but it was denied by the CA in its Resolution[34] dated February 7, 2014.

In this petition for review on *certiorari*, the petitioners claim that the CA committed reversible error in ruling that the respondents were illegally dismissed from their employment. They maintain that PSI never terminated the respondents' employment. On the contrary, they claim that the respondents freely and voluntarily resigned from their employment.[35] They

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[27] *Id.* at 282-286.

[28] *Id.* at 298-299.

[29] *Id.* at 300-310.

[30] *Id.* at 70-81.

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

[32] *Id.* at 77.

[33] *Id.* at 339-359.

[34] *Id.* at 83-84.

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

also claim that the CA erred when it ruled that they should be held jointly and solidarily liable to pay the respondents separation pay and backwages considering that there was absolutely no allegation or proof of participation, bad faith, or malice on the part of Racho in dealing with the respondents.[36]

Issues

Essentially, the issues for the Court's resolution are: *first*, whether the respondents were illegally dismissed; and *second*, whether Racho is jointly and solidarily liable with PSI for the payment of the monetary awards to the respondents.

Ruling of the Court

The petition is denied.

As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an emp1oyee.[37]

There is no merit to the petitioners' claim that the respondents were not dismissed, but merely relieved from their respective assignments. While it is true that Special Order No. 20031010,[38] which the petitioners issued to the respondents on January 13, 2003, indicated that the latter were merely relieved from the warehouse in Sta. Ana, Manila, such fact alone would not negate the respondents' claim of illegal dismissal. Indeed, the respondents pointed out that after they were relieved from their

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[36] *Id.* at 45-47.

[37] *Alert Security and Investigation Agency, Inc. and/or Dasig v. Pasawilan, et al.*, 673 Phil. 291, 301 (2011).

[38] *Rollo*, pp. 154-155.

previous assignment, the petitioners refused to provide them with new assignments.

It should be stressed that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[39]

Accordingly, the burden of proof to show that the respondents' dismissal from employment was for a just cause falls on PSI as employer. PSI cannot discharge this burden by merely alleging that it did not dismiss the respondents. It would also be the height of absurdity if PSI would be allowed to escape liability by claiming that the respondents abandoned their work. Considering that there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal.

Further, as aptly ruled by the CA, the petitioners miserably failed to prove that the respondents abandoned their work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts.[40]

The Court is not convinced that the respondents failed to report for work or have been absent without valid or justifiable cause. After the petitioners relieved them from their previous assignment in Sta. Ana, Manila, the respondents were no longer

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[39] See *Columbus Philippines Bus Corporation v. NLRC*, 417 Phil. 81, 100 (2001).

[40] *Seven Star Textile Company v. Dy*, 541 Phil. 468, 481 (2007).

given any assignment. Indeed, the petitioners failed to show that new assignments were given to the respondents and that the latter were informed of the same. As regards the second requisite, suffice it to state that the respondents' act of filing a complaint for illegal dismissal against the petitioners negates any intention on their part to sever the employer-employee relationship.[41]

Moreover, considering the hard times in which we are in, it is incongruous for the respondents to simply abandon their employment after being relieved from their previous assignment. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking for a means of livelihood nowadays.[42]

What is more, PSI did not afford the respondents due process. The validity of the dismissal of an employee hinges not only on the fact that the dismissal was for a just or authorized cause, but also on the very manner of the dismissal itself. It is elementary that the termination of an employee must be effected in accordance with law. It is required that the employer furnish the employee with two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[43]

Beyond dispute is the fact that no written notice was sent by PSI informing the respondents that they had been terminated due to abandonment of work. This failure on the part of PSI to comply with the twin-notice requirement, indeed, placed the

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[41] See *Hodieng Concrete Products v. Emilia*, 491 Phil. 434, 439-440 (2005).

[42] See *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 744 (2002).

[43] *Lynvil Fishing Enterprises, Inc., et al. v. Ariola, et al.*, 680 Phil. 696, 715 (2012).

legality of the dismissal in question, at the very least, doubtful, rendering the dismissal illegal.

The petitioners' further claim that the respondents' belated filing of the complaint of illegal dismissal, almost three years since the time of the dismissal, negated the allegation of illegal dismissal and, on the contrary, showed that the respondents intended to abandon their employment. The foregoing assertion is untenable.

In illegal dismissal cases, the employee concerned is given a period of four years from the time of his illegal dismissal within which to institute the complaint. This is based on Article 1146 of the New Civil Code which states that actions based upon an injury to the rights of the plaintiff must be brought within four years. The four-year prescriptive period shall commence to run only upon the accrual of a cause of action of the worker.[44] The respondents were dismissed on January 13, 2003. They filed their respective complaints for illegal dismissal in September 2005. Clearly, then, the complaints for illegal dismissal were filed within the prescriptive period.

Anent, the propriety of holding Racho, PSI's President, jointly and solidarily liable with PSI for the payment of the money awards in favor of the respondents, the Court finds for the petitioners.

A corporation has a personality separate and distinct from its directors, officers, or owners. Nevertheless, in exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Thus, under Section 31 of the Corporation Code of the Philippines, "[d]irectors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees, shall be liable jointly

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[44] *Reyes v. NLRC, et al.*, 598 Phil. 145, 162 (2009).

and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons."

The doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[45]

The respondents failed to adduce any evidence to prove that Racho, as President and General Manager of PSI, is hiding behind the veil of corporate fiction to defeat public convenience, justify wrong, protect fraud, or defend crime. Thus, it is only PSI who is responsible for the respondents' illegal dismissal.

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is hereby **DENIED**. The Decision dated April 25, 2013 and Resolution dated February 7, 2014 of the Court of Appeals in CA-G.R. SP No. 115464 and the Decision dated January 30, 2009 of the Labor Arbiter are **AFFIRMED with MODIFICATION** in that petitioner Nestor Racho is held not solidarily liable with petitioner People's Security, Inc. for the payment of the monetary awards in favor of respondents Julius S. Flores and Esteban S. Tapiru.

SO ORDERED.

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

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[45] *McLeod v. NLRC* (*1st Div.*), 541 Phil. 214, 239, 241-242 (2007).

THIRD DIVISION

[G.R. No. 221513. December 5, 2016]

SPOUSES LUISITO PONTIGON and LEODEGARIA SANCHEZ -PONTIGON, *petitioners vs.* **HEIRS OF MELITON SANCHEZ, namely: APOLONIA SANCHEZ, ILUMINADA SANCHEZ (deceased), MA. LUZ SANCHEZ, AGUSTINA SANCHEZ, AGUSTIN S. MANALANSAN, PERLA S. MANALANSAN, ESTER S. MANALANSAN, GODOFREDO S. MANALANSAN, TERESITA S. MANALANSAN, ISRAELITA S. MANALANSAN, ELOY S. MANALANSAN, GERTRUDES S. MANALANSAN, represented by TERESITA SANCHEZ MANALANSAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; MAY BE RELAXED IN ORDER TO OBVIATE THE FRUSTRATION OF SUBSTANTIVE JUSTICE.— Oft cited, but rarely applied, is that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving. This controversy before us, however, is one of the exceptional instances wherein the proverb can properly be invoked. We entertain this petition notwithstanding the finality of the judgment because fault here lies with the CA for its unjustified denial of the first Motion for Reconsideration filed by Atty. Muñoz, and for its refusal to resolve the still pending second Motion for Reconsideration in CA-G.R. CV No. 100188. It was plain error for the appellate court to have treated the first Motion for Reconsideration as a sham pleading for allegedly not having been filed by the counsel of record. The September 14, 2015 Resolution of the appellate court is premised on the alleged failed substitution of counsel. Premised on the immediate assumption that Atty. Muñoz was intended as a replacement for Atty. Sanchez-Malit, the CA concluded that non-observance of Sec. 26, Rule 138 of the Rules of Court rendered Atty. Muñoz's filing of the first Motion for Reconsideration to be wanting of authority. x x x [I]t is imperative that the intention of the

petitioners to replace their original counsel, Atty. Sanchez-Malit, be evidently clear before substitution of counsel can be presumed. The records readily evince, however, that herein petitioners did not manifest even the slightest of such intention. No inference of an intent to replace could be drawn from the tenor of either the first Motion for Reconsideration or in Atty. Muñoz's Entry of Appearance. x x x [T]he Entry of Appearance by the new lawyer, Atty. Muñoz, ought then be construed as a collaboration of counsels, rather than a substitution of the prior representation. Consequently, the CA should have entertained and resolved the Motions for Reconsideration filed by petitioners through Atty. Muñoz, despite Atty. Sanchez-Malit's non-withdrawal from the case. Verily, it was wrong for the CA to have denied outright petitioners' first Motion for Reconsideration, and to have directed the post-haste issuance of the Entry of Judgment. These haphazard actions resulted in the deprivation of petitioners of a guaranteed remedy under the rules. But more than the need to rectify the CA's procedural miscalculation, the liberal application of the rules is justified under the circumstances in order to obviate the frustration of substantive justice.

2. ID.; ACTIONS; ACTION FOR RECONVEYANCE BASED ON IMPLIED TRUST; PRESCRIBES IN TEN YEARS; EXCEPTION.— Under the Torrens System as enshrined in P.D. No. 1529, the decree of registration and the certificate of title issued become incontrovertible upon the expiration of one (1) year from the date of entry of the decree of registration, without prejudice to an action for damages against the applicant or any person responsible for the fraud. However, actions for reconveyance based on implied trusts may be allowed beyond the one-year period. x x x [A]n action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten (10) years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property. By way of additional exception, the Court, in a catena of cases, has permitted the filing of an action for reconveyance despite the lapse of more than ten (10) years from the issuance of title. The common denominator of these cases is that the plaintiffs therein were in actual possession of the disputed land, converting the action from reconveyance of property into one for quieting of title. Imprescriptibility is accorded to cases for quieting of title since the plaintiff has

the right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right.

3. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; THE IRREGULARITY IN THE NOTARIZATION OF A DEED IS NOT FATAL TO ITS VALIDITY, FOR THE DEFECT MERELY RENDERS THE WRITTEN CONTRACT A PRIVATE INSTRUMENT RATHER THAN A PUBLIC ONE.— The appellate court did not err in ruling that the Extrajudicial Settlement was not properly notarized given the absence of Flaviana's residence certificate number. As it appears, no identification was ever presented by Flaviana when the document was notarized. Be that as it may, the irregularity in the notarization is not fatal to the validity of the Extrajudicial Settlement. For even the absence of such formality would not necessarily invalidate the transaction embodied in the document — the defect merely renders the written contract a private instrument rather than a public one.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; NON-OBSERVANCE OF THE PRESCRIBED FORMALITIES DOES NOT NECESSARILY EXCUSE THE CONTRACTING PARTIES FROM COMPLYING WITH THEIR RESPECTIVE OBLIGATIONS UNDER THEIR COVENANT, AND MERELY GRANTS THEM THE RIGHT TO COMPEL EACH OTHER TO EXECUTE THE PROPER DEED.— While Art. 1358 of the New Civil Code seemingly requires that contracts transmitting or extinguishing real rights over immovable property should be in a public document, hornbook doctrine is that the embodiment of certain contracts in a public instrument is only for convenience. It is established in jurisprudence that non-observance of the prescribed formalities does not necessarily excuse the contracting parties from complying with their respective obligations under their covenant, and merely grants them the right to compel each other to execute the proper deed. A contract of sale has the force of law between the contracting parties and they are expected to abide, in good faith, by their respective contractual commitments notwithstanding their failure to comply with Art. 1358.

5. ID.; ID.; ID.; PRINCIPLE OF RELATIVITY OF CONTRACTS; THE HEIRS OF THE CONTRACTING

PARTIES ARE PRECLUDED FROM DENYING THE BINDING EFFECT OF THE VALID AGREEMENT ENTERED INTO BY THEIR PREDECESSORS-IN-INTEREST, FOR THEY ARE NOT DEEMED THIRD PERSONS TO THE CONTRACT WITHIN THE CONTEMPLATION OF LAW.— The principle of relativity of contracts dictates that contractual agreements can only bind the parties who entered into them, and cannot favor or prejudice third persons, even if he is aware of such contract and has acted with knowledge thereof. The doctrine finds statutory basis under Art. 1311 of the New Civil Code x x x. The law is categorical in declaring that as a general rule, the **heirs** of the contracting parties are precluded from denying the binding effect of the valid agreement entered into by their predecessors-in-interest. This is so because they are not deemed "third persons" to the contract within the contemplation of law. Additionally, neither the provision nor the doctrine makes a distinction on whether the contract adverted to is oral or written, and, even more so, whether it is embodied in a public or private instrument. It is then immaterial that the Extrajudicial Settlement executed by Flaviana was not properly notarized for the said document to be binding on her heirs, herein respondents.

6. ID.; ID.; ID.; VOIDABLE CONTRACTS; IN CASES OF INTIMIDATION, VIOLENCE OR UNDUE INFLUENCE, AN ACTION FOR ANNULMENT SHALL BE BROUGHT WITHIN FOUR YEARS FROM THE TIME THE DEFECT OF THE CONSENT CEASES.— Under the law, a voidable contract retains the binding effect of a valid one unless otherwise annulled. And as prescribed, the action for annulment shall be brought within four (4) years, in cases of intimidation, violence or undue influence, from the time the defect of the consent ceases. Unfortunately for respondents, the prescriptive period for annulment had long since expired before they filed their Complaint. They cannot be permitted to circumvent the law by belatedly attacking, collaterally and as an afterthought at that, the validity of the erstwhile voidable instrument in the present action for declaration of nullity of title.

7. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF PRIVATE DOCUMENT; THE WITNESS' TESTIMONY THAT SHE WAS PRESENT AT

THE TIME THE DOCUMENT WAS EXECUTED IS COMPETENT PROOF OF THE DOCUMENT'S AUTHENTICITY AND DUE EXECUTION.— As can be gleaned from the transcripts, the contents of petitioner Leodegaria's testimony satisfy the rules pertaining to the admissibility of documentary evidence. Her claim that she was present at the time the Extrajudicial Settlement was executed is competent proof of the said document's authenticity and due execution. To be sure, neither the RTC nor the CA held that the credibility of petitioner Leodegaria was impeached; the adverse findings against her and her husband were predicated mainly on the erroneous perception that her evidence-in-chief is inadmissible.

PERALTA, *J., dissenting opinion*:

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; RECONSTITUTION OF CERTIFICATE OF TITLE; PURPOSE; WHEN THE ORIGINAL CERTIFICATE OF TITLE (OCT) IS LOST OR DESTROYED, THE ISSUANCE OF A TRANSFER CERTIFICATE OF TITLE IN THE ABSENCE OF A DULY RECONSTITUTED OCT IS IRREGULAR.— [T]he irregularities attendant in the present case do not indicate a mere lapse on the part of the RD in the issuance of the disputed TCT. Considering that the owner's duplicate copy of the OCT in the custody of the RD does not contain any annotation of its cancellation, it is a grievous error on the part of the RD to consider such duplicate copy as basis in cancelling the OCT and issuing a new TCT in petitioners' favor. In the first place, there is no OCT to cancel as the original copy which is in the custody of the RD has been destroyed. Thus, the proper procedure that should have been followed was to reconstitute first the lost or destroyed OCT, in accordance with Section 1104 of PD 1529. The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. The lost or destroyed document referred to is the one that is in the custody of the Register of Deeds.

When reconstitution is ordered, this document is replaced with a new one that basically reproduces the original. After the *reconstitution*, the owner is issued a duplicate copy of the reconstituted title. It is from this reconstituted title that a new TCT may be derived. Thus, it is error on the part of the RD to have issued the disputed TCT in favor of petitioners in the absence of a duly reconstituted OCT.

2. REMEDIAL LAW; ACTIONS; ACTION FOR RECONVEYANCE; THE ACTION OR DEFENSE FOR THE DECLARATION OF THE INEXISTENCE OF A CONTRACT DOES NOT PRESCRIBE.— Whether an action for reconveyance prescribes or not is determined by the nature of the action, that is, whether it is founded on a claim of the existence of an implied or constructive trust, or one based on the existence of a void or inexistent contract. It is true that an action for reconveyance based on an implied trust ordinarily prescribes in ten (10) years, subject to x x x exception x x x. However, in actions for reconveyance of the property predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be unavailing. The action or defense for the declaration of the inexistence of a contract does not prescribe. In the instant case, the action filed by respondents is essentially an action for reconveyance based on their allegation that the title over the subject property was transferred in petitioners' name without any valid document of conveyance. Since respondents' complaint was based on the allegation of the inexistence of a valid contract, which would have lawfully transferred ownership of the subject property in petitioners' favor, such complaint is, therefore, imprescriptible.

3. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; REGISTRATION OF CONVEYANCES; A PRIVATE INSTRUMENT CANNOT BE A VALID BASIS TO CONVEY TITLE.— [T]he *ponencia* rules that the Extrajudicial Settlement with Sale was not properly notarized; thus, rendering the written contract a private instrument which, nonetheless, binds respondents. This notwithstanding, it is my considered opinion that the above document, being a private instrument, is not a sufficient basis to convey title over the disputed property in favor of petitioners. x x x Section 57 of Presidential Decree 1529 (PD 1529) provides: "**Section 57**. *Procedure in registration of conveyances*. **An owner desiring**

> **to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law**." x x x In relation to the above provision, Section 112 of the same Decree provides for the "Forms Used in Land Registration and Conveyancing," to wit: "**Section 112**. *Forms in conveyancing*. The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms. **Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registrable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledge to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment**." x x x Based on the x x x provision of law, it is clear that the subject Extrajudicial Settlement with Sale may not be used as a valid basis for the issuance of the questioned TCT in the name of petitioners.

APPEARANCES OF COUNSEL

Juvy Mell B. Sanchez-Malit & Roniel D. Munoz for petitioners.
Dipatuan P. Umpa for respondents.

D E C I S I O N

PEREZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the March 26, 2015 Decision[1] and September 14, 2015 Resolution[2] of the Court

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[1] *Rollo*, pp. 11-28; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios.

[2] *Id*. at 40-43.

of Appeals (CA) in CA-G.R. CV No. 100188.[3] The assailed rulings affirmed the trial court judgment that declared Transfer Certificate of Title (TCT) No. 162403-R, under the name of petitioners, null and void because of the fraud and irregularities that allegedly attended its issuance.

The Facts

Meliton Sanchez (Meliton) had been the owner of a 24-hectare parcel of land situated in Gutad, Floridablanca, Pampanga. Said property was duly-registered in his name under Original Certificate of Title (OCT) No. 207 issued on October 15, 1938.[4]

On August 11, 1948, Meliton died intestate, leaving the subject property to his surviving heirs, his three children, namely: Apolonio, Flaviana, and Juan, all surnamed Sanchez. Petitioner Leodegaria Sanchez- Pontigon (Leodegaria) is the daughter of Juan and petitioner Luisito Pontigon (Luisito) is the husband of Leodegaria. The respondents herein, who are all represented by Teresita S. Manalansan (Teresita), are Meliton's grandchildren with Flaviana.

On September 17, 2000, the respondents filed a Complaint for Declaration of Nullity of Title and Real Estate Mortgage with Damages[5] against petitioners, docketed as Civil Case No. G-06-3792 before the Regional Trial Court (RTC), Branch 49 of Guagua, Pampanga.[6] Respondents posited that the property in issue had never been partitioned among the heirs of Meliton, but when respondents verified with the Register of Deeds of Pampanga (RD) the status of the parcels of land sometime in

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[3] Entitled "*Heirs of Meliton Sanchez, namely: Apolonia Sanchez, Iluminada Sanchez, Ma. Luz Sanchez, Agustin S. Manalansan, Perla S. Manalansan, Ester Manalansan, Godofredo S. Manalansan, Israelita S. Manalansan, Eloy S. Manalansan, Gertrudes S. Manalansan, Represented by Teresita Sanchez-Manalansan, Attorney-in-fact v. Spouses Luisito Pontigon and Leodegaria Sanchez Pontigon.*"

[4] *Rollo,* p, 12.

[5] *ld*. at 139-145.

[6] *Id*. at 13.

August 2000, they discovered that OCT No. 207 was nowhere to be found — what was only with the RD's custody was the owner's copy of OCT No. 207, free of any annotation of cancellation or description of any document that could have justified the transfer of the property covered. Despite this tact, petitioners, even without any document of conveyance, were able to transfer the title of the subject lot to their names, resulting in the issuance of Transfer Certificate of Title (TCT) No. 162403-R on May 21, 1980 covering the same parcel of land. Hence, respondents, argued that the transfer of title to petitioners was fraudulent and invalid, and that petitioners merely held title over the subject property in trust for Meliton's heirs.[7]

It was further averred that post-transfer, petitioners unlawfully and fraudulently obtained a loan from, and mortgaged the subject property to, Quedan and Rural Credit Guarantee Corporation (Quedancor) — an additional defendant in Civil Case No. G-06-3792. Quedancor allegedly did not take the necessary steps to verify the title over and the true ownership of the subject property.[8]

Deprived of their inheritance over the subject property, to their damage and prejudice, respondents prayed that TCT No. 162403-R be declared null and void; that the real estate mortgage in favor of Quedancor likewise be nullified; that OCT No. 207 registered under Meliton's name be reinstated; and that damages be awarded in their favor.[9]

In their Answer, petitioners denied the material allegations in the Complaint. They countered that the conveyance in their favor is evidenced by an Extra-judicial Settlement of Estate of Meliton Sanchez and Casimira Baluyut with Absolute Sale (Extrajudicial Settlement) that was prepared and notarized by Atty. Emiliano Malit on November 10, 1979. In fact, Apolonio, Juan, and Flaviana filed before Branch 2 of the then Court of First Instance (CFI) of Pampanga a Petition for Approval of

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

[8] *Id*. at 14.

[9] *Id*. at 143.

the Extrajudicial Partition (Petition for Approval). Petitioners further alleged that on December 29, 1979, a Decision was rendered granting the petition adverted to, which ruling became final and executory based on a certification dated February 15, 1980 issued by the then clerk of court.[10]

Petitioners also raised the following affirmative defenses: that respondents had no cause of action against petitioners, Quedancor, and the RD; that respondent Teresita Sanchez Manalansan (Teresita) had no authority to represent all the respondents in the case; and that twenty (20) years had already passed from the issuance of TCT No. 162403-R on May 21, 1980 before respondents lodged their Complaint. Petitioners would file on October 10, 2002 a motion to dismiss reiterating the defense that respondents' action is already barred by prescription.[11]

For its part, Quedancor explained that petitioners mortgaged to it the parcel of land covered by TCT No. 162403-R as security for a PhP6,617,000.00 loan extended in their favor. It claimed that the mortgage was approved in good faith since it verified with the RD the veracity of petitioners' title. Moreover, by way of affirmative defense, Quedancor maintained that respondents have no cause of action against it. It then prayed that respondents be ordered to pay the corporation damages and attorney's fees.[12]

With the issues joined, trial on the merits ensued.

During trial, respondent Teresita, attorney-in-fact of her co-parties, testified that the subject property was merely held in trust by her uncle Juan, Meliton's son and petitioner Leodegaria's father, who had been paying the taxes on the property since he is the most educated and successful of the three siblings; and, that she was the one who verified with the RD and discovered that only the owner's copy of OCT No. 207 was in the office's

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[10] *Id*. at 163.

[11] *Id*. at 164.

[12] *Id*. at 146-150.

custody *sans* any annotation of cancellation or encumbrance.[13] Myrna Guinto, a Record Officer at the RD and witness for the respondents, testified that the duplicate owner's copy adverted to indeed bears no indication that it had been cancelled or otherwise encumbered.[14]

On the other hand, petitioner Luisito testified that even though he and his wife do not particularly like the location of the lots in issue, they accepted Juan, Apolonio, and Flaviana's offer to sell to them Meliton's erstwhile property due to sentimental reasons. The Extrajudicial Settlement was then executed and the Petition for Approval filed to effect the transfer in petitioners' name. The petition for approval, according to Luisito, was favorably acted upon by the CFI of Pampanga on November 30, 1979, which ruling allegedly became final and executory.[15]

Leodegaria corroborated Luisito's testimony that they were constrained to purchase the lot for its emotional attachment to them. She revealed that it was her father Juan who hired a lawyer, Atty. Malit, to effect the transfer, and that she was present when the Extrajudicial Settlement was executed by the three siblings, with Lucita Jalandoni and Agustin Manalansan as instrumental witnesses. Atty. Malit deposited into Flaviana's account the payments of the purchase price. And since then, petitioners occupied and developed the disputed lot.[16]

Atty. Lorna Salangsang-Dee (Atty. Dee), the Register of Deeds for Pampanga, likewise took the witness stand to explain that all documents relative to titles issued prior to October 1995 were destroyed by the *lahar* and flash floods that inundated their office. She further testified, on cross-examination, that she concluded that the owner's duplicate certificate of OCT No. 207 appears in their records because there was a transaction that warranted its surrender to the Registry.[17]

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[13] *Id*. at 163-164.

[14] *Id*. at 165-166.

[15] *Id*. at 170-171

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

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

In rebuttal, respondent Teresita was recalled as witness. She claimed that the first time she saw the Extrajudicial Settlement was when it was presented in court. She brought to the court's attention the fact that the document was allegedly executed on November 10, 1979, when her mother, Flaviana, was already 69 years of age. It was Teresita's contention that Flaviana, in her advanced age was already senile during the date material and, thus, could not have validly consented to the sale of her property. Teresita admitted, though, that she has no document to prove the status of her mother's then mental condition.[18]

The second rebuttal witness, Thiogenes Manalansan Ragos, Jr. (Thiogenes), son of respondent Perla Manalansan and grandson of Flaviana, claimed that on November 7, 1979, between 2:00-3:00 p.m., Juan, Luisito, and Leodegaria arrived at the house of Flaviana to coerce her into signing a document. Because Flaviana refused to affix her signature, she was forcibly taken by the three. Thereafter, Thiogenes accompanied his mother, Perla, to the police station to report the incident. There, he allegedly saw Perla file a complaint stating, among others, that Juan was persuading Flaviana to sign a document of sale.[19]

Ruling of the Regional Trial Court

During the course of the trial, the RTC issued its Order dated May 28, 2003 denying petitioners' motion to dismiss, ruling that respondents' cause of action has not yet prescribed. The RTC ratiocinated that by filing a motion to dismiss, petitioners hypothetically admitted the allegations in the complaint that they and respondents are co-owners of the subject property, being the heirs of Meliton. Having fraudulently obtained title over the subject property to the prejudice of respondents, a trust relation was created by operation of law, whereby petitioners merely held the subject property in trust for and in behalf of their co-owners. As held, an action based on this trust relation could not be barred by prescription.[20]

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[18] *Id*. at 175-177.

[19] *Id*. at 177-178.

[20] *Id*. at 18.

Subsequently, on June 28, 2012, the RTC promulgated a Decision[21] in favor of respondents. The dispositive portion of the Decision states:[22]

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring null and void Transfer Certificate of Title No. 162403-R registered in the name of defendants-spouses Luisito Pontigon and Leodegaria Sanchez and declaring herein plaintifis represented by Teresita Sanchez Manalansan as rightful co-owners to a one-third portion of the property embraced in said title previously registered in the name of Meliton Sanchez per Original Certificate of Title No. 207;

2. Ordering the Register of Deeds of Pampanga to cancel TCT No. 162403-R and issue a new title in favor of the Heirs of Meliton Sanchez, upon payment of the necessary taxes and lawful fees;

3. Upholding the validity of the real estate mortgage constituted on TCT No. 162403-R and setting aside the writ of preliminary injunction issued against defendant Quedancor without prejudice to the rights of herein plaintiffs as co-owners of the mortgaged property;

4. Denying plaintiff's claim for damages and attorney's fees as well as defendants' counterclaims for lack of merit.

SO ORDERED.

The RTC maintained that the transfer of title of the subject property to petitioners was tainted with irregularities. While the trial court took judicial notice of the floods and *lahar* that inundated the Provincial Capitol, it found strange that the owner's duplicate certificate, but not the original copy, of OCT No. 207, would remain with the RD, clean of any annotation or marking at that.[23]

Anent the Petition for Approval, the RTC noted that the pleading filed before the CFI was verified by Juan alone; that the court order setting it for hearing was not signed by the then

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[21] *Id*. at 160-188; penned by Presiding Judge Jesusa Mylene C. Suba-Isip.

[22] *Id*. at 187-188.

[23] *Id*. at 181-182.

presiding judge; and that the certification of the CFI judgment granting the Petition for Approval was a mere photocopy and does not satisfy the best evidence rule. Additionally, the RTC weighed against petitioners the fact that the Petition for Approval was prepared earlier than the Extrajudicial Settlement sought to be approved. The Extrajudicial Settlement was dated November 10, 1979, while the Petition for Approval was dated November 9, 1979, albeit filed on November 12, 1979.[24]

Taking substantial consideration of the "damning rebuttal evidence" of respondents,[25] the trial court deemed implausible petitioners' postulation that they purchased the subject property for sentimental reasons. It further held the petitioners did not particularly dispute that respondents are heirs of Meliton. Thus, upon Meliton 's death, co-ownership existed among the siblings, Juan, Apolonio and Flaviana. Finally, the RTC held that the subject property should then be divided equally among the three (3) heirs.[26]

Petitioners filed a Motion for Reconsideration,[27] but their contentions were rejected by the RTC anew.[28] Aggrieved, they elevated the case to the CA *via* appeal.

Ruling of the Court of Appeals

Through its assailed Decision, the appellate court affirmed the findings of the RTC and disposed of the case in the following wise:[29]

WHEREFORE, the instant appeal is **DENIED**. The Decision dated June 28, 2012 of Branch 49, Regional Trial Court of Guagua, Pampanga in Civil Case No. G-06-3792 is hereby **AFFIRMED**.

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[24] *Id*. at 180-181.

[25] *Id*. at 182.

[26] *Id*. at 182-183.

[27] *Id*. at 189-200.

[28] *Id*. at 201-202

[29] *Id*. at 27-28.

SO ORDERED.

At the outset, the CA ruled that petitioners' appeal was procedurally infirm. Citing Sec. 1 (f), Rule 50[30] of the Rules of Court, the CA held that failure of petitioners to submit a subject index is fatal to the appeal and warrants the outright denial of their plea.[31]

Even if the absence of the subject index were to be excused, the appellate court nevertheless found no cogent reason to disturb the trial court's ruling. The CA explained that the Extrajudicial Settlement cannot be considered a public document because it was not properly notarized. It could not then bind third persons, including respondents, according to the appellate court.[32] Moreover, the CA ruled that the document adverted to is bereft of any probative value for failure on the part of petitioners to comply with the rules on the admissibility of private documents as proof.[33] It also shared the RTC's observations as regards the

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RULE 50

Dismissal of Appeal

Section l. G*rounds for dismissal of appeal*. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44; x x x

RULE 44

Ordinary Appealed Cases

x x x x x x x x x

Section 13. *Contents of appellant's brief.* – The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited; xxx

31 *Rollo*, p. 21.

32 *Id*. at 23.

33 *Id*. at 24.

Petition for Approval.[34] Given the irregularities attending the execution and approval of the Extrajudicial Settlement, the CA concluded that it could not have conveyed title to petitioners, and that TCT No. 162403-R, consequently, is a nullity.[35]

From the date of their receipt of the adverse ruling, petitioners had until May 9, 2015 within which to move for reconsideration therefrom. It would be on May 4, 2015 when petitioners would interpose their Motion for Reconsideration[36] and Entry of Appearance[37] of Atty. Roniel Dizon Muñoz (Atty. Muñoz). Atty. Juvy Mell Sanchez-Malit (Atty. Malit), the counsel who previously represented the petitioners in the earlier proceedings, never informed the court that she is withdrawing from the case.

On October 2, 2015, petitioners received a copy of the Notice of Resolution[38] with Entry of Judgment[39] dated September 14, 2015, which provides thusly:[40]

> **WHEREFORE**, premises considered, the Court resolves as follows:
>
> 1. The Entry of Appearance as Counsel for Defendants-Appellants Spouses Pontigon filed by Atty. Roniel Dizon Muñoz is simply **NOTED WITHOUT ACTION**; and
>
> 2. The Motion for Reconsideration filed by Atty. Dizon Muñoz is hereby EXPUNGED from the rollo of this case, being a mere scrap of paper with no remedial value for having been filed by unauthorized counsel.

Accordingly, the Division Clerk of Court is hereby **DIRECTED** to issue an Entry of Judgment in consonance with Section 3 (b), Rule IV and Section 1, Rule VII of the IRCA, as amended.

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[34] *Id*. at 25.

[35] *Id*. at 26.

[36] *Id*. at 109-120.

[37] *Id*. at 121.

[38] *Id*. at 123-126.

[39] *Id*. at 127.

[40] *Id*. at 126.

SO ORDERED.

In fine, the CA treated the Motion for Reconsideration as a mere scrap of paper since it was allegedly not filed by petitioners' counsel of record. Atty. Muñoz was not vested with the authority to file the pleading in their behalf since the manner by which petitioners substituted their counsel is not consistent with Sec. 26, Rule 138 of the Rules of Court.[41] Citing *Ramos v. Potenciano*,[42] the CA held that no substitution of attorneys will be allowed unless the following requisites concur: there must be (1) a written application for substitution; (2) written consent of the client to the substitution; and (3) written consent of the attorney to be substituted, if such consent can be obtained. x x x[43]

Unless these formalities are complied with, no substitution may be permitted and the attorney who appeared last in the case before such application for substitution would be regarded as the attorney of record and would be held responsible for the conduct of the case.[44]

Unfazed, petitioners again filed a Motion for Reconsideration,[45] this time from the September 14, 2015 Resolution. The said motion remains pending with the CA to date. In the interim, the appellate court remanded the folders of this case to the court of origin.

Hence, the instant recourse.

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[41] **Section 26.** *Change of attorneys*. – An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

[42] G.R. No. L-19436, November 29, 1963, 9 SCRA 589, 592-593.

[43] *Id.* at 592; *rollo*, p. 125.

[44] *Id.*; *id.*

[45] *Rollo*, pp. 128-132.

The Issues

The pivotal issues of the current controversy are as follows:

I. Whether or not the CA is correct in ruling that Atty. Muñoz did not have the authority to file the Motion for Reconsideration in behalf of the petitioners, rendering it a mere scrap of paper;

II. Whether or not respondents' cause of action is barred by prescription;

III. Whether or not the appellate court correctly held that the Extrajudicial Settlement does not bind the respondents;

IV. Whether or not the Extrajudicial Settlement is admissible as evidence;

V. Whether or not the CA erred in ruling that TCT No. 162403-R is a nullity because of the irregularities that attended its issuance;

VI. Whether or not a relaxation of the procedural rules is warranted in this case.

The Court's Ruling

The Court finds merit in the petition. The resolution of the issues raised herein shall be discussed *seriatim*, beginning with the procedural aspect of the case.

The CA erred in denying the Motion for Reconsideration for want of authority of counsel

Oft cited, but rarely applied, is that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving.[46] This controversy before us, however, is one of the exceptional instances wherein the proverb can properly be invoked.

We entertain this petition notwithstanding the finality of the judgment because fault here lies with the CA for its unjustified

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[46] *Magsino v. De Ocampo*, G.R. No. 166944, August 18, 2014, 733 SCRA 202, 220.

denial of the first Motion for Reconsideration filed by Atty. Muñoz, and for its refusal to resolve the still pending second Motion for Reconsideration in CA-G.R. CV No. 100188. It was plain error for the appellate court to have treated the first Motion for Reconsideration as a sham pleading for allegedly not having been filed by the counsel of record.

The September 14, 2015 Resolution of the appellate court is premised on the alleged failed substitution of counsel. Premised on the immediate assumption that Atty. Muñoz was intended as a replacement for Atty. Sanchez-Malit, the CA concluded that non-observance of Sec. 26, Rule 138 of the Rules of Court rendered Atty. Muñoz's filing of the first Motion for Reconsideration to be wanting of authority.

The theory of the CA is flawed.

Apropos herein is the Court's teaching in *Land Bank of the Phils. v. Pamintuan Dev. Co.*,[47] to wit:

> [A] **substitution cannot be presumed from the mere filing of a notice of appearance of a new lawyer** and that the representation of the first counsel of record continuous until a formal notice to change counsel is filed with the court. Thus, absent a formal notice of substitution, all lawyers who appeared before the court or filed pleadings in behalf of the client are considered counsels of the latter. All acts performed by them are deemed to be with the clients' consent. (Emphasis supplied)

Applying the afore-quoted doctrine, it is imperative that the intention of the petitioners to replace their original counsel, Atty. Sanchez-Malit, be evidently clear before substitution of counsel can be presumed. The records readily evince, however, that herein petitioners did not manifest even the slightest of such intention. No inference of an intent to replace could be drawn from the tenor of either the first Motion for Reconsideration or in Atty. Muñoz's Entry of Appearance.

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[47] G.R. No. 167886, October 25, 2005; citing *Sublay v. National Labor Relations Commission,* 381 Phil. 198.

To dispel any lingering doubt as to the true purpose of Atty. Muñoz's entry, worthy of note is that he indicated in his Entry of Appearance that his office address is "Sanchez-Malit Building" in Dinalupihan, Bataan.[48] More, both counsels signed the present petition for review on *certiorari*, indicating only one address, the very same building of Atty. Sanchez-Malit, for where court processes shall be served. Indubitably, the Entry of Appearance by the new lawyer, Atty. Muñoz, ought then be construed as a collaboration of counsels, rather than a substitution of the prior representation. Consequently, the CA should have entertained and resolved the Motions for Reconsideration filed by petitioners through Atty. Muñoz, despite Atty. Sanchez-Malit's non-withdrawal from the case.

Verily, it was wrong for the CA to have denied outright petitioners' first Motion for Reconsideration, and to have directed the post-haste issuance of the Entry of Judgment. These haphazard actions resulted in the deprivation of petitioners of a guaranteed remedy under the rules. But more than the need to rectify the CA's procedural miscalculation, the liberal application of the rules is justified under the circumstances in order to obviate the frustration of substantive justice.

Respondents' action is already barred by prescription

The May 28, 2003 Order of the RTC denying petitioners' motion to dismiss on the ground of prescription cannot be sustained. To recall, the RTC held that as co-owners of the subject property, a trust relation was established between the parties when petitioners fraudulently obtained title over the same.[49] An action anchored on this relation of trust is imprescriptible, or so the RTC ruled.

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[48] *Rollo*, p. 121.

[49] **Article 1456.** If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

We find this ruling of the RTC not in accord with law and jurisprudence.

Under the Torrens System as enshrined in P.D. No. 1529,[50] the decree of registration and the certificate of title issued become incontrovertible upon the expiration of one (1) year from the date of entry of the decree of registration, without prejudice to an action for damages against the applicant or any person responsible for the fraud.[51] However, actions for reconveyance based on implied trusts may be allowed beyond the one-year period. As elucidated in *Walstrom v. Mapa, Jr.*:[52]

> [N]otwithstanding the irrevocability of the Torrens title already issued in the name of another person, he can still be compelled under the law to reconvey the subject property to the rightful owner. The property registered is deemed to be held in trust for the real owner by the person in whose name it is registered. After all, the Torrens

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[50] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES

[51] **Section 32.** *Review of decree of registration; Innocent purchaser for value.* The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[52] 260 Phil. 456, 468-469 (1990).

system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith.

In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right. This is what reconveyance is all about. Yet, **the right to seek reconveyance based on an implied or constructive trust is not absolute nor is it imprescriptible**. An action for reconveyance based on an implied or constructive trust must perforce prescribe in **ten years** from the issuance of the Torrens title over the property. (Emphasis supplied)

Thus, an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten (10) years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property.[53]

By way of additional exception, the Court, in a catena of cases,[54] has permitted the filing of an action for reconveyance despite the lapse of more than ten (10) years from the issuance of title. The common denominator of these cases is that the plaintiffs therein were in actual possession of the disputed land, converting the action from reconveyance of property into one for quieting of title. Imprescriptibility is accorded to cases for quieting of title since the plaintiff has the right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right.[55]

A perusal of respondents' Complaint,[56] though, reveals that the allegations contained therein do not include possession of the contested property as an ultimate fact. As such, the present case could only be one for reconveyance of property, not for

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[53] 242 Phil. 709, 715 (1988.)

[54] 376 Phil. 825 (1999), 166 Phil. 429 (1977).

[55] 452 Phil. 178, 206 (2003).

[56] *Rollo*, pp. 139-145.

quieting of title. Accordingly, respondents should have commenced the action within ten (10) years reckoned from May 21, 1980, the date of issuance of TCT No. 162403-R, instead of on September 17, 2000 or more than twenty (20) years thereafter.

The Extrajudicial Settlement is a private document that is binding on the respondents

The appellate court did not err in ruling that the Extrajudicial Settlement was not properly notarized given the absence of Flaviana's residence certificate number. As it appears, no identification was ever presented by Flaviana when the document was notarized. Be that as it may, the irregularity in the notarization is not fatal to the validity of the Extrajudicial Settlement. For even the absence of such formality would not necessarily invalidate the transaction embodied in the document — the defect merely renders the written contract a private instrument rather than a public one.

While Art. 1358 of the New Civil Code seemingly requires that contracts transmitting or extinguishing real rights over immovable property should be in a public document,[57] hornbook

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[57] **Article 1358.** The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein as governed by Articles 1403, No. 2, and 1405;

x x x x x x x x x

Article 1403. The following contracts are unenforceable, unless they are ratified:

x x x x x x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases, an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x x x x x x x

doctrine is that the embodiment of certain contracts in a public instrument is only for convenience.[58] It is established in jurisprudence that non-observance of the prescribed formalities does not necessarily excuse the contracting parties from complying with their respective obligations under their covenant, and merely grants them the right to compel each other to execute the proper deed.[59] A contract of sale has the force of law between the contracting parties and they are expected to abide, in good faith, by their respective contractual commitments[60] notwithstanding their failure to comply with Art. 1358.

As similarly observed by the appellate court, the Extrajudicial Settlement is not a nullity, but a valid document, albeit a private one. The CA never declared the document as void, but only that it cannot be considered as binding on third parties. It added, however, that respondents fall within the category of "third persons" against whom the stipulations in the private document can never be invoked.[61] On this point, we digress.

The principle of relativity of contracts dictates that contractual agreements can only bind the parties who entered into them, and cannot favor or prejudice third persons, even if he is aware of such contract and has acted with knowledge thereof.[62] The doctrine finds statutory basis under Art. 1311 of the New Civil Code, which provides:

(e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

x x x x x x x x x

[58] 700 Phil. 191, 203 (2012).

[59] **Article 1357.** If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[60] **Article 1159.** Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[61] *Rollo*, p. 23.

[62] 727 Phil. 473, 480 (2014).

Article 1311. Contracts take effect only **between the parties, their assigns and heirs**, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. xxx (Emphasis supplied)

The law is categorical in declaring that as a general rule, the **heirs** of the contracting parties are precluded from denying the binding effect of the valid agreement entered into by their predecessors-in-interest. This is so because they are not deemed "third persons" to the contract within the contemplation of law. Additionally, neither the provision nor the doctrine makes a distinction on whether the contract adverted to is oral or written, and, even more so, whether it is embodied in a public or private instrument. It is then immaterial that the Extrajudicial Settlement executed by Flaviana was not properly notarized for the said document to be binding on her heirs, herein respondents.

Reliance by the trial court on the so-called "damning rebuttal evidence" is misplaced and cannot be countenanced. Said evidence contradicts the very allegations in their Complaint. It effectively modifies the respondents' theory of the case and transforms the action so as to include a collateral attack on the deed of conveyance. It cannot escape the attention of the court that despite alleging in their Complaint and in their initial presentation of evidence that there was no document of conveyance that justifies the issuance of TCT No. 162403-R, respondents made a complete turnabout and virtually admitted the existence of the Extrajudicial Settlement on rebuttal, but nevertheless argued against its validity.

To review, Thiogenes, son of respondent Perla Manalansan, testified that on November 7, 1979, Juan, Luisito, and Leodegaria forcibly took Flaviana and coerced the latter to execute the sale in favor of petitioners. If this version of the facts were to be believed, this could only mean: (a) that the Extrajudicial Settlement existed, (b) that Flaviana's heirs knew of its existence; and (c) that Flaviana's consent was vitiated through force and intimidation. Noteworthy, too, is that Agustin Manalansan, one of the respondents in this case, even signed the deed as an instrumental witness to the execution of the deed. Yet, he did

not testify to disavow the signature appearing above his name in the Extrajudicial Settlement.

The above circumstances render the Extrajudicial Settlement voidable, not void.[63] Under the law, a voidable contract retains the binding effect of a valid one unless otherwise annulled.[64] And as prescribed, the action for annulment shall be brought within four (4) years, in cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.[65] Unfortunately for respondents, the prescriptive period for annulment had long since expired before they filed their Complaint. They cannot be permitted to circumvent the law by belatedly attacking, collaterally and as an afterthought at that, the validity of the erstwhile voidable instrument in the present action for declaration of nullity of title.

The validity of the Extrajudicial Settlement cannot then be gainsaid. Ratified by their inaction, the document of conveyance, as well as the consequences of its registration, would then bind the respondents. This still holds true notwithstanding the glaring irregularities in the Petition for Approval. Obvious to the eye and intellect as the errors may be, they are of no moment since the Extrajudicial Settlement, a private writing and unpublished as it were, nevertheless remains to be binding upon any person who participated thereon or had notice thereof.[66]

Petitioners complied with the rules on authentication of private documents

Likewise, the CA erroneously ruled that the Extrajudicial Settlement is bereft of probative value because of petitioners' alleged failure to comply with the rules on the admissibility of evidence set forth under Rule 132, Sec. 20 of the Rules of Court, *viz*:

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[63] **Article 1330.** A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.

[64] Art. 1390, New Civil Code.

[65] Art. 1391, New Civil Code.

[66] RULES OF COURT, Rule 74, Sec. 1.

Section 20. *Proof of private document*.—Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be

Contrary to the CA's ruling, petitioners complied with the foregoing authentication requirements. Pertinent hereto is petitioner Leodegaria's testimony on January 13, 2009:[67]

Atty. Malit	So what is the document they executed?
Witness	Then they executed a deed of sale, after that the lawyer took over the required documents to this effect like this extrajudicial settlement, that is one, and two, that is to pay all the taxes for more than fifty (50) years, Ma'am. After that the deed of sale then the extra-judicial settlement and after the [extra judicial] settlement they signed in front of the lawyer and after that publication in a newspaper of general circulation.
Atty. Malit	Now you mentioned that a document entitled extra-judicial settlement, if that copy will be shown to you, would you be able to identify it?
Witness	Yes Ma'am
Atty. Malit	I am showing to you a document entitled extra-judicial settlement of the estate of deceased spouses Meliton Sanchez and Casimira Baluyot, will you please go over this document. Which consists of two (2) pages and tell us if this is the one executed by Juan, Flaviana, and Apolonia?

[67] *Rollo*, pp. 78-80; Petition for *Cetiorari*, pp. 17-19, citing TSN of January 13, 2009, pp. 8-12.

Witness	Yes Ma'am
Atty. Malit	Above the names of Juan, Flaviana and Apolonio (sic) are signatures, do you know whose signatures are these?
Witness	These are the signatures of Juan, Flaviana and Apolonio, Ma'am.
Atty. Malit	**Why do you know that these are the signatures of Juan, Flaviana, and Apolonio?**
Witness	**Because I was present with my lawyer, Ma'am.**
Atty. Malit	On the second page of the document you are holding [two] (2) witnesses whose signatures appear on said document can you recall whose signatures are these?
Witness	The signatures of Lucita Jardinas and Agustin Manalansan, Ma'am.
Atty. Malit	Who is this Lucita Jalandoni?
Witness	Lucita is the witness from the office of Atty. Malit, Ma'am.
Atty. Malit	How about the other signature, Agustin Manalansan?
Witness	Agustin Manalansan is the son of Flaviana Sanchez, Ma'am.
Atty. Malit	Is he the same person who is one of the plaintiffs in this case?
Witness	Yes, sir (sic). (Emphasis supplied)

As can be gleaned from the transcripts, the contents of petitioner Leodegaria's testimony satisfy the rules pertaining to the admissibility of documentary evidence. Her claim that she was present at the time the Extrajudicial Settlement was executed is competent proof of the said document's authenticity and due execution. To be sure, neither the RTC nor the CA held that the credibility of petitioner Leodegaria was impeached; the adverse findings against her and her husband were predicated mainly on the erroneous perception that her evidence-in-chief is inadmissible.

Irregularities in the issuance of TCT No. 162403-R would not necessarily invalidate the same

Proceeding now to the issue on whether or not the nullification of TCT No. 162403-R is warranted, it must be borne in mind that the assailed document of title, as a government issuance, enjoys the presumption of regularity.[68] It was then incumbent upon the respondents to prove, by preponderant evidence, that the issuance of TCT No. 162403-R on May 21, 1980 was attended by fraud as they claim.

Respondents endeavored to overcome the burden of evidence in proving their allegation of fraud by presenting as witness Myrna Guinto, an employee of the RD of Pampanga, who testified that the original copy of OCT No. 207, the parent title of TCT No. 162403-R, is not in their custody as it is missing in their vault, and that the owner's duplicate certificate in its stead does not bear any annotation of cancelation or encumbrance.

We are inclined, however, to give more credence to the explanation given by the Registrar of Deeds, Lorna Salangsang-Dee, that the presence of the owner's duplicate certificate in their vault signifies that there was most likely a transaction registered with the office concerning the same. Indeed, there could not be any other plausible reason except that it was as a result of the transaction that owner's duplicate certificate was surrendered to the RD.

In any event, even if we were to assume for the sake of argument that the issuance of TCT No. 162403-R was marred by irregularities, this would not necessarily impair petitioners' right of ownership over the subject lot. As held in *Rabaja Ranch Development Corporation v. AFP Retirement and Separation Benefits System*:[69]

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[68] RULES OF COURT, Rule 131, Sec. 3(m).

[69] 609 Phil. 660, 676-677 (2009).

x x x justice and equity demand that **the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons.** The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties. (Emphasis supplied)

Respondents, in the instant case, miserably failed to prove that petitioners were parties to the perceived fraud. Basic are the tenets that he who alleges must prove, and that mere allegation is not evidence and is not equivalent to proof. Here, the allegations relating to petitioners' participation to the fraud were nothing more than general averments that were never fleshed out to more specific fraudulent acts, let alone substantiated by the evidence on record.

To clarify, what was only established was that there were lapses in the observance of the standard operating procedure of the RD in its issuance of titles, based on the loss of the original title and the absence of an annotation of cancellation even on the duplicate owner's original. The performance or non-performance of these acts, however, cannot be attributed to herein petitioners, as registrants, for these are within the ambit of the duties and responsibilities of the officers of the RD.[70] All the registrant was required to do was to surrender

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[70] Sec. 57. Of P.D. 1529 provides:

Sec. 57. *Procedure in registration of conveyances.* An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate

the duplicate owner's original,[71] which petitioners accomplished in the case at bar.

Worth recalling, too, is that contrary to respondents' claim, there was a valid document of conveyance that could justify the issuance of TCT No. 162403-R in petitioners' favor. In view of the validity of the Extrajudicial Settlement, the Court hesitates to conclude that the challenged TCT was fraudulently issued. At most, there appears to be, in this case, lapses in the standard operating procedure of the RD, which do not and could not automatically impair petitioners' ownership rights and title, but merely expose the negligent officers to possible liability.

Succinctly, we conclude from the foregoing disquisitions that: respondents' action has already prescribed; the Extrajudicial Settlement, though a private instrument, is nevertheless valid and binding on the heirs of the contracting parties; the Extrajudicial Settlement is admissible in evidence; and absent proof of complicity in the alleged fraud that attended the issuance of TCT No. 162403-R, petitioners' rights under the said document of title cannot be impaired. These corrections in judgment, to our mind, are considerations that severely outweigh and excuse petitioners' procedural transgressions.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Entry of Judgment dated September 14, 2015 in CA-G.R. CV No. 100188 is hereby **LIFTED**. The March 26, 2015 Decision and September 14, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 100188, as well as the Decision dated June 28, 2012 and the Order dated December 14, 2012 in Civil Case No. G-06-3792 before the Regional Trial Court, Branch 49 of Guagua, Pampanga, are hereby **REVERSED** and **SET ASIDE**. Let a new judgment be issued:

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shall be stamped "cancelled." The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

[71] *Id*.

1. Upholding the validity of Transfer Certificate of Title No. 162403-R registered in the name of petitioners Luisito and Leodegaria Pontigon; and

2. Dismissing the Complaint for Declaration of Nullity of Title and Real Estate Mortgage for lack of merit.

SO ORDERED.

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

Peralta, J., dissents, see dissenting opinion.

DISSENTING OPINION

PERALTA, *J.*:

With all due respect to my esteemed colleagues, I register my dissent from the majority decision on the following grounds:

First, both the RTC and the CA found that the execution and approval of the Extrajudicial Settlement with Sale and the subsequent transfer of title of the subject property to petitioners were tainted with irregularities, among which are the following:

1. Despite the loss of the original copy of the Original Certificate of Title (OCT) in the custody of the Registrar of Deeds (RD) for Pampanga, the latter still issued a TCT in the name of petitioners merely on the basis of the owner's duplicate copy of the OCT which does not contain any annotation of cancellation;

2. The TCT in petitioner's name was issued based only on the Extrajudicial Settlement with Sale, which is a private document;

3. The Petition for Approval of the Extrajudicial Settlement with Sale, dated November 9, 1979 was prepared earlier than the Extra Judicial Settlement sought to be approved, which was dated November 10, 1979;

4. Copies of the Petition for Approval of the Extrajudicial Settlement with Sale as well as the Certification which attests

to the existence of a CFI Decision which supposedly granted the said Petition were mere photocopies;

5. The alleged Order issued by the CFI which set the hearing for and publication of the Petition for Approval of the Extrajudicial Settlement with Sale was not signed by the Presiding Judge.

The Court has repeatedly held that it is not necessitated to examine, evaluate or weigh the evidence considered in the lower courts all over again.[1] This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case.[2] Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.[3] Based on these irregularities, the RTC and the CA are justified in concluding that the subject Extrajudicial Settlement with Sale could not have validly conveyed title to petitioners and that the TCT which was issued in their favor is null and void.

Indeed, the irregularities attendant in the present case do not indicate a mere lapse on the part of the RD in the issuance of the disputed TCT.

Considering that the owner's duplicate copy of the OCT in the custody of the RD does not contain any annotation of its cancellation, it is a grievous error on the part of the RD to consider such duplicate copy as basis in cancelling the OCT and issuing a new TCT in petitioners' favor.

In the first place, there is no OCT to cancel as the original copy which is in the custody of the RD has been destroyed. Thus, the proper procedure that should have been followed was to reconstitute first the lost or destroyed OCT, in accordance with Section 110[4] of PD 1529. The reconstitution of a certificate

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[1] *Timoteo and Diosdada Bacalso v. Gregoria B. Aca-ac, et al.*, G.R. No. 172919, January 13, 2016.

[2] *Id.*

[3] *Id.*

[4] **Section 110.** *Reconstitution of lost or destroyed original of Torrens title.* Original copies of certificates of title lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands

of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land.[5] The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.[6] The lost or destroyed document referred to is the one that is in the custody of the Register of Deeds. When reconstitution is ordered, this document is replaced with a new one that basically reproduces the original.[7] After the reconstitution, the owner is issued a duplicate copy of the *reconstituted* title.[8] It is from this reconstituted title that a new TCT may be derived. Thus, it is error on the part of the RD to have issued the disputed TCT in favor of petitioners in the absence of a duly reconstituted OCT.

The irregularity in the issuance of the contested TCT is also highlighted by the fact that the supposed Order which set the hearing for and publication of the Petition for Approval of the Extrajudicial Settlement with Sale was not signed by the Presiding Judge. In addition, copies of the Petition for Approval of the Extrajudicial Settlement with Sale, as well as the Certification which attests to the existence of a CFI Decision which supposedly

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covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act is hereby abrogated.

Notice of all hearings of the petition for judicial reconstitution shall be given to the Register or Deeds of the place where the land is situated and to the Commissioner of Land Registration. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of thirty days from receipt by the Register of Deeds and by the Commissioner of Land Registration of a notice of such order or judgment without any appeal having been filed by any of such officials.

[5] *Republic of the Philippines v. Vergel De Dios, et al.*, 657 Phil. 423, 429 (2011).

[6] *Id.*

[7] *Id.*

[8] *Id.*

granted the said Petition, were mere photocopies. In this regard, the CA was correct in ruling that mere photocopies of documents, being secondary evidence, are inadmissible as evidence unless it is shown that their originals are unavailable.

The *ponencia* also holds that respondents' action is already barred by prescription by restating the rule that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten (10) years reckoned from the date of registration or the date of the issuance of the certificate of title over the property; that, as an added exception, this Court has permitted the filing of an action for reconveyance even beyond the 10- year period in cases where the plaintiffs therein were in actual possession of the disputed land, thereby converting the action from reconveyance of property into one for quieting of title. Applying the above rule to the present case, the *ponencia* holds that since respondents' complaint did not allege their possession of the contested property as an ultimate fact, it follows that the case could only be one for reconveyance of property, not for quieting of title. Thus, respondents should have commenced their action within ten (10) years from May 21, 1980, the date of the issuance of the Transfer Certificate of Title (TCT) in petitioners' favor. However, since respondents only filed their Complaint on September 17, 2000, or more than twenty (20) years thereafter, their action has already prescribed.

I beg to disagree.

Whether an action for reconveyance prescribes or not is determined by the nature of the action, that is, whether it is founded on a claim of the existence of an implied or constructive trust, or one based on the existence of a void or inexistent contract.[9] It is true that an action for reconveyance based on an implied trust ordinarily prescribes in ten (10) years, subject to the exception mentioned above. However, in actions for reconveyance of the property predicated on the fact that the

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[9] *Aniceto Uy v. Court of Appeals, Mindanao Station, Cagayan de Oro City, et al.*, G.R. No. 173186 September 16, 2015.

reconveyance of the property predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be unavailing.[10] The action or defense for the declaration of the inexistence of a contract does not prescribe.[11] In the instant case, the action filed by respondents is essentially an action for reconveyance based on their allegation that the title over the subject property was transferred in petitioners' name without any valid document of conveyance. Since respondents' complaint was based on the allegation of the inexistence of a valid contract, which would have lawfully transferred ownership of the subject property in petitioners' favor, such complaint is, therefore, imprescriptible.

Lastly, the *ponencia* rules that the Extrajudicial Settlement with Sale was not properly notarized; thus, rendering the written contract a private instrument which, nonetheless, binds respondents. This notwithstanding, it is my considered opinion that the above document, being a private instrument, is not a sufficient basis to convey title over the disputed property in favor of petitioners. In this regard, the case of *Gallardo v. Intermediate Appellate Court*[12] is instructive, to wit:

x x x x x x x x x

Petitioners claim that the sale although not in a public document, is nevertheless valid and binding citing this Court's rulings in the cases of *Cauto v. Cortes*, 8 Phil. 459, 460; *Guerrero v. Miguel*, 10 Phil. 52, 53; Bucton v. Gabar 55 SCRA 499 wherein this Court ruled that even a verbal contract of sale of real estate produces legal effects between the parties.

The contention is unmeritorious.

As the respondent court aptly stated in its decision:

> True, as argued by appellants, a private conveyance of registered property is valid as between the parties. However,

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[10] *Heirs of Dumaliang v. Serban*, 545 Phil. 243, 257 (2007), citing *Heirs of Ingjug-Tiro v. Casals*, 415 Phil. 665, 673 (2001).

[11] *Id*.

[12] 239 Phil. 243, 253-254 (1987).

> the only right the vendee of registered property in a private document is to compel through court processes the vendor to execute a deed of conveyance sufficient in law for purposes of registration. Plaintiffs-appellants' reliance on Article 1356 of the Civil Code is unfortunate. The general rule enunciated in said Art. 1356 is that contracts are obligatory, in whatever form they may have been entered, provided all the essential requisites for their validity are present. The next sentence provides the exception, requiring a contract to be in some form when the law so requires for validity or enforceability. Said law is Section 127 of Act 496 which requires, among other things, that the conveyance be executed "before the judge of a court of record or clerk of a court of record or a notary public or a justice of the peace, who shall certify such acknowledgment substantially in form next hereinafter stated."
>
> Such law was violated in this case. The action of the Register of Deeds of Laguna in allowing the registration of the private deed of sale was unauthorized and did not lend a bit of validity to the defective private document of sale.

With reference to the special law, Section 127 of the Land Registration Act, Act 496 (now Sec. 112 of P.D. No. 1529) provides:

> Sec. 127. Deeds of Conveyance, ... affecting lands, whether registered under this act or unregistered shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, ... or bind the lands as though made in accordance with the more prolix forms heretofore in use: Provided, That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, *and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgement substantially* in the form next hereinafter stated. (Emphasis supplied).

It is therefore evident that Exhibit "E" in the case at bar is definitely not registerable under the Land Registration Act.

Likewise noteworthy is the case of Pornellosa and *Angels v. Land Tenure Administration and Guzman*, 110 Phil. 986, where the Court ruled:

> The deed of sale (Exhibit A), allegedly executed by Vicente San Jose in favor of Pornellosa is a mere private document and does not conclusively establish their right to the parcel of land. While it is valid and binding upon the parties with respect to the sale of the house erected thereon, yet it is not sufficient to convey title or any right to the residential lot in litigation. Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public document.
>
> x x x x x x x x x

Thus, Section 57 of Presidential Decree 1529[13] (PD 1529) provides:

Section 57. *Procedure in registration of conveyances.* **An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law.** The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "canceled". The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.[14]

In relation to the above provision, Section 112 of the same Decree provides for the "Forms Used in Land Registration and Conveyancing," to wit:

Section 112. *Forms in conveyancing*. The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered

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[13] Property Registration Decree.

[14] Emphasis supplied.

or unregistered land, executed in accordance with law in the form of public instruments shall be registrable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the ages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment.[15]

Based on the above discussions and provision of law, it is clear that the subject Extrajudicial Settlement with Sale may not be used as a valid basis for the issuance of the questioned TCT in the name of petitioners.

Accordingly, I vote to **DENY** the petition and **AFFIRM** the Decision dated March 26, 2015 and Resolution dated September 14, 2015 of the Court of Appeals in CA-G.R. CV No. 100188.

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[15] Emphasis supplied.

INDEX

INDEX

ADMINISTRATIVE DUE PROCESS

Twin-notice rule — To meet the requirements of due process in the dismissal of an employee, an employer must finish the worker with two (2) written notices: (1) a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side; and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee; when complied with. **(**Phil. Auto Components, Inc. *vs.* Jumadla, G.R. No. 218980, Nov. 28, 2016) p. 171

ADMINISTRATIVE LAW

Administrative regulations **—** Administrative regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer as administrators and implementors cannot engraft additional requirements not contemplated by the legislature. **(**Purisima *vs.* Rep. Lazatin, G.R. No. 210588, Nov. 29, 2016) p. 395

Administrative remedies **—** Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases have not yet been resolved with finality. **(**Atoc *vs.* Camello, I.P.I. No. 16-241-CA-J, Nov. 29, 2016) p. 207

ADMINISTRATIVE PROCEEDINGS

Burden of proof **—** The burden of proof that the respondent committed the acts complained of rests on the complainant. **(***Re*: Verified Complaint dtd. 17 Nov. 2014 of Dolora Cadiz Khanna against Hon. Delos Santos, I.P.I. No. 15-227-CA-J, Nov. 29, 2016) p. 194

ALIBI AND DENIAL

Defenses of **—** Considered as inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the

APPEALS

surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when 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 there is no citation of specific evidence on which the factual findings are based; (7) when the findings of absence of facts is contradicted by the presence of evidence on record; (8) when the findings of the CA are contrary to the findings of the RTC; (9) when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the CA are beyond the issues of the case; and (11) when the CA's findings are contrary to the admission of both parties. **(**Manulife Phils., Inc. *vs.* Ybañez, G.R. No. 204736, Nov. 28, 2016) p. 95

Petition for review on certiorari to the Supreme Court under Rule 45 — As both petitions are petitions for review filed under Rule 45 of the Rules of Court, this Court will no longer disturb the factual findings of the Court of Appeals; a Rule 45 petition should raise only questions of law. (P.D. No. 1271 Committee *vs.* De Guzman, G.R. No. 187291, Dec. 5, 2016) p. 731

—— In a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised; the Court had recognized several exceptions to this rule: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are

— The tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the Clark FEZ, such as VAT and excise tax. (*Id.*)

— The taxes imposed by Sec. 3 of RR 2-2012 on the importation of petroleum and petroleum products brought into FEZ directly contravene the exemptions enjoyed by the FEZ enterprises from VAT and excise tax. (*Id.*)

CERTIORARI

Petition for — As a rule, *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed; exceptions: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. **(**Hon. Aguinaldo *vs.* His Excellency Pres. Aquino III, G.R. No. 224302, Nov. 29, 2016) p. 492

— Distinguished from petition for *mandamus*; explained. (Mandaue Realty & Resources Corp. *vs.* CA, G.R. No. 185082, Nov. 28, 2016) p. 27

— Proper remedy to assail the decision of the Commission on Audit, when it is shown that the same have been tainted with unfairness amounting to grave abuse of discretion. **(**Phil. Health Ins. Corp. *vs.* COA, G.R. No. 213453, Nov. 29, 2016) p. 427

CLARK FREEPORT AND ECONOMIC ZONES (FEZs)

Nature of –– Clark Freeport and Economic Zones (FEZs) enterprises have legal standing to question the validity of the implementation of RR 2-2012. (Purisima *vs.* Rep. Lazatin, G.R. No. 210588, Nov. 29, 2016) p. 395

–– To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund runs counter to the legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones, is ensured. (*Id.*)

Tax exemptions –– The imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment; RR 2-2012 which imposes VAT and excise tax on goods brought into the FEZs declared null and void. (Purisima *vs.* Rep. Lazatin, G.R. No. 210588, Nov. 29, 2016) p. 395

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Construction –– The presumption of constitutionality of Sec. 17 of R.A. No. 6657 and DAR Administrative Order (AO) No. 5, series of 1998 must prevail, as there is no factual foundation of record to prove the invalidity or unreasonableness thereof. (Alfonso *vs.* LBP, G.R. Nos. 181912 & 183347, Nov. 29, 2016) p. 217

Just compensation –– In determining just compensation, courts are obligated to apply both the compensation valuation factors enumerated by the Congress under Sec. 17 of R.A. No. 6657, and the basic formula laid down by the Department of Agrarian Reform (DAR). **(**Alfonso *vs.* LBP, G.R. Nos. 181912 & 183347, Nov. 29, 2016) p. 217

–– In the exercise of their judicial discretion, the courts may relax the application of the formula to fit the peculiar circumstances of a case, but they must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion. (*Id.*)

— Substantial compliance therewith is sufficient as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officers. (*Id.*)

Illegal possession of dangerous drugs — With respect to the prosecution for illegal possession of dangerous drugs, the following facts must be proved: (a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs. (People *vs.* Tamaño, G.R. No. 208643, Dec. 5, 2016) p. 981

Illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs — The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12, Art. II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. (People *vs.* Tamaño, G.R. No. 208643, Dec. 5, 2016) p. 981

Illegal possession or illegal sale of dangerous drugs — The dangerous drug itself constitutes the very *corpus delicti* of the offense. (People *vs.* Tamaño, G.R. No. 208643, Dec. 5, 2016) p. 981

Illegal sale of dangerous drugs — In every prosecution for illegal sale of dangerous drugs, like *shabu* in this case, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. (People *vs.* Tamaño, G.R. No. 208643, Dec. 5, 2016) p. 981

CONSPIRACY

Existence of — May be presumed from and proven by the acts of the accused pointing to a joint purpose, design, concerted

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine — Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her; exceptions: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary who acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot. (Herbosa *vs.* CJH Dev't. Corp., G.R. No. 210316, Nov. 28, 2016) p. 110

FORUM SHOPPING

Consequences of — If the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed without prejudice, on the ground of either *litis pendentia* or *res judicata;* if the forum shopping is willful and deliberate, both actions shall be dismissed with prejudice. (Heirs of Andres Naya *vs.* Naya, G.R. No. 215759, Nov. 28, 2016) p. 160

— The doctrine of the "law of the case" provides that questions of law previously determined by a court will generally govern a case through all its subsequent stages where "the determination has already been made on a prior appeal to a court of last resort." (*Id.*)

Void judgment — A void judgment for want of jurisdiction is no judgment at all, and cannot be the source of any right nor the creator of any obligation, and all acts performed pursuant to it and all claims emanating from it have no legal effect. (Cabrera *vs.* Clarin, G.R. No. 215640, Nov. 28, 2016) p.41

JUDICIAL AND BAR COUNCIL (JBC)

Powers — The JBC's power to recommend cannot be used to restrict or limit the President's power to appoint, as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the judiciary is still paramount. **(**Hon. Aguinaldo *vs.* His Excellency Pres. Aquino III, G.R. No. 224302, Nov.29, 2016) p. 492

Revised Rules of the Judicial and Bar Council (JBC No. 2016-1) — The clustering by the JBC nominees for simultaneous vacancies in collegiate courts constitute undue limitation on and impairment of the power of the President to appoint members of the Judiciary under the 1987 Constitution. **(**Hon. Aguinaldo *vs.* His Excellency Pres. Aquino III, G.R. No. 224302, Nov. 29, 2016) p. 492

JUDICIAL DEPARTMENT

Expanded power of judicial review — The Court will exercise its power of judicial review only if the case is brought before it by a party who has legal standing to raise the constitutional or legal question. (Hon. Aguinaldo *vs.* His Excellency Pres. Aquino III, G.R. No. 224302, Nov. 29, 2016) p. 492

JUDICIAL REVIEW

Legal standing — Defined; the gist of the question of standing is whether a party alleges such a personal stake in the

KIDNAPPING FOR RANSOM WITH HOMICIDE

Commission of — When duly established; penalty. (People *vs.* Elizalde *y* Sumangdon, G.R. No. 210434, Dec. 5, 2016) p. 1008

LABOR ORGANIZATIONS

Union dues — Case law interpreting Art. 250 (n) and (o) (formerly Art. 241) of the Labor Code, as amended, mandates the submission of three (3) documentary requisites in order to justify a valid levy of increased union dues: *(a)* an authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; *(b)* the secretary's record of the minutes of the meeting, which shall include the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees; and *(c)* individual written authorizations for check-off duly signed by the employees concerned. (Peninsula Employees Union (PEU) *vs.* Esquivel, G.R. No. 218454, Dec. 01, 2016) p. 667

— When there was no sufficient showing that the proposed increase in union dues had been duly deliberated and approved by the members, no individual check-off authorizations can proceed therefrom. (*Id.*)

LABOR RELATIONS

Money claims — The labor arbiter and the National Labor Relations Commission have jurisdiction over private respondents' money claims; by engaging in a particular business thru the instrumentality of a corporation, the government divests itself pro hac vice of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations. (Light Rail Transit Authority *vs.* Alvarez, G.R. No. 188047, Nov. 28, 2016) p. 40

LACHES

Elements — The elements of laches must be proven positively, as laches is evidentiary in nature, a fact that cannot be

SALARY STANDARDIZATION LAW (SSL)

Cost of living allowance — The cost of living allowance (COLA) is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration of the SSL, but the court in certain instances sustained the continued grant of allowances, whether or not integrated into the standardized salaries, but only to those incumbent government employees who were actually receiving said allowances before and as of July 1, 1989. (Phil. Health Ins. Corp. *vs.* COA, G.R. No. 213453, Nov. 29, 2016) p. 427

Labor management relations gratuity — Good faith dictates that before the board members and officers approved and released the allowance, they should have initially determined the existence of the particular rule of law authorizing them to issue the same; members and officials of the petitioner corporation who authorized the release of the labor management relations gratuity are ordered to refund the same. **(**Phil. Health Ins. Corp. *vs.* COA, G.R. No. 213453, Nov. 29, 2016) p. 427

— The fact that a GOCC is a self-sustaining government instrumentality which does not depend on the national government for its budgetary support does not automatically mean that its discretion on the matter of compensation is absolute; absent any statutory authority or DBM issuance expressly authorizing the grant of the labor management relations gratuity (LMRG), the same must be deemed incorporated in the standardized salaries of the employees of the petitioner-corporation. (*Id.*)

Refund of disallowed benefits or allowances — Recipients need not refund disallowed benefits or allowances when it was received in good faith and there is no finding of bad faith or malice, and officers who participated in the approval of such disallowed amount are required to refund only those who received it if they are found to be in bad faith or grossly negligent amounting to bad faith. (Phil. Health Ins. Corp. *vs.* COA, G.R. No. 213453, Nov. 29, 2016) p. 427

as possible under the threat of having their importation declared as abandoned and forfeited in favor of the government; (c) to minimize the opportunity of graft; (d) to compel both the BOC and the importers to work for the early release of cargo, thus decongesting all ports of entry; (e) to facilitate the release of goods and thereby promoting trade and commerce; and (f) to minimize the pilferage of imported cargo at the ports of entry. (Pilipinas Shell Petroleum Corp. *vs.* Commissioner of Customs, G.R. No. 195876, Dec. 5, 2016) p. 806

Finality of liquidation — Any action questioning the propriety of the entry and settlement of duties made beyond the one-year prescriptive period is barred by prescription. (Pilipinas Shell Petroleum Corp. *vs.* Commissioner of Customs, G.R. No. 195876, Dec. 5, 2016) p. 806

— In the absence of fraud, the entry and corresponding payment of duties made by petitioner becomes final and conclusive upon all parties after one (1) year from the date of the payment of duties in accordance with Sec. 1603 of the TCCP, as amended. (*Id.*)

Fraud — Sec. 3611(c) of the TCCP, as amended, defines the term fraud as the occurrence of a "material false statement or act in connection with the transaction which was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence." (Pilipinas Shell Petroleum Corp. *vs.* Commissioner of Customs, G.R. No. 195876, Dec. 5, 2016) p. 806

Notice requirement — The requirement of due notice contemplated under Sec. 1801(b) of the TCCP, as amended, refers to the notice to the owner, importer, consignee or interested party of the *arrival of its shipment* and *details thereof;* applies solely to persons not considered as knowledgeable importers, or those who are not familiar with the governing rules and procedures in the release of importations. (Pilipinas Shell Petroleum Corp. *vs.* Commissioner of Customs, G.R. No. 195876, Dec. 5, 2016) p. 806

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

Page

Page

Page

II. FOREIGN CASES

REFERENCES

LOCAL AUTHORITIES

CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

Page

Page

Page

C. OTHERS

Page

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

BOOKS

Page